

2013 • A TAX HAVEN • GREAT DIVIDE • FULL SPEED AHEAD • PARTNER FOR LIFE • PORTRAIT OF A DEAN

NYU LAW

MAGAZINE



Trevor Morrison Arrives

The constitutional law scholar steps up as NYU Law's 17th dean.

REUNION

Friday & Saturday, April 25–26, 2014

Please visit law.nyu.edu/alumni/reunion2014 for more information.

ReUNITE!



The Morrison Memo

In April, I was honored to be named dean of the Law School. I have long admired NYU Law for its outstanding faculty and fabulous students, and for its unique institutional energy and entrepreneurship. That admiration has only grown over the past several months as I have met with faculty, staff, students, and alumni. The NYU Law community is special, and I am thrilled and humbled by the privilege of guiding this outstanding institution.

In this issue of the magazine you'll read about some of our truly spectacular programs, initiatives, and people. You may have already seen in the *New York Times* that we have embarked on an ambitious set of curricular changes announced by my wonderful predecessor, Richard Revesz. These new offerings provide students with a range of opportunities to align their 3L-year studies with their career goals, thus making the most of their time in law school (see "Full Speed Ahead" on page 20). Here, as in so much that NYU Law does, we are at the forefront of innovation in legal education.

Over the last several months I have learned much about the history of NYU Law, including the grand plan, launched in 1945 by Dean Arthur Vanderbilt, to transform the Law School from a regional commuter school to one of the nation's great institutions of legal education. Vanderbilt's vision included the Graduate Tax Program, and in "A Tax Haven," on page 34, you'll see how his dream has been realized. Through that story you'll also meet the incredibly impressive members of our tax faculty, including Lily Batchelder, who is currently on leave to serve as chief tax counsel to the Senate Finance Committee, and David Kamin '09, formerly an economic adviser to the White House Office of Management and Budget.

"Partner for Life," on page 28, examines the exceptional relationship between NYU Law and one of its most illustrious alumni, Martin Lipton '55, co-founder of the storied firm Wachtell, Lipton, Rosen & Katz. Selected for the second class of Root-Tilden Scholars, Marty is the embodiment of the excellence that Vanderbilt envisioned for NYU Law and its graduates. He has repaid the Law School many times over for the education he received, not only by rescuing it from financial peril in the turbulent 1970s



A handwritten signature in blue ink that reads "Trevor Morrison".

TREVOR MORRISON

but also by continuing to serve his alma mater in leadership posts for four decades. NYU Law is proud to claim the legendary Marty Lipton as a devoted alumnus.

Incidentally, one of Vanderbilt's directives was to serve in public office. I, too, believe that public service is a critically important part of our profession. "Great Divide," on page 22, showcases the depth and breadth of the Law

School's ties to Washington, DC. The engrossing discussion features members and friends of our community—veterans of campaigns in both major parties—debating the causes of and possible solutions to the extreme polarization in modern politics.

There is much more in these pages. I'm particularly pleased to introduce three new faculty appointments—all in intellectual property, cementing our position of preeminence in that dynamic and important field. You'll also meet students like Garen Marshall '14, an Iraq War veteran who is committed to helping fellow vets, and you'll read the reactions of distinguished alumni like Sherrilyn Ifill '87, head of the NAACP LDF, and Trustee David Boies '67 to the Supreme Court's recent decisions in two historic cases in which they have been centrally involved.

Sadly, the Law School community lost some extraordinary colleagues and friends over the last year, including the brilliant Ronald Dworkin, a true giant in legal philosophy who did so much to make NYU Law the paragon in that field, and Trustee Dwight Opperman, a visionary leader who championed our Institute for Judicial Administration. I'm sorry to have missed the chance to work directly with those two men, but I am inspired by their legacies as I help guide this great

law school along a continuing path of excellence.

I welcome your thoughts, feedback, and suggestions at deanmorrison@nyu.edu.

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NYU LAW

MAGAZINE

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10 Taking Charge



A former Supreme Court clerk, associate White House counsel, and award-winning Columbia Law professor, Trevor Morrison brings his signature energy and enthusiasm to his new role as dean of NYU Law.

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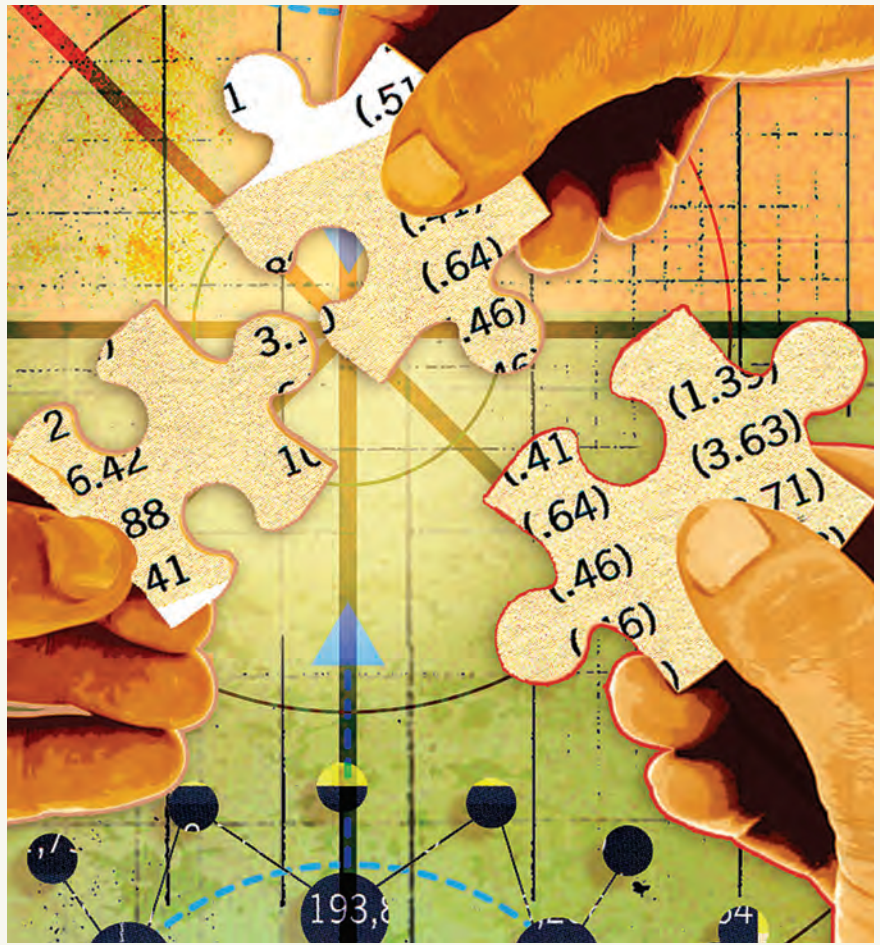


As Richard Revezz marked the end of his deanship with the unveiling of his official portrait, friends, colleagues, and students offered heartfelt tributes.

20 Leading the Way



NYU Law is preparing students for the rapidly changing legal profession with specially designed study-abroad opportunities, leadership training, financial and business literacy, and other programs.



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The increasing polarization in Congress between Democrats and Republicans inspired a spirited debate among a group of political advisers and experts about the nature, extent, and causes of the partisan divide, as well as potential bridges.

28 Lipton's Legacy



As a trusted adviser to four NYU presidents and six Law School deans, Martin Lipton '55, co-founder of one of the world's top law firms, has played a pivotal role in NYU Law's rise from a commuter law school to a premier global institution.

Stepping on the Gas

Only four years after being elected the youngest mayor of Charlotte, NC—a part-time position—Anthony Foxx '96 was unanimously confirmed by the Senate to be US Secretary of Transportation and the youngest member of President Barack Obama's cabinet. He will lead the planning and support of the nation's roads, air, and sea-based transportation networks.

The confirmation capped a remarkable year for Foxx, a rising star in the Democratic Party. He delivered nationally televised remarks in prime-time on the opening night of the September 2012 Democratic National Convention. Earlier that spring, he also addressed the JD graduates and their guests at NYU Law's 2012 convocation with a humorous and inspiring description of his persistent efforts to land the convention for Charlotte less than one year after becoming mayor. The convention netted \$91 million in new spending for North Carolina.

Since graduating from NYU Law himself, Foxx has

worked not only in private practice but also in every branch of the federal government: He served as a law clerk for Judge Nathaniel Jones of the US Court of Appeals for



the Sixth Circuit, a trial attorney for the Civil Rights Division of the Justice Department during the Clinton administration, and a staff counsel to the House Judiciary Committee. He is the third member of his 1996 Root-Tilden-Kern class to join the Obama administration in 2013 (see story about Christopher Meade and Jenny Yang on page 47) and joins Seth Harris '90, acting secretary of labor, in Obama's cabinet. At this rate, Foxx should consider changing his title to secretary of career acceleration.

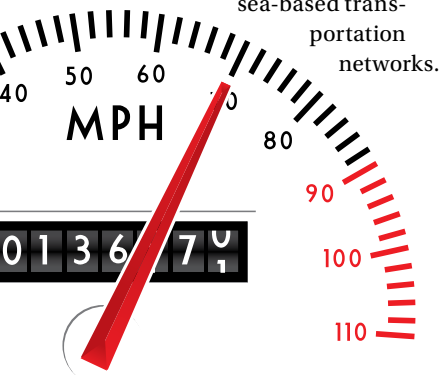


Well-Appointed

A bipartisan agreement to preserve the Senate filibuster paved the way for Kent Hirozawa '82 to become the first Asian American on the National Labor Relations Board. Hirozawa, formerly chief counsel to NLRB chairman Mark Pearce, was confirmed on July 30.

Republicans had balked when Barack Obama recess-appointed two stalled nominees in 2012, but eventually agreed to Hirozawa and another nominee as replacements, creating a full Senate-confirmed NLRB for the first time since 2003.

At his confirmation hearing, Hirozawa focused on the mission at hand: "I once heard another employee described as pro-act. Not pro-union or pro-management, but pro-act, dedicated solely to advancing the policies and purposes of the National Labor Relations Act, without regard for the identities or alignments of the parties. That has always struck me as an apt term of praise for an employee of the board, and that is what I will aspire to."



Boies, left, and Olson, cheered at a West Hollywood rally the day the Supreme Court ruled on Proposition 8.

From Docket to Documentary

HBO announced in July that next year it will air a documentary about *Hollingsworth v. Perry*, the Supreme Court case that led to the overturning of Proposition 8, thus allowing same-sex couples in California to be married. Arguing against Proposition 8 were co-litigators David Boies LLM '67 and Theodore Olson. (Read more about their marriage-equality efforts on page 88.) The documentary's directors, Ben Cotner and Ryan White, had exclusive access as they followed Boies and Olson's legal team and the lives of the plaintiffs, two same-sex couples, for five years.

In a press release about the documentary, Olson deemed *Perry* the most important case he had ever worked on. Boies, commenting on the testimony given at trial as the case worked its way up to the Supreme Court, added, "The opponents of marriage equality have successfully blocked the release of the videotapes of that testimony. But they cannot block this documentary. Everyone who sees this film will understand the pain our fellow citizens feel when they are deprived of the right to marry the person they love—and why that pain is so unnecessary."

A Scout's Honor



When the Boy Scouts of America (BSA) held a closely watched vote on whether

to admit gay Scouts, it was the organization's volunteer president, Wayne Perry LLM '76, who announced the results. On May 23, dressed in his Scout's uniform, he declared that, effective January 2014, "No youth may be denied membership in the Boy Scouts of America on the basis of sexual orientation or preference alone."

More than 1,400 members of the BSA's National Council, composed of volunteer leaders across the country, voted on the resolution.



The measure was an about-face from a hard-fought Supreme Court case 13 years earlier, *Boy Scouts of America v. Dale*. The justices then ruled 5-4 to uphold the BSA's freedom of association—or, more accurately, its freedom not to associate with gays.

Perry says that the wide margin—61 percent supported the resolution—surprised him, adding, "I also was proud of our people. We had people who opposed us, who made forceful arguments about this. They immediately rolled up their sleeves and said, 'OK, decision made. Let's get to work.'"

Perry sees the development as a means of moving forward: "Did we have gay kids in the



family? Yes, we did. Have we now gone to a more honest place? Yes, we have. By doing this, we upheld our stan-

dard that a Scout is honest." He freely acknowledges that the continued ban on gay and lesbian Scout leaders leaves many external factions still critical of the BSA. "We had no illusions about satisfying the outside world," he says. "This was the Scouting family making a decision. I hope that people will understand what it's really like to be in the Scouting organization. There are no kinder, more considerate people on the planet than those Cubmasters, den leaders, and Scoutmasters who are dealing with kids that have challenges—divorce, poverty, abuse, and everything else. I hope this decision will enable more people to join."

Counterpoint

“The idea that we have somehow tipped off the terrorists to the fact that the US government is monitoring their telephone calls and emails is completely idiotic. The only things that we've revealed are things to the American people that they didn't know about how their communications, not the communications of the terrorists, are being monitored.”

Activist and *Guardian* columnist Glenn Greenwald '94, who broke multiple stories about surveillance by the National Security Agency, responding to Rep. Peter King's call that he be prosecuted for his groundbreaking reporting.



Loud and Clear



Time's 2013 list of the 100 most influential people in the world featured Vrinda Grover LLM '06, a Delhi-based human

rights lawyer and advocate for women's rights. After a young Indian woman's brutal sexual assault sparked protests in Delhi, Grover argued that India must reform its sexual violence laws. "The laws on sexual assault have to be expanded to include such crimes varying from hurt and humiliation to penetrative assault," Grover told the *New Yorker* in January.

In her *Time* tribute, Indian journalist Nilanjana Roy wrote, "In the conservative backlash that followed the waves of women's protests, Grover's voice—loud, uncompromising—was raised again and again in the rambunctious theater of Indian TV. Justice and equality, however distant, are the goal; she is there to remind politicians that nothing less will do."

1st Inaugural Ford Foundation Fellows

4 total number of schools selected

25 number of Ford Foundation Fellows from NYU Law

The Ford Foundation launched a Law School Fellowship Program to provide 10-week placements for 100 high-performing 1L and 2L students in the foundation's grantee organizations around the world.

"Investing in the next generation of leaders is central to the Ford Foundation's mission," said Foundation President Luis Ubiña. "This effort continues the expansion of our work with leading academic institutions in the United States and worldwide." One of only four law schools invited to participate, NYU Law selected the following 25 inaugural fellows: M. Gabrielle Apollon-Richardson '15, Siobhan Atkins '14, Juan Camilo Mendez Guzman '15, Emma Clippinger '15, Alexander Connelly '15, Martin de Jesus Santos Paredes '15, Lyubomira Docheva '15, Jesse Dong '15, Brittany Francis '14, Monte Frenkel '15, Rebecca Hufstader '15, Andrew Jondahl '15, Nishi Kumar '15, Rahim Manji '15, Anne Mathews '14, John Nelson '15, Vivake Prasad '15, Joshua Riegel '15, Johann Strauss '15, Colin Stroud '15, Aimee Thomson '15, Adrienne Warrell '15, Geoffrey Wertime '14.

Your Cart is Empty

Turning its attention within our borders, the International Human Rights Clinic (IHRC) focused on hunger in America.

The IHRC's report, "Nourishing Change: Fulfilling the Right to Food in the United States," described the toll that food insecurity takes on individuals, families, and communities and the impact it has on health and educational outcomes, especially for children. The report, which Associate Professor Smita Narula co-authored with Jessica Scholes '13, Matthew Simon '14, and Alyson Zureick '14, found that 50 million Americans, including almost 17 million children, cannot afford adequate food and that food insecurity cost the US an estimated \$167.5 billion in 2010.

"The world over, freedom from hunger and access to sufficient nutritious food is recognized as a basic fundamental human right. And these values are not foreign to the United States," said Narula in an interview with *Democracy Now!* "We're calling on America to reclaim those values to ensure that all houses have access to sufficient and nutritious food and that nobody struggles to put food on the table."



A Grand Prize



For only the second time in its 93 years, the American Civil Liberties Union has established an award. The \$10,000 Dorsen Presidential Prize will be given biennially to full-time academics for outstanding lifetime contributions to civil liberties. Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law, served as general counsel and then president of the ACLU from 1969 to 1991. Citing his "unflinching determination to protect the civil liberties of all Americans in all circumstances," ACLU Executive Director Anthony Romero stated, "This award was designed to honor his resolve and to reward and encourage those who share his commitment."

Medicinal Purpose

During 18 years as an assistant US attorney in the Eastern District of New York, Maureen Barden '78 became increasingly concerned with repeat offenders. "As federal sentences became longer and longer and mandatory sentencing laws tied our hands in so many cases, I was anxious to help people stay out of prison," she said. "Working with the reentering population was a natural segue from my work as a prosecutor."

Named a 2013 Soros Justice Fellow by the Open Society Foundations, Barden will work with the Pennsylvania Health Law Project to develop and implement model policies and practices to give former inmates better access to health care, building on opportunities provided by the Patient Protection and Affordable Care Act (ACA).

Although the ACA will expand Medicaid eligibility and establish state-based health insurance exchanges that will improve health care for former prisoners, barriers to access still exist, Barden says. She points to multiple studies indicating a correlation between increased health care access and decreased recidivism. "Anything that assists the reentering population with basic needs and reinforces their ties to the larger community is likely to help people stay out of jail."



Built on Sandy

Thousands of New Yorkers have dramatic Superstorm Sandy survivor stories, but few can claim a \$200 million deal weighed in the balance.

After 10 months of preparing to buy Ocean Village, a 1,100-unit affordable-housing complex in Far Rockaway, Queens, NYU Law Trustee Ronald Moelis '82 and his firm, L+M Development Partners,

were scheduled to close on the very day Sandy touched ground in New York City.

The buildings had already been in distress from mold and disrepair. But then Sandy buried the transformers under 51 inches of saltwater. "That meant no lights, no heat, no running water," says Moelis. Approximately 100 families remained despite the order to evacuate. "Most were elderly or challenged, and there was a lot of distress," he adds. Generators were brought in.

Ultimately, L+M went ahead with the closing less than a month later, and renovations on 350 vacant apartments and the building exteriors began almost immediately, financed largely through a Citigroup fund that encourages investing in affordable housing.

Three years ago, Moelis funded the Moelis Institute for Affordable Housing Policy, part of NYU's Furman Center for Real Estate and Urban Policy. The institute aims to improve affordable housing policies and programs by providing research, data, and rigorous evaluation of innovative practices. Ocean Village will put such policies to the test.

"The storm made this area incredibly visible, which is both good and bad," Moelis says. "We now have the opportunity to be visible in a positive way. We are trying to bring in resources to enhance the property, including food, security, and social services as well as open space, all things missing in this community."

Poor timing could turn out well for Ocean Village after all.



Moelis with US Secretary of Housing and Urban Development Shaun Donovan, left, in Brooklyn.



Shingira Masanzu LLM '13, Cenobar Parker LLM '13, and Marzieh Darian LLM '13 in Sidi Bou Said, a picturesque town in northern Tunisia.

Springtime in Tunis

With all eyes on Egypt, it is easy to forget that the Arab Spring began when Tunisian protesters brought down the government of their 23-year president in 2011. In April, 16 students and faculty of the Constitutional Transitions Clinic traveled to a University of Tunis El Manar conference to present their research on aspects of emerging democracies and later engaged with the nation's political actors, including Tunisian president Moncef Marzouki.

For the students, it was a once-in-a-lifetime experience: "How many people can say they were able to ask the president of Tunisia for his reflections on the revolution and the constitutional transition in general?" said Cenobar Parker LLM '13. Alex Kerchner '14 added, "It is one thing to research these issues from New York from an academic perspective, and entirely another to meet with Tunisians who clearly had a large stake in the ultimate

resolution of these issues, and who posed pointed and directed inquiries because they believe the answers will greatly affect their lives moving forward."

The clinic, led by Sujit Choudhry, Cecelia Goetz Professor of Law, and Katy Glenn Bass, is assisting its client, the International Institute for Democracy and Electoral Assistance (International IDEA), by providing support for constitutional transitions across the Middle East and North Africa in Morocco, Libya, Tunisia, Egypt, and Jordan. "Our students did an extremely good job in presenting their work to an expert Tunisian audience, and received valuable feedback that will enable them to sharpen their reports," Choudhry said. "Our high-level meetings are a testament to the importance of our project with International IDEA to support constitutional transitions in the region."

Destroying Words in the Name of Art



What happens when trimming a written work literally involves a pair of scissors? Amy Adler, Emily Kempin Professor of Law, would argue that the end result is art. Adler published an article in the *California Law Review* taking issue with a body of "moral rights" law that gives visual artists the right to protect the integrity of their creations, even when they are owned by others.

Adler states in her article "Against Moral Rights" (which was excerpted in the 2010 issue of *NYU Law* magazine) that moral rights laws "endanger art in the name of protecting it." It is her belief that modifying, or even destroying, works of art is essential to artistic expression and creativity.

To practice what she preaches, Adler distributed four bound copies of "Against Moral Rights," along with a pair of scissors, to students in her Art Law class. The students applied lipstick kisses on it, spilled drinks on it, cut it up, drew on it, folded it, wrote on it, added objects, and crossed out some portions.

The end result became a part of "Art and Law Codex" by artist and lawyer Sergio Muñoz Sarmiento and was displayed at the Independent Curators International Hub as "Cut Piece(2) by Amy Adler and 109 Art Law students."



"Our appetite for punishment... has made the demand...for lawyers much greater than...we've been able to meet. The situation for poor people in the criminal justice system is much, much worse today than it was in 1963."

BRYAN STEVENSON

*Moyers & Company, March 29, 2013
"Evening the Odds in American Justice"*

Ask Me Anything!

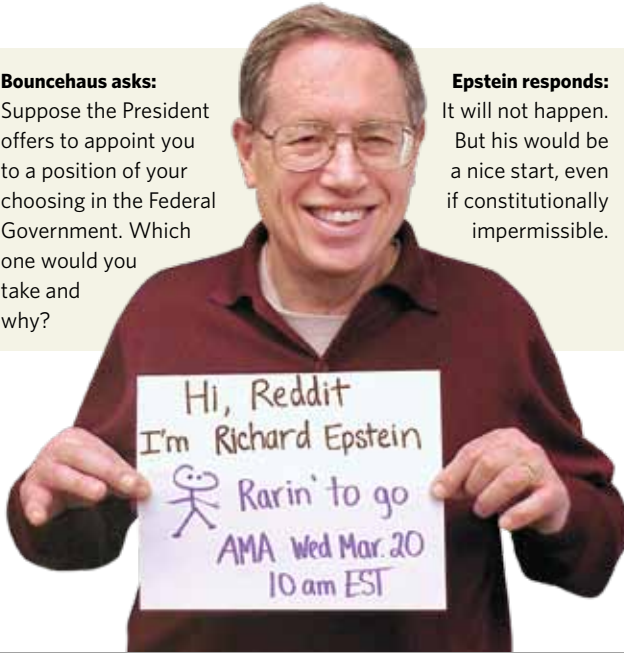
Reddit, the popular social news forum, invited Laurence A. Tisch Professor of Law Richard Epstein to take part in a “celebrity” Ask Me Anything (AMA) session. A sample question and response:

Bouncehaus asks:

Suppose the President offers to appoint you to a position of your choosing in the Federal Government. Which one would you take and why?

Epstein responds:

It will not happen. But his would be a nice start, even if constitutionally impermissible.



“Gays are essentially where African Americans were in 1967, confronting discrimination where it’s relatively easy to see. What’s much harder for the court to deal with under the Equal Protection Clause is when the discrimination is slightly jiggered, so instead of talking about eliminating the vote from African Americans, you talk about voter ID or literacy tests.”

KENJI YOSHINO

All In with Chris Hayes, June 26, 2013

Answering how to make sense of Supreme Court decisions on affirmative action, the Voting Rights Act, and marriage equality.

Exploring History as It’s Made



Standing on the same stage upon which Abraham Lincoln espoused his opposition to slavery, Burt Neuborne, Inez Milholland Professor of Civil Liberties, took to the historic Great Hall at Cooper Union for a weekly series of nine public lectures exploring the evolving interpretation of the US Constitution. An average of 400 people attended each lecture, which took place against the backdrop of the historic 2012 presidential campaign.

In the series, called “Three Constitutions: Republican, Democratic and Consensus,” Neuborne framed divisive

issues such as the role of religion in American politics, due process, free speech for corporations, massive electoral spending, and immigration in terms of constitutional history and law.

During his lecture on the Second Amendment, Neuborne cited an estimated \$2 billion a year spent treating nonfatal gunshot wounds in the US. “If you were to substitute ‘gun virus’ for ‘gun,’ it would trigger a nationwide medical emergency,” he said. “When we shift the focus to just plain ‘gun,’ we move from a medical emergency to a constitutional debacle.”

A Backstage Papa

Setting the scene for a dramatic theater season, Albert Podell ’67 declared in the *New York Times* that he is determined to get a Lyndon B. Johnson historical play, *The Great Society*, on Broadway this year at the expense of a competing LBJ-centered drama, *All The Way*. “No sane theatergoer is going to see two plays about LBJ on Broadway this season, so only one of us will make it,” Podell told the *Times*, adding that he will underwrite the \$3.3 million cost of the production if he has to.



Capital Crew

The inaugural class of Governor Andrew Cuomo’s New York State Excelsior Service Fellowship Program kicked off with 10 recent graduates of NYU Law. Designed for college, university, and professional school graduates from across the state who are pursuing public service careers, the two-year program allows NYU Law graduates the opportunity to work on pressing policy issues as entry-level attorneys in New York State’s executive branch.

Of the 30 JD fellows selected, the NYU Law graduates, all from the Class of 2013, include: **Jehiel Baer, Kevin Frick, Darci Frinquelli, Phillip Harmonick, Ashley Harrington, Krystan Hitchcock, Abid Hossain, Theodore Kelly, Benjamin Levitan, and Paula Vera.**

“Our students have been increasingly interested in government service,” says Sara Rakita ’98, associate director of the NYU Law Public Interest Law Center, “and this fellowship is a fantastic opportunity for them to make a difference in New York State.”

Striking Home



*Kenneth
Feinberg '70,
founder of
Feinberg
Rozen and the
go-to problem*

*solver for major disasters,
served as the administrator of
One Fund Boston, distribut-
ing more than \$60 million to
the victims of the 2013 Boston
Marathon bombings.*

*Feinberg has mastered vic-
tim compensation funds for the
9/11 attacks, 2007 Virginia Tech
shooting, and 2010 Deepwater
Horizon oil spill, and even
served as the nation's "pay czar"
for top executives at banks that
were bailed out by the US. But
this time, the Brockton, MA,
native is administering close to
home. "Unless you have a heart
of stone, you cannot help but
empathize with victims who
reside in your neighborhood,"
says Feinberg. "As a profes-
sional, you try not to permit
your background and youth in
Massachusetts to influence your
objective decision making, but
it certainly strikes at your core."*

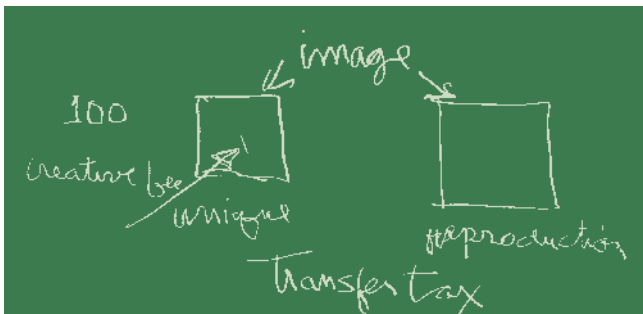


Big Ideas for the Big Apple

The Furman Center for Real Estate and Urban Policy and its Moelis Institute for Affordable Housing Policy convened a Mayoral Forum on Affordable Housing in April, moderated by Brian Lehrer of WNYC and featuring all six then-declared candidates for New York City mayor, above: John Liu, Christine Quinn, Sal Albanese, Adolfo Carrión Jr., Bill Thompson, and Bill de Blasio. Furman Center Director Vicki Been '83, Boxer Family Professor of Law, introduced the event with a daunting observation: "How the city takes on this challenge of creating and preserving affordable housing in an environment of increasing needs, declining federal support, and a strengthening real estate market will have an enormous effect on the livability, diversity, and character of the city."

"Failure to provide for maximum punishments adequate to satisfactorily punish criminal offenders is not an American problem. We probably have the longest sentence maxima in the free world. For the most serious crimes, we have life imprisonment without parole or capital punishment. No more can be added."

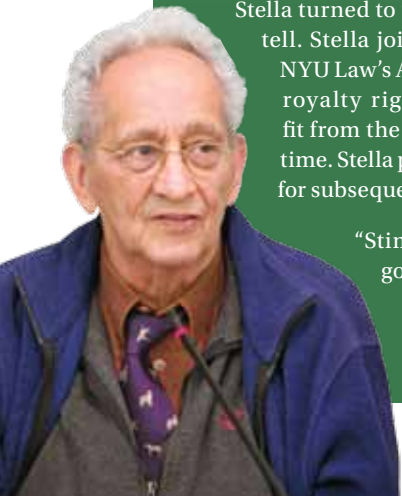
JAMES JACOBS,
*Chief Justice Warren E. Burger
Professor of Constitutional Law
and the Courts, testified before
the Senate Judiciary Subcom-
mittee on Constitution, Civil
Rights and Human Rights during
a hearing on hate crime and
domestic extremism that was
held on September 19 in the
wake of a shooting at a Sikh
temple in Milwaukee, Wisconsin.*



"Untitled, Chalk on Board"

When mere words wouldn't do, renowned painter Frank Stella turned to the chalkboard to show rather than tell. Stella joined a panel of experts in April for NYU Law's Art Law Society's discussion of resale royalty rights, which allow artists to benefit from the increased value of their works over time. Stella proposed an alternative "transfer tax" for subsequent sales of an original work of art.

"Stimulating creativity in the arts is not going to be done by any kind of resale right or handout to the artists," he said. The drive to create, he added, "happens regardless of the market."



Our Fellow Americans

Candice Jones '07 and Jason Washington '07 recently completed their year as White House Fellows.

Jones, most recently the executive director of the Illinois Juvenile Justice Commission, worked on a series of policy projects in the Office of the Secretary of Education, contributing to broad strategy development. "I have a better understanding of the benefits and burdens of being a public servant," said Jones. "There is a responsibility to appreciate the broad impact of proposed policies, while constantly managing the scrutiny of decisions and



efforts to communicate those decisions effectively."

Washington, previously a senior policy adviser to Baltimore's mayor, was initially placed in the Office of Field Policy and Management. After Superstorm Sandy, however, he asked to work on the Department of Housing and Urban Development's Hurricane Sandy Rebuilding Task Force. "The White House Fellows experience has challenged me to think about my responsibilities as a leader in a more complex way," he said. "As I map out my career path moving forward, I plan to consider not just my personal goals but also how I can have a positive and meaningful impact in the world."





Ahead of the Curve

During a time of great change for the legal profession, Trevor Morrison is leading NYU Law into the next era of legal education.

BY NADYA LABI

At the beginning of this year, Trevor Morrison was teaching a constitutional law class at Columbia, training for a marathon, and participating in rounds of job interviews for the deanship at NYU School of Law. But when a colleague found herself unable to teach her con law class for personal reasons, just three weeks into the semester, Morrison didn't hesitate. Because the two courses were held at the same time, he offered to merge the classes, doubling his own to 193 students. The students were, understandably, nervous and concerned. "I was not happy at the time at all," says Gabriel Unger, a 1L who was among the transplants. "I felt like we were kind of getting shafted."

The son of a teacher, Morrison did his utmost to set the new students at ease, welcoming them, reviewing material he'd already taught, and taking questions. At one point, he mentioned turtles in passing, and only half the class laughed. Morrison quickly described the reference to the newcomers: An old woman explains to a scientist that the earth is a flat plate supported on the back of a giant turtle. When the scientist pushes back, asking what the turtle is standing on, he's told, "It's turtles all the way down." The punch line became a bonding point throughout the semester. Morrison did much more than tell jokes, however. He held weekly review sessions, hired three teaching assistants (the first he'd ever used) to offer extra hours, hosted a series of happy hours, and agreed to grade the original and transplanted students on separate curves.

By semester's end, Morrison had won over skeptics like Unger. "Professor Morrison was an absolutely incredible professor, among the best I've ever had," he enthuses. "He's clear, organized, engaging, and interesting." Henry Monaghan, a professor of constitutional law and federal courts who taught Morrison when he was a student at Columbia, praises Morrison for his "lightning-like willingness" to merge the classes, adding, "He is somebody who pitches in for the school."

Morrison was collecting fans at NYU as well. When the Law School began looking for a dean last November, it cast a wide net, interviewing non-academics, CEOs of corporations, and entrepreneurs, among others. The committee eventually winnowed the field to four candidates and Morrison emerged as the clear favorite. "We found no one else who commanded the kind of universal respect and devotion that Trevor does from an amazingly wide range of people, both inside and outside the academy," says Daryl Levinson, David Boies Professor of Law, who headed the search committee. "Everyone who has ever met him or worked with him talks about his judgment, wisdom, and ability to bring people together."

The new dean has accomplished that feat across a range of impressive career moves. Upon graduating from Columbia Law School in 1998, he clerked for Judge Betty Fletcher of the US Court of Appeals for the Ninth Circuit and, four years later, another trail-blazing female judge: Supreme Court Justice Ruth Bader Ginsburg. He then entered academia, joining the faculty at Cornell Law School and, five years later, Columbia. He took a year's leave of absence to work on issues of national security for the White House counsel during President Barack Obama's first year in office. (He also found time to help vet the nomination of Sonia Sotomayor to the Supreme Court.) At 42, Morrison has already grappled with some of the most urgent legal challenges of our time. He is considered one of the nation's foremost scholars on constitutional structure and executive powers. "He's been a first-rate legal scholar whose work shows the kind of intellectual power, subtlety, and sophistication that he will bring to the role of the dean. He's deeply thoughtful and able to see down the road at an appropriate distance to make decisions that will endure as the correct ones over time," says Richard Pildes, Sudler Family Professor of Constitutional Law. "He was destined to become the dean of one of the top law schools in the country, and we were very fortunate to be able to persuade him to come here."

MORRISON'S FATHER, from New Zealand, and his mother, from California, met in college in Seattle, married, and followed jobs to Port Alberni on Vancouver Island in British Columbia. Port Alberni is a city at the head of the Alberni Inlet, surrounded by mountains and forests of red cedar and Douglas fir; many of the parents of Morrison's friends worked in the paper mills or logging divisions that constituted the small town's main industry. His father, Hugh, taught elementary and junior high school, and his mother, Anne, did a combination of social and community-building work. Other than one distant cousin, there were no lawyers in the family.

Morrison went to the only public high school in town and excelled at parliamentary debate, thanks largely to prep sessions with his father, who pushed him to think critically. When not studying or working or practicing piano, he ran, choosing the University of British Columbia in part because it had track and cross-country teams with some of Canada's best middle-distance runners. He made varsity on a seven-person cross-country team in which the top runner qualified for the Olympics. (Golf, he admits, is his new obsession.)

He planned to get a law degree and a PhD in Japanese history at Harvard, but a conversation with a graduate student in Japanese studies at Columbia—Beth Katzoff—convinced him to choose the New York City school. After completing a year of the doctoral coursework, Morrison started the JD program there. He became fascinated by virtually everything about the law, which seemed to offer much greater scope for engagement in the world than the narrow set of legal historical questions he was exploring for his PhD. "He was the most frequent attender of my office hours," says Deirdre von Dornum, who was his TA at Columbia Law School. Von Dornum recently left the Federal Defenders of New York to become the new assistant dean of the Public Interest Law Center at NYU.

NOW AND THEN With his wife, Beth, in the Vanderbilt courtyard; and with his younger brother, Andy, in Port Alberni, British Columbia, circa 1982 (above).



"He always had a million hypotheticals and he was generally interested in playing out each one far beyond what everyone else was, to understand every aspect of it." Morrison abandoned the PhD but gained a wife in Katzoff.

After getting his JD, he began clerking for Fletcher and quickly became an expert among the clerks in the knotty questions raised by the law of habeas corpus, which guarantees a prisoner the right to be brought before a judge to determine whether his or her detention is lawful. "The whole group looked to him, and the judge quickly recognized that he could be relied upon for the most cogent and trustworthy of analysis," says Alison Nathan, a US district judge for the Southern District

of New York who also clerked for Fletcher and who later worked with Morrison in the White House. Among the habeas cases, he was drawn to those involving the death penalty, an interest he maintained while teaching at Cornell Law School years later.

Fletcher was an inspiration to Morrison. After having four children, she enrolled in law school, graduating at the top of her class. No law firm wanted to hire a woman—"Prejudice came down on me like a ton of bricks," she later wrote—but she finally convinced one to hire her, becoming its first partner, the first woman to head the local bar association, and the second woman appointed to the Ninth Circuit. She went on to write some 700 opinions, including one in 1984 approving affirmative action for women in Santa Clara's transportation department and another in 2007 tossing the Bush administration's fuel-efficiency requirements for light trucks and SUVs because Fletcher found that the rules failed to adequately account for global warming. Her liberal record made her a target of conservative senators, who forced her to take senior status in 1998 after Bill Clinton appointed her son to the same court. Unlike most senior judges, however, she never reduced her caseload, ruling in more than 400 cases a year before her death last year at the age of 89.

Her work ethic left a lasting impression on Morrison, who said she expected equally dedicated service from her clerks: "The judge taught me that a progressive approach to the law can often just be a matter of working very hard. It doesn't just matter how smart you are."

Morrison never forgot the lesson. After stints at the US Office of Legal Counsel, the Solicitor General's Office, and Wilmer, Cutler & Pickering, Morrison returned to clerking in 2002, for an admirer of Fletcher's, Supreme Court Justice Ginsburg. At the same time, he went on the teaching market for law professors and juggled the demands of his newborn daughter, Clio. (Daughter Sophia was born five years later.) "I'm not sure he slept," says Toby Heytens, his co-clerk who is now a professor at the University of Virginia School of Law. Despite the grueling schedule, Morrison nearly always made time for the pickup basketball games that took place on a court above the courtroom. As Heytens puts it: "No matter how busy he was, Trevor was always in. There were a couple instances where Trevor was playing basketball and the justice was looking for him. He went down to talk to her about a case while wearing gym shorts and a T-shirt." Ginsburg hasn't held it against him. As she told the *New York Times*: "NYU Law School has snared a prize. Trevor possesses in abundance all the qualities needed to make a great dean."



“Trevor is able to find common ground between vastly different points of view. I remember identifying some really difficult aspect of policy with tensions on all sides. After a 20-minute rundown of the difficulties, he said, ‘That’s just the needle we have to thread.’”

Brigadier General Mark Martins

IN 2008, MORRISON SPENT CHRISTMAS helping to draft executive orders for the newly elected Barack Obama. His work impressed Greg Craig, Obama’s first White House counsel, who asked him to join the office. Morrison had just moved from Cornell to Columbia and had taught only one semester at his new school, but he was drawn to Obama’s ambitious agenda and agreed.

Morrison worked on orders banning torture, including waterboarding, and calling for the closure of Guantánamo Bay. The first was successful; the second, less so. He spent much of his time on a task force charged with figuring out how to reform detention policy, deciding whether, for example, enemy combatants should be tried in military courts or Article III courts. When the president opted to keep the military commissions, Morrison worked to reform them. “He’s able to find common ground between vastly different points of view,” says Brigadier General Mark Martins, who was the Defense Department’s representative. “I remember identifying some really difficult aspect of policy we were going to deal with. I laid out the tensions on all sides. After about a 20-minute rundown of the difficulties, he said, ‘That’s just the needle we have to thread.’” And thread it, they did. Morrison became a regular presence on Capitol Hill, talking to staffers and helping to find the votes for the White House’s vision. At a time when not a lot of legislation was passed, the Military Commissions Act of 2009 did.

At year’s end, Martins invited him to spend a year in Afghanistan to help implement detention reforms similar to those they had addressed on the task force. Morrison felt compelled to decline. Commuting between Washington, DC, and New York City had already imposed enough of a burden on his wife, a librarian at Columbia who specializes in Japanese history, and their two young daughters; Morrison wanted to be home. But when Martins invited him to spend a week in Afghanistan assessing the work of the military boards charged with reviewing enemy combatant detentions there, Morrison readily agreed. He flew to Bagram Airfield, observed the boards, and was largely impressed. As Morrison puts it, “One indicator that the boards’ scrutiny was real was that a lot of people were released.”

Upon returning to Columbia, Morrison didn’t leave government life behind. He helped start a colloquium on national security

law and policy, which hosted current and former lawyers in government, including those who had served as general counsel to the Defense Department, the CIA, the State Department, and the White House.

Morrison’s scholarship reflects his experiences as a lawyer. In 2010, for example, he wrote an article published in the *Columbia Law Review* analyzing the opinions of the Office of Legal Counsel. Drawing on opinions from the Carter administration through the end of Obama’s first year in office, Morrison found that

BENCH STRENGTH With Judge Betty Fletcher in 1999; with fellow clerks Toby Heytens, Karl Thompson, and Elizabeth Porter and Justice Ruth Bader Ginsburg in 2003.



“There’s a wonderful lightness in the way he goes about doing his heavy and important work. He will just crack jokes in situations, which helps defuse any bad feelings in the room and helps bring the best out of people.”

Olatunde Johnson

goes about doing his heavy and important work,” says Olatunde Johnson, a Columbia Law professor who specializes in civil procedure and civil rights. “He will just crack jokes in situations, which helps defuse any bad feelings in the room and helps bring the best out of people.” Ariela Dubler, a Columbia Law professor who taught a seminar on executive power with Morrison, says: “There’s not an academic thought that I’ve not run by Trevor. He reads everything

OLC largely followed its own precedents, or the rule of stare decisis. That and other articles by Morrison respond to scholars such as Bruce Ackerman at Yale, who has argued that in the absence of routine judicial review of their work, executive legal offices like OLC cannot reliably place any meaningful check on presidential power. Morrison argues that such critiques are insufficiently attentive to the subtle but important dynamics of government lawyering, and that offices like OLC can and do provide real constraints on the president. The infamous “torture memos” written by OLC lawyers John Yoo and Jay Bybee in the years immediately after the attacks of September 11, 2001, Morrison argues, are anomalous abuses, not business as usual, as Ackerman contends. “This is a very high-stakes debate,” says Samuel Rascoff, an associate professor of law at NYU specializing in national security. “What you think about these kinds of lawyers matters for whether you believe the US is practicing national security under the rule of law. The stare decisis article is classic Trevor in that it’s a defense of the best of what the legal profession has to offer.”

More recently, Morrison co-wrote with Curtis Bradley an article in the *Harvard Law Review* titled “Historical Gloss and the Separation of Powers,” which challenges the assumption of courts that congressional silence in the face of an assertion of executive power amounts to acquiescence. Morrison also co-wrote an amicus brief defending the constitutionality of the Affordable Care Act. In it, he made the argument that the individual mandate to buy health insurance is a tax and falls under Congress’s tax power. The Supreme Court ultimately upheld the mandate on that ground.

Morrison takes on these sober concerns with a cheerful and energetic spirit. “There’s a wonderful lightness in the way he

IN THE INNER CIRCLE With President Barack Obama and other advisers in the Oval Office, October 2009.



I write. I read everything he writes. He's gracious and intellectually generous and fun to talk to about ideas and great to teach with." Sarah Cleveland, a professor of international and human rights law, concedes: "I think he was probably the leading internal candidate to be our dean, if he had stayed here."

So what's the secret to Morrison's success? The ability to thrive on little sleep, with some help. He has skills as a barista that are a fitting testament to his Pacific Northwest roots. "I have a very elaborate espresso machine, and Trevor has tutored me every step of the way," Dubler says. "He can make the hearts in the milk. He can make that leaf in your foam. I can only aspire to that leaf." Morrison has had years of practice; every morning, he says, he makes a latte for Beth. (During an icebreaker lunch with NYU Law administrators in the spring, Morrison also confessed that he and Beth watch the romantic comedy *Love Actually* several times a year.)

IN EARLY APRIL, Morrison e-mailed his students to tell them that he had just accepted the deanship at NYU. "I want to assure all of you that this development will not diminish in any way my complete commitment to our class and to you, my students," he wrote. Shortly after the official announcement was made, he headed up to Amsterdam Café for a planned happy hour with his students.

Morrison enjoys teaching to such a degree that he refers to it as a "selfish" pleasure. His students at Columbia have responded to his enthusiasm. In 2011, Morrison, who taught federal courts in addition to con law, won the school's top teaching award. And at a recent auction to raise money for public-interest law, the opportunity for a group of students to have lunch with him and two colleagues was among the top-selling items. This fall at NYU Law, even as he's learning the ropes of his new position, he plans to teach a con law class to signal his commitment to students.

The new dean will be taking the helm at a time when applications to law schools nationwide have declined amid profound concerns about whether a legal education justifies its cost. Many graduates of the 203 ABA-accredited US law schools cannot find high-paying jobs that will allow them to repay the debt most accrue for their schooling. "There is a general oversupply of law schools structured on the traditional model and, tragically, an undersupply of legal services to the poor, especially in rural parts of the country," Morrison says. "These are large systemic challenges, but a leading school like NYU continues to have an incredibly important place in American public life and law.

"What our graduates do in the first year after they leave here may not be what they're doing 10 years later," he says, emphasizing the portability of the skills law students gain. "They may even move beyond the formal practice of law, but they will still rely on the training they received here in critical thinking, analytical reasoning, and problem solving. Law schools do better than any other graduate program in training their students for a wide range of careers."

Morrison, whom Columbia Professor Monaghan refers to as a "first-class energizer," has excited just about everyone he has met at NYU. His academic credentials are beyond reproach. Or as Rascoff puts it, "He does his work with enormous intelligence, the best academic values, and a highly credible golf game." But how will he fare with the more pedestrian demands of the job?



DEAN ON THE SCENE Chatting with audience members after giving his first Admitted Students Day welcome, on April 26, top; serving breakfast at Feast for Finals on May 8; and greeting Washington, DC-area alumni, who heard remarks from FTC Commissioner Julie Brill '85, left, on June 11.

Jeannie Forrest, a vice dean who was on the search committee and was once associate dean of development, decided to test him. "In the company of several trustees, I said, 'Ask me for money,'" she recalls. "You have to be nimble to respond to a question like that and to make an ask." Morrison paused, thought about it, and launched into what Forrest describes as a reasonable pitch. She was impressed. "But what was really remarkable to me was that afterward, when we walked downstairs, he said, 'How could I have done that better?'" When Forrest relayed his comment to the trustees, they said, "That's our dean. That's who we want." □

Nadya Labi is a writer based in New York.

PORTRAIT OF A DEAN

Calling him the best law school dean of the last decade, “bar none,” Justice Elena Kagan—along with several colleagues and friends—spoke in honor of Richard Revesz as he bid farewell to his corner office.

BY JESSE WEGMAN '05 • PHOTOGRAPHS BY JULIANA THOMAS



IN EARLY 2008, KENJI YOSHINO faced an unusual dilemma: The respected constitutional scholar had in his hands a tempting offer to become a full professor at NYU School of Law—and yet he could not accept it.

At the time, Yoshino was in the midst of a successful visiting professorship at NYU, on leave from his post as Guido Calabresi Professor of Law at Yale, where he had been on the faculty for nearly 10 years. To lure him to NYU, Dean Richard Revesz presented Yoshino with a seemingly ideal title: the inaugural Earl Warren Professor of Constitutional Law.

Yoshino, who is of Japanese heritage, was honored but explained to Revesz that he could not accept the chair because Warren, as attorney general and later governor of California, had been a central figure in establishing the Japanese American internment camps there during World War II.

“Ricky completely understood, but a few weeks later he reached out to me again,” Yoshino recalled. Revesz told him that he had consulted a biography of Warren and confirmed that as Chief Justice of the United States—the post he famously held for 16 years after his governorship—Warren had publicly expressed profound regret for his involvement in the internment program.

Revesz added that he had discovered he had some flexibility in the exact name of the professorship, and proposed that the chair instead be called the Chief Justice Earl Warren Professorship of Constitutional Law. “He mentioned that as a specialist in civil rights, I might enjoy having a title that would remind me how much an individual can grow over a lifetime,” Yoshino said. “I knew then that I had found my new dean.”

The story, which Yoshino recounted during a celebration on April 9 honoring Revesz’s 11 years of service at the helm of NYU Law, evoked many of Revesz’s best qualities: “his keen problem-solving approach, his relentless energy—but most of all, his humane wisdom,” Yoshino said to the hundreds of professors, administrators, alumni, and students who filled Tishman Auditorium to bid a bittersweet goodbye to the outgoing dean.

Yoshino, as a fellow faculty member, was last in a lineup of speakers who each revealed different relationships to Revesz as dean: John Sexton, president of NYU, spoke as Revesz’s decanal predecessor and, subsequently, his boss; Elena Kagan, associate justice of the Supreme Court, was both a colleague and a direct competitor when she was dean of Harvard Law School; Robert Katzmann, judge on the US Court of Appeals for the Second Circuit, is both a longtime adjunct professor and a close friend; and Nicholas Bagley ’05, assistant professor at the University of Michigan Law School, is a former student and collaborator of Revesz.

The 90-minute event, emceed with wit and banter by Vice Dean Jeannie Forrest and Professor Barry Friedman, also featured the unveiling of Revesz’s official portrait, painted by Daniel Mark Duffy. But before the scrim was pulled off Duffy’s handsome work, the speakers painted their own “verbal portrait,” as Yoshino called it, each reflecting with insight and a little humor on the myriad ways Revesz had transformed and strengthened NYU Law since he took over as dean in 2002.

First up was Sexton, who recounted his 1984 trip down to the Supreme Court to try to convince Revesz, then a clerk for Justice Thurgood Marshall, to join the NYU Law faculty.

“He elevated our faculty the minute he joined it,” Sexton said, adding that during his own 14-year tenure as dean, no one “had more to do with shaping the heart and soul of the Law School, which is its faculty, than Ricky.” In this way, Sexton said, “it really is the case that for 25 years, Ricky’s been the dean, in the most important way.”

Sexton cited Revesz’s many accomplishments as dean, including more than \$500 million in fundraising, the addition of 46 new faculty members, the expansion of NYU’s pioneering loan repayment assistance program, the creation of multiple new and influential policy centers, the doubling of the number of clinical courses, and the trailblazing steps to adapt legal education to the fiscal and global realities of the 21st century.



GUESTS OF HONOR AND HONORABLE SPEAKERS Dean Richard Revesz (upper right) with his wife, Vicki Been, and daughter, Sarah, basking in the glow of encomiums from, clockwise from lower right, Elena Kagan, Robert Katzmann, Nicholas Bagley, Jeannie Forrest, Barry Friedman, Kenji Yoshino, John Sexton, and Anthony Welters.

A FEW CHOICE MOMENTS FROM...



Warren Braunig '05, a partner at Keker & Van Nest in San Francisco, matriculated when Revesz began as dean. That fall, the student body learned that demand for public interest summer internship funds had far outstripped supply. By spring, Revesz was able to announce a new head of the Public Interest Law Center and more:

"Ricky called everyone together to say, 'We will guarantee funding to everybody, and we're raising the amount by a thousand dollars.' It was like, Bam! Our faith in NYU as a bastion of public interest law was restored and extended. Because of his administrative law scholarship, people feared that Ricky would be a technocrat, and in that moment he showed that he knew when to place the school's core values over what appeared to be budgetary math. He didn't just convene a committee; he went and did it."



Jessica Almy '09, an associate at Meyer Glitzenstein & Crystal in Washington, DC, arrived as a 1L with a husband and baby. She was surprised to learn that University health insurance didn't cover well-child services such as vaccines and check-ups.

"Together with a few other law students with children, I asked Dean Revesz about the healthcare plan. He was absolutely surprised; he had no idea there were these deficiencies. He went to the University and advocated on our behalf, and the result was all those services were covered the next year. The fact that he did this after one meeting with us made it clear that he meant it when he said he cared about students who have kids. It's one thing to say you care, and it's another to put your words into action."



Jason Washington '07 was an AnBryce Scholar and a 2012–13 White House Fellow.

"Ricky made it clear he would always have an open-door policy; he was passionate about it, and gave time, energy, and administrative capacity to it. I would drop by and talk about what more the school could do for diversity and inclusiveness. It's one of the many reasons why I loved my time at NYU. Often I was very formal with him, reflexively. So it became a running joke that whenever I called him 'Dean,' he would call me 'Senator.' That got me off my formality really quickly!"

But the outsized success of Revesz's tenure was by no means preordained. To the contrary, remembered Kagan, Revesz "flunked the first test of deaning...which is, you have to pick your predecessor really well."

Noting that Revesz assumed the job in the shadows of the extremely popular Sexton, Kagan, who became dean of Harvard Law School in 2003, recalled that "there were some number of people who said, 'Well, he's not John Sexton, is he?'" But, she added, "Ricky proved in really short order that you didn't necessarily have to have the personality type of John to be just an extraordinarily successful dean."

Kagan recounted with rueful amusement the frequent battles she and Revesz engaged in over faculty hiring. "It just turned out that

every time I decided I wanted a faculty member, there was Ricky Revesz! We seemed to have quite the same taste," Kagan said, remarking that when she heard people mention 46 new faculty at NYU, she felt "as though I was there for every single one of those."

As the crowd roared with laughter, Kagan added with a smile, "I have to say, this was all highly annoying."

But Kagan made it clear that any annoyance was dwarfed by her respect for and admiration of her New York counterpart. Calling him the best dean in the business over the past 11 years—"bar none"—Kagan said that when she looked outside Harvard for ideas on how to improve legal education, "there was no one I looked to more than Ricky Revesz and no school I looked to more than I looked to NYU."

As an example of the model Revesz set for other deans, Kagan highlighted his commitment to public service and public interest law, primarily through his championing of the Root-Tilden-Kern Scholarship Program, his support of the loan repayment assistance program, and his protection of the summer funding provided by the Public Interest Law Center.

Yet Revesz's "true greatness," Kagan said, resides in his values. NYU Law "is an entrepreneurial, innovative, optimistic place," she said. "And law schools don't have to be that. Law schools can be—and often are—stodgy and tradition-bound and not the most adventurous institutions in the world." But Revesz "imbued this place with his optimism, with his sense of adventure and innovation."

Following Kagan, Katzmann spoke admiringly of Revesz's ability to maintain a high level of scholarly output even as he bore the burdens of running a top-tier law school. "Usually when somebody becomes a dean, the sense is he or she is done with scholarship and is going to become

an administrator," Katzmann said, but Revesz took "active efforts to promote the careers of the young talent around him."

Katzmann also echoed the near-universal observation that Revesz personally responded to e-mails deep into the night, saying that it instilled in everyone else a sense not just of awe but also of mutual obligation: "We want to say yes to Ricky, because we know that he would say yes to us if he possibly could."

One person Revesz said yes to many times was next on the podium: Nicholas Bagley, who told the audience that as a first-year student in 2002, all he knew of Revesz was "that he didn't hug people as much as John Sexton did."

In Bagley's second year, however, Revesz tapped him to help edit a textbook chapter on the law and economics of environmental

regulation. Bagley was wary, because he had not studied economics since high school, but “Ricky insisted it would be fine,” he said. “And some part of me—some big part of me—wanted to believe him.” Meanwhile, Bagley said, the rest of him thought, “This man is clearly out of his mind!”

The following year, Revesz asked Bagley to co-author an article—one of the first in a series of Revesz’s collaborations with students while he was dean. Again, Bagley was concerned that he couldn’t live up to the dean’s expectations. But Revesz’s persistence won out, and the resulting article, “Centralized Oversight of the Regulatory State,” ran in the *Columbia Law Review* and won a 2006 American Bar Association award for best article in its field.

Bagley, who still sounded astonished eight years on, said he initially thought Revesz’s optimism and faith in a student was misplaced, possibly even “reckless.” But because Revesz “couples that optimism with a huge investment of his own time and energy,” Bagley said, it “turns out to be a subtle but effective way to get the people around him to step it up a notch, to be better than they think they are.”

Anthony Welters ’77, chairman of the Law School’s board of trustees, was tasked with the official presentation of Revesz’s portrait, but first he took an opportunity to thank not just the dean but also his family.

“It’s easy to focus on the accomplishments that are visible to everyone,” Welters said. “It’s a little harder to recognize the sacrifices that people must make to achieve that level of success.” Gesturing to Revesz’s wife, Professor Vicki Been ’83, and their daughter, Sarah (their son, Joshua, was unable to attend the celebration), Welters said, “We owe you a debt of gratitude for sharing your father and your husband with us.”

When the man of the hour finally took the stage beside his portrait, he appeared to be overwhelmed by the affection and accolades that had been showered on him. After thanking each of the speakers individually, Revesz took Welters’s cue and turned to his family.

“As much as I enjoyed this job, I enjoyed being with Joshua and Sarah even more,” he said. “Our trips together and family board games, my bike rides and chocolate-chopping sessions with Sarah, my ongoing political discussions and chess games with Joshua—that’s what makes life special.”

Then Revesz pointed to the front row to acknowledge his “indefatigable mother,” Nora Revesz. He remembered his childhood in Argentina and his dream of studying in the United States and thanked his mother, who

now lives in New York City, for helping him to realize it. “I would definitely not be here had it not been for her,” he said, and the audience laughed at the double entendre.

By the end of the evening, incoming dean Trevor Morrison, who had been appointed just days earlier and was sitting a few rows from the stage, could be forgiven for feeling a bit daunted by the challenge he’d accepted. As Kagan admonished him in her closing remarks, “Trevor, you too have flunked the first test of deanship, which is not to succeed a legend.” □

Jesse Wegman ’05 is a member of the New York Times editorial board, where he writes editorials on the Supreme Court and legal affairs.

...REVESZ’S COMPASSIONATE DEANSHIP



Before law school, Garen Marshall ’14 served two deployments in Iraq as a U.S. Navy explosive ordnance disposal technician. Concerned that he was one of only a few veterans enrolled at NYU Law last fall, he e-mailed Revesz to push for increased funding.

“To be honest I didn’t really think much would come of it; it was a long shot. I was just frustrated that we hadn’t successfully recruited more veterans. Ricky responded within a few hours, writing, ‘Garen, I completely agree with your analysis, I’m looking into it.’ Within a week he had a new funding program approved that, with a government match, makes NYU Law free for veterans starting this fall. We’ve got the highest funding in the country now. It’s kind of a 180 from what things were a few months ago.”




Brandon Buskey ’06, staff attorney at the ACLU Criminal Law Reform Project, was both an AnBryce Scholar and a Root-Tilden-Kern Scholar. For four years after graduation, he worked for the Equal Justice Initiative in Montgomery, Alabama, which is led by Professor Bryan Stevenson. Then he moved to the New York Attorney General’s office in the Civil Rights Bureau.

“I went to an AnBryce event that Ricky was also attending. We were chatting, catching up, and he said, ‘What are you up to?’ I said, ‘I’m at the AG’s office.’ He said, ‘Oh! You’re not at Bryan’s anymore?’ I said, ‘No, I left that job a month ago.’ And he paused and said, ‘Well, nobody told me about that.’ It was one of those little comments, but it stuck with me because I never thought I would tell the dean I switched jobs! But it showed his level of concern for me and interest in me.”



Claudia Angelos is clinical professor of law and director of the Civil Rights, Racial Justice, and New York Civil Liberties clinics.

“Ricky inherited a very strong clinical program, and he did everything he could to get out of its way, which is what a dean should do! His complete confidence in and respect for us is exactly what a program like this needs to flourish. Then he joined in it; he became a clinician! Clinicians nationally struggle for the respect of their deans, but there is no question that Ricky regards the clinical faculty as an essential component of the JD education at NYU. The bottom line is that he trusted us.”



FULL SPEED AHEAD

By Michael Orey

In early 2011 the legal profession, like much of the rest of the business world, was still shaking off lingering effects of the economic crisis. Hiring was coming back, but only gradually, and among the leadership of the Law School there was concern that the forces affecting major legal employers were secular, not just cyclical. So Law School board chair Anthony Welters '77 formed a strategy committee to assess whether NYU Law was doing all it could to prepare graduates for the needs of an evolving legal marketplace. He named trustee Evan Chesler '75, then the presiding partner (now chair) of Cravath, Swaine & Moore, as the committee's chair.

"NYU has long been a leader in innovative legal education," notes Chesler. "However, there have been profound changes in the expectations of clients for what lawyers need to be prepared to do." Many clients, for example, now want even recent graduates to have collaborative problem-solving skills, to understand business fundamentals, or to know how to deal with colleagues or adversaries from different cultural or legal backgrounds. The strategy committee was formed, Chesler said, because "there was the distinct sense that it was time for our law school to lead the way on the complex issues concerning the imperatives of legal education in the 21st century."

After fact finding over the course of 18 months, the committee—whose members include NYU Law trustees who are leaders at major law firms, general counsel at large publicly traded companies and asset management firms, and others with deep knowledge of the legal marketplace—issued a series of recommendations for curriculum enhancements. Following faculty approval of central elements of the recommendations, then-dean Revesz and Chesler announced the plans to students at a Milbank Tweed Forum on October 17. That morning, the *New York Times* ran a story about the new steps on the front page of its business section.

"In recent years, a variety of forces, including globalization, advances in technology, and the worldwide economic crisis, have significantly changed the way law is practiced in many organizations," Revesz said at the time of the announcement. "The steps we are announcing today assure that the education we offer is keeping pace with those changes."

A multi-front effort to implement the initiatives got underway as soon as they were announced. One recommendation of the strategy committee was for the Law School to do more to

WITH AMBITIOUS CHANGES TO THE CURRICULUM, NYU LAW PUSHES LEGAL EDUCATION FORWARD

prepare students for global legal practice, including the introduction of new study-abroad opportunities for students during their third year. Under the supervision of Kevin Davis, vice dean for global affairs and Beller Family Professor of Business Law, NYU has now established semester-long programs in Buenos Aires, Paris, and Shanghai that will accommodate up to 25 JD students each. The initial group of students is preparing to head to those cities in January.

"These aren't the typical study-abroad programs that we and other law schools have offered for years," notes Davis. "These are designed and managed by NYU Law faculty and they will include not just classroom study, but also clinics, internships, travel study, and language training," with some variation based on location. In Buenos Aires and Paris, the programs will be operated in cooperation with local university partners. What's more, Davis emphasizes, these semester-abroad experiences for 3Ls are meant to serve as the capstone of an extensive set of curricular and co-curricular options offered to JD students who are interested in global practice beginning in their first year. (See sidebar at right.)

Closer to home, but still well off campus, is the Washington, DC-based Legislative and Regulatory Policy Clinic that is being jointly taught by two of the foremost experts in Washington legal practice: Robert Bauer, former White House Counsel to President Obama, and Sally Katzen, a member of the Obama-Biden transition team who held a number of senior positions in the Clinton Administration. Combining the practical and the scholarly, the clinic's 16 3L students work four days a week in a federal agency or government office, but also attend a weekly seminar, as well as special sessions with senior government officials and guest lecturers. The clinic is an outgrowth of a strategy committee recommendation calling for "a program of intensive study and practical training in the role of government," noting that it would

be relevant to many career paths. “What we’re offering with the clinic is the rare opportunity to study the machinery of government and the political process, while simultaneously working within it,” says Katzen. “These students are developing an on-the-ground understanding of what it means to be a government lawyer, combined with an instructional component that fosters insight and analysis.”

Not all of the curricular changes are limited to the third year or require a journey. At Washington Square, the Law School is currently rolling out stepped-up training in leadership and financial and business literacy for students at all levels of the JD program. The strategy committee noted that “lawyers in our society routinely become managers and leaders of organizations, yet law schools offer little training in leadership and collaboration.” In addition, the committee observed, “a large proportion of lawyers ... encounter business and financial issues, yet law schools have long lagged in assuring that their graduates have a basic grounding in these areas.” Providing instruction in these areas, the committee said, will make NYU Law graduates “more attractive to employers and more helpful to their clients.”

The Law School, Vice Dean Jeannie Forrest observes, has long offered elements of leadership training through programs such as the Dean’s Roundtable and the Public Interest Law Center’s Leaders in Public Interest Series. Last February also saw the debut of the Leadership Series in Law and Business, when Herbert Kelleher ’56, the charismatic founder and chairman emeritus of Southwest Airlines, came to Vanderbilt Hall to talk about his career. But now, says Forrest, the Law School will emphasize leadership “in a much more conscious and deliberate way.”

Forrest, who has a doctorate in psychology, is overseeing one major initiative: offering students evaluation and instruction in EQ, or emotional intelligence, since an ability to deal with people in a thoughtful and empathic manner is critical to good leadership. During their orientation in August, all entering JD students were invited to take an online EQ assessment to help identify skills they may want to develop. And certain classes throughout the curriculum will incorporate EQ instruction, building on interpersonal skills training that has been part of the first-year Lawyering Program for many years.

This academic year, the Lawyering Program is also adding instruction on business and financial concepts—including

statistical inference, core accounting practices, and time value of money analysis—by incorporating an intensive mini-class on these subjects into a transaction-negotiation exercise. The mini-class will be taught by Geoffrey Miller, Stuyvesant P. Comfort Professor of Law and director of NYU Law’s Center for Financial Institutions, and Gerald Rosenfeld, distinguished scholar in residence and senior lecturer, and co-director of the Mitchell Jacobson Leadership Program in Law and Business.

As the range and diversity of the Law School’s curriculum expand, it can be a challenge for students to decide how best to prepare for practice in a particular area of law. To address that, Vice Dean and Professor of Clinical Law Randy Hertz has worked with faculty to identify core courses that provide an essential foundation for practice in a number of fields students commonly enter, ranging from tax to intellectual property to public interest and government lawyering. This Professional Pathways system offers advice on a sequenced course of instruction, including substantive-law classes, clinics, simulation courses, and seminars. In addition, Hertz notes, Pathways includes career guidance, utilizing faculty members, Office of Career Services counselors, and alumni to counsel students on employment options and how best to pursue them.

That combined approach was on display in April, when faculty held their first Pathways advisory sessions. At a session on criminal practice, for example, Professor Erin Murphy (who spent five years as a public defender) explained differences in two evidence classes taught at the Law School, one with a more nuts-and-bolts focus, the other more theoretical. She also discussed how students might decide between being a prosecutor or a public defender.

The Law School’s new dean, Trevor Morrison, has fully embraced the curricular initiatives. “The new measures squarely address concerns that have been raised by employers about the need for more practice-focused training, as well as questions that have been raised about the utility of the third year of law school,” he says. “At the same time, throughout our curriculum, we continue to emphasize the problem solving, critical thinking, and analytical skills that have long been the hallmarks of an outstanding legal education. It’s the combination of the two that will enable NYU Law graduates to excel throughout their careers.” □



CLOCKWISE FROM TOP LEFT Revesz, Chesler, Katzen, Davis

OFF-OFF-WASHINGTON SQUARE

NYU Law in Asia

LOCATION Shanghai
FOCUS Chinese business law
FACULTY DIRECTOR Frank Upham
LANGUAGE STUDY OPTION Mandarin
SAMPLE CLASS International Business and Investment Transactions with China

NYU Law in Latin America

LOCATION Buenos Aires
FOCUS Latin American legal systems; economic and institutional development
FACULTY DIRECTOR Florencia Marotta-Wurgler '01
LOCAL PARTNER University of Buenos Aires School of Law
LANGUAGE STUDY OPTION Spanish
SAMPLE CLASS Transnational Insolvency in Latin America

NYU Law in Europe

LOCATION Paris
FOCUS European regulatory and administrative law; international arbitration
FACULTY DIRECTOR Franco Ferrari
LOCAL PARTNER Sciences Po and HEC Paris
LANGUAGE STUDY OPTION French
SAMPLE CLASS EU Regulatory Policy Clinic



GREAT



Marriage. Gun control. The deficit. These are just some of the issues that split Democrats and Republicans. But is the widening gulf between parties actually a problem for our government? This spring, *NYU Law* magazine invited a distinguished group of political advisers and experts from both sides of the aisle to debate polarization, its causes and effects. The discussion, moderated by our own Richard Pildes, surprisingly showed more than a few areas of agreement.

This discussion was edited and condensed. Watch or read the full discussion online at law.nyu.edu/news/magazine_roundtable_2013

DIVIDE

RICHARD PILDES, SUDLER FAMILY PROFESSOR OF CONSTITUTIONAL LAW

(MODERATOR): The defining feature of American democracy over probably the last 20 years, but even more so today, has been the emergence of extreme political polarization within government, at the very least, and maybe among the rest of us. It is unlike anything that we have had in American democracy since the late 19th century. There is virtually no center. The most conservative Democrat now is considerably more liberal than the most liberal Republican. This process seems to have begun in the late 1970s and has been accelerating.

Many people view this extreme polarization as making American democracy dysfunctional, particularly in a system of separated powers with checks and balances, a House, a Senate, and a Presidency, elected from different constituencies on different time cycles, which is dramatically unlike a parliamentary system. Can the American system function effectively in the face of these kinds of extreme divisions?

So the first question is whether this extreme polarization is as bad as is typically discussed in the media.

ROBERT BAUER, PARTNER, PERKINS COIE; FORMER WHITE HOUSE COUNSEL; GENERAL COUNSEL FOR OBAMA FOR AMERICA, 2008 AND 2012; DISTINGUISHED SCHOLAR IN RESIDENCE, NYU SCHOOL OF LAW: Well, let me distinguish this very powerful, very extreme sorting out of

ideologies into opposing political camps from what I call polarized debate. Polarization is not what creates the singular dysfunction that we're talking about. It is the way in which those differences are discussed and affect negotiation. The debate has become extreme.

PILDES: Why aren't you troubled about the actual polarization of the political parties beyond public debates, civility, and discourse?

BAUER: Years ago I remember people saying the biggest problem we have with the American political parties is that there isn't a dime's worth of difference between them. It was thought that the voters weren't really presented with a sharp choice, debate didn't have a particularly gleaming edge to it, and therefore the political process suffered. But that's obviously not true anymore.

BENJAMIN GINSBERG, PARTNER, PATTON BOGGS; GENERAL COUNSEL, ROMNEY FOR PRESIDENT, 2008 AND 2012: Something has caused the elected representatives in Washington to change their relationships with each other over the course of the past 20 years. There is a notable difference in the collegiality and how much they talk to each other about golf or restaurants or families. When it comes to the cause, we need to deal with that.

There really are differences between the parties now in a way that hasn't happened before, and it helps to look at the three areas



Richard Pildes

where that manifests itself in the policy realm. It's certainly true in the size of government, all of these dangerous fiscal cliff actions that are taking place. It's certainly true on the social issues, by and large, where there are just two concepts that are pretty far apart and hard to bridge the gap.

The military and our foreign policy muscle was the third area. Now, interestingly enough, you'd be hard pressed to really find great differences between the current president and the past president on most foreign policy matters. So we need to take a look within those particular issues for why this is happening.

PILDES: But why would certain issues be more polarizing today than in the past? Haven't we always been deeply divided at some ideological level on these kinds of issues?

GINSBERG: The country is going through a growth spurt and hasn't quite come to grips with who it is. You've written about the Voting Rights Act and how that started breaking up the coalitions. The Vietnam War tore the Democratic coalition asunder. Coalitions have been breaking up over the last 40 or 50 years and just aren't quite re-formed yet. The media is a very different place today in terms of transmitting views than it was even 10 years ago. It's much more polarized. Over the last 40 years people have come to live much more with people like them rather than in diverse communities. That contributes, too.

MICHAEL WALDMAN '87, PRESIDENT, THE BRENNAN CENTER FOR JUSTICE: Well, the period of consensus that we think of as the norm from which we've deviated was itself unusual in American history. Many things that were the quirks of American politics have worked themselves out and are no longer so different. It used to be said that Americans were ideologically conservative and operationally liberal. Now people tend to sort out more in both of those areas.

I have a book in my office, *The Deadlock of Democracy*, which not only talks about political parties not being responsible and you couldn't tell what the difference was between them, but that there were really multiple party systems where conservative southern Democrats and northern liberal Republicans each played their own roles. Those vanished in the mid-1960s with the move of southern white Democrats slowly into the Republican Party, first for the presidency, then for the Senate, then for the House. Less noticed but just as significant, the Rockefeller Republicans disappeared in the Northeast. These big trends make us look more like a European-style ideologically divided party system. The challenge is not so much polarization but paralysis. Can we have a system as polarized as it is now without government being either paralyzed or lurching from one extreme to the other?

PILDES: That is one of the big questions. If we are forming European-style parliamentary parties—a much more unified Democratic Party, a much more unified Republican Party, much sharper differentiations between the parties—can those changes be made to work within an institutional framework from 200 years ago that wasn't designed with the idea of political parties at all?

SAMUEL ISSACHAROFF, BONNIE AND RICHARD REISS PROFESSOR OF CONSTITUTIONAL LAW: I don't find the polarization disturbing. People should disagree strongly about things like the death penalty or abortion or the size of the military or foreign interventions. What I find reassuring is that public opinion surveys generally show a bell-shaped

distribution of views among the American population where the center still holds in terms of broad public views on even the most controversial issues. The difficulty is that the institutional framework through which those social views are mediated reinforces the poles. The election system where we use "first past the post"—that you get one more than the other side and you get everything—means that you're going to end up with two basic parties.

PILDES: Let's talk about the dramatic change in the media over the last 10 years. We no longer have the three major broadcast networks with 25 million viewers and network anchors like Walter

Cronkite or Tom Brokaw, centrists moderating representations of what's going on in politics. Instead, we have cable television and the Internet, which is a much greater source of political information but which many people use to confirm the beliefs they already hold. How much is public opinion actually more polarized today? And how much are politics actually reflecting that polarization?

MONICA YOUN, BRENNAN CENTER CONSTITUTIONAL FELLOW, NYU SCHOOL OF LAW: People who study election law tend to be policy wonks, and that often leads to an assumption that people vote their policy preferences. Sam is absolutely right to say that there still is a relatively bell-shaped distribution of views on a number of social issues. What the evidence of the southern Democrats and the Rockefeller Republicans has hinted to me is that people will vote their party even despite their policy preferences. People's affiliation towards parties may be less policy-based than tribal affective, more like a sports team or a religion.

SEAN CAIRCROSS '01, FORMER DEPUTY EXECUTIVE DIRECTOR AND GENERAL COUNSEL, NATIONAL REPUBLICAN SENATORIAL COMMITTEE: Today we woke up and found out that the House is moving toward an immigration package that is probably going to look like the Senate's immigration package. So one of the most controversial issues of our current time where both parties have skin in the game looks to be moving forward. Just a little bit of perspective that we shouldn't stand on the panic button.

But I agree with Ben that the relationships between the principals who negotiate these issues has changed. People travel home much more. There's a 24-hour news cycle and the Internet, and you can rest assured that if you are cutting a deal or you are

moderating on an issue that that is a very real force. I can tell you after two cycles at the senatorial committee that the potential for a primary challenge, and this is true on both sides of the aisle, is a significant constraint on your ability to negotiate.

PILDES: But what are the larger causes? I wanted to ask particularly about some institutional features of the election system that may be contributing. And should we consider changing some of them?

You all brought up primary elections, which is perhaps the single biggest institutional factor that contributes to the polarization of office holders today. Although primary elections were celebrated as great democratic achievements, wresting control of the choice of candidates from the smoke-filled back rooms of the party bosses in the late 19th century, over time voter turnout in primary elections, even for very significant races like for Senate, has become shockingly low. And not surprisingly the people who show up for primary elections in both parties are the most committed party activists, the most ideological wings of the parties.



Samuel Issacharoff



Robert Bauer



Sean Cairncross

Certainly it's a plausible argument that the Republicans would control the Senate today were it not for the primary election process over the last couple of cycles, in which more extreme candidates emerged—defeating sometimes long-serving incumbents—but who were not electable in the general election.

CAIRNCROSS: Let's not lose sight of the voter. The people who show up in a democracy are going to determine what the governing structure looks like, and I'm not sure that you change that by going back to the smoke-filled room. We saw in the recent campaign that technology makes it easier to reach out and contact particular voters and motivate them to go to the polls. These new means of reaching people will have an impact on primaries. It doesn't take much to change the course of a primary where there is very little turnout to begin with.

GINSBERG: It's too early for me to sign onto the return to the smoke-filled back room, but I agree with Sean that you can't forget the voter, that the mobilization efforts that have created bad results for Republican primaries in terms of being able to have better general election candidates are one of those things that the voters have brought about.

Overall on the state level, you can't overlook the impact that McCain-Feingold has had. The weakening of state parties on both the Republican and Democratic sides is profound. The personnel at state parties over the last decade have by and large migrated from people who were very involved in campaigns to people who care very much about policy. And the nuts and bolts of campaigns at the state level are much weaker today than they were in the past. So the state party brand on the local level is much more diffuse.

PILDES: Explain how the McCain-Feingold campaign finance reforms are a significant cause of the decimation of state and local political parties?

GINSBERG: Campaign finance "reform" eliminated money that's legal under state law. So it is now a felony for the chairman of the Democratic or Republican National Committees to make a contribution to a candidate for governor with money legal under that state's law. To even go out and raise the money for that candidate is now illegal. The result is that the party-building programs—voter registration, voter persuasion, get out the vote activities—must all now be done with federal money. State parties are uneven in their ability to raise especially federal money, and now do not get involved in primaries in the way that they once did nor in fundamental grassroots organizing.

PILDES: Are you also saying that the decimation of state parties is contributing to political polarization at the state level?

GINSBERG: Not only on the state level but also on the national level. This is a much longer conversation, but what parties have historically done for candidates—raised money, mobilized volunteers to mobilize voters to come out to vote, and messaging, which is basically advertising and, these days, independent expenditures—is not only done much less by the parties, but created a vacuum that has produced more robust special interest groups. It is much easier for a special interest group to raise money for a candidate, provide volunteers, and do ads for them. And, at least in our party, groups deeper in what you might call the "polarization zone" have been more adept at doing that.

PILDES: Unless you hope with Sean that turnout will change dramatically with the Internet, should we say it's not healthy for

democracy to have candidates chosen by such low-turnout electorates, and let's start thinking about whether there are other ways of organizing the choice of candidates? Sam, you raised a hand to defend the smoke-filled back rooms.

ISSACHAROFF: Well, I used to be much more distrustful of elites choosing on behalf of the people, but I've grown accustomed as I've grown older.

PILDES: As you've grown more elite, of course.

ISSACHAROFF: Yeah, sitting at this table with the party elites and I don't actively dislike them.

BAUER: We're not actively hostile to you, either.

ISSACHAROFF: Ben's point is absolutely critical on the weakness of the state-level parties. And it's not just that they don't perform the functions that Ben identified. They don't groom the candidates. They don't train. They don't do all of the things that they used to do. We learned in the last two election cycles how an effective political organization can bring people out who might not have voted otherwise. This is something that the Republicans did effectively in 2004 and the Democrats did much more effectively in 2008 and 2012. The problem is you need a centralized organization with resources. At the primary stage you don't have that. In 2004, 2008, and 2012, the national campaigns didn't work through the state parties. They went out and mobilized voters themselves. There's been an effort on behalf of both parties to push toward open primaries to draw a bigger swath of voters. You're seeing different candidates emerging within the parties depending upon whether it's an open or closed primary.

PILDES: Are you prepared to go that far and give it back to the party leadership?

ISSACHAROFF: Sure. We've done 100 years of this experiment, are we doing better for it or not? In 1972 the Democrats pushed very far in the direction of no party control of the nomination process, and they paid the cost for it. The Republicans are paying the price right now for ceding too much control. There were certain reform efforts, and Ben was obviously central in these, to rein that in a little bit to impose more institutional filters in the Republican process. So it's not a question of going back completely to smoke-filled rooms—because we don't allow smoking there anymore—but it is a question of recognizing that there have to be other

institutional leverages to keep the primary system from degrading.

PILDES: Michael, as the president of the Brennan Center, which is very committed to increasing popular participation in politics and in elections, how do you feel about going back to the non-smoke-filled back rooms?

WALDMAN: We ought to look instead at ways to build on the mass participation model of the last few presidential cycles, which started with McCain in 2000, and find ways to use the new money and the new technology to make the primaries less the smoke-filled room of the super PAC and more something that actual voters are participating in.

BAUER: Whether it was direct democracy, the top-two system, or, frankly, some of the engineering that was intended by McCain-Feingold, these things typically don't work out the way the sponsors have in mind. There's simply no linear relationship between the problem they've identified, the institutional design feature that they craft, and the outcome that they're looking for.



Take, for example, Stand by Your Ad. After all, we're having a conversation about polarized debate, and the notion was there was too much negative advertising and therefore if we force candidates personally to state that they've approved the ad it will reduce the quantum of negative speech in the political process. And of course it didn't. Period. That's because very frequently, with the best of intentions, we design these features with an enormous amount of optimism that frankly experience belies.

Second, there was a discussion of campaign finance and state parties. And I significantly disagree with a couple of the comments made. I don't think McCain-Feingold weakened the state parties. The truth is that the world had changed to the disadvantage of state parties for decades. Party money flowed from the states up to the federal government. By the time I began practicing in the 1970s that wasn't true anymore, and critics would say that state parties and election cycles were pumped up with national activists who were sent to the states to run the state parties and with national resources that were sent to state parties. McCain-Feingold didn't create that set of circumstances. It may have accelerated the difficulties of all of the parties. It certainly created some difficulties for the national parties by shutting off a main source of financial support, but it's very difficult to say in my view that McCain-Feingold was responsible for it. So, the plea I'm issuing is for recognizing how often we fail with these institutional design issues. We become terribly excited at a particular moment by the panic of the day. Not too many years ago the view was that Republicans would never ever obtain control of the Congress unless they had term limits, and then they gave up term limits once they gained control of the Congress.

PILDES: Okay, let's come back to the issue that Bob put on the table that the problem is not polarized parties but the nature of debate, discourse, and the like. Monica, is that a significant problem now? Do they no longer want to get together because they're spending so much time raising money, or because polarization itself makes it politically costly to get together with people from the other side of the aisle?

YOUN: People who have spent more time in DC than I can talk about the softer cultural factors. But a lot of the problem does reflect the polarization of the electorate. The electorate will always say, Oh, yes, we want reasonable, moderate, bipartisan solutions, but when push comes to shove the electorate will say, What we really want is for our party to trounce the other guys and to win this debate that we're on. And if you take it to the level of the individual voters, the politicians are responding to demand rather than otherwise.

PILDES: Michael, you've written in particular about the very polarized debates on voter identification issues and laws that have been emerging over the last two or three years. And what we see there is that, at least within legislative bodies, the votes on these laws break down on completely partisan lines, although public opinion polls generally seem to suggest that three-quarters of voters endorse these kinds of laws.

WALDMAN: The voting wars of the past decade are a symptom rather than a cause of the polarization. There have always been challenges about who could vote, but there has not been as sharp a red/blue divide as now. The public has broad but not particularly deep views on these matters. On the one hand, there's broad public support for something like voter ID. On the other hand,

when you point out that a lot of people don't have the particular kind of ID that's being proposed, the public voted against it, as in Minnesota. The real challenge is how to advance something where there is in fact a solution that meets the concerns of both sides in the debate, as I would argue is the case here.

PILDES: What is that solution?

WALDMAN: Well, you could have a system that registers just about every voter and is less susceptible to fraud. And even on the very polarized issue of voter ID, you're now starting to see proposals around the country, as in Nevada, where the Democratic secretary of state has proposed a system where you have to have an ID. But if you don't have it, your photo gets taken at the polls. That has the potential to calm concerns about security without disenfranchising people.

There are some real solutions. We're seated at the table with the co-chairs of the president's new commission on electoral reform [Bauer and Ginsberg]. If we could find a way to take these issues out of the partisan crossfire, it's far more likely to get a solution that actually meets the concerns of all parties.

PILDES: Can we take these issues out of the partisan crossfire, especially at the national level?

WALDMAN: Sometimes, when both parties want something, whether it's a grand bargain between them, or, as in immigration, where suddenly both parties for entirely different reasons want exactly the same thing.

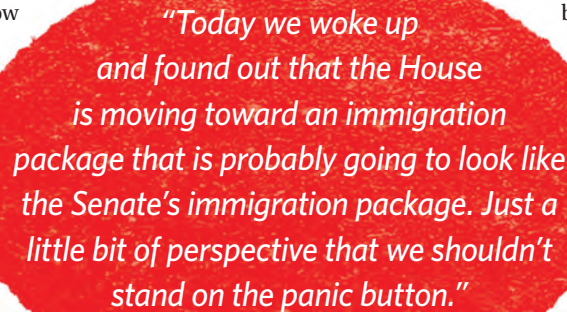
But it's important not to neglect some of the soft matters of leadership. The filibuster rules are the same as they've been for a long time, but all of a sudden they're used so incessantly that you suddenly need an impossible supermajority to do anything in the Congress. There are numerous things where the rules are what they are on

paper, but if leaders of both parties aren't willing to stand up to their base or exert leadership then the system breaks down. The polarization that we've seen is not only a function of the voters or even the money in the system pulling people, but the difficulty that people inside the system have had resisting it.

PILDES: Ben, you're the one who opened up the personal side of polarization. What, in your view, accounts for the situation Michael is describing?

GINSBERG: I'm honestly not sure. One of the contrasts with the atmosphere in Washington is on the state level, where there are any number of governors from both parties in either unified or divided legislatures who have managed to get an awful lot done in their states. So despite the polarization that we're talking about, and we're really talking about it as a national phenomenon, in any number of states it's not true. I'm not really sure what the differences are temperamentally and in the relationships between people, and why it is different in Washington from the way it is in so many state capitals.

BAUER: There's no question that the tenor of relationships in the city has changed. When I came to Washington, DC, full time in 1976, there was a very different quality to relationships across the aisle. Sometimes the rhetoric was still very hard edged, but there was more of a likelihood that you would see the previous combatants walking off the floor of the Senate joking with each other. And that's very different than the reported period, post-1994 election, when the Democratic leader of the House



"Today we woke up and found out that the House is moving toward an immigration package that is probably going to look like the Senate's immigration package. Just a little bit of perspective that we shouldn't stand on the panic button."

—Cairncross

and the Speaker of the House did not speak to each other for a year and a half directly. So there's a difference, but to go to Michael's distinction, it's more of a symptom than a cause of the larger divide.

ISSACHAROFF: American government has traditionally depended upon two different things, which both are in short supply right now. One is people who rise above the partisan divides in the institution and are the deal brokers, and there seem to be fewer of those due to the decline of the center.

The other is that there seems to be less identification with the institution than with one's party. If you look at the separation of powers, there is a Senate that has an understanding of its role, and a House in the same way, and a presidency organized around the executive in opposition to the Congress and to the judiciary. That seems to have broken down. There seems to be willingness to disable the various institutions in favor of an immediate partisan objective. The causal stuff is hard to figure out because there's so many factors: that life is more transparent, that our sources of information are more available. The monopoly of information under Walter Cronkite was a terrible thing. I learned about the Vietnam War from Walter Cronkite, but that can't be the right image to hold onto in this era.

BAUER: One thing about the kind of polarized debate that has most gotten my attention is what I call a negotiating inflexibility clothed in high moral principle. At a keynote recently delivered at a conference (I won't identify which party), the fundamental choice put to the audience was that there were large issues facing the country, and the choice was between standing up for the Constitution or surrendering. Increasingly there is a view that the large national issues that we are dealing with are essentially a zero-sum game. Therefore you're not splitting the difference when you compromise, you're giving up, you're losing. To defend that point of view there is an impulse to adopt a very stern moral tone so that the refusal to negotiate is not being unreasonable, it is being principled. That has to do with the way in which arguments are increasingly framed around issues that Tom Edsall calls "the age of scarcity." We don't have the resources to allocate fairly among all of the potential participants. And therefore, polarized debate is a negotiating strategy, but it's an anti-negotiating strategy, and it serves a function in this particular political environment.

CAIRNCROSS: It's also important to remember where you stand on this depends on where you sit, which is to say the filibuster is a big problem if you support an administration that's trying to move judicial nominees through or whatever the case may be. It's not if it's a prior administration. But the tables always turn, so radical change to this system or reform for reform's sake needs to be approached with some level of caution.

WALDMAN: I'll say for the record that presidents should be able to make judicial appointments regardless of what party they are, and that will be for the record even when there's a Republican president or a Democratic president. That's not really a way to make our courts, let alone the rest of the system, work.

But I want to go back to something Sam said. I want to strongly defend Walter Cronkite.

GINSBERG: Brave.

WALDMAN: And Huntley-Brinkley. What we're really talking about is a period when there was a sense of journalism that spoke to the whole country, that was more or less regarded as fair, and that facts were more or less regarded as facts. And that was unusual. In the 1800s that was not the way it was. Newspapers were highly partisan. Among the challenges to making the kind of compromises that inevitably are necessary, there must be some basic agreement on facts, and so this especially is challenging on things that involve short-term pain and long-term gain. As I look at the whole panoply of things affected by the polarization and dysfunction right now, you know, budgets come and go, taxes come and go. But climate change is different. We will look back on this era as a time when our political system was unable to grapple with a looming catastrophe, and one reason is there is no more shared space where people can persuade the media that something is a problem and force political actors to do something about it.

YOUN: One thing that's happened is that the people's expectations of Congress at this point are so low that it's become a self-fulfilling prophecy. No one expects Congress to govern anymore. So the more interesting question to your average voter is: Did my representative back down out of a negotiation?

You have Planned Parenthood and the NRA both with their ideological purity tests, on which ideally you want your candidate to score 100 percent. You have political parties suggesting their own versions of the purity test, and it becomes this spiral in which you start to wonder: Are we going to lose a certain amount of democracy in our democratic institutions because more and more responsibility gets pushed onto less accountable institutions

such as administrative agencies, executive action of various kinds, and the courts? Is Congress meant to be just an ideological battlefield?

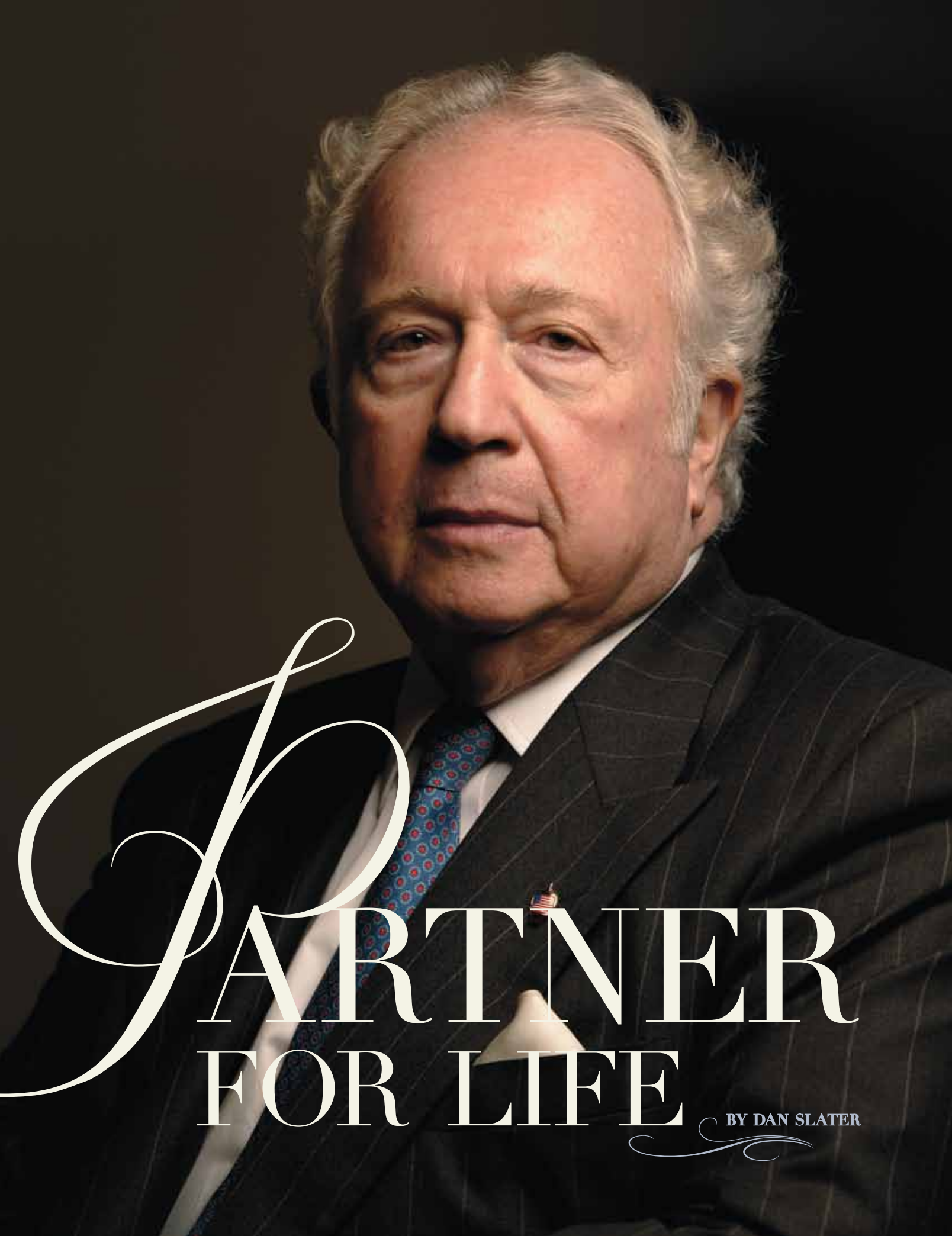
GINSBERG: Let me call attention to three issues, which in the last 20 years were positions of principle on both sides, where there's now been a sea change. Number one is immigration, number two is same-sex marriage, and number three is the gun debate—though still current, the goalposts are really different from where they were. So if we were having this discussion a few years ago we would say we're locked in concrete, that there will be no compromise because people have their principles. Through the electoral wars, discussions, whatever it is, the debate shifted.

BAUER: That is true, but in two of three cases, and to some degree the third, what really shifted was public opinion, and it drove the two parties together because if there's one thing we expect from our political actors, it's a keen sense of survival. So it's no shock that we're moving toward immigration reform, that we're moving toward acceptance of gay marriage, but it's not a result of reasoned discourse over time in which both parties sat down and listened closely to each other. It's a result of a fundamental change in the electorate's judgment that has moved the political actors.

PILDES: With that, I want to thank everybody and particularly the people who came in from out of town. It's a real tribute to their commitment to these issues and to NYU. This is the biggest issue, I think, in democracy, and these are some of the best people to talk about it. □

"As I look at the whole panoply of things affected by polarization and dysfunction—like budgets and taxes—climate change is different. We will look back on this era as a time when our political system was unable to grapple with a looming catastrophe."

—Waldman

A portrait of an elderly man with white hair, wearing a dark pinstriped suit, a white shirt, and a blue patterned tie. He is looking slightly to the left of the camera. A large, white, stylized letter 'P' is overlaid on the left side of the image, partially covering the man's face and suit. The text 'PARTNER FOR LIFE' is written in a white serif font across the bottom of the image, with the 'P' graphic extending over the word 'PARTNER'.

P
PARTNER
FOR LIFE

BY DAN SLATER

For the lion's share of 60 years, NYU Chair Martin Lipton '55 has served as a trusted adviser to four NYU presidents and six Law School deans.

Not long after he graduated from New York University School of Law, Martin Lipton '55 returned to campus for a reception, where he ran into Dean Russell Niles. Dean Niles was Lipton's former mentor, and he'd been keeping tabs on his protégé. In the few years since graduation, Lipton had gone on to a fellowship at Columbia Law School, where he studied under Adolf Berle, co-author of the landmark book on corporate law, *The Modern Corporation and Private Property*, and then to a clerkship with Judge Edward Weinfeld '21 of the US District Court for the Southern District of New York. At the moment, Lipton was working at Seligson, Morris & Neuberger, a small firm that advised big companies such as Pepsi. There, he worked with fellow NYU alums George Katz '54 and Leonard Rosen '54. Lipton, Rosen, and Katz had been referring litigation to a fourth NYU graduate, Herbert Wachtell '54.

At the reception, Dean Niles asked Lipton what he was working on. Lipton said he was preparing an SEC registration statement for a client. Niles mentioned that there was an opening on the NYU faculty; Chester Lane, former general counsel of the SEC and an adjunct professor at NYU who taught securities regulation, had passed away. Niles needed an interim professor. He offered Lane's old class notes to Lipton, along with the job, and said: "Don't worry, Marty. By next week I'll have someone who knows how."

Next week came and went. Niles never found a replacement. Lipton would spend the better part of the 1960s and 1970s teaching securities regulation and corporate law part-time. Later, he would continue his association with NYU by serving as chairman of the Law School board and then of the University board, a post he holds today, more than 60 years after arriving on campus from the University of Pennsylvania. Law school students and fellow attorneys might know Lipton for his creation of the "poison pill," an important innovation in corporate law that's used to defend against takeovers. Less well known, however, is Lipton's lifelong association with NYU, where alumni and administrators credit him with raising crucial funds and captaining NYU's ascent from a small commuter school for working-class students into a premier global university.

The rise of NYU and the School of Law over the past half-century is particularly impressive when considering how static the world of higher education tends to be. In the constellation of great centers of learning, the stars move mostly in imperceptible ways. There have been a handful of exceptions, such as the trajectory

of Stanford in the second half of the 20th century, although that was fueled heavily by money from Hewlett-Packard. NYU has a smaller endowment than its peer schools. Over the past 40 years as a trustee of both the University and Law School boards, Lipton has helped NYU leverage its nonfinancial assets, such as its location in the heart of New York City, as well as the loyalty of its alumni, typified by people like Evan Chesler '75, chairman of Cravath, Swaine & Moore, and Stern alumnus Kenneth Langone, a founder of the Home Depot. But nowhere is that loyalty more evident than at Lipton's own firm. Two of his partners, Herbert Wachtell and Eric Roth '77, serve on the Law School board. Partner David Katz '88 has taught a Law School course on M&A for the past 20 years, while another partner, Lawrence Pedowitz '72, co-chairs the board of NYU's Brennan Center for Justice.

"The Law School has had an established trajectory over the past 60 years," says Richard Revesz, who ended 11 years as dean this May, "and I see it as connected to the emergence of Marty and his firm as major players. Wachtell Lipton is very much an NYU story."

During the late 1950s and early 1960s, in his day job at the Seligson firm, Lipton handled new issues of securities for smaller companies, represented clients in SEC enforcement proceedings, and worked on friendly acquisitions in the \$5 million to \$10 million range. In 1964, the firm broke up, leaving Lipton, Rosen, and Katz to form a new firm. Wachtell, formerly an assistant US attorney for the Southern District of New York, had already struck out on his own as a litigator. In January 1965, the four men, joined by Jerome Kern '60, hung out a shingle, though Kern would leave in a few years to become an investment banker. All of the original men, including two young associates, had gone to NYU Law.

They started with \$110,000 in capital, about \$800,000 in today's money. It was enough for seven lawyers to get along for one year, assuming no business came along. But some business did come along, and Lipton, confident of the future, developed a vision for what kind of firm he wanted it to be. It was Lipton, say his contemporaries, who was most responsible for establishing the firm's culture and value system. Wachtell, Lipton, Rosen & Katz would pursue only the highest-caliber matters. When it came to work and profits, the lawyers would share and share alike. There would

be no eat-what-you-kill policy, with each lawyer out for himself. Internal competition was frowned upon. No one spoke of clients in terms of “my client.” All clients were “firm clients.” This tight-knit culture of trust was built into the structure of the firm.

A couple of years into Wachtell Lipton’s existence, a disagreement arose between the firm and one of its biggest clients, Metromedia. The firm differed with Metromedia’s founder, John Kluge, on a matter of strategy. Rather than kowtow to Kluge, Lipton simply resigned the account. “He said they could take their business elsewhere,” recalls Bernard Nussbaum, a longtime Wachtell Lipton partner who served as White House counsel to Bill Clinton. “I couldn’t believe it. Here was a client that accounted for maybe 40 percent of our revenue. So I approached Marty and said, ‘What are you doing?’ Marty just laughed. He told me not to worry, that we’d do better next year than we had this year, and of course it was true.” Lipton refused to sacrifice the firm’s freedom of judgment, Nussbaum says, and that integrity led to the success of the firm. “Wachtell is known for making a lot of money,” he added, “but money was never the driving force.”

That integrity quickly became part of the firm’s brand and a reason many corporate leaders would feel comfortable putting their business in Lipton’s hands. “High-powered CEOs are used to manipulating people to get the answers they want,” says Kenneth Langone, a longtime friend of Lipton’s. “You’re not going to get that from Marty. If what he thinks you want is wrong, or borders on unethical, you don’t get him. Everyone’s out there kissing someone’s ass. That’s not Marty’s style.”

Lipton says clients don’t care if you play golf or are entertaining at dinner. “What they’re interested in is whether you’re dedicated to giving them the advice they need to get their deals done on terms that make sense,” he says. “You can’t cater too much to a client and expect to be successful.”

By the mid-1970s, starting attorneys at Wachtell Lipton were earning \$22,500, making it one of the few firms paying lawyers more than the going rate at Wall Street firms. Daniel Neff, now a well-known M&A partner and co-chair of the executive committee at Wachtell Lipton, joined the firm in 1977. Neff says Lipton has kept in place a compensation system that has Lipton “dramatically undercompensated” relative to his value. “If,” says Neff, “the 82-year-old senior partner, the guy who had the most to do with creating the firm, is going to be continually underpaid in order to maximize the chance of having a lasting institution, well, that creates a real sense of firm, that we’re in it together, and it becomes pretty clear how you should conduct yourself.”

“We work harder than most firms,” says Jodi Schwartz LLM ’87, a tax partner.

“It’s different here. For one thing, you don’t have six dedicated associates to do all your work. We’re at the office doing it with them. Marty has infused this firm with the idea that law is above all a profession, not necessarily a business. Giving back to your school and to the city—these are parts of the profession. He’s someone who leads by example.”

Today, Wachtell Lipton employs about 250 attorneys, making it tiny compared with other firms of its stature. Wachtell Lipton may be a firm of devoted professionals, but it’s a pretty good business, too. In 2012, the *American Lawyer* ranked it No. 1 in profits per partner, with a “PPP” of nearly \$4.5 million, about three times the average among top 100 firms.

Born in Jersey City, New Jersey, in 1931, Martin Lipton was the son of a factory manager and a housewife. Lipton’s father wanted him to go to the Wharton School and become a banker. But when Lipton graduated from Penn with a degree in economics, entry-level Wall Street jobs were different than they are today. “You didn’t just walk into an investment bank and say, ‘I want to be an associate,’ as you do now,” Lipton recalls. “There weren’t these great jobs for aspiring bankers. All you could get was being a registered rep or salesman of one kind or another. I thought what I’d really like to be is a lawyer. I did OK on the LSAT, and there I was.”

For an Ivy League graduate, NYU School of Law was not an obvious choice. Back then the Law School had only about 600 students in total. Its reputation was that of a commuter school for kids from working-class families. Lipton chose NYU partly because Arthur T. Vanderbilt, its visionary former dean, was the chief justice of the Supreme Court in Lipton’s home state of New Jersey. When Lipton started at NYU in the fall of ’52, Vanderbilt Hall, the school’s main building on the south side of Washington Square, had been open for one year. But Vanderbilt, who had been dean from 1943 to 1948, wanted more than physical expansion. His ambition had been to transform the Law School into a top national institution. So focused was Vanderbilt on ensuring the school’s future that he purchased the C.F. Mueller Company in 1947 on the Law School’s behalf, with the intention that the pasta maker’s profits would sustain the Law School. “I didn’t know it then,” says Lipton, “but I would in the future fit as a cog into Vanderbilt’s dream.”

One key aspect of that dream was the Root-Tilden Scholarship Program (now Root-Tilden-Kern, after Jerry Kern, one of the original WLRK partners). It provided full tuition plus room and board to two exceptional college graduates from each of the country’s



~ HERBERT WACHTELL '54 ~



~ MARTIN LIPTON '55 ~



~ LEONARD ROSEN '54 ~



~ GEORGE KATZ '54 ~
(1932-1989)



AN IMPECCABLE SCHOLAR Lipton sitting at the editor-in-chief's desk at the *Law Review*; third from right in the back row, with the Class of 1955 Root-Tilden Scholars and Snow Scholars; as an adjunct professor at a faculty author reception in 1976.

then-10 federal judicial circuits. During his first year at the Law School, Lipton lived at home and commuted. In his second year, he was taken into the Root-Tilden program and moved to Hayden Hall.

Vanderbilt conceived of the Root-Tilden Scholarship Program in the 1940s because he was troubled that some of the best students and lawyers had become more concerned with making money than they were with participating in American democracy. He wanted to create leaders of the bar who would give unselfishly to serve the public. He named the program for alumni Elihu Root and Samuel Tilden. Root, class of 1867, had been secretary of war under President William McKinley and secretary of state under Theodore Roosevelt. In 1912 he won the Nobel Prize for his contributions to international law. Tilden, class of 1841, was governor of New York and ran for president against Rutherford B. Hayes.

The program at inception was designed to build the reputation of the Law School while also bolstering legal education. So, the scholars were required to take special courses in the humanities, social sciences, history, and natural sciences. They also had to live together and to have lunch and dinner as a group five days a week. To instill Vanderbilt's values of public service, scholars met regularly with leaders in government, industry, and finance. "The original idea was to bring in people who would have the highest respect for the laws of the country, and who would uphold them in the most ethical manner," said Thomas Brome '67, a Root alumnus, on the occasion of the 50th anniversary of the birth of the program in 2002. "These men would live together and dine together, forming a community of scholars who were infused with interests beyond the mechanical practice of law."

These were heady, inspirational times to be a law student at NYU. Until then, NYU had been a little-noticed school. But Lipton began seeing his peers benefit from its rising status. In 1954, when the inaugural Root-Tilden class graduated, it was the first time in years that NYU students were hired by major Wall Street law firms. Cravath hired two Root-Tilden Scholars in the class ahead of Lipton. "That was a big deal," he remembers. "It was some combination of everyone thinking, We're going to break into the big time and be one of the major law schools. You'd read things about how competitive law schools were. That was not NYU. Everybody was working toward a common goal of providing a professional education and helping other people get along in life."

Herb Wachtell was a member of that first class of Root-Tilden Scholars. "I remember a tall, skinny guy who wrote a *Law Review* piece that I proceeded to edit," says Wachtell, of meeting Lipton. Lipton, likewise, remembers: "My lifelong

friendship with Wachtell got off to a rocky start when he took the first note that I wrote for the *Law Review* and completely rewrote it, pounding away on an old manual typewriter amidst a constant stream of criticism."

Lipton says his early years of teaching were a catalyst for his future involvement with NYU at increasingly higher levels. Had Dean Niles not targeted Lipton to come back and teach, it's possible that NYU, without Lipton's leadership, would look very different today. Evan Chesler, the chairman of Cravath, graduated from NYU and its law school and now sits on the boards of both. He recalls taking Lipton's class as a third-year law student. "His firm had been having a meteoric rise," says Chesler. "Marty was already an extraordinarily successful lawyer around town. I remember thinking that it was a big deal to learn securities law from him."

Chesler adds: "My own view is that Marty feels about NYU the same way I do. He believes the school gave him a life. He's been one of the leading corporate lawyers in America for half a century. And without that piece of paper from that little commuter law school, which was always hitting above its weight, it might not have been."

In addition to being an adjunct professor, Lipton added the roles of Law School trustee and president of the Law Alumni Association in 1972. As trustee, Lipton was reunited with his old boss Judge Weinfeld (who would soon become chairman of the Law School's board) and began consulting closely with Dean Robert McKay on strategy and alumni matters.

These were dire years for the University—and for the city. In 1971, NYU was running a deficit of almost \$7 million and hemorrhaging money. Two years later, NYU sold its University Heights campus in the Bronx for \$62 million, but by then the NYU budget deficit was around \$10 million a year.

"When Marty first got involved, the University was facing hard times," says William Berkley, founder of W.R. Berkley Corp., the \$5 billion insurance company. Berkley got his undergraduate degree from NYU in 1966 and is now a vice chair of the University's board. "We had given up the engineering school along with lots of other things, shrinking in order to survive."

One more lucrative asset remained—the C.F. Mueller Company. Vanderbilt had intended its profits to support the Law School, and Lipton believed it was time to sell it for the school's sake. But there was one snag: The Law School had not been a separate entity from NYU when it purchased the pasta company.

So the title to Mueller had been taken in the name of the University, with ownership “for the exclusive benefit of its School of Law.”

On the Law School’s behalf, Lipton tried to negotiate with the University president, James Hester, to obtain direct ownership of the macaroni giant. He was stonewalled, however, until a new University president, John Sawhill, took over in 1975 and appointed Laurence Tisch, then a member of the University board, to negotiate the sale of Mueller on behalf of the board of trustees. Lipton and Tisch sold Mueller to Foremost-McKesson for \$115 million. The proceeds were divided between the Law School (\$67.5 million) and the University (\$47.5 million). An ensuing agreement between the Law School and the University—known to this day as the Treaty—provided that the Law School would not be disproportionately taxed for University overhead and that it would be able to nominate four trustees for election to the University’s board. Lipton, meanwhile, deepened his involvement with his alma mater by becoming one of those University trustees in 1976. In 1978, Lipton was instrumental in Tisch’s being elected chair of the board.

Around the same time, another major institution called on Lipton for help: New York City itself. During the city’s fiscal crisis of the mid-1970s, its comptroller, Harrison Goldin, retained Wachtell Lipton as an adviser. For the final six weeks of 1975, the firm drew on every lawyer in its ranks to work with investment banker Felix Rohatyn and obtain federal financing to restructure New York City’s debt, ending the fiscal crisis. Lipton’s reputation grew.



In 1982, Lipton was in conversation with Arthur Fleischer and Stephen Fraidin, partners at rival law firm Fried Frank. Fleischer and Fraidin represented Burlington Northern, the railroad conglomerate, in its bid to acquire El Paso, a natural gas producer. El Paso’s board of directors hired Lipton to defend against the takeover. “Marty told us that he was going to deploy what would become known as a ‘poison pill’ to deal with our takeover bid,” recalls Fraidin, now a partner at Kirkland & Ellis. “I listened to him describe it and thought to myself, There’s absolutely no way a court is going to uphold this.”

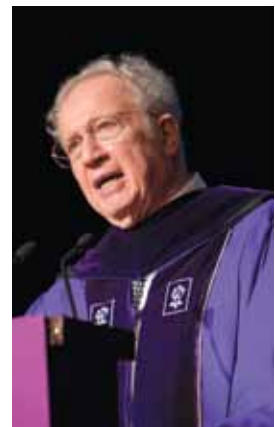
To understand the evolution of Lipton’s career, and why he holds the beliefs he does about how companies should be managed and merged, it’s necessary to know a little about the way the world of mergers and acquisitions morphed during the second half of the 20th century. When Lipton began practicing corporate law, M&A had been limited mostly to so-called strategic deals:

If it made good business sense for one company to buy another, then the prospective buyer would approach the board and seek 90 percent of the shareholder vote. In the 1970s, a new approach to taking over a company, considered *déclassé* by New York’s older white-shoe firms, came into vogue: Corporations were using hostile takeover bids and proxy battles to win control of other public companies. These deals were “hostile” because they excluded the board of the target company and coerced the target’s shareholders. The dominant technique was the front-end-loaded tender offer, in which the hostile bidder makes an offer for 51 percent of the shares, with a statement that if the bidder acquires 51 percent within 10 days, then it will force a merger. Those shareholders who don’t tender their shares on the “front end” will get a lower price, or might just wind up holding debt, an IOU.

“In a sense, this made the transaction involuntary, because shareholders had to get in on the front end,” explained William Allen, Nusbaum Professor of Law and Business, who in the 1980s and 1990s sat on Delaware’s Court of Chancery, a leading trial court for business law. At the same time, says Allen, evolution in the money markets had made large pools of capital available to entrepreneurs. The new breed of company buyers, typified by T. Boone Pickens and Carl Icahn, worked outside the establishment of big investment banks. Known as financial buyers, these new entrepreneurs looked to buy companies based not on their strategic relevance but on the financial return to be made if they could buy the company with borrowed money, fix its capital structure, and flip it for a profit.

These corporate raiders upset two powerful groups: corporate management, who were losing control of their firms, and labor unions, who often saw jobs slashed and factories closed when financial buyers moved in. Political power amassed on the side of wanting to slow these hostile tender offers. In this new environment, lawyers came to the foreground, offering either offensive or defensive tactics. Lipton frequently tussled with the legendary offensive lawyer Joseph Flom of Skadden, Arps, Slate, Meagher & Flom.

Eight years Flom’s junior, Lipton had won attention in 1974 for an offensive role, representing Loews in its hostile acquisition of the CNA insurance company. But the following year, Lipton established his reputation as a defender of corporate boards when squaring off against Flom on a high-profile deal, Colt Industries’ \$151 million takeover of gasket-maker Garlock. The Garlock deal was documented in detail in a 1976 *New York* article, “Two Tough Lawyers in the Tender-Off Game.” The piece was written by Steven Brill, who would later create a legal-media empire that included *American Lawyer* and Court TV. Comparing the two attorneys, Brill described Lipton



A DEDICATED—AND INDEFATIGABLE—ALUMNUS With Kenneth Feinberg ’70 and John Sexton at a pre-commencement dinner in 2010; speaking to alumni fundraisers at the Half Way There Dinner in 2011; giving an address to JD graduates at convocation in 2011.

as “huskier and slightly better tailored, in his habitual white shirt and black suit, and wearing bottle-thick glasses.”

As a defender of companies in hostile deals, Lipton sought to return power to management by slowing the takeover process and forcing bidders to negotiate directly with the board. His signature invention was the aforementioned poison pill, which he developed between 1980 and 1982. The pill is triggered when a shareholder—a potential bidder for the company—acquires 20 percent of the shares. At that point, the other shareholders have the right to buy up more shares at a discount. This in turn dilutes the bidder’s interest and raises the cost of acquisition. It’s called a poison pill because it makes the company temporarily “sick,” unattractive to the bidder.

When Lipton explained his idea during Burlington Northern’s bid for El Paso, Fraidin figured a court would deem it illegal because the poison pill, after all, required that a board exclude the bidder from the self-tender. Critics also argued that it interfered in a transaction among shareholders and would be used by boards to entrench themselves in management. But in 1985, the Delaware Supreme Court upheld the poison pill as a valid takeover defense, sealing Lipton’s reputation as a brilliant corporate M&A strategist.

What’s unique about Lipton’s stewardship of NYU is not just the depth of his involvement—it’s not unusual for successful alumni to become benefactors and trustees of their alma maters—but also that he has managed to put his dealmaking prowess to work at so many decisive junctures for the university. Two decades after he helped sell off the Mueller company, buttressing the financial security of the Law School and the University, Lipton turned his attention to the problems of the NYU School of Medicine and Tisch Hospital, caused, he says, by the growth of managed healthcare.

In 1997, Lipton attempted a merger of Mount Sinai Hospital and the NYU Medical Center, which encompasses four hospitals and the medical school. By this time, he had further ascended the NYU ranks. In 1988, Lipton was elected to succeed Judge Weinfeld as chairman of the Law School board after Weinfeld died. Then, when Larry Tisch retired as chair of the University board in 1998, he recommended Lipton as his successor. “It’s not that I think I’m too old to continue as chair,” Tisch said at the meeting, “it’s that I’m afraid Marty is getting too old to succeed me.” (Tisch passed away in 2003.) The proposed hospital merger, Lipton’s first major test as leader of NYU, was critical for the future of the medical school, but it soon became problematic. First, the faculties of the medical schools of both organizations opposed the merger, and the plan was abandoned. Eventually the merger went through, but then the entities had to be de-merged, in 2001, when financing that had been promised by Mount Sinai fell apart. Lipton faced the possibility of an embarrassing failure.

For another NYU chair, the situation might have been overwhelming. For Lipton, drawing on four decades of M&A experience, it was nothing new. When the hospital merger caved, he approached his friend Kenneth Langone about taking on the chairmanship of the Medical Center and working to resolve its problems. “We were facing considerable difficulty,” Lipton

“The school gave Marty a life. He’s been one of the leading corporate lawyers in America for half a century. And without that piece of paper from that little commuter law school, it might not have been.”

—EVAN CHESLER

remembers. “When you’re in a situation like that, you try to think who it is that you could turn to to be effective. I thought, If I could get Ken to put the kind of enthusiasm into this that he puts into everything else he does, it’d be perfect.” Langone said he wasn’t interested.

“Ken, let me level with you,” Lipton recalls saying to Langone at the time. “I’m desperate. Will you at least come down to the Medical Center and meet some of the people?”

Langone visited the Medical Center—twice—and then Lipton paid him another visit at his office. “He said to me,” remembers Lipton, “I decided I’m going to do this. And you know, Marty, I never put time into something I can’t invest in.”

Langone handed Lipton a check for \$100 million.

“Why did I do that?” Langone asks. “Simple: Because Marty Lipton asked me to. If the tables were turned, he would have done the same for me.”

Of course, this sounds too simple in the retelling, but as William Berkley, the insurance mogul who sits on the NYU board with both men, explains: “You trust Marty for a couple reasons. First, he’s balanced. He says, ‘What does the other side need and what do we need, and how do we move forward?’ He’s not about pie in the sky. He’s about reality. Second, he’s got this strong emotional commitment to NYU. No one can debate that. He’s so committed because of his experiences at the Law School, which were clearly just really extraordinary for him. Marty thinks of it as his family, something he’s indebted to. He believes it’s an absolutely integral part of his life.”

In the past, Lipton has said that he never questions what he’s doing with his life, or how he chooses to spend his time. “You don’t have to plumb to the depths of my psyche,” he told the *New York Observer* in 2005. “There’s nothing there.” It’s not surprising, perhaps, that someone who has worked so hard at the same tasks for so long isn’t prone to much existential angst. But the epic course of Lipton’s career, split between his firm and his school, suggests a deep soulfulness that he probably would never admit to.

University President John Sexton, whose ascendant career at NYU parallels Lipton’s—Sexton became dean of the Law School shortly after Lipton became chairman of the Law School board—says the two men “consider each other brothers” who share an “extraordinary friendship” that has spanned nearly 30 years. “It’s fair to say there isn’t a single person who has entered Marty’s life, either in a personal or professional way, who hasn’t felt enhanced by his presence. He is an extraordinary embodiment of the ideal of care and caring.” Sexton also expresses appreciation for his and the University’s partnership with Marty. “He’s one of the busiest people in the world,” says Sexton, “and yet never has a call from me or anyone associated with NYU gone for more than an hour without an answer. When he’s asked to do something, it’s done immediately.”

Over the decades, that commitment amounted to incalculable and invaluable non-billable hours. But asked about his legacy, one of the most famous corporate lawyers in America looks away and shrugs, a little embarrassed. “There’s nothing else more important in life,” he says, “than what one achieves by contributing to the welfare and the benefit of those who come after us.” □

Dan Slater, a former litigator, is a freelance journalist and author of Love in the Time of Algorithms: What Technology Does to Meeting and Mating.

A Tax Haven

Arthur Vanderbilt envisioned a formidable graduate tax program in 1945. Nearly 70 years later it remains the powerhouse platform for launching tax law careers in the nation's top law firms and law schools, multinational corporations, and the US government.

On a cold Tuesday in January, David Kamin '09, an assistant professor of law and the newest member of NYU Law's tax faculty, was presenting a paper on the United States budget at the Law School's Tax Policy Colloquium. Held in a classroom in Vanderbilt Hall, the colloquium nonetheless had the feel of a conference in Washington, DC: Among those in attendance were noted policymakers such as Peter Orszag, distinguished scholar at NYU Law and former director of the White House Office of Management and Budget (OMB), and William Gale, a prominent economist at the Brookings Institution. Students (who take the colloquium for credit) and academics made up the rest of the audience.

Under discussion was a 2012 paper, "Are We There Yet?: On a Path to Closing America's Long-Run Deficit," that Kamin wrote for *Tax Notes*, a popular tax news and commentary magazine. The deficit discussion, with tussles over tax increases and spending cuts, was one of the biggest and most important political battles in Washington, and Kamin—who at the age of 33 is one of the country's top experts on the federal budget—thought that the common wisdom was wrong.

The Congressional Budget Office's projections showed a long-term budget gap of nearly nine percent of GDP over the next 75 years. The impact: Stabilizing the country's debt-to-GDP ratio would require a combination of \$1.3 trillion in spending cuts and revenue increases per year, starting immediately and growing with the economy. The size of those numbers had Washington in a tizzy.

Kamin argued that uncertainty and flawed predictions, including a failure to include consensus measures on which Republicans and Democrats agreed or to account for what he called a "long game on revenue"—meaning those tax provisions already in place that will bring in more funds in future years—gave a false impression of how bad things were. The actual long-term gap could be below two percent, he said, an amount that would be hard to categorize as a crisis. "[D]enying the possible progress distorts the policymaking process and does not reward tough choices when they are made—while also justifying evermore radical solutions," he wrote.

That provocative argument is exactly the kind of thinking for which Kamin is known, and why the school wooed him back. Kamin, until last year an economic adviser to the OMB and the National Economic Council, and Lily Batchelder, on leave to be chief tax counsel for the Senate Finance Committee, embody tax law's trend toward innovation. At a time when fiscal policy is splashed on the front pages of every newspaper, they both influence the national debate and form a bridge

between Washington and the Law School classrooms.

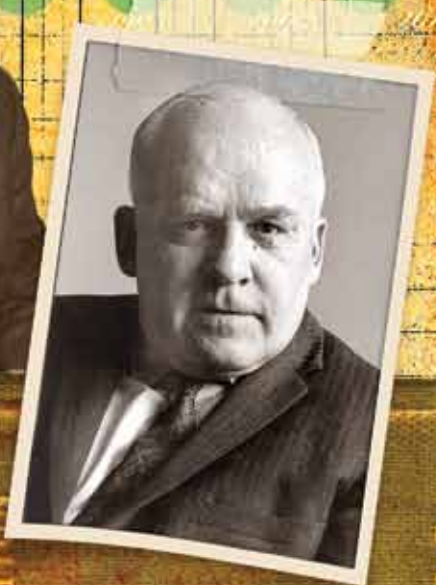
They join other NYU Law faculty with a tax policy focus, including Daniel Shaviro, organizer of the Tax Policy Colloquium and one of the nation's leading tax policy academics; Deborah Schenk LLM '76, editor-in-chief of the policy-focused *Tax Law Review*; Joshua Blank LLM '07, who specializes in tax administration and compliance; and Mitchell Kane, whose interests lie at the intersection of tax with environmental policy and development economics.

The tax faculty also encompasses those who focus on cutting-edge transactional tax issues, such as Noël Cunningham LLM '75, a foremost authority on the taxation of partnerships; Leo Schmolka LLM '71, an expert in estates and partnerships; Laurie Malman '71, who specializes in individual and corporate tax; John Steines LLM '78, who focuses on corporate and international taxation; and Brookes Billman LLM '75, an expert in tax procedure. In addition, top practitioners such as Victor Zonana '64, LLM '66 in hot areas like taxation of cross-border transactions also teach as adjuncts. This combined focus on both policy and practice makes NYU Law—whose tax law curriculum has been ranked number one by *U.S. News & World Report* every year since the survey began in 1992—"home to a world-class tax faculty that has a deep impact on national, and often global, tax policy debates," says Blank, faculty director of the Graduate Tax Program.

At law schools across the country, there has been a shift from practice to policy, especially in tax. The tax code itself is arcane and complex, and tax lawyers can spend years of study deep in its details to learn to navigate it for their clients. But the rules and regulations that govern this country's tax policy are also an expression of who we are as a people and what social policies we want to foster or curtail. Should the tax law be used to shrink poverty? Can it be tailored to ease inequality? In a global economy, what is the best way to tax US-based multinational companies? Should investment income be taxed at lower rates than wage income? Should an estate tax or inheritance tax halt family dynasty-building? Should the tax law be used

Clockwise from top left:
Lily Batchelder, David Kamin,
Gerald Wallace, Charles Lyon

30	UND PNLTY	37.087	PAID	BALANCE
31	EST PNLTY	19.40	.00	19.40
32	LEGAL	.00	36.07	.00
33	INTEREST			.57
34	USE TAX	3.00		.00
35	PIT TAX/RFD	20.00		388.00
36	2012 BALANCE DUE	25.00		407.97
37	PLUS OTHER TAX YEAR			
38	ADJUSTMENTS			.00
39	TOTAL DUE NOW* - (P			407.97
40	SENT AMOUNTS AS ORIGINALLY			
41	ADJUSTED BY THE DEPARTMENT			
42	LINE 9 MINUS LINE 10			
43	LINE 11 BY .01070			
44	YEAR			
45	PAYMENTS			
46				



INTERNAL
REVENUE
CODE OF
1954

MARCH 1964
EDITION

J. S. E.

to change our behavior, such as by encouraging us to purchase health insurance? Whatever your political perspective, the questions multiply the more you try to get your arms around them.

Nowhere does this increased emphasis on tax policy find a more organic fit than at NYU Law. “I think it’s a natural extension of the fact that the school is focused on public service,” says Batchelder. “One of the things you can do is be a public interest lawyer and have clients, and another thing you can do is work on policy issues.”

“THE MOST COMPLETE AND IMAGINATIVE OFFERING”

The federal income tax was passed into law 100 years ago, in 1913, and for the first few decades of its existence law students learned about tax as a minor offshoot of constitutional law. “Tax as a subject came into the curriculums of law schools in the 1930s,” says M. Carr Ferguson LLM ’60, a longtime member of the tax faculty and former US assistant attorney general for the Tax Division of the Department of Justice, who now teaches as an adjunct. “It was regarded as the work of accountants until then.”

It wasn’t until 1934 that Randolph Paul ’13—one of the name partners of Paul, Weiss, Rifkind, Wharton & Garrison—co-wrote the six-volume *Law of Federal Income Taxation*, one of the earliest studies of tax as a legal discipline. And while taxation had become more complicated by the 1940s, and litigation had begun to build up case law, law schools had not kept pace with the developments.

That was the landscape when Arthur Vanderbilt became dean of NYU School of Law in 1943 and quickly moved to enhance the school’s reputation beyond its regional base. Tax, Vanderbilt realized, was a wide-open area for training lawyers, and teaching it could give NYU an edge in the new field. While NYU Law offered a couple of basic tax courses then, there were no professors who specialized exclusively in tax. Vanderbilt’s idea would go one giant step further than simply beefing up the tax curriculum for JD students; he would establish a graduate tax program, the first in the nation, and create an academic home for all those who cared about tax. “It was a radical departure in legal education,” says Professor Emeritus John Peschel, who joined the tax faculty in 1967.

To make a splash with this new program, Vanderbilt was determined to hire Gerald (Jerry) Wallace, one of the country’s most brilliant tax teachers. Wallace had taught at Yale and had worked as special assistant to the US Attorney General and as chief of the criminal unit of the Justice Department’s tax division. Vanderbilt convinced Wallace to leave Cravath, Swaine & Moore in 1945.

Wallace was not only one of the nation’s most beloved tax professors, but he had also devised a new way of teaching tax that replaced law schools’ traditional Socratic method. In the problem method, as Wallace’s way came to be known, students were given a set of facts and required to analyze the code, regulations, and case law to produce an answer. This allowed students to get deep into the tax code and grounded the analysis with real-life problems and rules, rather than getting into a discourse that might veer too far into the hypothetical. Students across the country are now taught tax with the problem method. This, Schenk says, is in part because NYU has educated so many tax law academics.

The program launched with evening courses for associates at the city’s elite firms who were seeking LL.M.s. Wallace, known as the Chief and renowned for the camaraderie he fostered, built up the curriculum and expanded the program, teaching at NYU until 1983. Eventually, the program grew to offer a full-time day schedule.

Senior members of the tax faculty still tell stories about how the Chief and Charles Lyon—who joined the faculty in 1955 after

serving as deputy chief prosecutor at the Nuremberg trials and being an early name partner at what became Skadden, Arps, Slate, Meagher & Flom—would hold court at Marta, a nearby Italian restaurant where Blue Hill is today, drinking martinis. (This was, after all, back in the day of the three-martini lunch.) Students would join them after class. “Charlie and Jerry would go there so regularly that their drinks would be ready at their table when they got in from their morning classes,” recalls Ferguson.

Wallace not only knew all of the program’s students, but he also remembered the names of their girlfriends and boyfriends. And Lyon, who was widely read—and was married to *New Yorker* writer Andy Logan—would make jokes. The duo also organized outings to Bear Mountain, basketball games, and other social events with the graduate tax students. “It was just the personalities of Jerry and Charlie. They were the kind of people who wanted to engage students,” says Stephen Gardner LLM ’65, a partner at Cooley and an adjunct professor since 1966. “Jerry didn’t care about writing; it was not what he considered important.”

Vanderbilt, who later became chief justice of the New Jersey Supreme Court, had big ambitions for the tax program, and he insisted on creating a new law review that would be the first such journal devoted exclusively to taxation. The *Tax Law Review*, which remains the preeminent tax law journal, launched in 1946.

As Dean Russell Niles wrote in a commemoration of his predecessor, Vanderbilt, in the *Tax Law Review*: “Vanderbilt was not a tax lawyer; he did not even find the study of tax law congenial. As an imaginative realist, however, he saw before any other law school dean what the impact of the new tax laws would be on the post-war world.... And so, with his usual audacity and vigor, he recruited a tax law faculty...and with their help set up the most complete and imaginative offering ever made in this field.”

As the program gained in students and popularity, NYU Law brought in heavy-hitting tax lawyers to join Wallace and Lyon in teaching there. James Eustice LLM ’58, known to all lawyers for



his co-authorship with Boris Bittker of the most important corporate tax treatise, *Federal Income Taxation of Corporations and Shareholders*, arrived at NYU Law in 1960.

Eustice, who died in 2011, was a marathon runner—known for wearing track suits and passing hours running around Washington Square Park—who kept stacks and stacks of paperwork (and of used Styrofoam coffee cups) in his office. Though his notes scribbled in the margins of the tax code were barely legible, and he never did use e-mail, his mind was a steel trap about all things tax-related. He had spent decades, after all, keeping *B & E*, the nickname for nothing less than *the* treatise on corporate tax law, up to date. “He was revered by everyone,” says Schenk. “If the answer was not in his book, there was no answer. He knew everything there was to know about tax.”

AN EXPRESSION OF WHO WE ARE AS A PEOPLE

As the Bush tax cuts approached their expiration at the end of 2012 and congressional Democrats and Republicans prepared for battle, Lily Batchelder was the woman at the center of the storm. On leave from her professorship of law and public policy at NYU Law since 2010, Batchelder has been the Senate Finance Committee’s chief tax counsel, serving as right-hand

person to its powerful chairman, Senator Max Baucus, in the tax negotiations. In 2012, inside-the-Beltway newspaper *Roll Call* named her one of the top five Hill aides to know regarding tax and noted that she had become “a very visible presence on Capitol Hill, often appearing on the dais at hearings, and alongside [Baucus] as he roams the hallways.” She has led all of the committee’s tax work over the last couple of years, including the tax extensions and reauthorization of federal transportation programs.

Batchelder, whose low-key manner belies her sharp intellect, came to tax policy because of a passion for social justice and economic fairness. Unlike many tax professors who gravitate to tax early and have straightforward career paths, by the time Batchelder joined NYU Law in 2005 she had worked as a client advocate at a small social service agency in the Brownsville section of Brooklyn, as director of community affairs for then-State Senator Marty Markowitz (who’s now the Brooklyn borough president), and as a tax attorney at Skadden, Arps. She has both a master’s in public policy from Harvard University’s John F. Kennedy School of Government and a law degree from Yale Law School.

Batchelder’s academic interests naturally fall squarely at the intersection of tax and social policy. She has completed research on how to use tax incentives to help low- and middle-income families and how to structure wealth transfer taxes for societal good. “What interested me about both was, how can we promote equal opportunity so that people’s economic rewards reflect their efforts, and folks from disadvantaged backgrounds get a fair shot,” she says.

For example, Batchelder has been a big proponent of structuring financial incentives as refundable tax credits. The credits are available to people regardless of whether they owe income tax, and they are considered more progressive because the poorest families, who otherwise might be excluded from the benefit, can use them. (Most tax incentives, by contrast, are nonrefundable, which means taxpayers can take them only to reduce their tax bills.) “Why not give incentives to people that need them the most?” Batchelder asks.

Like most tax policy wonks, Batchelder is interested in ways to simplify the tax code. Consider, she says, the complexity of tax benefits for higher education; there are more than 10 credits and deductions, each with its own rules and eligibility requirements. “If we’re going to use the tax code to promote education, we should do so in the most cost-effective way,” she says. Equally important for the education benefits in an age when college costs have soared, she argues, is the issue of timing. Families that are really strapped for cash would do better to get the education benefit before paying tuition, rather than waiting to get money back on the next year’s tax return. “Maybe you could claim it based on your previous year’s income, or we could give it to the university,” Batchelder ponders. “How could we build it into the sticker price that prospective students are facing, rather than them having to build a spreadsheet to figure out what tax benefits they might be able to claim?”

A related issue, which Batchelder explored in a 2009 *Tax Notes* paper, “Estate Tax Reform: Issues and Options”—written as the federal estate tax was approaching its one-year disappearance in 2010—is changing the way we tax the transfer of wealth from one generation to the next. In her paper she argued that not only could the estate tax be improved, simplified, and potentially expanded, but it could also be replaced with an inheritance tax. (Don’t expect that to actually happen in Washington, where the year-end tax agreement kept the estate tax with a generous \$5 million exclusion.) “What interested me about that was focusing on opportunity and privilege, and making sure people’s tax burden reflected how well off they were,” Batchelder says. “You might have two people earning \$40,000, but one of them has a

\$4 million inheritance. That person is better off, but the tax code doesn’t differentiate.”

For Batchelder, her time at NYU has informed her work in Washington, just as she expects that her work for the Senate Finance Committee will affect her teaching and research when she returns. In Washington, for example, Batchelder has become used to talking about tax policy in lay terms—most congressmen and congresswomen, after all, don’t know the ins and outs of the tax code beyond their talking points—and she has become more pragmatic about the way tax law is actually created. “There are some provisions I would speak about in tax class with this attitude of ‘Why are they doing this? It’s the stupidest thing ever.’ I’ve learned that some of these things are more sophisticated than I would have thought,” she says. “And sometimes it does come down to trying to reach a deal with certain members of Congress. It may not be the perfect policy, but you do not want to make the perfect the enemy of the good.”

WHILE BATCHELDER spent 2012–13 immersed in tax policy discussions in Washington, David Kamin—who had been Batchelder’s student and crossed paths with her in Washington—escaped the day-to-day grind of writing position papers in order to join the NYU Law faculty. “I really loved working on tax and budget policy for the Obama administration,” Kamin says. But after three and a half years, Kamin—who is married and has a young daughter—was ready for a change from the late nights and constant battles of fiscal policymaking. “I wanted to work on larger pieces, versus the memos and fact sheets that are the lifeblood of policymaking in DC,” he says. “I want to think on a larger scale.”



Kamin has a bachelor's in economics and political science from Swarthmore College, and worked for the Committee for Economic Development and the Center on Budget and Policy Priorities before getting his JD magna cum laude at NYU Law. Even then, he was on the fast track: He became special assistant to Orszag, then the newly appointed director of the OMB, before even finishing his law degree. In a 2008 *NYU Law Review* article he wrote while still a student (that was excerpted in this magazine that year), "What Is a Progressive Tax Change?: Unmasking Hidden Values in Distributional Debates," Kamin asked what it meant for a tax change to be considered progressive or regressive, concluding that measures of progressivity are often used in misleading or incoherent ways.

At the National Economic Council, as special assistant to the president for economic policy, Kamin made a significant impact on important policy legislation, including Obama's healthcare law, the continuation of the payroll tax cut (through 2012), and the resolution of the debt crisis (in 2011).

Kamin is currently working on a *Tax Law Review* paper, "Poverty, Not Inequality: Federal Taxes and Redistribution," about how the tax system cannot be used well to reduce inequality, though it can be used effectively to reduce poverty, and how pulling apart those two ideas can help create more effective policy. "If you look at the practical limits of the tax system, it is not going to have much impact on overall income tax distribution," Kamin says. "But it can have much more effect on the welfare of people at the middle or bottom income levels. That's different from inequality. If you distribute even a little to the bottom, it has a big impact."

Another area of interest for Kamin is baselines, the seemingly simple concept of measuring where we are now that raises thorny policy questions. "In budget and tax, this creates a controversy: What's a tax increase, and what's a tax cut? Is what we agreed to [in the fiscal cliff deal] a \$600 billion increase, or a \$4 trillion tax cut?" Kamin asks. "If you look at the official score, it looks like a \$4 trillion tax cut because the tax cuts were supposed to expire, but relative to current policy it's a \$600 billion tax increase."

Kamin's scholarship often shows how budget and tax metrics deeply influence policy debates, even as they are frequently misunderstood. He delves deep into the numbers to come up with original arguments that, typically, counter the conventional wisdom. Nowhere is this more true than with an idea he's now exploring on

the distributional impact of tax and spending policy. The common wisdom is that you can look at a tax bill and figure out its distributional impact—for example, that the Bush tax cuts benefited everyone but disproportionately benefited the wealthy. Kamin argues that because the common perception looks only at a particular time, it misses a bigger and more nuanced story. "Whenever you increase spending and cut taxes, you either have lower spending or higher taxes in the future," Kamin explains. "In figuring out the actual effect, I can tell a plausible narrative that the end result of the Bush tax cuts is a tax system that is more progressive—however unintentional that may have been. At the same time, the tax system is producing less revenue, and that is now resulting in cuts to federal programs with regressive distributional consequences."

The way Kamin sees it, part of the payback occurred in the year-end tax legislation, with the first major tax increase on high earners in 20 years (marginal tax rates for married couples making over \$450,000 rose from 35 percent to 39.6 percent). Meanwhile, tax cuts which benefited all taxpayers but especially helped those at middle- and low-income levels, including the carving out of the 10 percent tax bracket, remained. The result: Over the long term, tax rates at the top of the income scale largely returned to their old levels, while tax rates at the bottom are lower. Programs like Head Start, however, are facing significant cuts due to fiscal pressures. "We now ironically have a more progressive tax system, but there are also less government services and a weaker safety net than would otherwise be the case," Kamin says. "It may seem like splitting hairs, but it is a more accurate way to look at the net impact."

In addition to his scholarship, Kamin is teaching a federal budget seminar, which he designed. And he hopes that he and Batchelder will be role models to students who are interested in the policy world. Tax lawyers, perhaps more so than others because of the technical expertise required, often create careers that span both private practice and government service. "Having Lily and me here will hopefully give people entrée into a different career path if they are interested," Kamin says.

While he was in Washington, Kamin recalls, he would sometimes call Shaviro—his professor at NYU Law and one of the country's top tax policy experts—to walk through some arcane analysis that he was struggling with. "Now I can just knock on his door," Kamin says with a laugh. "For me, it's been very exciting to be a student in the program and then come back to teach."

A Field of Dreams

HARVEY DALE, University Professor of Philanthropy and the Law, is one of the country's leading experts in taxation and philanthropy. Dale started his career as an international tax lawyer and joined the faculty in 1977 to teach international tax, which was then a growing area. Meanwhile, Dale began representing his increasingly wealthy clients' philanthropic work, a shift that culminated in his becoming founding president of the Atlantic Philanthropies, the then-secret foundation of Duty Free Shoppers' Chuck



Feeney, who planned to give away his billions during his lifetime. It's hard to overstate the importance of Feeney's

philanthropic approach—a story chronicled in the book *The Billionaire Who Wasn't: How Chuck Feeney Secretly Made and Gave Away a Fortune*—and Dale's work in making it happen from a legal perspective.

As Dale focused more on Atlantic, his academic focus shifted to nonprofits. "I had a very steep learning curve," he recalls. And as Dale delved into an area of law that few people understood, he brought that new area of learning to NYU Law.

A study of nonprofit law that Dale commissioned in the mid-1980s spawned a program in nonprofit law and ultimately led

to the 1996 founding of NYU's National Center on Philanthropy and the Law, which serves as a clearinghouse on nonprofit law and the teaching of it. "Harvey was one of the founding fathers of the area," says Jill Manny, executive director of the philanthropy center and adjunct professor since 1993. Dale, who in addition to teaching a class on nonprofit law works with the center on conferences and travels the world for his own nonprofit work, puts it in perspective: "Nonprofits are 5.5 percent of GDP, yet they were rarely taught at any law school. We had to create the whole field of nonprofit law."

WHILE BATCHELDER AND KAMIN are relative newcomers to NYU Law, the shift from practice to policy has been underway for more than two decades, built up by longtime professors Schenk, Shaviro, and others.

Deborah Schenk, Ronald and Marilynn Grossman Professor of Taxation, was unusual in many ways when she joined the tax faculty 30 years ago. She was one of the first women (along with Laurie Malman) in a clubby, male environment, and the first woman tax professor to get tenure. She took charge of the quarterly *Tax Law Review*, and as editor-in-chief for the past 25 years has made it the foremost publication for tax policy research. And she has mentored hundreds of students, particularly those interested in becoming tax academics themselves, many of whom completed the acting assistant professor program.

"Deborah is the most amazing mentor. She tells it how she sees it," says Sarah Lawsky LLM '06, a professor at the University of California, Irvine, School of Law and an adjunct professor at NYU Law. "She'll go to bat for you, but you have to live up to her standards. There are so many tax professors in this country who owe their jobs, and their work, to Deborah."

Schenk's own research runs the gamut, including a treatise on Subchapter S corporations and a number of pieces about low-income taxpayers and small businesses. Her article "Exploiting the Saliency Bias in Designing Taxes" (*Yale Journal on Regulation*, 2011), for example, looked at the issue of saliency—that is, things

that are disclosed visibly—and how that relates to taxpayers' cognitive biases. The idea of looking at cognitive biases in decision making, generally, dates to the pioneering work of Amos Tversky and Daniel Kahneman, but only more recently have researchers begun to consider how those biases play out in tax policy. Simplistically, income tax rates are relatively easy for taxpayers to see, and they will notice



if Congress raises rates. But other provisions that have a similar effect of raising revenues—for example, the phaseouts on personal exemptions and deductions for the wealthy—may be harder to see, or less salient. Likewise, the failure to index tax brackets for inflation has the effect of changing a taxpayer's marginal tax rate without altering the tax brackets.

Schenk argues that while such provisions often get criticized as hidden taxes, that criticism is misdirected; low-saliency taxes might be both effective and justified. "Tax scholars are starting to think about how to adopt behavioral economics in tax," Schenk says. "Can we use behavioral economics to shape compliance? Some people think that's devious. There are a few of us who say we ought to take this into account."

A dozen years after Schenk came to NYU Law, Daniel Shaviro, Wayne Perry Professor of Taxation, joined from the University of Chicago Law School. Shaviro, whose background includes stints at the elite tax firm Caplin & Drysdale and at the Joint Committee on Taxation (where he worked on the 1986 tax reform), has wide-ranging interests spanning tax policy, budgets, international tax, corporate tax, and more. He has written eight books on topics that range from budget policy to corporate tax—including *Decoding the U.S. Corporate Tax*; *Taxes, Spending, and the U.S. Government's March Toward Bankruptcy*; *Making Sense of Social Security Reform*; and *Do Deficits Matter?*—and he pens an influential tax blog called Start Making Sense, in which he was outspoken in his criticism of Mitt Romney's tax proposals during the recent elections. His rich body of work even includes a satirical 2010 novel with a young, morally challenged litigator as a protagonist.

Shaviro's big project at the moment is a forthcoming book on international tax policy, *Fixing U.S. International Taxation*, that will try to frame the issues regarding taxation of multinational companies in a global economy at a time when Washington has been considering corporate tax reform. Among the issues the



book will explore is how to think about a territorial system of taxation, in which offshore profits would not be taxed in the US (which, corporations argue, would make them more competitive in a global economy), versus the current system in which overseas profits of US-based entities are taxed when they come back home, but those companies receive a credit for foreign taxes paid. Ultimately, Shaviro argues,

the US lacks the market power to levy as much tax on US companies' foreign-source income as it does on domestic income, and should use a lower tax rate for overseas income, instead of relying on foreign tax credits and deferral. (The current tax system, he notes, is what induced Apple to borrow in the US rather than bringing home more than \$100 billion in offshore profits.)

While Shaviro has been working on the book, he has published numerous other papers, many of which have grown out of the research for the book. In "The Rising Tax-Electivity of US Corporate Residence" (*Tax Law Review*, 2011), which was first presented as the David R. Tillinghast Lecture at NYU Law, Shaviro looks at the ability of US corporations to elect a different residence for tax purposes and what that might mean to the current US system of international taxation. "In an increasingly integrated global economy, with rising cross-border stock listing and share ownership, it is plausible that US corporate residence for income tax purposes, with its reliance on one's place of incorporation, will become increasingly elective for taxpayers at low cost. This trend is potentially fatal over time to worldwide residence-based corporate taxation, which will be wholly ineffective if its intended targets can simply opt out," Shaviro writes. If the US were to shift its system of taxation, he argues, the US could assess a one-time transition on existing US multinationals' foreign subsidiaries' profits, which might raise \$200 billion, to avoid giving a windfall to them.

Shaviro's arrival at NYU heralded an increased depth of focus on tax policy, a shift from the earlier days of looking at tax doctrine. "That really took off with Dan," says Noël Cunningham, whose own focus is on partnership taxation. "I think it's fair to say that now, as a group, we're more policy than doctrine." For example, the work of Joshua Blank, who joined in 2010 as professor of tax practice, and Mitchell Kane, Gerald L. Wallace Professor of Taxation, who arrived in 2008, touches on repercussions for tax scofflaws, environmental policy, and economic development.



"Collateral Compliance," Blank's recent *University of Pennsylvania Law Review* article, looks at collateral sanctions for tax noncompliance. Such sanctions are imposed in addition to monetary tax penalties, revoke nonmonetary government benefits and services, and are often administered by agencies other than the taxing authority. In *Kawashima v. Holder*, for instance, the Supreme Court in 2012 upheld an immigration judge's decision to deport a Japanese immigrant couple who had previously pleaded guilty to filing false tax returns and been sentenced to four months in prison. States also are trying to use collateral sanctions. In

The Most Influential Person in the Tax World

AS DEBATES over corporate tax policy raged last year, John Samuels LLM '75 was an oasis of calm: As vice president and senior tax counsel for General Electric, Samuels, 67, has built the firm's global tax operation into the equivalent of a giant tax firm, with approximately 1,200 tax experts in 44 countries, and a reputation as one of the most aggressive corporate tax operations.

Big enough and aggressive enough, that is, to make the front page of the *New York Times* in 2011 in a scathing and much-talked-about piece about just how little tax GE pays. It's all in a day's work for Samuels, who describes GE's tax techniques as akin to individual homeowners claiming the home mortgage interest deduction to lower their taxes.

"The government puts incentives out there, and we take advantage of them," Samuels says simply. "That's the obligation we have to shareholders."

A tall and dapper man, wearing a polka-dot yellow bow tie on the day I met him at his satellite office in Stamford, Connecticut, Samuels is one of the Graduate Tax Program's most successful alums, though he prefers to keep a low profile. From his perch at GE over the past 25 years, Samuels has helped change the way corporations think about their taxes and the importance tax strategy can have on the bottom line. And with his founding of the International Tax Policy Forum—a Washington, DC-based tax think tank whose members include more than 40 US-based multinationals—and frequent appearances at tax-policy events, Samuels is one of the corporate sector's most prominent voices on international tax issues. *Tax Business*, an international magazine, once ranked him the most influential person in the tax world, calling him

"famous for crafting clever tax plans and groundbreaking deals with the US and foreign fiscal authorities."

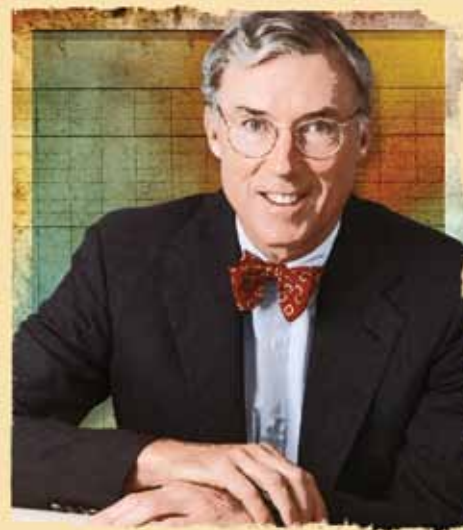
Samuels grew up in the small Florida town of Hollywood, where his father was a lawyer and the kids were expected to be either doctors or lawyers. At Vanderbilt University, Samuels was pre-med, until he realized that he didn't want to go to the hospital every morning and see sick people. He got his law degree at the University of Chicago, where he studied with eminent tax scholar Walter Blum. "Very few people did tax," Samuels says. "I started it, and loved it. You have to actually learn a body of law."

At Dewey Ballantine, first in New York and then in Washington, DC, Samuels honed his interest in tax law. When Jimmy Carter was elected president in 1976, word went around the office that his administration wanted new faces at Treasury. "Like all new presidents," Samuels says, "he was going to reform the tax code." Samuels joined Treasury as deputy tax legislative counsel and rose to become tax legislative counsel.

After Carter lost re-election, Samuels returned to Dewey Ballantine, where he was a partner, and shuttled between his practice in the capital and in New York, where his clients included Bankers Trust and HBO.

In 1987, Jack Welch, GE's legendary chief executive, hired Ben Heineman, a constitutional lawyer, as general counsel in a new effort to build a significant in-house legal department. It was unusual then for companies to hire high-powered lawyers in-house, and considered a poor career move for top lawyers to make. "Heineman started this revolution of bringing senior lawyers in-house," Samuels says. It wasn't long before Heineman was courting Samuels to join.

At first, Samuels figured he'd just meet with the GE executives in order "to hustle a client," as he recalls, "because that's what you do in a law firm that's hustle clients." Instead, he came away from the meetings seriously considering the job. "I could feel the draw of the opportunity to build something new," he says. But the risks loomed large, and Samuels was afraid: After all, he was a top-billing law partner at a top law firm with an interest in government service at a time when few ambitious lawyers would choose to go in-house. Would he be making a career mistake? Would he be able to convince other top tax lawyers to join him at GE? M. Carr Ferguson LLM '60, who was one of Samuels's professors at NYU Law and remains a friend,



recalls meeting with Samuels in New York as he agonized over whether to leave Dewey Ballantine for GE. The two had worked in Washington during the Carter administration, when Ferguson was assistant attorney general in charge of the tax division at the Department of Justice and Samuels was at Treasury. They had even, very briefly, been roommates there. "I strongly recommended he take the job; it sounded spectacular, and I think it has been for him," Ferguson says. "I thought that was an endearing characteristic of John's—

his great loyalty and great appreciation of the law as a calling."

With Welch's imprimatur to hire, Samuels soon brought in young partners with deep knowledge of tax for GE's business units, like GE Capital and the aircraft business. And as GE expanded overseas, he added tax lawyers in countries like Brazil and China. "When I came here, there were 40 or 50 people in the tax group, and none of them had tax backgrounds. There was low-hanging fruit everywhere. Everyone thought I was a genius, and I'm not and was not," Samuels says. Still, as other corporations built up their in-house expertise, Samuels says: "I think we set the model."

Samuels once thought he'd return to government, but over the years has cut off feelers to be assistant secretary for tax policy at Treasury and commissioner of the Internal Revenue Service, unwilling to deal with the revolving door that is Washington. Instead, he keeps on signing GE's voluminous tax return, and spends time flyfishing (in the Bahamas and the Florida Keys), playing golf, and going to the opera with his wife, Diane, a retired teacher of children with learning disabilities. The family's ties to NYU Law remain strong: His daughter Sarah Samuels, an associate at Skadden, Arps, Slate, Meagher & Flom, and her husband, Isaac Wheeler, a tax associate at Sullivan & Cromwell, both graduated in 2009. But even as Samuels can look back on a long and successful career, don't count on his retiring anytime soon. Says he: "I'll never go to Florida and play golf. There's at least another chapter or two."

California, for example, tax delinquents may lose their driver's license; in Louisiana, it's their hunting license that's at risk.

Blank argues that collateral sanctions should only be applied when there's a violation of a clear tax rule, when the taxing authority identifies the offense, and when taxpayers view the sanction as proportionate to the offense—standards that aren't met when incorporating the *Kawashima* holding into federal deportation



Blank

policies. "I argue collateral sanctions offer a lot of benefits," says Blank. "But if people view the penalty as disproportionate, they may not cooperate."

In addition to projects involving individual tax compliance, Blank is also pursuing a long-term empirical study of the factors that influence judges' decisions in corporate tax abuse cases with Nancy Staudt, a tax policy scholar at the University of Southern California Gould School of Law. "Corporate Shams" in the *NYU Law Review* (2012) reviewed more than 100 years of US Supreme Court decisions. The two are now immersed in thousands of federal appellate court decisions as they focus on the role of tax penalties in judicial decision making.

Meanwhile, Mitchell Kane is an international law expert who engages in cross-disciplinary research. His "Strategy and Cooperation in National Responses to International Tax Arbitrage" (*Emory*



Kane

Law Journal, 2004) looked at the opportunities created by arbitrage—the structuring of transactions to take advantage of variations in tax laws across jurisdictions—for governments as they battle to attract capital in a global economy.

Kane is currently energized about work that spans tax and climate policy. At a conference in Europe, he realized that efforts to create carbon markets—which should have a single price to reduce emissions—have been hampered by the lack of a harmonized system for a carbon tax across jurisdictions. "All of the economic models are built on a pre-tax basis," Kane says. "So I've been struggling with the general problem of how the tax system should be structured." Kane's "Taxation and Multi-period Global Cap and Trade," published in the *NYU Environmental Law Journal* in 2011, tried to create a framework for the taxation of a greenhouse gas emissions permit market that encompasses multiple periods and jurisdictions.

PUZZLES WITHIN PUZZLES

Despite the glitziness of talking tax policy, for most students the core reason to study tax law remains professional education in difficult and highly specialized tax issues. And it doesn't take a lawyer to realize that as the tax code has gotten ever more complex, the amount of knowledge required to understand it has expanded exponentially. Over the last dozen years, National Taxpayer Advocate Nina Olson has consistently cited the complexity of the tax code as one of the biggest problems facing American taxpayers. Not only does the thicket of rules and regulations make compliance difficult, but it undermines trust in the tax system, too. The burden on the tax lawyer is that much greater as well. "You cannot begin to know it all. It's wildly out of control," Schenk says. Adds John Steines: "If you're going to remain technically

proficient, it's much more demanding now. And as each decade rolls by, it becomes that much more demanding."

Mastery of the tax code inspires such passion in members of the NYU Law tax faculty that, for many years after Marta closed, they would regularly gather at Volare, a cozy Italian restaurant near Washington Square Park known for its burlesque paintings by the Broadway set designer Cleon Throckmorton, and debate its arcane details. While friendly, those tax discussions occurred so often, and got so heated, that the restaurant allowed them to keep a copy of the entire Internal Revenue Code behind the bar to settle disputes quickly and definitely.



Steines

More seriously, the tax professors have used that refined and battle-tested knowledge to produce numerous treatises and casebooks that are at the core of teaching the practice of tax law. The *B&E* treatise on corporate taxation is the gold standard in that area and the most prominent example.

Schenk wrote *Federal Income Taxation: Principles and Policies* (co-authored with Michael Graetz). Cunningham and his wife, Laura LLM '88, a tax professor at Benjamin N. Cardozo School of Law and adjunct at NYU, penned *The Logic of Subchapter K: A Conceptual Guide to the Taxation of Partnerships*, the definitive book on partnership tax law, a particularly abstruse subject. Brookes Billman, who has been teaching at NYU since 1979, co-wrote a casebook on tax procedure, *Federal Tax Practice and Procedure: Cases, Materials, and Problems*. Malman co-authored *The Individual Tax Base: Cases, Problems, and Policies in Federal Taxation*.

Blank credits Schenk and Graetz's book on federal income taxation, which he first read in his dorm room during his JD studies at Harvard, with getting him excited about taxation, a subject many young law students don't think they'll enjoy. "After reading the first few pages, I was hooked," he says.

The tax code, for students who are interested in it, is a brainteaser, creating puzzles within puzzles to work through. At NYU Law, as the tax code itself has grown more intricate, the number of tax courses has proliferated; there are now roughly 100 classes, more than any one student could possibly take. While the Graduate Tax Program caters to LLM students, JD candidates can take graduate-level courses, and those who want to focus their studies can pursue a joint JD/LLM degree. Classes range from the straightforward (Income Taxation, Taxation of Property Transactions, Estate and Gift Taxation) to the complex (Advanced Corporate Tax Problems, Taxation of Subchapter S Corporations) to the esoteric (Taxation of Affiliated Corporations). And while the 14 full-time faculty (plus two acting assistant professors each year) teach many of the courses, adjuncts, who are often practicing attorneys at elite firms, handle some of the most complex topics—taxation of financial instruments, say, or taxation of private equity. "Unless you're dead set on something else already, it's such a good idea to try tax," says Vivek Chandrasekhar '11, LLM '13, who clerked for Judge Rosemary Pooler of the US Court of Appeals for the Second Circuit in the 2012 term, and now works at Roberts & Holland, a boutique tax firm in New York.

Still honoring the collegial model that Wallace and Lyon created, the tax program offers students a dizzying array of colloquia, programs, and networking events outside of the classroom. Each year, Blank hosts roundtable lunches that feature prominent alums talking about how they became interested in tax and what led to their success in the field. "It's our version of *Inside the Actors Studio*," Blank says. Students also attend the annual David R. Tillinghast Lecture on International Taxation, the



NYU/KPMG Tax Lecture Series, and even an annual tax movie night, which this year featured episodes from *The Honeymooners* and *The Simpsons*.

As tax becomes more complex and the legal market changes, the Graduate Tax Program has been adding even more classes that will better prepare students for jobs as tax lawyers. There are now more in-depth classes on issues in state and local taxation, for example, and specialized courses that focus on transactional tax planning. In a new course on tax deals, students read merger agreements and try to understand how the deal was structured and why. Another new offering focuses on accounting for tax consequences, a nod to the closer relationship between accountants and tax lawyers. “We are working with the faculty to incorporate a level of practical training into the substantive classes,” Blank says.

The faculty is also moving rapidly into online education, making sure that tax classes are available for time-pressed attorneys across the nation. Since 2008, NYU Law has offered the Executive LLM in Tax in an entirely digital format. “Our online program is thriving,” Blank says. It currently has roughly 100 students, several of whom are experienced partners in law firms and high-ranking lawyers in accounting firms. Blank and Graduate Tax Program Director John Stephens have worked closely with the faculty to expand the number of online courses offered. With streaming software that’s used by some of the most popular movie services, the online classes give the feel of being in the classroom, with chalkboard scrawls turned into detailed graphics. Adjunct Professor Sarah Lawsky, for example, created the online Tax Deals course. Tax ramifications are an increasingly important consideration in mergers and acquisitions, and the course seeks to give

students real-life experience reading deal documents and exploring the tax provisions in them. The final exam is a deal document with questions.

Like many law students, Hayes Holderness ’11, LLM ’12 wasn’t initially interested in tax. But Schenk’s iL income tax course changed that. After a tax policy fellowship at the Joint Committee on Taxation and an LLM in tax, he is now an associate at McDermott Will & Emery in New York focused on state and local tax issues. “The environment at NYU helped me to form not only a good understanding of the tax law,” he says, “but also a love for it.”

While students who will practice in the US hunker down in deals documents or learn the ins and outs of employee benefits law, an increasing number of foreign students choose to study tax in the US. A select few foreign students will study in the International Tax Program, launched in 1997. Director H. David Rosenbloom, James S. Eustice Visiting Professor of Taxation and member at Caplin & Drysdale in Washington, DC, describes it as a tightly knit intellectual oasis with a maximum of 30 students from around the world. “It’s very intensive,” says Rosenbloom, who is an expert in tax treaties, some of which he helped negotiate during his time as international tax counsel at the Treasury Department’s Office of International Tax Affairs in the late 1970s. “It’s an education in tax and in internationalism.”

Tax policy might be more in vogue and intellectually interesting than tax practice, but the reality is that most tax lawyers will wind up at law firms. And as the legal market gets squeezed, having more specialized knowledge up front is not just an advantage but also a necessity. “It’s important for grads today to show prospective employers they can deliver immediate value,” Steines says. “Particularly in view of the economic condition of the legal profession, it is important that law schools not forget that most people view them as professional schools.”

LOOKING FORWARD

Benjamin Franklin famously said, “Nothing is certain except death and taxes.” Paying taxes, however much you may personally grumble about it, is part of the social contract. And as last year’s presidential debates heated up over the taxes paid by the one percent and what type of social safety net we as a country want to have, the critical role of tax policy was impossible to ignore.

While the fiscal cliff deal at the end of last year settled tax policy for individuals, both Democrats and Republicans have continued to talk about the possibilities for major tax reform, something that has not happened since 1986. Since last fall, both Senator Baucus (who has announced he will retire in 2015) and Congressman Dave Camp, chairman of the House Ways and Means Committee, have been working up their proposals and have issued 10 bipartisan options papers.

“We’re going full steam ahead,” Batchelder says. “The chairman really wants to do tax reform. It’s an extremely ambitious goal, and there are a lot of challenges, but we’re going to work as hard as we can to make it happen.”

The debates in Washington echoed back at NYU Law with a series of evening discussions called Pathways to Tax Reform, to look at ideas that range from the possible to the radical. What sort of tax reform should happen? What might it mean?

Interesting questions worth pondering, and studying. □

Amy Feldman is a New York-based business journalist. She writes a tax column for Reuters, and contributes to Fortune and Barron’s.



THE PEOPLE

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Ronald Dworkin, Frank Henry Sommer Professor of Law, passed away on February 14. One of the most important legal philosophers of our time, Dworkin is remembered by colleagues and friends as a fierce advocate for moral principles in constitutional interpretation.

Ronald Dworkin, 1931–2013

Thomas Nagel remembers his close friend and collaborator on one of the most famous courses in legal education, the Colloquium in Legal, Political, and Social Philosophy.



IFIRST MET RONALD DWORKIN 45 years ago in the bar of one of those faceless, interchangeable hotels where conventions of the American Philosophical Association always take place. Amid the general grunge that typically characterizes any gathering of philosophers, Dworkin, with his beautifully tailored suit, gleaming cuff links, and silk breast-pocket handkerchief, stood out as a visitor from another planet. He was in the company of my former teacher John Rawls, whose frayed cuffs, scuffed shoes, and abstracted air made the contrast even more vivid.

The juxtaposition of Dworkin's worldly, elegant hedonism and Rawls's unworldly, tattered asceticism is an indelible dash of color in my image of the philosophical domain. These two very different Americans were jointly responsible for an enormous change in our moral and intellectual environment during the latter part of the 20th century—Rawls in political philosophy and Dworkin in legal philosophy. They brought the clarity and logic of analytic philosophy into normative fields from which they had been excluded by the earlier prejudices of logical positivism. Both of them deepened and gave articulate

form to questions and arguments that arose from the most urgent political and legal issues of our time.

But Dworkin also did something else: he wrote for the public. Rawls, who did not have this gift, greatly admired Dworkin's capacity to explain difficult moral issues about law, politics, and society in lucid terms to a general, nonacademic audience—without in any way watering down or simplifying his subjects. Rawls said that in this respect Dworkin had made a contribution in our own day comparable to that of John Stuart Mill in the 19th century—a just and memorable tribute.

Dworkin's legal theories developed in critical response to H.L.A. Hart's legal positivism—the view that facts about what the law is are essentially social facts. In the alternative view that Dworkin developed, facts about what the law is are essentially moral facts about the rights of individuals and the justification of the use of state power over those individuals—though these moral facts depend in large part on social facts, together with general moral principles. The theory is set out most fully in an early major work, *Law's Empire*, published in 1986. It has the consequence that when judges are faced

with a difficult question of law, whether in statutory, common law, or constitutional adjudication, they cannot avoid engaging in moral reasoning in order to settle it. It is not surprising, therefore, that judges with different moral convictions will come to different conclusions about the constitutionality of affirmative action, for example, or restrictions on campaign finance, or prohibition of same-sex marriage. This does not cast doubt on the legitimacy of such adjudication, nor does it mean that there is no right answer. Dworkin believed that there was no alternative but to include moral argument and the pursuit of moral disagreement in the process of determining what the law is.

Though he began his career as a lawyer, clerking for Judge Learned Hand and then practicing at Sullivan & Cromwell for four years before he started to teach at Yale, his intellectual motivation was always philosophical. He sought understanding in the largest sense, and tried to reach the foundations of whatever claim he was investigating in general principles that could survive rational criticism. This philosophical disposition of mind led him over the course of his career to gradually expand and deepen his concerns to cover political theory, general moral philosophy, and finally the theory of knowledge—specifically the question of whether there is such a thing as objective truth, and if so, what that means, in science, in morality, and in law. All these interests are brought together in his magnum opus, *Justice for Hedgehogs*, published in 2011. He had become a philosopher of great range and power, offering a comprehensive vision of human life and the social good. The title is a play on Isaiah Berlin's distinction between intellectual hedgehogs (who know one big thing) and intellectual foxes (who know many things). Dworkin believed in the essential unity of value, which permitted us to reconcile liberty and equality, individuality, community, and justice in a single comprehensive conception.

Dworkin's greatest impact on the Law School came through the Colloquium in Law and Philosophy that he initiated in 1987 with the help of David Richards, Larry Sager, and me, and that he and I ended up conducting for the next 25 years. The mountains of theoretical material that we subjected to critical analysis in that time include some of the most interesting work on these topics, as well as some that is less interesting, but the constant element that always impressed me was Dworkin's tirelessness and his unforced enthusiasm. He was a superb intellectual

host, always communicating the sense that there was nothing he would rather be doing than talking with our guest of the week about his or her ideas. I have to admit that sometimes, when he and I met for a preliminary discussion of a thinner-than-average paper for that week's colloquium, he would look at me ruefully and say, "We're going to have to do a lot of work." But as soon as the author walked through the door, Dworkin was the picture of eager engagement and interest, and a spirited discussion was launched.

One thing that made this possible was that Dworkin cared more keenly about the answers to questions of moral, political, and legal theory, and about converting others to the right view, than almost anyone I have known. This quality of temperament is more unusual among philosophers than you might think. I'm going to steal one of Dworkin's stories here. He once overheard a woman comforting a friend who was evidently in great distress by saying, "Be philosophical; don't think about it." Most of us don't go quite that far, but I believe the norm, after a certain number of rounds in the dialectical ring, is to feel that we can let fundamental disagreements continue unresolved, and that we aren't obliged to keep trying to convince our opponents. Dworkin, by contrast, was always good for another round. So long as anyone on the other side was

left standing and unconverted, he would keep the battle going, and would leave no objection or reply unanswered. This could create problems of graceful termination, particularly when Dworkin encountered an equally tireless adversary.

Among our guests over the years have been most of the people doing important work in these areas, including John Rawls, Jürgen Habermas, T.M. Scanlon, Michael Walzer, Frank Michelman, Robert Post, Kathleen Sullivan, Cass Sunstein, Owen Fiss, Seana Shiffrin, Amartya Sen, Bernard Williams, Derek Parfit, and Richard Posner. Dworkin himself presented most of his own work in progress to the colloquium, responding with his usual fluency and style to criticism from all comers. In person he displayed an astounding level of eloquence and logical speed, together with personal charm and a wonderful sense of humor. It was invariably a pleasure to be in his company, to see him engage with others, and to feel the force of his irrepressible *joie de vivre*. Dworkin leaves a legacy of writings that shaped our intellectual landscape, but he is also responsible for creating a continuing celebration of the life of the mind at this institution, which those who shared it with him will never forget. □ *This piece is adapted from a tribute Nagel wrote on the occasion of the Annual Survey of American Law dedication to Dworkin in 2006.*

Books by Ronald Dworkin

Taking Rights Seriously (1977)

A Matter of Principle (1985)

Law's Empire (1986)

A Bill of Rights for Britain: Why British Liberty Needs Protection (1990)

Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom (1993)

Freedom's Law: The Moral Reading of the American Constitution (1996)

Sovereign Virtue: The Theory and Practice of Equality (2000)

Justice in Robes (2006)

Is Democracy Possible Here? Principles for a New Political Debate (2006)

Justice for Hedgehogs (2011)



Religion without God (forthcoming, 2013) Dworkin's final and posthumous book on religious atheism is dedicated to his wife, Reni, and to Tom Nagel.

“ A few minutes before I was to give the job talk that is such a nerve-wracking part of the interviewing process at NYU, Ronnie came over, introduced himself, and told me that he would have to leave early because of a prior commitment. I quickly understood the implied message. My presentation relied on the economic analysis of tort law, a methodological approach that Ronnie had devastatingly critiqued years earlier. He wanted to let me know that I shouldn't misconstrue his early departure as a dismissal of my job talk. That gesture was reflective of our ensuing relationship. He attended faculty workshops when I presented a paper or would otherwise pass along regrets for his absence. At the colloquium, he made me feel as if my input on tort issues mattered. Like the time when we first met, the graciousness and interest expressed by such an extraordinary colleague were always an invaluable form of support for me. ”

Mark Geistfeld

Sheila Lubetsky Birnbaum Professor of Civil Litigation

“ With the passing of Ronald Dworkin, we have all lost a highly important philosopher and public intellectual. For almost 20 years, I was privileged to be his NYU colleague and a regular attendee at the colloquium that he and Thomas Nagel ran, fondly known as the Ronnie and Tom Show. That three-hour colloquium was without doubt a high point of the philosophical life of New York City, where discussion was always kept at the highest level by its two conveners. The dinners following were exemplars of the life of the mind: Discussion of the presenter's paper continued for another two hours, led by Ronnie but with truly egalitarian participation and no-holds-barred disputes. But Ronnie wasn't all philosophy. Another governing passion was his love and knowledge of art. (I remember joking that I had a postcard of every artwork he once owned.) In so many ways, he was remarkable and irreplaceable. ”

Frances Kamm

Littauer Professor of Philosophy and Public Policy, Kennedy School of Government, Harvard University

“ The passing of Ronald Dworkin on February 14, 2013, has left a huge gap, not only in our faculty, where colleagues have for years enjoyed and profited from the Thursday afternoon Colloquium in Legal, Political, and Social Philosophy that Dworkin ran with Thomas Nagel, but also in the world of legal philosophy. Dworkin's contributions there were immense. He was a titan in the field. His work on legal principles galvanized jurisprudence in the 1960s and '70s. His conception of legal integrity deepened our understanding of the responsibility judges have to the laws as a whole. Above all, he emphasized the obligation of judges never to give up on their sense that the existing law demanded something of them, even in the most difficult cases. He saw ways to unite the study of law, ethics, and political morality that most of us had never dreamed of. He will be sorely missed, but his work and his example live on. ”

Jeremy Waldron

University Professor

Rosie the Riveter, with a Bunsen Burner

Coming of age during World War II, Pauline Newman '58 brought a can-do spirit to careers in science and the law.



THE PHRASE “the first woman to...” occurs frequently in descriptions of Judge Pauline Newman’s career. She was the first woman to be appointed an appellate judge by President Reagan. She was the first woman to be elected as an officer or director of a large number of scientific and law associations, and to hold various research and management positions in industry.

Yet Newman, the NYU Law Women 2013 Alumna of the Year, sees herself less as a pioneer than a product of her time. Born in 1927, she graduated from college two years after World War II. “During that era of total mobilization, women moved into every traditional male job: Rosie the Riveter posters recruited women into heavy industry, women ferried bombers overseas, women fought fires and patrolled the streets,” she recalls. “As a young woman, I was very much aware that women could do anything.”

Even so, the glass ceiling was still low enough to practically touch the floor. As a result, her career path, while “extraordinarily satisfying,” as she notes, was also “not quite straightforward.”

Newman’s initial plan after graduating from Vassar College in 1947 was to become a

doctor. But after 12 medical schools turned her down, she switched her sights and got an MA in pure science from Columbia University and a PhD in chemistry from Yale University. She turned to industrial research with the American Cyanamid Company, but she confessed her wanderlust to the Law Women, and as soon as she had saved enough money she bought a ticket to Paris on the SS *Ile de France*. She stayed there for six months, funding her sojourn by tending bar in a *boîte* on the *Ile Saint-Louis*. Newman boasts that to this day she can serve up any mixed drink—as long as it’s ordered in French.

Upon her return to New York, she was offered a job “no respectable scientist would take”—writing patent applications at FMC Corporation—“but since I was getting quite hungry, I took it.” To her surprise, “it wasn’t quite as dreary as I expected.” Her commute took her past the NYU Law campus, and she often stopped in at a bar favored by law students, eavesdropping, she confesses, on “all the fascinating conversations about torts.” Soon she was a student herself, attending classes at night while working at FMC during the day. “It turned out that I liked the law, very much,”

Newman says. “The law summoned the same parts of my mind that had attracted me to science, years before.”

Her scientific background continued to shape Newman’s career, and in 1961–62 she served as a science policy specialist in the Department of Natural Sciences at UNESCO. Back at FMC, in 1969 she became director of the patent, trademark, and licensing department, and continued to serve a host of legal and scientific organizations. “It undoubtedly eased the next step in my career,” she notes, “because so many people knew me.”

That step was the US Court of Appeals for the Federal Circuit. It was 1984, a time when the fruit orchards south of San Francisco were being transformed into Silicon Valley. Newman was in the right place at the right time and with the right credentials. “The same postwar era that has opened so many opportunities for women has seen extraordinary technological advances, much of which has flowed from entrepreneurship—which is the focus of patent law,” she says. “The patent system provides the only incentive to commercial investment that comes not from government subsidy but from privately supported ingenuity, investment, and competition. The court on which I am privileged to sit has been, for the past 30 years, at the core of advancing and adapting that law to the nation’s purpose.”

In her 29 years as a judge, Newman has helped guide the growth of the technology industry, which now accounts for between 60 percent and 78 percent of the US economy—“depending on how much weight you put on the intellectual property component,” she notes.

Despite her career’s uncertain beginnings, Newman can look back on a professional life rich in recognition. At NYU she endowed the Pauline Newman Professorship of Law, now held by Rochelle Dreyfuss, as well as the Pauline Newman Intellectual Property Fellowship to encourage young academics to develop an interest in patent law. In 2001, she was awarded the Vanderbilt Medal, NYU Law’s highest alumni honor.

To women thinking of entering the legal profession, she says, “I well understand that there remain many gaps to be filled, but from the perspective of the changes I have observed during my lifetime, I am optimistic for the future.” She advises, “Keep your options open, your mind open, and see what opportunities turn up. And if you have the irresistible urge to dump everything and go to Paris, I would urge you to do that, too. But I can promise you that in the law, the future will delight you. It certainly has delighted me.” □ *Catherine Fredman*

Capital News

April 25, 2013, was a big day for the 1996 Root-Tilden-Kern Scholarship class: Two members were confirmed by the US Senate, as general counsel of the US Department of the Treasury and as a member of the Equal Employment Opportunity Commission. (A third, Anthony Foxx '96, would be nominated as transportation secretary a week later.)

Christopher Meade '96 was appointed principal deputy general counsel of the Treasury in 2010 and has served as acting general counsel since last June. In a statement, Treasury Secretary Jacob Lew said that Meade's "impressive grasp of a wide set of legal and policy matters ranging from the tax code to terrorism finance has been and will be vital as we move forward with initiatives of immense scope and complexity."

Jenny Yang '96 was a partner at Cohen Milstein Sellers & Toll. Specializing in civil rights class actions and wage and hour collective actions, she worked on cases such as *Beck v. The Boeing Company*, in which she successfully represented more than 28,000 female employees alleging sex discrimination, and also helped represent 1.5 million women in *Wal-Mart Stores Inc. v. Dukes*, the biggest discrimination class action in history. Previously, Yang served as a senior trial attorney in the Civil Rights Division of the Department of Justice.



JENNY YANG: AP IMAGES / MIKE GROLL



From Blackboard to Bench

RECALLING HER 1960S CHILDHOOD on the Lower East Side, Jenny Rivera '85, one of the newest judges of New York State's Court of Appeals, says, "My world was my mother and me in our tenement apartment. She walked me to school, she brought me home at lunch. Where she went, I went."

Accompanying her quiet mother to a protest of housing discrimination against Latinos at a lower Manhattan high-rise transformed Rivera: "I understood that everyone in the picket line was like me, Puerto Rican. Even if I hadn't learned about inequality at school, I learned about it on the picket line."

Rivera's appointment is a historic one: She is the first judge appointed to the state's highest court to come directly from the faculty of a law school (the City University of New York School of Law) and the second Latina to serve on the court. Her appointment stirred Republican objections because of her limited judicial experience, but Governor Andrew Cuomo staunchly defended her.

"She is going to make a great court a greater court," Cuomo said at a post-confirmation press conference. "When it comes to problems facing New Yorkers—immigrants, working families, people with civil rights issues, people who are victims of discrimination, people who are victims of

predatory lending—she knows the reality that people are dealing with and she knows what the body of the law says."

Indeed, Rivera comes to the position with impressive legal experience, rooted in social justice. She clerked for now US Supreme Court Justice Sonia Sotomayor when Sotomayor served on the US District Court for the Southern District of New York. She worked for then New York Attorney General Cuomo as special deputy AG for civil rights. She has also been a lawyer for both the Legal Aid Society and the Puerto Rican Legal Defense and Education Fund, and served as an administrative law judge for the NYS Division for Human Rights.

The majority of Rivera's experience, however, lies in teaching—first, briefly at Suffolk University Law School, then at CUNY for 15 years, where she was founder and director of the Center on Latino and Latina Rights and Equality. The center investigates issues affecting the Latino community in the United States, with the goal of developing progressive strategies for legal reform.

Rivera's experiences are no doubt what shaped her life commitment to social change. As a judge, she vows to be guided by justice and, she says, to do nothing short of an excellent job in serving the people of New York. □ *Christine Pakkala*

Expanding Students' Horizons

TO SAY THAT RACHEL BARKOW, Segal Family Professor of Regulatory Law and Policy and faculty director of the Center on the Administration of Criminal Law, is beloved by her students is an understatement. Inspirational, life-changing, encouraging, and patient are just a few of the adjectives current and former students use to describe their teacher and mentor. This past spring, Barkow's achievements as a teacher were formally recognized when she received NYU's Distinguished Teaching Award, which is given to outstanding faculty members across the university who have made a significant contribution to NYU's intellectual life through teaching.

Students, faculty, and alumni submit nominations, which are then examined by NYU's All-University Selection Committee, which makes the final decision. Winners of the award receive \$5,000 and a medal in recognition of their outstanding teaching accomplishments.

Barkow, who teaches courses in administrative law and criminal law, is renowned among her students for her accessibility and mentorship. "For Professor Barkow,

teaching isn't just a necessary part of her job description; it's her passion. She takes a keen interest in her students and invests in their personal and professional development," wrote Alex Levy '14 in his nomination, adding that Barkow is "the kind of educator who expands horizons, brings clarity to otherwise dense subjects, and mentors students for years after they've left her classroom."

Nicholas Bagley '05, an assistant professor of law at the University of Michigan Law School, took Barkow's Advanced Administrative Law class when he was a student at NYU Law, and he credits this course with shaping his future career in legal academia. "It's no exaggeration to say that Advanced Administrative Law, in Rachel's hands, was gripping. So much so, in fact, that it cemented my own desire to become a professor of administrative law," said Bagley in his letter of support for Barkow's nomination. "I can say categorically that I wouldn't be doing what I'm doing today were it not for Rachel's class."

The care and attention that Barkow gives to her students is particularly remarkable



given her own impressive range of commitments. Just this spring, President Barack Obama nominated Barkow to the US Sentencing Commission. Confirmed in June, Barkow will serve on the commission through October 2017. Luckily, this position will not conflict with her role as a professor at the Law School. Even with this added responsibility, Barkow will continue to teach, mentor, and inspire students of criminal and administrative law. □

Leading by Example

ASSISTANT PROFESSOR of Clinical Law Alina Das '05, co-teacher of the Immigrant Rights Clinic, was one of this year's recipients of the Dr. Martin Luther King Jr. Faculty Award from New York University. The award recognizes

professors who exemplify King's spirit through scholarship, research, and teaching, and it also reflects their positive impact in the classroom and the greater NYU community. Das was one of six faculty members from the entire university to be recognized.

"Attending the clinic and having Alina as my professor has been the best decision I've made during my law school career.... Alina's work embodies the goals of clinical teaching: equipping law students with the ability to address urgent problems and preparing them to serve as effective practitioners," wrote Jesse Rockoff '14 on behalf of a group of Immigrant Rights Clinic students who nominated Das for the award. "Despite her busy schedule, Alina never fails to serve as a friend and mentor, demonstrating

the spirit of inclusion and community building on a day-to-day basis."

Das's scholarly work and the work of the clinic have attracted the attention of the Supreme Court, too. In *Moncrieffe v. Holder*, the Court ruled in April that a noncitizen should not be automatically deported for "social sharing of a small amount of marijuana." Justice Sonia Sotomayor's majority opinion cites not only Das's 2011 article, "The Immigration Penalties of Criminal Convictions: Resurrecting Categorical Analysis in Immigration Law," but also an amicus brief written by Das and clinic students Pierce Suen '13 and Jordan Wells '13 on behalf of more than 80 immigration law professors. The brief argued that labeling noncitizens as aggravated felons when they are caught with small amounts of marijuana "deprives immigration adjudicators of the power to consider favorable equities, humanitarian concerns, and the public interest."

This year, too, Das is the recipient of the Daniel Levy Memorial Award for Outstanding Achievement in Immigration Law, given by LexisNexis Matthew Bender. Das and Nancy Morawetz '81 were also honored for their leadership of the Immigrant Rights Clinic in the *New York Law Journal's* 2012 list of "Lawyers Who Lead by Example." □



A Teachable Moment

Veteran lawyer Peter Levin has shifted from restructuring debt to improving public education, one block at a time.

GIVEN THE LOCATION—inside the former Tweed Courthouse—you might assume that Peter Levin '81 is doing something related to law in this warm and bright room.

Instead, Levin is putting yellow tape on a blue floor, marking spots where his 23 kindergarten students will sit upon their return from lunch. The tape acts as a guide to “reduce marginally the level of chaos,” he says with a grin. It does the trick for most of the five-year-olds, with just a few needing a gentle reminder from their teacher.

Levin, a partner at Davis Polk from 1989 to 2010 and currently senior counsel at the firm, is at full throttle in a second career as an early-childhood and elementary school teacher at PS 343. A native New Yorker who attended private schools and, with his wife, raised two sons who also attended private schools, Levin changed careers partly because he wanted to “know what options were available to children who don't have the resources that my children had” and to “investigate” the political debate surrounding public education by gaining practical teaching experience.

“For many of the people who first created public schools 180 years ago, universal free public education was the key to a successful democratic society,” Levin says. “If they were right, what happens to that society if public education is failing?”

That kind of thoughtfulness and commitment, not to mention his successful legal career, makes Levin an attractive hire in public education. “It's exciting to have him here,” Principal Maggie Siena says, calling Levin “a consummate professional.” Siena worked with Levin at PS 150 in Tribeca, where she was principal and he worked as an assistant fourth- and fifth-grade teacher. When she was tapped to open PS 343 in the renovated courthouse last fall, she invited him to join her. “The kids respond well to him,” she says, “and he has a very good sense of who they are.”

For Levin's kindergarteners, the afternoon activity is building with blue foam blocks, some as big as the children. With their teacher's help, the kids plan what kinds of structures they want to build and choose teams, then the room erupts in noisy activity. Soon, where there were just blocks sit pony castles and jungles.

Although it looks spontaneous, the activity is carefully designed—drawing

on a graduate course at Bank Street College, where Levin recently earned joint master's degrees in early-childhood and elementary education. “Play is a very important way for the kids to learn,” Levin explains. “The blocks can teach the kids a host of things, such as counting or science—how many blocks does it take to build a structure? How are you going to keep up the blocks?”

Restructuring blocks is a far cry from restructuring debt for titans like Bank of America and JPMorgan Chase. As a partner in Davis Polk's Credit Group, Levin advised clients on complex financial problems including the collapses of “lots of things that were not supposed to collapse,” in his words, such as Argentina, Bear Stearns, Bethlehem Steel, Enron, and many more.

At the firm, his “legendary encyclopedic knowledge of law,” says partner Jason

many of its professors had real-world experience. He remembers Professor John Slain '55 as a “perfect example of someone who had done a lot of other things,” including practicing law at a firm, serving as general counsel of a public company, and in 1980 co-authoring a seminal law book, *Agency, Partnership, and Employment: A Transactional Approach*.

Levin's pro bono work often has an educational slant. He has done work for the Lincoln Center Institute, which provides curricula for schools. Recently, he joined the board of School Year Abroad, of which one of his sons and three nieces are alumni.

For Anna Hayes Levin '80, who met her spouse when both were undergraduates at Yale, his gear switching makes complete sense. After her own career as general counsel for LVMH and a partner at the Battle Fowler law firm, she left to serve on Manhattan Community Board No. 4 from 2001 to 2009 and now sits on the New York City Planning Commission. “It's always been important for us to do something for our community,” she says. “Besides,



Kyrwood, was coupled with a genuine interest in the well-being of young associates: “If you had a personal or professional issue, he would take the time to talk it over and offer frank, useful advice.”

Teaching as a second career has long been Levin's plan. “I knew when I was in fourth or fifth grade that I wanted to teach, but only after I'd done a lot of other things,” he says. His teachers “brought the world into the classroom.” A Spanish teacher served in the Spanish merchant marine, and an English teacher was a member of the Royal Shakespeare Company. As a senior in high school, Levin helped teach ninth-grade English. Levin chose NYU Law because so

changing careers is intellectually rejuvenating. As a friend once said, every plant needs to be repotted.”

For Peter Levin, there is also the immense satisfaction of positively influencing a young life. “There are children who arrive with a range of emotional situations,” he says. “When you've succeeded, you see the light go on. They radiate back to you how well you've done.”

He adds: “Most of them don't have a clue what I did before. And to them it doesn't really matter.” Or, as one kindergartener put it, “Peter's awesome.” Eyes widening, he leans forward and whispers, “He lets us dissect fish.” □ Christine Pakkala

Experience Is Political

A budget crisis—and resolution—is a lesson learned for newly elected Congressman Scott Peters of San Diego.



NEW MEMBERS OF CONGRESS often arrive in Washington agape at the scale of the nation's problems, starting with the upward-spiraling federal debt and endless cycle of congressional budget battles.

First-term Democratic US Representative Scott Peters '84, however, is no stranger to acrimonious fights over spending and the size of government. As president of the San Diego City Council, Peters saw his adopted hometown engulfed in a fiscal crisis when the public pension system ended up more than a billion dollars in the red.

The budget meltdown drove a mayor out of office, set off years of combat between elected officials and a zealous city prosecutor, and triggered a federal investigation of San Diego's bond offerings. Peters and his council colleagues were ultimately exonerated in an inquiry—but not spared the task of turning around San Diego's finances.

Backed by Republican Mayor Jerry Sanders, that's what the Peters-led city council did, pushing public employees to accept new pension agreements, cutting spending, and eventually putting San Diego in a position to spend again on infrastructure and community development.

It's probably an experience Peters would prefer to put behind him. During his 2012 campaign, however, he endured withering attacks for his voting record on the city budget. Peters ultimately defeated his opponent, Republican incumbent Brian Bilbray,

by 2.5 percentage points—around 7,000 votes—after spending nearly \$3 million in personal and family money.

For better or worse, all that may have been the perfect preparation for serving in the 113th Congress.

"We learned some good lessons in San Diego," Peters says, reflecting on the pension battles. "What we found was that people didn't like to hear bad news, but they understood if you told them the truth and you gave them a plan for how to deal with it, that over time we could adapt."

He adds: "I have tremendous confidence that if we were willing to talk with voters about really how to save Medicare and make sure that it's there for people who depend on it, and Social Security, that we could."

Peters obviously didn't get into politics by being bent on slashing away at government. The son of a Lutheran minister, he worked at the Environmental Protection Agency after graduating from Duke University and found himself drawn to NYU School of Law because of its commitment to the public interest.

Students there were "thinking about how to use the law to change things," Peters says. For himself, Peters hoped to effect change on issues related to the environment and public development.

After a stop at the white-shoe Minneapolis firm Dorsey & Whitney, Peters and his wife, Lynn, landed on the West Coast.

There, he began to build a reputation in the San Diego community—first in private practice, then as a deputy county counsel who litigated high-profile disputes over a controversial waste-disposal facility in San Marcos, a suburb of San Diego.

Colleagues who worked with Peters at the firm Baker & McKenzie and for the county describe him as an earnest, good-humored attorney determined to find areas of compromise.

Republican real estate developer Fred Maas met Peters when the latter was serving as a pro bono attorney for the Sierra Club in the mid-1990s. Maas was seeking support from the environmental group for a development project and walked away impressed by Peters's skill and fair-mindedness as a negotiating partner.

"He's exactly the kind of guy who should go to Washington," says Maas, who crossed party lines to support Peters for Congress. "He was always the guy who could broker things among warring factions."

San Diego attorney Pamela Naughton, who worked with Peters in private practice, echoes that description, saying he "always found the bright side, the humor in everything." That wasn't always easy during Peters's time as a city official. "Those were very, very difficult times for the city of San Diego," Naughton says. "He was under a lot of pressure, and he performed just marvelously."

If deficits and debt are at the top of the congressional agenda—just as they were for the San Diego City Council—they're not the only issues Peters hopes to tackle. He won seats on the House Armed Services and Science, Space, and Technology committees, overseeing areas of importance to his local economy.

That, after all, is why he says he ran for federal office, trading a sun-soaked life in California for a cross-country commuter job, representing a district he'll have to fight hard to defend.

"We love our surfers and we love our admirals, but [San Diego] is an adolescent city. It's developing into what it's going to be," says Peters. He also sees similarities between the national legislature and the local city council on which he served.

"You have a bunch of people who have their values, their insecurities, their egos. You have to sort that all out in figuring out how you're going to work with them. The obvious challenge here is that here there aren't nine of them—there are 435," he says. "There's a tremendous sense that everyone heard the same thing from the voters, which is, 'Go solve problems and stop bickering.'" □ Alexander Burns

How'd He Do It?

Edward Koch '48, the colorful, three-time mayor of New York City, television judge, radio talk-show host, author, newspaper columnist, and movie reviewer, died in February at age 88. Among his many achievements is this little-known gem: How did Koch, who was not a college graduate, get into NYU Law?

As his sister Pat Thaler recalls, Koch, like other World War II veterans, was in a hurry on his return home. The new GI Bill would pay for law school at NYU, but Koch had only completed two years at the City College of New York. The professor reviewing Koch's application balked at the lack of a bachelor's degree.

Luckily, Professor Paul Kaufman was passing by. Admissions interviews were more informal then. Kaufman listened to Koch and noted CCNY's academic rigor. "Two years at CCNY is four years at any other school," Kaufman reportedly said. Koch was in.

Jonathan Soffer, NYU-Poly history professor and author of *Ed Koch and the Rebuilding of New York City*, says Koch's admission was "actually kind of amazing" and that his NYU years were essential to his political career.

Most significant, Koch led the city during 12 tumultuous years from 1978 to 1989, steering it from near-bankruptcy in the 1970s and championing an ambitious public housing program in neglected neighborhoods.

Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law, reflected on the Koch he had known since the late 1950s. "Ed was a very intelligent guy, but he was no legal thinker," says Dorsen. "Law school was a way station to the career that he was very good at."

A Dedicated Server

PUBLIC INTEREST LAWYERS are generally a devoted group, but Lauren Burke '09 displays a dedication far beyond the norm. After Hurricane Sandy hit, she convinced her roommates to share their Brooklyn apartment with an immigrant family of five whose home had been flooded. This act of generosity does not seem extreme to Burke, however. "Randy Hertz's Juvenile Defender Clinic taught me not to be afraid of doing things that people think are crazy, if your client needs it," Burke says.

Following this mantra has served the indefatigable lawyer—she holds not one, but three public interest jobs—very well. Recently named to *Forbes*' "30 under 30: Law & Policy" list, Burke has won every case either in court or on appeal—with one pending. But even more impressive is her track record of creating innovative, holistic legal service programs in every organization where she has worked. The founder and executive director of Atlas: Developing Immigrant Youth (Atlas DIY), a cooperative empowerment center for young immigrants and their allies, Burke also serves as the in-house attorney for the New York Asian Women's Center (NYAWC), where she built the pro bono legal services program from the ground up. She also teaches Brooklyn Law School's Immigration Youth Law Clinic, which she developed herself.

Burke first earned her chops at the Door, an organization that provides youth development services. She interned there as a law student, then served there as a Skadden Fellow for two years after graduation. During her fellowship, Burke created a peer mentorship program for young Chinese immigrants who were victims of human trafficking. "Lauren's energy far surpasses that of most human beings," says Jason Cade, a lawyering professor at NYU Law who was Burke's supervising attorney when she interned at the Door. "She was mature enough, sophisticated enough, and caring enough that even as an intern, she understood that social determinants are just as critical for a client's success as actually doing the legal work."

Burke's fluency in Mandarin and her experience working with trafficking victims at the Door made her a perfect fit to develop the pro bono program at NYAWC, which now represents more than 100 clients, primarily women, who are survivors of domestic violence, sexual assault, and human

trafficking. "I've learned so much from Lauren about how to interact with clients and develop client relationships, which is hugely important because the legal work we do involves discussing very traumatic experiences and very personal things," says Colleen Duffy '11, an NYAWC attorney who reports to Burke.

These days, Burke's remarkable energy is largely focused on Atlas DIY, the center



for immigrant youth that she founded in January 2012. (The children in the family stranded by Sandy were Atlas DIY participants.) Both she and the center have been particularly active since the Obama administration implemented Deferred Action for Childhood Arrivals (DACA), which allows undocumented individuals who arrived in the US before age 16 to defer prosecutorial removal action. By the end of 2012, Atlas DIY had won two DACA cases and filed close to 60 more.

Drawing on what she learned about holistic legal service at NYAWC and the Door, Burke's goal for Atlas DIY is not only to provide legal assistance for undocumented immigrant youth but also to create a place that enables young people to become active agents of change. Burke staged her first protest at the age of nine, she recalls, fighting her parents for the right to cut her hair. Twenty years later, she has moved on to bigger issues of social justice, but she wants to ensure that every young person has the confidence to act on his or her own behalf. "I want the young people to decide what happens at our organization," Burke says. "I want them to be the ones who have the power." □ Rachel Burns



Brothers in Law

How the three Connelly brothers found their way to NYU.



Alex, David, and Corey Connelly

THE 2012–13 ACADEMIC YEAR was huge for a certain Connelly family of Louisville, Kentucky. All three sons were on campus, each at a different stage of his law school education, pursuing distinct career goals. David '13, the eldest, is the more entrepreneurial one. Corey '14, the middle son, is the hardworking corporate type. And Alex '15, the youngest, is the adventure-seeker.

Given their differences, the Connelly brothers are somewhat surprised to find their journeys converging at NYU Law. David, 30, who earned degrees in anthropology and international relations at the University of Chicago, was contemplating a PhD and a future as an academic. But after a year teaching English in Madrid, he found himself working for a New York lawyer. The Law School's strengths in social entrepreneurship ultimately won David over; he worked as a Kiva Fellow in Peru and Colombia just before coming to NYU, where he eventually became a Reynolds Fellow and co-chair of the Law and Social Entrepreneurship Association (LSEA).

Corey, 27, was perhaps the least likely to choose NYU Law, where he is a John J. Creedon Scholar. He studied business and technology with a minor in economics at

Stevens Institute of Technology in New Jersey, which he attended on full scholarship. As a senior associate at UBS, he led a tax remediation team and worked on bringing the firm's credit card business in-house. The more Corey worked with UBS's in-house counsel, the greater his interest became in the legal aspects of the work.

Meanwhile, Alex, 26, had majored in economics and minored in Latin American studies at Columbia University. After graduation he made tracks for China, where he worked for an educational services company before relocating to Colombia, where he eventually became a Kiva Fellow, like David.

Law school had been in the back of Alex's mind for a couple of years. "It was probably more of an abstract academic interest," he says. "Then as I started working and seeing how the law underpinned everything we were doing at all levels, it became more of a practical interest as well."

The rest of the family, however, had long anticipated Alex's pursuit of the law. "He likes to argue and is probably the best of us at it," says David. (Their parents recently found and framed a signed contract Alex had drafted when he was five or six, promising not to cause his siblings harm as long as they adhered to certain stipulations.)

The brothers made the most of their shared year at NYU Law. "The first week," says Alex, "they both sat me down and said, 'Here's what I did, here's what I didn't do, here's what you should do to get the best grades you can.' A lot of awesome pointers." Alex accompanied David, who is also something of a world traveler, on an LSEA trip to Sri Lanka during the Fall 2012 semester, followed by a side excursion to India. (The two nearly overlapped abroad back in 2010, when Alex moved to Colombia the day after David left Colombia for New York. The elder brother left his sibling a phone and some leftover cash at the front desk of his hostel.) And over the summer Alex was one of 25 NYU Law students selected to be inaugural Ford Foundation law school fellows; he worked at a human rights organization in Brazil. With both David—now a tax associate at Davis Polk & Wardwell—and Corey—who was a summer associate at Ropes & Gray—planning to remain in the city after graduation, the Connelly brothers will all be New Yorkers at least until Alex graduates.

Their parents, Jan and John, who own a food plant sanitation company in Louisville, visit their sons often. They marvel at the brothers' work ethic, going back to their sons' days at an inner-city public magnet school. They intended for the boys to have a stake in their own education, and the three covered each of their NYU Law tuitions. "What they all wanted in their lives was diversity in thought," says John. "They wanted to go somewhere where they would encounter many different types of people. They all went to institutions where they were able to experience that as undergrads, and we think NYU Law is a great final place for their education in that way."

Their mother doesn't deny the boys' claims that she tried to nudge them toward careers in medicine. But, Jan says now, "At this point in their lives law school seems to fit all three of them. They're happy, and that's the most important thing. They just keep giving us reasons to cheer them on."

On campus, it's not uncommon to spot at least two Connelly brothers heading to the gym, grabbing a bite, or staking out a study room together. Although the brothers are competitive about sports (they play intramural basketball), grades, and even height (Alex offers, "I think I'm about a quarter-inch taller than both of them"), their shared NYU Law experiences—and, of course, their blood ties—have fostered a certain esprit de corps.

Recently, Corey became engaged to be married. In the ultimate gesture of brotherly unity, he asked both David and Alex to be his best men. □ *Atticus Gannaway*



A President, Knighted

OVER THE PAST YEAR, when University Professor Joseph Weiler's proverbial phone rang, it was often Italy calling. Last December, the European University Institute (EUI) in Florence named Weiler its president, a position he assumes in September. And in February, Weiler traveled to Rome to receive two prestigious and rare honors.

Weiler will be on leave for a five-year term as president of the EUI, a doctoral and postdoctoral research institution created by the founding countries of the European Union. The EUI and Weiler are well acquainted. He taught law at the EUI from 1978 to 1985 after earning his PhD there, and later he co-founded its Academy of European Law and a center that is now its Robert Schuman Centre for Advanced Studies. "I am humbled yet gratified to return as president to my alma mater at a time of both great challenge and great promise in Europe," Weiler said in a statement.

Colleagues say Weiler was a natural pick to be the EUI's next leader. Florence Ellinwood Allen Professor of Law Gráinne de Búrca, a former EUI professor, says, "It's difficult to think of a more suitably qualified person than Joseph Weiler. In addition to being one of Europe's leading intellectuals for over three decades, he has quite remarkable institution-building skills and experience." At NYU Law, de Búrca notes, he established and directed the Jean Monnet Center for International and Regional Economic Law and Justice, the Straus Institute for the Advanced Study of Law and Justice, and the Tikvah Center for Law and Jewish Civilization. Weiler was also

chair and faculty director of the Hauser Global Law School Program and the JSD Program. "He has the creativity, vision, and energy of several people combined," de Búrca says.

Weiler's accomplishments outside the halls of academia have also drawn note and appreciation, including from the pope and the president of Italy. Although Weiler is an Orthodox Jew, in 2011 he won a landmark ruling from the Grand Chamber of the European Court of Human Rights upholding Italy's right to display crucifixes in public classrooms. Weiler, who took the case pro bono, explained that it was mostly about the right of European states to chart different approaches to the relationship of church and state—the right of "France to be France and Italy to be Italy," resisting, as he said in his oral pleadings, a "one rule fits all" solution to this delicate issue.

At the end of January, Pope Benedict XVI honored Weiler with an audience at the Vatican. Later, at a dinner on the same day, at the official residence of Italy's President Giorgio Napolitano, Weiler was made a Knight Grand Cross of the Order of Merit of the Italian Republic, Italy's highest civilian honor. He shares the rank with dignitaries from around the world including Prince Philip, Queen Sofia of Spain, and Supreme Court Justice Samuel Alito Jr.

Even as Weiler settles into his new position at the EUI in Florence, he will retain ties to NYU Law, serving on a range of committees related to programs he has overseen. His phone will no doubt continue to ring, but now many of the calls may come from Washington Square. □

Noted

Faculty

José Alvarez and **Benedict Kingsbury** were voted co-editors-in-chief designate of the *American Journal of International Law*.

The *Corporate Practice Commentator's* list of Top 10 corporate and securities articles in 2013 included "Credit Card Pricing: The CARD Act and Beyond" by **Oren Bar-Gill** and **Ryan Bubb**.

The Pacific Century Institute honored **Jerome Cohen** with the 2013 Building Bridges Award.

Norman Dorsen received an honorary doctorate from the University of Buenos Aires School of Law.

Eleanor Fox '61 was honored for being a founder of the International Competition Network, a forum for antitrust enforcers.

David Garland received the Michael J. Hindelang Award and the Edwin H. Sutherland Award from the American Society of Criminology.

Clayton Gillette gave the keynote address at the 2012 annual Bond Attorneys Workshop of the National Association of Bond Lawyers.

Judge **Theodor Meron** delivered a keynote speech at the start of the 2013 term of the European Court of Human Rights in France.

Daniel Shaviro made the *International Tax Review's* 2012 list of the 50 top global tax influencers.

Bryan Stevenson received the 20th annual Fred L. Shuttlesworth Human Rights Award as well as the Smithsonian American Ingenuity Award in social justice. The *Crime Report* also honored him as the 2012 Criminal Justice Person of the Year.

Jeremy Waldron received the American Society of International Law's annual scholarship award for his book "Partly Laws Common to All Mankind": *Foreign Law in American Courts*.

Seeking a Few Good Veterans

STARTING THIS FALL, veterans who attend NYU Law can thank Garen Marshall '14 for helping make possible a free legal education. Marshall, a former explosive ordnance disposal technician who served in Operation Iraqi Freedom, made it his mission to recruit more military service members to the Law School—and in the process prompted NYU Law to offer one of the country's most generous funding packages for eligible veterans.

After leading a 25-person team on more than 120 missions to defuse bombs, the 28-year-old from Staten Island, New York,

Revesz agreed with Marshall, and two weeks later the Law School increased its grants to \$20,000, in effect enabling eligible service members to attend NYU Law for free. There is no cap to the number of veterans the Law School will fund.

Ken Kleinrock, associate dean for admissions, says the decision to increase funding was an easy one: "The women and men who have experience in the armed services bring leadership experience and commitment to public service, as well as perspectives and talents that make them an asset to our community."

In the spring the Law School admitted 15 veterans, up from seven last year. "I am incredibly proud of all that NYU Law has accomplished in their support of veterans," says Marshall.

On September 11, 2001, Marshall was in his high school American history class when terrorist attacks brought down the twin towers just a few miles north. "I remember thinking I didn't want to be in the position again of not being able to help," says Marshall. "The military seemed like the best way to contribute to national security."

The next year, as his classmates were applying for college, Marshall enlisted in the Navy two days after his 18th birthday. He trained for two years as a member of US Navy Special

Operations, then was sent on two deployments, disarming IEDs as well as conventional and unconventional ordnance.

Marshall continues to work on veterans issues. He founded Students for the Education and Representation of Veterans, a group that provides legal representation for veterans in New York. Today more than 40 student advocates help former service members receive fair hearings and apply for discharge classification upgrades that can improve their benefits.

"Looking at how things have changed in a matter of months," says Marshall, "I can really say that NYU Law has transformed from a school that had a weak relationship with military veterans to one with a welcoming culture for service members both as students and as visitors." □ *Michelle Tsai*



was undaunted by the demands of law school, including classes, a staff editorship for the *Journal of International Law and Politics*, and an assistant teaching position for a Lawyering class. He was, however, frustrated that NYU Law attracted few veterans. In Fall 2012, Marshall shared his concerns with Dean Richard Revesz in an e-mail.

Military veterans, Marshall wrote to the dean, added diversity, maturity, and employability to the student body, but they were largely unable to take on the expense of attending NYU Law. Even though the US Department of Veterans Affairs had a program that matched grants from schools, NYU Law's \$3,500 grant for veterans meant service members needed other funding to cover the bulk of their tuition and living expenses.

Noted, continued

Students

Jennifer Chen '12 won first place in the New York State Bar Association's environmental law essay contest.

Dolly Krishnaswamy '15 participated in the Law School Reporters Program of the American Bar Association's Section of Intellectual Property Law.

Emma Kurose '14 and **Kayla Bensing '14** won Fordham Law's Securities Law Moot Court Competition, and also Best Oralist and Second Best Oralist, respectively.

Shoyeb Siddique '14 won Best Oralist at Vanderbilt Law's National First Amendment Moot Court Competition.

Lisandra Fernandez '13 and **Michelle Quiles '13** were named Rising Stars by the Puerto Rican Bar Association.

Elyssa Caplan '13, Semuteh Freeman '13, Diana Newmark '13, and **Scott Welfel '13** were named 2013 Skadden Fellows.

Alumni

The *National Law Journal's* 100 Most Influential Lawyers list included Trustee **Sheila Birnbaum '65**, Trustee **David Boies LLM '67**, **Kenneth Feinberg '70**, **Thomas Girardi LLM '65**, and Trustee **Martin Lipton '55**.

Trustee **Karen Freedman '80**, executive director of Lawyers for Children, was honored with the New York State Bar Association's 2012 Citation for Special Achievement in Public Service.

Diplomatic Courier named **Conor French '06**, CEO of Indego Africa, one of the 99 most influential foreign policy leaders under 33.

Steven Hawkins '88 was named executive director of Amnesty International USA.

The US Senate confirmed **Kent Hirozawa '82** to the National Labor Relations Board.

Finding His Voice

I REALLY HAD never learned how to think,” said Blaine Templeman ’94, “and NYU changed all of that.” In a deeply personal speech, the managing partner of Sheppard Mullin’s New York office and a partner in its Corporate and Intellectual Property practice groups (IP Transactions) accepted the inaugural Alumnus of the Year award from OUTLaw, NYU Law’s LGBT student organization.

Templeman recalled a childhood of neglect and poverty in rural Illinois that led him to begin working at age nine and to seek refuge at a local church. But the same church also told him at age 13 that his sexual orientation was a sin and ultimately alienated him.

After graduating from a religious university in Tulsa that requires students to sign a pledge promising not to engage in “homosexual activity,” then attending Princeton Theological Seminary, Templeman applied to NYU Law. A legal assistant at a large firm at the time, he showed his supervisor his personal statement detailing his struggles growing up, and the man said he would be out of his mind to share the story.

Templeman ignored that advice. “What worried me most about my superior’s comment was that he was a person of color,” said Templeman, “and he should have

recognized the power in being honest about who you are and that struggles can give rise to great success.” He added, “I’ve always had this theory that I was invited to NYU solely because they did not yet have an openly gay Oral Roberts University graduate. That’s a tough box to tick.”

At the Law School, professors like Paulette Caldwell and David Richards opened Templeman’s eyes to ways in which discrimination can be both codified and combatted. He befriended other LGBT students, and they compared notes about things like discrimination in the interviewing process. Through these experiences, Templeman found a clearer identity and voice.

“No more would I actually vote for Pat Robertson,” he said. “No more would I ask Jesus to free me from the person I was, nor permit others in my presence to make the same request. No more would I actually ask people to vote on my basic civil rights or my right to invite my legally wedded husband to become a US citizen. That was no longer acceptable.”

During his job interview with Sheppard Mullin, where he started in 2008, Templeman expressed discomfort in working for a firm that wasn’t a national sponsor of Lambda Legal; in response, Sheppard



Mullin became a sponsor and asked Templeman to start an LGBT affinity group.

Subsequently, with Templeman’s encouragement, the firm became the primary outside counsel of GLAAD, reviewed its employee and benefits policies to be more LGBT-friendly, altered its recruiting practices, and created a retreat for LGBT employees and employees of color as well as representatives of the broader community. “The important thing was not necessarily to push ‘the agenda,’” he said, “but to push the civil rights agenda that applies to all of us, and we shouldn’t leave anyone behind when we’re doing that.” □

Max Kampelman '45: 1920–2013

FEW PEOPLE would have used “peacenik” to describe Max Kampelman. After all, he had the hardest of noses, Democrats and Republicans said, when negotiating with the Soviet Union on human rights and nuclear weapons at the request of Presidents Carter and Reagan during the dark days of the Cold War.

Despite actively participating in armament one-upmanship, Kampelman, it turns out, shared a dream with a former boss. It was of a world of “zero nuclear weapons for everybody,” as Reagan put it.

At a 2006 conference at Stanford University’s Hoover Institution, Kampelman delivered a provocative paper, arguing

that the world should return to pursuing that dream. Many former Reagan aides, including Secretary of State George Shultz, were in attendance. Around the same time, Kampelman also published an op-ed in the *New York Times* advocating Reagan’s vision.

Shultz buttonholed Kampelman after the conference, according to Philip Taubman’s book *The Partnership: Five Cold Warriors and Their Quest to Ban the Bomb*. Shultz’s mind had been changing, too, and he agreed with Kampelman. In the next few months, Henry Kissinger, Sam Nunn, and William Perry, all hawkish Cold War icons, joined the two men’s crusade.

What had compelled Kampelman to act, coming out of a comfortable retirement at the age of 81? One day: September 11, 2001.

As he later put it in this magazine in 2009: “I read in the press after 9/11 that if those airplanes had carried nuclear weapons, New York and Washington would have been destroyed. It scared the living daylight out of me.”

Nuclear weapons, of course, still exist, but because of Kampelman, the “zero option” is no longer unthinkable. □



MAX KAMPELMAN: AP IMAGES / BETTMANN / CORBIS / TIM CLARY

Glickenhau s Has Left the Building

THE MODERN HISTORY of Wall Street is not quite the history of Seth Glickenhau s '38. But it's close.

Before the stock market crashed in 1929, even before the Empire State Building was built, Seth Glickenhau s of the Bronx worked as a teenage messenger for Salomon Brothers in Manhattan's financial district.

This year Glickenhau s, who turned 99 in March, has entered a new chapter. He has merged the boutique Wall Street firm he founded, Glickenhau s & Co., into a unit of Neuberger Berman. It is truly the end of an era for a Wall Street legend.

Glickenhau s has never been short on judgment. He made Nixon's enemies list in the early 1970s when he tried to close his firm for a day to protest the Vietnam War. The New York Stock Exchange blocked the closure, but Glickenhau s complained about it in an advertisement in the *New York Times*.

Having started his own firm in 1938, he has been mostly right about the financial markets, too. After the 1987 crash, Glickenhau s predicted the Dow would rise sharply by the end of 1988, which it did—but in 1989. And he called the end of that bull market in April 2000, just a week after it peaked. "We're going to consolidate the huge gains



for the next 10 or 15 years," Glickenhau s was quoted saying in Bloomberg. "All this absurd opinion that companies will go up 15 percent per annum is over."

In 2008, with a worldwide recession unfolding, business reporters besieged Glickenhau s, then 95, for his firsthand knowledge of the Great Depression. For a time, he reserved weekdays at 4:15 p.m., after the market closed, just for press interviews.

As reported in this magazine in 2009, his hearing was good, his voice strong, and his opinions, as always, were tart.

But he acknowledged a softer side when asked about the secret to long life. Glickenhau s, who has been married to Sarah since 1944, offered: "The right genes and a wife who makes sure you live sensibly." □

High-Interest Bonds



Hassan



Masanzu

From a field of 1,000 applicants, the World Bank chose Elizabeth Hassan LLM '12 and Shingira Masanzu LLM '13 for two of four positions in its Legal Associates Program. Associates provide research, comparative legal analysis, and other support, and are prepared to apply for permanent counsel positions. Hassan had been an International Finance and Development Fellow and a legal intern to the bank's deputy general counsel. A Hauser Global Scholar, Masanzu was an intern at the Center for Economic and Social Rights.

Freshly Coiffed

The NYU Law chapter of the Order of the Coif inducted Lawrence Pedowitz '72 as an honorary member. Pedowitz is a partner and heads the white collar and regulatory practice group at Wachtell, Lipton, Rosen & Katz. Previously he was chief appellate attorney and chief of the Criminal Division in the US Attorney's Office for the Southern District of New York, and clerked for Chief Judge Henry Friendly of the US Court of Appeals for the Second Circuit and Justice William Brennan of the Supreme Court.



Noted, continued

Trustee **Jerome Kern '60** is the new chief executive of the Colorado Symphony.

The DC Bar gave its Beatrice Rosenberg Award for Excellence in Government Service to **Francine Kerner '74**, chief counsel for the Transportation Security Administration at the US Department of Homeland Security.

Eric Lane LLM '79 was named dean of the Hofstra University Maurice A. Deane School of Law.

Winston Ma MCJ '98, managing director and deputy chief representative of the China Investment Corporation, was named a Young Global Leader by the World Economic Forum.

Douglass Maynard '86 is the new deputy commissioner for legal matters at the New York City Police Department.

Trustee **Randal Milch '85** was honored with the Scales of Justice Award from Equal Justice Works.

April Newbauer '83 was appointed to the New York State Court of Claims.

The National Bar Association and IMPACT named **Chigozie Onyema '11** to its 2013 "Nation's Best Advocates: 40 Lawyers under 40" list.

Tamrat Samuel LLM '98 was appointed the UN deputy special representative for Liberia.

Gustavo Schmidt LLM '08 was appointed chief of staff of the mayor of Rio de Janeiro.

Lorna Schofield '81 was confirmed as a federal judge for the Southern District of New York.

Joshua Sheinkman '87 was named staff director of the Senate Energy and Natural Resources Committee.

President Obama named **Anthony Welters '77**, chair of the Law School board of trustees, a trustee of the Kennedy Center for the Performing Arts.



SCHOLARLY PURSUITS Justice Anthony Kennedy, Samuel Estreicher, Dwight Opperman, and Richard Revesz at the inaugural lecture of the Dwight D. Opperman Professorship of Law in 2005

The First Time's a Charm

LIKE MANY FLEDGLING NOVELISTS, Marlen Bodden '86 was stymied by traditional book publishing. The veteran Legal Aid Society lawyer had spent nine years researching and writing a page-turner about a wealthy, slave-owning plantation family in pre-Civil War Alabama. Unable to find an agent—despite sending more than 300 entreaties—or a commercial publisher, she self-published, in the process hiring three editors to polish her manuscript and spending hours promoting the book to family and friends; traveling to book clubs, signings, fairs, and readings; and reaching out to academia and local media. Her hard work paid off.

From 2011–12, Amazon sold 140,000 digital copies of *The Wedding Gift*, putting it on the *Wall Street Journal's* e-book bestseller list. Within weeks, Bodden found an agent who sold her book to major publishers in the US and worldwide, netting her at least two six-figure contracts. *The Wedding Gift* will be released by St. Martin's Press this fall with an enthusiastic blurb by Tom Wolfe.

Bodden's novel was inspired by an actual 1840s Alabama case in which a slave owner sued his wife for divorce and the court granted him all the property she brought into the marriage, including a young slave woman. Writing on weekends and on vacations, Bodden, who is currently working on a class action in the Southern District of New York concerning the constitutionality of stop-and-frisk police practices, did not even tell her family she was writing a book: "I just thought that no one was going to take it seriously, and this was just something that I was doing for me."

Now Bodden is working on a historical novel about the conquest of Mexico. Creative writing serves as a refuge from the stress of law practice, she says, and vice versa: "It's the best of both worlds." □

Dwight Opperman, 1924-2013

LONGTIME TRUSTEE AND SUPPORTER Dwight Opperman passed away on June 13 at the age of 89 after a brief illness. A model of leadership and integrity, he combined sharp business acumen with a philanthropic spirit and a graciousness that made a significant difference in the lives of many individuals and institutions, including NYU Law.

"Dwight has long been a committed friend and supporter not only of the Supreme Court but of the Federal Judiciary as a whole," Chief Justice John Roberts of the US Supreme Court said in a statement. "He demonstrated his deep commitment to the American system of justice, and in particular the role of the judge in that system, in countless other ways as well."

Opperman was the first member of his family to go to college, eventually becoming a self-made billionaire. He grew up in rural Iowa during the Great Depression; as a child, he walked along train tracks collecting stray coal to heat the family home. As a young man, he was an accomplished saxophonist, often accompanied by his first wife, Jeanice, as vocalist. After serving in the Army during World War II, he attended Drake University Law School with the aid of the GI Bill, and graduated in 1951. His first job was as an editor at West Publishing Company, a legal publisher of regional court opinions, where he eventually worked his way up to CEO and chairman. In the 1970s, persuading a reluctant board, Opperman pushed the company to deliver information electronically. The result was Westlaw, an online legal research database and service known to every legal professional.

After Thomson Reuters bought West in 1996, Opperman turned more actively to philanthropy. That year, he became a trustee of NYU Law and established the Dwight D. Opperman Scholarship at the Law School. More than 40 students and alumni have been Opperman Scholars to date. In 2004, he endowed the Dwight D. Opperman Professorship of Law, which has been held since its inception by Samuel Estreicher. The Institute of Judicial Administration, a pioneer in its commitment to improving the administration of justice in federal and state courts, was renamed the Dwight D. Opperman Institute of Judicial Administration in 2005 to recognize Opperman's outstanding support as both a long-time IJA board member and principal funder.

"A warm, decent man, Dwight Opperman was a great friend of judges and the courts," said Estreicher, who is co-director of the IJA. "There is no program in the country dedicated to the education of judges and excellence in the judicial process that has not been the recipient of Dwight's personal generosity and sage counsel. We will sorely miss him."

"Throughout my deanship, I always knew I could turn to Dwight for support and wise counsel," said Richard Revesz, Lawrence King Professor of Law and Dean Emeritus. "It's clear to me that NYU Law has benefited enormously from Dwight's keen intelligence, foresight, generosity, and vision," said Dean Trevor Morrison.

Opperman's first wife, Jeanice, died in 1993. He is survived by his wife, Julie; his two sons, Vance and Fane; nine grandchildren; and 13 great-grandchildren. □



New Faculty

Jeanne Fromer

PROFESSOR OF LAW

Here are the signs that Jeanne Fromer is a culture junkie: Her vast iPhone application collection takes up two screens with 16 folders each, a dozen apps per folder. She has downloaded more than 7,000 songs, ranging from Adele to Pink Floyd to Vivaldi. She is up on the latest movies and TV shows, and when she walks, her high-heeled shoes flash red, the trademark lacquered soles of highly coveted Christian Louboutins.

By luck or design, Fromer, 37, has made cultural immersion her livelihood. “Staying fresh in copyright law requires me to keep up with contemporary culture. But I like to do that anyhow,” she says. That synergy has become her personal trademark.

Are copyright laws antiquated in an era of streaming videos and downloading music? How does software, an incredibly important but more recent part of the economy, fit into copyright law? Fromer, a rising star in the field of intellectual property law, wrestles with these thorny issues daily. Lecturing in class on the Louboutin lawsuit to prevent Yves Saint Laurent from also selling red-sole shoes, she tackled its key challenge: Is Louboutin’s red sole *functional*? If so, that would prevent trademark protection under the law’s functionality doctrine.

Fromer is not new to NYU. She was an Alexander Fellow in 2006-07 and a visiting professor in Spring 2012. That fall, she

joined NYU Law from Fordham University School of Law, where she began teaching in 2007. One of two scholars to receive the first-ever American Law Institute Young Scholars Medal (with Oren Bar-Gill, Evelyn and Harold Meltzer Professor of Law and Economics) in 2011, Fromer has distinguished herself by exploring the unified theories of copyright and patent law, and by using empirical research on creativity and cognition to investigate incentives for innovation.

In “A Psychology of Intellectual Property” (*Northwestern University Law Review*, 2010), she compares copyright and patent law. The end goal for both is to encourage innovation by protecting creations in their domains, but copyrights for artistic works are easily obtainable and generally last an author’s lifetime plus 70 years, whereas patents for scientific works are difficult to obtain and don’t last as long. She concludes that rather than raise the bar on copyright laws as some scholars have suggested, one might examine, from a psychological point of view, how artistic and scientific creativity compare.

That work led to an investigation of the creative process itself. In “Expressive Incentives in Intellectual Property” (*Virginia Law Review*, 2012, and also excerpted on page 70), Fromer looked at the literature on creativity for artists and scientists to understand what motivates each. She found that the creator is motivated not only by monetary incentives but also by having his labor and personhood recognized.

“Jeanne is known in the IP community for being someone who connects really big ideas and comes up with creative research agendas,” says Fordham Professor Sonia Katyal. Rochelle Dreyfuss, Pauline Newman Professor of Law, welcomes the computer technology expertise and sharp scholarship that Fromer brings to NYU’s IP group: “She’s a clear, expressive, thoughtful writer with a great eye for an interesting issue.”

Fromer is the oldest of five children and was raised in Brooklyn. Her mom, Susan Abramowitz, is a retired high school math teacher and guidance counselor who still teaches part-time. Her dad, Mark, a New York State economist, is deceased. Fromer went to an all-girls high school, focusing on debate, choir, and mock trial.

From there, she chose Barnard College, majoring in computer science. Graduating at the top of her class in 1996, she went on to MIT for her master’s in electrical engineering and computer science. With fellowships

from the National Science Foundation and AT&T Labs, Fromer researched artificial intelligence and built software that was rudimentarily similar to Apple’s personal assistant, Siri.

“I loved computer science, but at some point the day-to-day—becoming mired in encoding an algorithm and finding missing semicolons in debugging code—was less interesting than the big picture,” Fromer says. It didn’t take long to shift gears. At Harvard Law School, “she was revered for her legal brilliance even as a 2L,” says Jeanne Suk, a classmate who now teaches there. Arthur Miller, who left Harvard in 2007 to become a University Professor at NYU Law, remembers Fromer as one of his most exceptional research assistants: “The quality of her work stood out the way few of my researchers have in over half a century.”

After earning her JD in 2002, she joined the intellectual property practice at the Boston law firm Hale and Dorr. Fromer was led to academia by her terms as a law clerk, first with Judge Robert Sack of the US Court of Appeals for the Second Circuit and then with US Supreme Court Justice David Souter. “Legal research and scholarship lit up more areas of my brain,” she says.

Fromer is married to Arnaud Ajdler, a hedge fund manager who was studying aeronautics at MIT when they met. They have three children: Eric, 10; Olivia, 8; and Audrey, 5. Judge Sack marveled at how she juggled her 2003 clerkship with first motherhood: “She did each job more fully than most human beings, without letting one focus interfere with another,” he says.

In fact, the children only add to Fromer’s cultural synergy. Reading them *Charlie and the Chocolate Factory*, she says, “I was struck by how much the plot seemed to be driven by trying to keep inventions secret.” Soon enough, Fromer had published a book chapter: “Trade Secrecy in Willy Wonka’s Chocolate Factory.” Sweet. □ *Jennifer Frey*

Jason Schultz

ASSOCIATE PROFESSOR OF CLINICAL LAW

In 2009, Jason Schultz approached Professor Erin Murphy to put together a conference on social media and the criminal justice system, her specialty. “This was in the early days,” she recalls, before the intersection of the two was even on the radar. “The next thing you know, we attracted a number of key stakeholders,” including policymakers from Facebook and the FBI.

“It was a collaboration,” says Schultz. “That’s what I love.” Held at the University of California, Berkeley School of Law, where





they then both taught, the conference resulted in a best practices booklet that was adopted by public defenders statewide.

Schultz is a clinical intellectual property scholar and activist with a focus on patent reform and a passion for technology. He browses websites that fund innovative projects; visits open community labs, where computer and technology folks share ideas; and experiments with technologies such as 3-D printers. “He’s the guy to pass on a really interesting link and also to know about the hip new bar,” says Murphy.

Devoted to ensuring that the world of patents and copyrights is a safe, collaborative space for innovation, Schultz is making an impact. He founded the Patent Busting Project at the Electronic Frontier Foundation (EFF), a nonprofit digital rights group. And as co-director of Berkeley’s Samuelson Law, Technology & Public Policy Clinic since 2004, he brought successful lawsuits against “patent trolls”—entities that enforce their patents against alleged infringers often with no intention of manufacturing the product.

He joins the Law School as director of the Technology Law and Policy Clinic, which he began while visiting last year. “Most people think of IP as huge corporations with thousands of patents that they enforce on products. But that’s not what I’m focused on,” says Schultz. Partnering with lawyers from

the American Civil Liberties Union, “the clinic focuses on how new technologies benefit society at large and individual citizens, especially those without a lot of resources.”

Clinic student Ava McAlpin ’13 says that Schultz created a comfortable environment for students to experiment in their role as lawyers. Because she co-chaired the Art Law Society, he suggested that the society write a comment on legislation regarding artists’ resale royalty rights, and he helped them organize a star-studded panel discussion with senior people from the US Copyright Office and artist Frank Stella.

Schultz’s scholarship explores the struggle to balance IP law with free expression and access to knowledge and innovation, particularly regarding new digital technologies. He has written extensively about the first-sale doctrine, which permits resale of copyrighted goods without permission of the copyright owner. First-sale issues are rapidly becoming more complex with easy access to Internet resale markets like eBay and Amazon. He is currently co-authoring a paper with Aaron Perzanowski of Wayne State University that investigates what it means to own a digital object “legally.”

Along with Samuelson Clinic Co-Director Jennifer Urban, Schultz invented the Defensive Patent License (DPL), a tool for de-escalating the patent wars. “There are a lot of small companies that are open-source, that publish their code because they want to be based in a community of people who make and share technology.” Patent trolls prey upon them, he says, and none can afford to defend itself. The DPL “offers them a way to band together, to create a circle-the-wagons approach.”

He and Urban laid out their plan in “Protecting Open Innovation: The Defensive Patent License as a New Approach to Patent Threats, Transaction Costs, and Tactical Disarmament” (*Harvard Journal of Law and Technology*, Fall 2012). DPL users pledge to make their patents available to everyone in the DPL network for free and refrain from suing network members for any reason other than defense. “It creates a shield, a collective defense against patent threats that allows them to patent for good,” he says. Even Google has shown an interest in joining the DPL network.

“Jason and Jen’s work on the DPL and similar ideas have catalyzed a conversation in the community about what companies can do themselves to stop the patent madness,” says Colleen Chien of Santa Clara Law. “The impact could be huge.”

Schultz grew up in Berkeley, the younger son of an elementary school teacher, Hilary, and a cardiologist, Clifford. His dad bought

him his first computer, an Apple II, when he was in first grade. By middle school, Schultz was programming and chatting in the earliest chat rooms. “It took 25 different steps to get into a chat room,” he recalls. “It was only for the geeks.”

Always interested in other perspectives, he majored in women’s studies at Duke University, opening his world to a range of social justice issues. Schultz earned his bachelor’s degree in 1993, got his JD from Berkeley Law in 2000, and worked at a San Francisco law firm litigating patent and copyright cases for high-tech clients. “Then I got my first dream job,” he says—staff attorney for EFF—and a chance “to change the world.”

A combination of factors lured Schultz to NYU. “It doesn’t interest me to be the only person to do what I do, no matter what spotlight you get. I like to have colleagues,” he says, emphasizing NYU’s strong and diverse IP and clinical faculties. He is also excited by what he sees in the Law School’s passionate students, and New York City’s recent surge in high-tech initiatives.

Schultz’s partner is Kate Crawford, an award-winning writer, academic, and composer. She is a principal researcher at the Social Media Collective of Microsoft Research New England and senior fellow at the Information Law Institute at NYU. They are devoted to their one-year-old son, Elliott—who likely will have an iPad well before first grade. □ J.F.

LATE-BREAKING NEWS

Christopher Sprigman

PROFESSOR OF LAW



In June, Dean Trevor Morrison announced the hire of Christopher Sprigman from the University of Virginia School of Law.

Sprigman teaches copyright law, intellectual property law, antitrust law, and competition policy. His research focuses on how legal rules affect innovation and the deployment of new technologies. His widely cited works have had an influence on important aspects of copyright law, and often belie the conventional wisdom about intellectual property rights.

Sprigman’s eclectic résumé includes clerkships both in the US and in South Africa, practice at US law firms, and public service, notably as appellate counsel from 1999 to 2001 in the Antitrust Division of the US Department of Justice, where *US v. Microsoft* was among his cases. □

Visiting Faculty

CARYL LOUISE BOIES
VISITING PROFESSOR OF LAW

Michael Klausner



*Nancy and Charles
Munger Professor of
Business and Professor
of Law, Stanford
Law School*

When: Spring 2014

Course: Deals: The Economic Foundations of Business Transactions

Research: Corporate law and governance

Selected Works: *Liquidation Rights in Venture Capital Financing* (2013); *Myth and Reality in Corporate Governance* (2013)

Education: MA in economics, Yale University; JD, Yale Law School

Clerkship: Judge David Bazelon, US Court of Appeals for the District of Columbia Circuit; Justice William Brennan, US Supreme Court

CARYL LOUISE BOIES
VISITING PROFESSOR OF LAW

David Skeel



*S. Samuel Arsh
Professor of Corporate
Law, University of Penn-
sylvania Law School*

When: Fall 2013

Course: Corporations

Research: Financial distress; bankruptcy; corporate law; Christianity and law

Selected Works: "States of Bankruptcy," *University of Chicago Law Review* (2012);

"Transaction Consistency and the New Finance in Bankruptcy," *Columbia Law Review* (2012; co-author); *The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences* (2011)

Education: JD, University of Virginia School of Law

Clerkship: Judge Walter Stapleton, US Court of Appeals for the Third Circuit

In Residence

William Forbath

*Lloyd M. Bentsen Chair in Law and
Associate Dean for Research, University*



*of Texas at Austin School
of Law; Professor of
History, University of
Texas at Austin*

When: 2013–14

Research: US legal

and constitutional history; comparative constitutional law; history of Jews, law, and identity politics in the 20th century; social and economic rights in the courts, politics, and social movements of South Africa and Latin America

Selected Works: "The Constitution of Opportunity," *Texas Law Review* (2013); "The Distributive Constitution and Workers' Rights," *Ohio State Law Journal* (2011); "Politics, State Building, and the Courts, 1870–1920," *The Cambridge History of Law in America, Vol. 2* (2008)

Education: MA in social and political sciences, University of Cambridge; PhD in American studies, Yale University; JD, Yale Law School

Clerkship: Judge Louis H. Pollak, US District Court for the Eastern District of Pennsylvania

Multiyear Visitors

Alan Auerbach

Robert D. Burch Professor of Economics



*and Law; Director,
Burch Center for Tax
Policy and Public Finance,
University of California,
Berkeley*

When: Spring 2014

Course: Tax Policy and Public Finance Colloquium and Seminar

Research: Behavioral effects of taxation; tax reform; demographic change and fiscal policy; budget rules

Selected Works: "Measuring the Output Responses to Fiscal Policy," *American Economic Journal: Economic Policy* (2012; co-author); "Welfare and Generational Equity in Sustainable Unfunded Pension Systems," *Journal of Public Economics* (2011; co-author); "Activist Fiscal Policy," *Journal of Economic Perspectives* (2010; co-author)

Education: PhD in economics, Harvard University

Related Experience: Deputy Chief of Staff, US Joint Committee on Taxation

Mervyn King

Distinguished Visiting Professor of Business and Law

Sir Mervyn King, who stepped down from his position as governor of the Bank of England and chair of its Monetary Policy Committee and Financial Policy Committee on June 30 after more than two decades at the UK's central bank, is visiting NYU



in the fall semester with a joint appointment between the Law School and the Stern School of Business.

King joined the Bank of England in 1990 as a non-executive director and has been chief economist, executive director, and deputy governor. The first incumbent governor to be granted an audience by Queen Elizabeth II, King led the Bank of England during the global financial crisis that took hold in 2008. Asserting that the only way to prevent a worldwide depression was to join other central banks in cutting interest rates almost to zero, among other measures, King was also highly critical of the banking sector and its bailout in the wake of the crisis, and supported measures to bring down the national deficit.

Before working for the Bank of England, King was a professor at the London School of Economics, where he founded the Financial Markets Group. He had previously taught at the University of Birmingham and the University of Cambridge. In 1983–84, King was a visiting professor at the Massachusetts Institute of Technology, where he shared an office with Ben Bernanke, the future chairman of the Federal Reserve, who was then an assistant professor.

Robert Rabin

A. Calder Mackay Professor of Law,
Stanford Law School



When: 2013–14
Courses: Protection of Personality; Toxic Harms Seminar; Torts
Research: Tort system; regulation/compensation

of risks to health and safety
Selected Works: “Reflections on Tort and the Administrative State,” *DePaul Law Review* (2012); *Tort Law and Alternatives: Cases and Materials* (2011; co-author); “Tobacco Control Strategies: Past Efficacy and Future Promise,” *Loyola Law Review* (2008)
Education: PhD in political science, Northwestern University; JD, Northwestern University School of Law

Hauser Global Visiting Faculty

Stefan Bechtold

Professor for Intellectual Property,
ETH Zürich



When: Spring 2014
Courses: Innovation Law and Economics; Technology Law and Policy Seminar

Research: Intellectual property; law and technology; law and economics
Selected Works: “An Economic Analysis of Trade-Secret Protection in Buyer-Seller Relationships,” *Journal of Law, Economics, and Organization* (2011; co-author); “Digital Rights Management in the United States and Europe,” *American Journal of Comparative Law* (2004)
Education: JD and PhD in law, University of Tübingen School of Law; JSM, Stanford Law School

GLOBAL VISITING PROFESSOR FROM PRACTICE AND SENIOR FELLOW, CENTER ON LAW AND SECURITY

Dorit Beinisch

Chancellor of the Open University of Israel



When: Fall 2013
Course: Judging National Security: A Comparative Perspective Seminar
Education: LLB and LLM, Hebrew University

Related Experience: State Attorney of the State of Israel; Justice and President of the Supreme Court of Israel

Lawrence Collins

Lord of Mapesbury; Justice, Supreme Court of the United Kingdom (2009–11)



When: Spring 2014
Courses: Select Problems in Transnational Law Seminar

Research: Conflict of laws/private international law; transnational litigation; foreign relations law
Selected Works: *The Conflict of Laws* (2012; co-editor); *Essays in International Litigation and the Conflict of Laws* (1994)
Education: LLB and LLD, Cambridge University; LLM, Columbia Law School

Radhika Coomaraswamy

Former UN Under-Secretary-General,
Special Representative for Children and Armed Conflict



When: Spring 2014
Courses: International Human Rights of

Women; Children and Armed Conflict
Research: Human rights; gender studies; ethnic studies; the protection of civilians
Selected Works: *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Towards Universal Ratification* (2010); *Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women* (2002)
Education: JD, Columbia Law School; LLM, Harvard Law School

Dennis Davis



Judge President, Competition Appeal Court, South Africa
When: Spring 2014
Courses: Labor Law in the Context of

Globalization; Colloquium on Globalization, Economic Development, and Markets
Research: Competition law; global labor regulation; constitutionalism; legal theory
Selected Works: “South Africa: The Competition Law System and the Country’s Norms,” *The Design of Competition Law Institutions* (2013; co-author); “How Many Legal Philosophers Can Dance on the Head of a Pin?” *South African Law Journal* (2012)
Education: LLB, University of Cape Town; MPhil, University of Cambridge

David Dyzenhaus



Professor of Law and Philosophy, Albert Abel Chair, University of Toronto Faculty of Law
When: Fall 2013
Courses: Law and

Morality: An Introduction to Philosophy of Law; Rule of Law Seminar
Research: Philosophy of law; political philosophy; public law
Selected Works: *Hard Cases in Wicked Legal Systems: Pathologies of Legality* (2nd ed., 2010); *The Constitution of Law: Legality in a Time of Emergency* (2006)
Education: DPhil, University of Oxford; LLB, University of the Witwatersrand School of Law

Mohammad Fadel

Associate Professor and Canada Research Chair for the Law and Economics of Islamic Law, University of Toronto Faculty of Law



When: Fall 2013
Courses: Introduction to Islamic Law; Islamic Business Law: Theory and Practice Seminar
Research: Islamic legal

history; modern Middle Eastern law; political and legal theory
Selected Works: “Muslim Reformists, Female Citizenship, and the Public Accommodation of Islam in Liberal Democracy,” *Politics and Religion* (2012); “The True, the Good, and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law,” *Canadian Journal of Law and Jurisprudence* (2008)
Education: PhD, University of Chicago; JD, University of Virginia School of Law
Clerkships: Judge Anthony A. Alaimo, US District Court for the Southern District of Georgia; Judge Paul V. Niemeyer, US Court of Appeals for the Fourth Circuit

Lech Garlicki

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When: Fall 2013
Course: European Court of Human Rights Law; Human Rights and Terrorism: The ECHR’s Perspective Seminar

Research: Constitutional law; comparative constitutional law; judicial review; human rights
Selected Works: “External Review of Constitutional Amendments? International Law as a Norm of Reference,” *Israel Law Review* (2011; co-author); “Cooperation of Courts: The Role of Supranational

Jurisdictions in Europe," *I·CON* (2008)

Education: JD and PhD, University of Warsaw

Related Experience: Justice, Constitutional Tribunal of Poland (1993-2001); Judge, European Court of Human Rights

Michael Kobetsky

Associate Professor, University of Melbourne,



Melbourne Law School

When: Spring 2014

Courses: Tax Treaties; Comparative and International Anti-Tax Avoidance

Research: Taxation law and policy; international tax law; transfer pricing

Selected Works: *Income Tax: Text, Materials, and Essential Cases* (8th ed., 2012; co-author); *International Taxation of Permanent Establishments: Principles and Policy* (2011)

Education: LLB, ANU College of Law; PhD, Deakin University

Related Experience: Member, United Nations Subcommittee on Transfer Pricing

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Challis Chair in Jurisprudence, Sydney



Law School; Professor, Centre for Europe, University of Warsaw

When: Spring 2014

Course: Introduction to Political Philosophy

Research: Jurisprudence; philosophy of law; political theory; comparative constitutionalism

Selected Works: *Constitutionalism and the Enlargement of Europe* (2012); *Equality and Legitimacy* (2008)

Education: LLM and PhD, University of Warsaw Faculty of Law

Related Experience: Board Member, Institute of Public Affairs (Poland); Chairman, Academic Advisory Board, Community of Democracies

Stefan Vogenauer



Linklaters Professor of Comparative Law, University of Oxford Faculty of Law

When: Fall 2013

Courses: Introduction

to Comparative Law; Comparative Contract Law

Research: Comparative law; European legal history; private law; transnational commercial law and international uniform law; legal method

Selected Works: *The Common European*

Sales Law in Context: Interactions with English and German Law (2013; co-editor); *Ius Commune Casebooks for the Common Law of Europe: Cases, Materials, and Text on Contract Law* (2010; co-author)

Education: MJur, MA, University of Oxford

Related Experience: Adviser, European Parliament and United Kingdom government (proposal for a Common European Sales Law)

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Roger Andersson

Professor of Social and Economic Geography,



Institute for Housing and Urban Research, Uppsala University

Research: The dynamics and effects of residential segregation

Selected Works: "Neighbourhood Ethnic Composition Effects on Immigrant Incomes," *Journal of Ethnic and Migration Studies* (2012; co-author); "Counteracting Segregation: Swedish Policies and Experiences," *Housing Studies* (2010; co-author); "Neighbourhood Effects and the Welfare State: Toward a European Research Agenda?" *Schmollers Jahrbuch (Journal of Applied Social Science Studies)* (2008)

Education: PhD in social and economic geography, Uppsala University

Leah Boustan

Associate Professor of Economics, University



of California, Los Angeles; Research Associate, National Bureau

of Economic Research
Research: Black migrants in northern cities and

labor markets over the 20th century

Selected Works: "Europe's Tired, Poor, Huddled Masses: Self-Selection and Economic Outcomes in the Age of Mass Migration," *American Economic Review* (2012; co-author); "School Desegregation and Urban Change: Evidence from City Boundaries," *American Economic Journal: Applied Economics* (2012); "Was Postwar Suburbanization 'White Flight'? Evidence from the Black Migration," *Quarterly Journal of Economics* (2010)

Education: PhD in economics, Harvard University



Camille Charles

Edmund J. and Louise W. Kahn Term Professor in the Social Sciences; Professor of Sociology, Africana Studies and Education;

Chair, Department of Africana Studies; Director, Center for Africana Studies, University of Pennsylvania

Research: Black diversity in elite colleges and universities; Black racial identity in the United States

Selected Works: "The Real Record on Racial Attitudes," *Social Trends in American Life: Findings from the General Social Survey Since 1972* (2012; co-author); "Black Like Who? Exploring the Racial, Ethnic, and Class Diversity of Black Students at Selective Colleges and Universities," *Racism in Post-Race America: New Theories, New Directions* (2008; co-author); *Won't You Be My Neighbor? Race, Class, and Residence in Los Angeles* (2006)

Education: PhD in sociology, University of California, Los Angeles

Charles Clotfelter

Z. Smith Reynolds Professor of Public



Policy Studies and Professor of Economics and Law, Duke University

Research: Scholastic segregation in the age of meritocracy

Selected Works: *Big-Time Sports in American Universities* (2011); *After Brown: The Rise and Retreat of School Desegregation* (2004); "The Private Life of Public Economics," *Southern Economic Journal* (1993)

Education: PhD in economics, Harvard University

Jennifer Hochschild

Henry LaBarre Jayne Professor of Government and Professor of African and African



American Studies, Harvard University

Research: Racial isolation and genomic science

Selected Works: *Creating a New Racial Order: How Immigration, Multiracialism, Genomics, and the Young Can Remake Race in America* (2012; co-author); *Political and Policy Implications of Technology Optimism about Genomic Science* (2012; co-author); *Bringing Outsiders In: Transatlantic Perspectives on Immigrant Political Incorporation* (2009; co-editor)

Education: PhD, Yale University

DAVID M. FRIEDMAN FELLOW

Jerry Kang



Professor of Law, Professor of Asian American Studies, Korea Times-Hankook Ilbo Chair in Korean American Studies,

University of California, Los Angeles
Research: Implementation of humane technologies; race and race relations
Selected Works: “Seeing Through Colorblindness: Implicit Bias and the Law,” *UCLA Law Review* (2010; co-author); “Trojan Horses of Race,” *Harvard Law Review* (2005); “Cyberbace,” *Harvard Law Review* (2000)
Education: JD, Harvard Law School

Desmond King



Andrew Mellon
 Professor of American Government and Professorial Fellow, Nuffield College, University of Oxford

Research: The American state, executive politics, and racial inequality since 1940
Selected Works: *Still a House Divided: Race and Politics in Obama’s America* (2011; co-author); *Separate and Unequal: African Americans and the US Federal Government* (2007); *Making Americans: Immigration, Race, and the Origins of the Diverse Democracy* (2000)
Education: MA and PhD in political science, Northwestern University

Mary Pattillo

Harold Washington Professor of Sociology and African American Studies, Northwestern University
Research: Behind choice: exploring what people want out of their neighborhoods and schools
Selected Works: “Making Fair (Public) Housing Claims in a Post-Racism Legal Context,” *Journal of Affordable Housing and Community Development Law* (2009); “Investing in Poor and Black Neighborhoods ‘As Is,’” *Public Housing Transformation: Confronting the Legacy of Segregation* (2008); *Black on the Block: The Politics of Race and Class in the City* (2007)
Education: PhD in sociology, University of Chicago



Robert Sampson

Henry Ford II Professor of the Social Sciences, Harvard University; Director, Social Sciences Program, Radcliffe Institute for Advanced Study
Research: Mixed-income neighborhoods and mechanisms of residential integration
Selected Works: *Great American City: Chicago and the Enduring Neighborhood Effect* (2012); *Shared Beginnings, Divergent Lives: Delinquent Boys to*



Age 70 (2003; co-author); *Crime in the Making: Pathways and Turning Points Through Life* (1993)
Education: MA and PhD in sociology, State University of New York at Albany

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Associate Professor of Sociology, New York University
Research: The rise of economic segregation and the consequences for economic mobility
Selected Works:



“The Legacy of Disadvantage: Multigenerational Neighborhood Effects on Cognitive Ability,” *American Journal of Sociology* (2011; co-author); “The Acute Effect of Local Homicides on Children’s Cognitive Performance,” *Proceedings of the National Academy of Sciences* (2010); “The Intergenerational Transmission of Context,” *American Journal of Sociology* (2008)
Education: PhD in sociology and social policy, Harvard University

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Associate Professor of History, University of California, Los Angeles
Research: Jewish history in the ancient Mediterranean world; early Jewish and Christian relations; early Jewish mysticism and magic; rabbinic literature
Selected Works: “Rabbinization and the Making of Early Jewish Mysticism,” *The Jewish Quarterly Review* (2011); “The Dislocation of the Temple Vessels: Mobile Sanctity and Rabbinic Rhetorics of Space,” *Jewish Studies at the Crossroads of Anthropology and History: Authority, Diaspora, Tradition* (2011); *From Martyr to Mystic: Rabbinic Martyrology and the Making of Merkavah Mysticism (Texts and Studies in Ancient Judaism)* (2005)
Education: PhD in religion, Princeton University

Ronnie Goldstein



Senior Lecturer, Bible Department, Hebrew University of Jerusalem
Research: Hebrew Bible; historiography; prophecy
Selected Works: “Late Babylonian Letters on Collecting Tablets and Their Hellenistic Background—a Suggestion,” *Journal of Near Eastern Studies* (2010); “The Greek and Jewish Origins of Docetism: A New Proposal,” *Journal*

of Ancient Christianity (2006; co-author); “From Gods to Idols: The Changes in the Relation to Other Gods in Biblical Literature and the Revision in Isaiah 2:18-21,” *Beer-Sheva* (2004)
Education: PhD in Bible studies, Hebrew University of Jerusalem

Jeffrey Rubenstein

Skirball Professor of Talmud and Rabbinics, Department of Hebrew and Judaic Studies, New York University
Research: Talmudic stories and their East Christian and Persian parallels
Selected Works:



The Culture of the Babylonian Talmud (2003); *Talmudic Stories: Narrative Art, Composition, and Culture* (1999); *The History of Sukkot in the Second Temple and Rabbinic Periods* (1995)
Education: PhD in religion, Columbia University

Haim Shapira



Senior Lecturer, Faculty of Law, Bar-Ilan University
Research: Jewish law and jurisprudence; institutions of law and

learning in the Talmudic period; Jewish political tradition; law and religion
Selected Works: “Majority Rule in the Jewish Legal Tradition,” *Hebrew Union College Annual* (2013); “For the Judgment Is God’s: Human Judgment and Divine Justice in the Hebrew Bible and in Jewish Tradition,” *Journal of Law and Religion* (2012); “The Talmudic Debate over Compromise and the Goals of Judicial Process,” *Diné Israel* (2010)
Education: PhD, Hebrew University of Jerusalem

Cana Werman



Associate Professor, Department of Bible, Archaeology, and Ancient Near Eastern Studies, Ben-Gurion University of the Negev

Research: The development of halakha; Tannaitic literature; Jewish apocrypha and pseudepigrapha; the Dead Sea Scrolls; Jewish-Hellenistic literature; Judaism of the Second Temple Period; early Christianity
Selected Works: “The Price of Mediation: The Role of Priests in the Priestly Halakha,” *The Dead Sea Scrolls and Contemporary Culture* (2011); “Messiah in Heaven? A Re-evaluation of Jewish and Christian

Apocalyptic Traditions," *Text, Thought, and Practice in Qumran and Early Christianity* (2009); "Epochs and End-Time: The 490-Year Scheme in Second Temple Literature," *Dead Sea Discoveries* (2006)
Education: PhD in Jewish thought, Hebrew University of Jerusalem

Shira Wolosky

Professor, English and American Literature, Hebrew University of Jerusalem



Research: Emmanuel Lévinas; religion, ethics, and postmodernism; cosmopolitanism and identity

Selected Works:

"Gershom Scholem's Linguistic Theory," *Gershom Scholem* (2006); "An 'Other' Negative Theology: On Derrida's 'How to Avoid Speaking: Denials,'" *Poetics Today* (1998); "Nietzschean Pharisaism," *Common Knowledge* (1993)

Education: PhD in comparative literature, Princeton University

Robert Yelle



Assistant Professor, Department of History and the Hardin Honors Program, University of Memphis

Research: History of

religions; law and religion; secularization; political theology; semiotics of religion

Selected Works: *The Language of Disenchantment: Protestant Literalism and Colonial Discourse in British India* (2013); *After Secular Law* (2011; co-editor);

"The Trouble with Transcendence: Carl Schmitt's 'Exception' as a Challenge for Religious Studies," *Method and Theory in the Study of Religion* (2010)

Education: PhD in history of religions, University of Chicago; JD, University of California, Berkeley School of Law

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Steven Aschheim



Emeritus Professor of History, Hebrew University of Jerusalem

Research: Varieties of empathic experience

Selected Works:

At the Edges of Liberalism: Junctions of European, German, and Jewish History (2012); *The Nietzsche Legacy in Germany: 1890-1990* (1992); *Brothers and Strangers: The East*

European Jew in German and German Jewish Consciousness, 1800-1923 (1982)

Education: PhD in modern European history, University of Wisconsin-Madison

BERKOWITZ FELLOW

Jonathan Yovel

Professor of Law and Humanities,



University of Haifa Faculty of Law

Research: The languages of justice

Selected Works:

"The Creation of Language and Language Without Time: Metaphysics and Metapragmatics in Genesis," *Biblical Interpretation* (2012); "How Can a Crime Be Against Humanity? Philosophical Doubts Concerning a Useful Concept," *UCLA Journal of International Law and Foreign Affairs* (2007); "What is Contract Law 'About'? Speech Act Theory and a Critique of 'Skeletal Promises,'" *Northwestern University Law Review* (2000)

Education: LLB, Tel Aviv University; LLM and JSD, Northwestern University School of Law

Senior Emile Noël Fellows

Armin von Bogdandy



Director, Max Planck Institute for Comparative Public Law and International Law, University of Heidelberg; Professor of Public Law, Goethe

University Frankfurt am Main and the Ruprecht-Karls-Universität Heidelberg

Research: Developing the publicness of public international law

Selected Works:

"In Whose Name? An Investigation of International Courts' Public Authority and Its Democratic Justification," *European Journal of International Law* (2012; co-author); "10 x 10," *International Journal of Constitutional Law* (2010); "Developing the Publicness of Public International Law: Toward a Legal Framework for Global Governance Activities," *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (2010; co-author)

Education: MPhil, Faculty of Philosophy, Freie Universität Berlin; LLB and JSD, Freiburg/Breisgau

Rainer Forst

Professor of Political Theory and Philosophy, Goethe University Frankfurt am Main; Vice-Director, Center for Advanced Studies (*Justitia Amplificata*), Goethe University



Research: Transnational justice and democracy

Selected Works:

Justification and Critique: Toward a Critical Theory of Politics (English ed., 2013; German ed., 2011); *Toleration in Conflict: Past and Present* (English ed., 2013; German ed., 2003); *The Right to Justification: Elements of a Constructivist Theory of Justice* (English ed., 2012; German ed., 2007)

Education: PhD in philosophy, Goethe University

Antoine Vauchez



Research Professor, Centre Européen de Sociologie et de Science Politique, Université Paris 1-Sorbonne

Research: Fields of

global justice: legal entrepreneurs, transnational fields, and the making of international courts

Selected Works:

L'Union par le Droit: L'Invention d'un Programme Institutionnel pour l'Europe (French ed., 2013; English ed., forthcoming); *Lawyering Europe: European Law as a Transnational Social Field* (2013; co-editor)

Education: PhD in social and political science, European University Institute

Joint Straus/Senior Emile Noël Fellow

Christopher McCrudden



Professor of Human Rights and Equality Law, Queen's University Belfast; William W. Cook Global Law Professor, University

of Michigan Law School

Research: An integrated theory of comparative human rights law

Selected Works:

Courts and Consociations: Human Rights Versus Power-Sharing (2013; co-author); "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* (2008); *Buying Social Justice: Equality, Government Procurement, and Legal Change* (2007)

Education: MA and DPhil, Oxford University; LLB, Queen's University Belfast School of Law; LLM, Yale Law School



ARGUMENTS AND OPINIONS

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*In the furor over his 11th and latest book, *Mind and Cosmos*, University Professor Thomas Nagel, the famously liberal philosopher, has attracted unlikely supporters: proponents of creationism and intelligent design.*

Two Years Out of Three Ain't Bad

Samuel Estreicher proposes greater flexibility in legal education and training.



THE PROFFER A January panel to discuss the 3L year included, from left, Brian Tamanaha, John Barrett, Richard Matasa, Randal Milch '85, Zachary Fisman, and Joy Radice. Not pictured: Randy Hertz.

TO SOME CRITICS, it might seem as if Samuel Estreicher, Dwight D. Opperman Professor of Law, is trying to put himself out of a job. The labor and employment law expert made waves in the legal community last January when he published a *New York Times* op-ed, co-authored with Northwestern University School of Law Dean Daniel Rodriguez, suggesting that law students should be allowed to take the bar exam after two years of legal education.

In the piece, "Make Law Schools Earn a Third Year," Estreicher and Rodriguez argue that increases in the cost of law school, coupled with decreasing numbers of high-paying firm jobs, demand greater flexibility in the training of practitioners. The op-ed, which was based on an article Estreicher wrote for the *NYU Journal of Legislation and Public Policy* (*JLPP*), appeared on the same day that NYU Law held a lively public discussion of the two-year proposal.

Law school debt, as Estreicher explained at the forum, limits most graduates' career choices. For those interested in less lucrative public interest jobs who do not have access to a generous loan repayment assistance program like NYU Law's, paying one-third less tuition might make sense. Estreicher stated that law schools should be free to offer three years of instruction, which is likely to remain the choice for many students. The key is to remove a legal requirement of the third year. Just having the option will not only help certain students but also create incentive for law schools to make the third year more relevant to students' needs upon graduation.

Seated in the front row, New York Chief Judge Jonathan Lippman '68 expressed keen interest in Estreicher's ideas and freely acknowledged the ubiquity of the problems: "Sam's proposal challenges us to take a good, hard look at what we're doing now and where we should be going."

Estreicher's proposal is firmly rooted in a longstanding academic debate. His *JLPP* piece traced the history of the three-year requirement in New York State to a 1911 rule created by the NY Court of Appeals. In the 1970s, two prominent reports supported a two-year curriculum, but law schools opposed a proposal to revise American Bar Association accreditation standards.

With the financial recession causing upheaval in the legal profession, however, outside-the-box thinking is back in the zeitgeist. Last fall, NYU Law announced changes that give students the ability to use the third year as a transition to practice, including a specially designed study-and-practice-abroad semester in Buenos Aires, Paris, or Shanghai; a semester of study and government agency fieldwork in Washington, DC; specialized skill development in one of eight legal areas; and special instruction in business and financial literacy and leadership skills. (See page 20 for more on these initiatives.) And in February, the ABA's Task Force on the Future of Legal Education held a public hearing. Many lawyers and students testified in support of a two-year option, along with training for limited-license legal technicians who are not lawyers but have more responsibility than paralegals (Washington State is already developing such a program).

In a 2012 interview when he was ABA president-elect, James Silkenat LLM '78, now ABA president, emphasized the need for legal education reform. "Do all the law schools need to teach the same things? Do they all need to cost the same amount?" he asked. "Good minds need to focus on and come to some agreement on these issues."

Even those who were slow to embrace the idea are coming around. Stephen Gillers '68, Elihu Root Professor of Law, raised concerns at the January forum about whether state bar associations would recognize two-year graduates from New York and whether those graduates would have a disadvantage in competing for jobs. But in March, both Gillers and Estreicher signed an open letter to the ABA task force that was discussed in the *Wall Street Journal's* Law Blog. The missive supported, among other measures, "awarding the basic professional degree after two years, while leaving the third year as an elective or an internship." Fellow NYU Law professors Anthony Amsterdam, Norman Dorsen, Richard Epstein, Helen Hershkoff, Arthur Miller, and Burt Neuborne also signed on, as did Judge Richard Posner of the US Court of Appeals for the Seventh Circuit.

For Estreicher, two intertwined issues contribute to his uneasiness with the current state of legal education: lack of representation for most Americans combined with law graduates who are not prepared to meet working Americans' everyday legal needs like drafting wills. "The current system may not hold in the near future," he says. "That's what we should be focusing on." □ *Atticus Gannaway*



A Big Bang

AT 128 PAGES, University Professor Thomas Nagel's book *Mind and Cosmos* may look modest, but it ignited something of a furor in the fields of science and philosophy upon its publication last October. The book's subtitle helps to explain the reaction: "Why the Materialist Neo-Darwinian Conception of Nature Is Almost Certainly False." Nagel posits that the existence of human



consciousness is a fundamental aspect of the universe that cannot be explained by evolutionary theory alone, and argues that a "natural teleology" might lead the universe to produce particular

outcomes, although without a divine force. He further asserts that "almost everyone in our secular culture has been browbeaten into regarding the reductive research program as sacrosanct."

The controversial argument has created unexpected bedfellows. Famously liberal and atheist, Nagel has seen his book garner accolades from conservative publications and supporters of intelligent design theory. Conversely, scientists and some of Nagel's fellow philosophers have expressed doubts about the book's reasoning.

In the *New Republic*, Christian philosopher Alvin Plantinga called *Mind and Cosmos* an "important new book" that critiques "some of the most common and oppressive dogmas of our age," and in the *Wall Street Journal* philosopher Jim Holt wrote that Nagel "offers a sharp, lucidly argued challenge to today's scientific worldview." The *National Review* deemed the book "a work of considerable courage and importance." On the other end of the spectrum, Brian Leiter and Michael Weisberg offered in the *Nation* that "the subtitle seems intended to market the book to evolution deniers, intelligent-design acolytes, religious fanatics, and others who are not really interested in the substantive scientific and philosophical issues" and suggested the book would be "an instrument of mischief." A sympathetic *Guardian* piece nonetheless pronounced *Mind and Cosmos* "the most despised science book of 2012."

Some critics had less polarizing reactions. Alva Noë of NPR invoked the book's importance in prodding scientists and philosophers to dig deeper: "If we are to resist Nagel's call for a radically new conception of fundamental reality...we need to do better than merely defend the status quo." Through the uproar, Nagel himself has remained silent, preferring to leave his published arguments to speak for themselves. □

From *Mind and Cosmos*:

“ I lack the *sensus divinitatis* that enables—indeed compels—so many people to see in the world the expression of divine purpose as naturally as they see in a smiling face the expression of human feeling. So my speculations about an alternative to physics as a theory of everything do not invoke a transcendent being but tend toward complications to the immanent character of the natural order. That would also be a more unifying explanation than the design hypothesis. I disagree with the defenders of intelligent design in their assumption, one which they share with their opponents, that the only naturalistic alternative is a reductionist theory based on physical laws of the type with which we are familiar. Nevertheless, I believe the defenders of intelligent design deserve our gratitude for challenging a scientific world view that owes some of the passion displayed by its adherents precisely to the fact that it is thought to liberate us from religion. ”

Embracing the Value of Doubt

In Islamic law, the strength and validity of legal rulings were based on texts that Muslims believe to be of divine origin, and therefore absolute. But upon closer scrutiny of how Muslim jurists handled criminal cases, Intisar Rabb, associate professor of Middle Eastern and Islamic Studies and Law, found more gray than black and white. Last February, she was the youngest alumna to give Yale Law School's James A. Thomas Lecture, established to recognize scholars whose work addresses concerns of communities or groups that are marginalized within the legal academy or society at large. Her lecture was based on her forthcoming book, *The Burden and Benefit of Doubt in Islamic Law*.

Examining doubt runs contrary to the typical focus of inquiry in Islamic jurisprudence, Rabb noted. Though they placed a premium on certainty, which has been "often conflated with textualist meanings of law," Muslim jurists recognized that certainty was elusive. At the same time, the potential harm from any lack of certainty could be substantial. Doubt about the law or facts, Rabb said, could present "the God-subservient Muslim with a paralyzing burden: Apply a harsh criminal rule even if doubtful about the facts, or dismiss the rule in cases of doubt and risk disobeying the lawgiver."

Rabb discovered, however, that the strict textualism that gave rise to this dichotomy departed from the mainstream approach to Islamic legal interpretation historically. Instead, she said, "most Muslim jurists came to see doubt less as an unmitigated burden to be avoided and more as a ubiquitous challenge to be resolved." Contrary to common thought, "they did so by using a legal maxim that privileged doubt as an interpretive tool to avoid punishment through constructing contextualist meanings of Islamic law."





Forcing the Issue

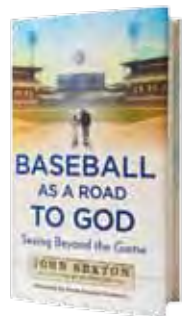
A WORKING PAPER by Ryan Goodman, Anne and Joel Ehrenkranz Professor of Law, drew intense and high-profile interest shortly after it was posted on the Social Science Research Network last winter. Ranked as one of the most downloaded SSRN articles in multiple categories and now slated for publication in the *European Journal of International Law* this fall, “The Power to Kill or Capture Enemy Combatants” cogently spells out how, contrary to many experts’ opinions, combatants should not automatically be subject to lethal force upon discovery, regardless of where they are found. Rather, Goodman said, the modern law of armed conflict (LOAC) requires that “if enemy combatants can be put out of action by capturing them, they should not be injured; if they can be put out of action by injury,

they should not be killed; and if they can be put out of action by light injury, grave injury should be avoided.”

Goodman stated the matter more bluntly in a February 19 Slate piece, “The Lesser Evil,” in reference to the Obama administration’s leaked white paper on drones. “The administration claims, in the white paper, to have conducted an exhaustive review of the laws of war, and to honor those standards,” he wrote. “Its portrayal of the rules, however, is incomplete to the point of being wrong.” According to the Justice Department white paper, the government has discretion in wartime to choose whether to kill an enemy combatant, but Goodman contests that modern laws of war place real limits on that choice. He supports his contention by tracing a “lost history” of international legal authorities’ past support for restraints on the use of force, calling his claim “consistent with a long line of some of the most highly respected law of war experts who reached the same conclusion on this issue.”

Unsurprisingly, Goodman’s challenge to current conventional wisdom provoked strong reactions, both pro and con, from well-known scholars in the field of warfare. On the Lawfare blog, Professor Jack Goldsmith of Harvard Law School, former special counsel to the Defense Department, called Goodman’s work “timely and important.” A series of responses from prominent thinkers spurred a point-by-point debate between Goodman and his critics in several forums. And at least one powerful military voice took note of Goodman’s assertions: in his official blog as the Air Force’s general counsel, Charles Blanchard wrote that the vigorous exchange Goodman had inspired is “worth a careful read by all of us LOAC wonks.” □

Like Baseball, God, and Apple Pie?



PRESIDENT JOHN SEXTON, BENJAMIN F. BUTLER PROFESSOR OF LAW, published a book in March based on a course he teaches to undergraduates at NYU.

From *Baseball as a Road to God: Seeing Beyond the Game*:

“ [F]aith is an affirmation of something that cannot be expressed, for it is rooted in another domain of knowledge, one that is beyond what is knowable in scientific terms.

There is much that is known today, and even more that is unknown today but that will be known (perhaps even hundreds of years from now). [T]rue faith...deals with that which is unknowable in the scientific sense but which the believer knows with all of his or her being (the

way, in a wonderful marriage, love is known). This is the domain of faith. Therein lies the most powerful connection to baseball, its rhythms and patterns, astonishing feats and mystical charm; it is not necessary to elevate baseball to the level of ultimate concern to notice that, for the true fan, there is sometimes a touching of the ineffable that displays the qualities of a religious experience in the profound space of faith.



Emotional Decisions

Human dignity holds a central place in human rights law, yet

the concept itself resists concrete definition, complicating efforts to protect it. This state of affairs troubles Emily Kidd White LLM '09, JSD '15, who uses the philosophy of emotion to critically appraise legal theory and practice on rights.

White’s dissertation will show how particular emotions, such as contempt, disgust, pity, or empathy, play an important role in evaluative judgment. A better understanding of the role of emotion, says White, will illuminate how human dignity is invoked in the adjudication of rights claims as well as how it relates to the procedural and evidentiary laws governing their adjudication. Her work has won her a three-year, \$180,000 Trudeau Foundation Scholarship.

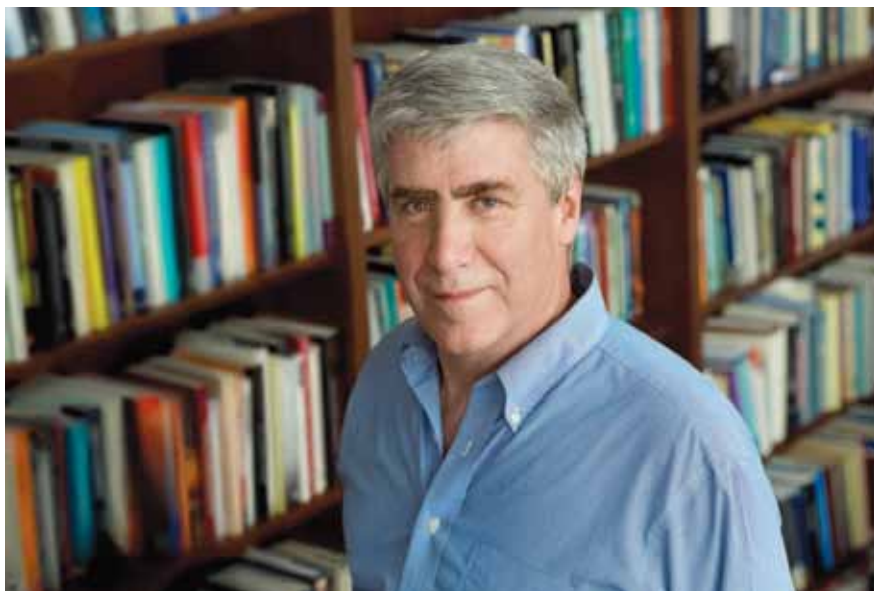
“Emily brings important insights from the philosophy of the emotions to understand the significance of appeals to dignity in human rights cases,” said University Professor Jeremy Waldron, White’s doctoral supervisor. “She has been able to show how important the emotional dimension is for a full-blooded understanding of what matters in certain kinds of legal argument.”

In legal theory, emotions are typically seen as having a negative effect on legal reasoning, says White. But she plans to show “how the concept of human dignity helps rights claimants expose the injustice of a legislative scheme or government act through the admission of evidence detailing suffering, humiliation, and degradation.” □

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Waldron Takes Questions



University Professor Jeremy Waldron published four books in 2012, prompting Senior Writer Atticus Gannaway to have the following exchange with him:

A review of your titles from the last several years suggests you have an insatiable curiosity. Is there a topic you would never write about? Transactions. Hang on—there is a bit about transactional law in *“Partly Laws Common to All Mankind”*: *Foreign Law in American Courts*. But the impression that I write about lots and lots is a bit misleading. I work through the central agenda of a couple of major areas: legal philosophy and the theory of politics, including historical and modern normative political theory. I maintain my interest in every aspect of these disciplines, rather than cutting things off in order to specialize. So one week it is Aristotle, another week it is ethical positivism, and a third week it is the separation of powers. It’s narrower than it seems.

Which ideas from your recent works have prompted the most disagreement? *The Harm in Hate Speech* has excited the most disagreement. Actually, it is more denunciation. An anti-Semitic website described the book as a Jewish attempt to cut off our tongues! But there has been good-faith and good-natured disagreement as well from people I greatly respect. I have debated the book with Robert Post, dean of Yale Law School; Professor James Weinstein at Arizona State; and—most important for me—my dear friend and colleague Ronald Dworkin, just recently passed away.

What topics do you hope to explore next?

I’m continuing to write about human dignity, and I lectured last April at UCLA on the topic “What Do Philosophers Have Against Human Dignity?” (See also “Emotional Decisions” at left.) I also want to devote some time to developing and elaborating some of Ronald Dworkin’s latest jurisprudential work, a way of carrying a torch forward after the wonderful start he gave us in resetting and reevaluating analytic legal philosophy. Finally, I have a little volume of essays on institutional political theory—I call it *“political political theory”*—in the works. There are essays on topics such as separation of powers, representation, loyal opposition, and judicial review.

How often do your own conclusions surprise you?

More and more. Especially when you are engaging with others and responding to their suggestions and criticisms, you find yourself taking your work into places you didn’t expect. Is it possible to say that a person can sometimes be surprised by their own moderation? That’s often the effect of the back-and-forth that scholarly debate embodies. But then there are times when one is surprised by one’s absolutism. I hadn’t expected to end up defending an absolutist position on torture when I began writing what became *Torture, Terror, and Trade-offs: Philosophy for the White House* 10 years ago, but it was a good place to end up. □

Note: In addition to the three titles named above, Waldron also published The Rule of Law and the Measure of Property in 2012.

Reading List

A sampling of recent books by faculty

Oren Bar-Gill

Seduction by Contract: Law, Economics, and Psychology in Consumer Markets, Oxford University Press, 2012

Rochelle Dreyfuss

A Neofederalist Vision of TRIPS: The Resilience of the International Intellectual Property Regime, Oxford University Press, 2012 (with Graeme Dinwoodie)

Franco Ferrari

Contracts for the International Sale of Goods: Applicability and Applications of the 1980 United Nations Sales Convention, Martinus Nijhoff, 2012.

Eleanor Fox '61

The Design of Competition Law Institutions: Global Norms, Local Choices, Oxford University Press, 2013 (with Michael Trebilcock).

Geoffrey Miller

The Governance and Regulation of International Finance, Edward Elgar Publishing, 2013 (with Fabrizio Cafaggi)

William Nelson '65

The Common Law in Colonial America: Vol. II, The Middle Colonies and the Carolinas, 1660–1730, Oxford University Press, 2012

John Reid

Legitimizing the Law: The Struggle for Judicial Competency in Early National New Hampshire, Northern Illinois University Press, 2012

David Richards

Resisting Injustice and the Feminist Ethics of Care in the Age of Obama: “Suddenly, All the Truth Was Coming Out,” Routledge, 2013

Stephen Schulhofer

More Essential Than Ever: The Fourth Amendment in the Twenty-First Century, Oxford University Press, 2012

Alan Sykes

Economic Foundations of International Law, Belknap Press, 2012 (with Eric Posner)

See a full list of faculty publications at law.nyu.edu/faculty/publications.

Faculty Scholarship

Expressive Incentives in Intellectual Property

JEANNE FROMER sees complements in competing utilitarian and moral rights theories of what compels creators to make copyrightable and patentable work.



ACCORDING TO the dominant American theory of intellectual property, copyright and patent laws are premised on providing creators with just enough incentive to create artistic, scientific, and technological works of value to society by preventing certain would-be copiers' free-riding behavior. Another group of scholars reasons instead that creators deserve moral rights to their works either by virtue of the labor they expend to create them or because the works are important components of creators' personhoods (the aspects of creators' personalities infused into and bound up in their works). Other academics highlight a rhetoric focused on authorship and inventorship within intellectual

property law, all the while assuming that it is devoid of substantive effect.

Scholars nearly always see the utilitarian and moral-rights theories as disjointed, likely because utilitarian theories are more concerned with maximizing benefit to society via a properly calibrated incentive to creators whereas moral-rights theories place more emphasis on the creator's interests. In this article, I show that the two theories can be complementary in important ways because there is a utility to moral-rights concerns. As evidence from a multitude of vantage points demonstrates, creators of copyrightable and patentable work typically attach great significance to both their personhood and labor interests in their work. Pertinently, they believe that their self-concept is critically bound up in their creations; they are uniquely

situated to employ their personal vision and genius to create their works; they create in large part for reputational gains; they psychologically possess their creations; and they often hold strong interests in their works and their works' integrity by virtue of their expended labor.

As to authors, one critical belief they usually have about their creations is that they are intimately linked to their self-concept. Psychological and philosophical work demonstrates that one's possessions are tightly bound up in a person's self-concept. Objects over which people have control or which they themselves have created or manipulated are more likely to be perceived as part of a person's self-concept than other types of objects. Likely for these reasons, people experience these possessory and self-concept effects with regard to their artistic creations, especially because they are self-made and far from fungible. A striking illustration of this notion comes from the novelist Anne Lamott, who states in *Bird by Bird: Some Instructions on Writing and Life*, "I understood immediately the thrill of seeing oneself in print. It provides some sort of primal verification: you are in print; therefore you exist." Coinciding with this view is the metaphor of author as parent to his or her literary works, commonly invoked since the 16th century.

Beyond the strong influence of artists' creations on their self-concept, much else about authorship is considered to be highly personal. Authors typically view the process of creation as both personal and subjective. As reported by Ariston Anderson in *99U*, filmmaker Francis Ford Coppola conveys his most important piece of advice for his children, who work in the arts: "Always make your work be personal." As I explore in prior work on creativity's role in intellectual property law, artists are preoccupied with "harnessing experiences and themes for artistic expression." Painter Henri Matisse observes in *Notes d'un Peintre* that he is "unable to distinguish between the feeling [he] ha[s] for life and [his] way of expressing it." Creativity scholars Jacob Getzels and Mihalyi Csikszentmihalyi recount in their book *The Creative Vision* that the goal of the "artist is to be sensitive to salient life experiences, and to translate these into [artistic] products, thereby preserving as much of the impact of the experience as possible, while at the same time revealing meanings that were not perceived before the work of art was completed." Csikszentmihalyi elaborates in *Creativity* that "[a]rtists find inspiration in 'real' life—

emotions like love and anxiety, events like birth and death, the horrors of war, and a peaceful afternoon in the country.” There is a seemingly endless supply of instances of this principle: Spanish painter Pablo Picasso’s painting *Guernica* was inspired by his views on the destruction of the Spanish Civil War, fought during his lifetime. Philip Roth’s novels about secular American Judaism in the face of Jewish tradition mirror the world in which he grew up. And slightly more lowbrow, a novel by reality television star Nicole Richie, the adopted daughter of the singer Lionel Richie, is about the Hollywood lifestyle of the adopted daughter of a famous singer.

Additionally, to authors, the artistic works they create are a vehicle for their reputation or esteem, surely a strong personhood interest. A key reason many authors create literary works is the expectation of reputational benefits, such as recognition and attention. For example, in the context of open-source software, scholars show that a quest for reputation has largely driven the enterprise.

Just as authors believe their creations are intimately linked to their self-concept, so too inventors think their inventions are closely linked to theirs. Given that they created their inventions, they tend to feel tightly bound to them. In fact, inventors discuss how much their inventions are a part of their identity. Relatedly, empirical work demonstrates the considerable significance inventors attach to the personal satisfaction and intellectual challenge they derive from inventing. Psychological research also shows that the desire for self-expression is a main reason why inventors invent.

An extreme story illustrates the strong connection inventors can feel to their creations. In the 1980s, Petr Taborsky worked for a Florida power company, having been assigned to assist on a research project using bacteria to extract ammonia from a type of clay used in filtering water. The company terminated the project after it appeared that it would not be successful and reassigned Taborsky to work on other tasks. Taborsky, captivated by the research problem, nonetheless continued to work on the original research question. Taborsky figured out how to use bacteria to accomplish this extraction by raising the temperature. Taborsky was stunned to learn that he had no legal rights in the invention, having signed them away to his employer in his contract. Angry and determined, he refused to turn over his research notebooks. Taborsky fought so far as to be convicted of theft of the note-

books, being jailed for refusing to assign to the company the patents he ultimately secured for the invention, and later refusing an executive pardon. Taborsky stated to IPAdvocate.org that he was willing to go to jail because his employers “weren’t entitled to” his invention. Although he was likely driven in part by pecuniary considerations, the extent to which he was willing to be punished was surely underscored by his personhood-based determination, as he said in an NPR interview, that “the notebooks were mine and the work was mine.”

Another personhood interest in which inventors, and society writ large, believe is that inventors are creative geniuses, uniquely situated to fashion their inventions. A quintessential (and somewhat mythical) example is Thomas Edison, depicted as laboring and tinkering with possibilities for the light bulb and then coming up with a solution in a stroke of genius. Thomas Jefferson, a noted inventor himself, colorfully called inventions “the fugitive fermentation of an individual brain.” Twentieth-century psychological work confirms the continuing endurance of this belief, showing that an inventor’s most important characteristic is perceived to be originality.

Take Johannes Gutenberg’s invention of the printing press as but one example of an inventor’s unique situatedness. A critical step in Gutenberg’s invention required solving how to press paper to affix images or type. Gutenberg did so when he was participating in a wine harvest, which

led him to draw a connection between the principles for pressing grapes to make wine and pressing paper to affix images or type. This illustration suggests what sociologist Robert Merton has shown more systematically, in *The Sociology of Science*, that “[o]nce a scientific problem has been defined, profound individual differences among scientists will affect the likelihood of reaching a solution.”

This belief that inventors are uniquely placed to solve particular problems in certain ways is distinct from views about authors’ uniquely personal connections to their artistic works. Inventors, unlike authors, are ultimately guided to their creations by functional considerations of solving a particular problem, such as cooling air, creating software to encrypt communications, or providing a vaccine for polio. A poignant childhood memory, vacation experience, or lasting emotion might help guide the inventor’s mind to particular scientific and technological problems to study or successful problem solutions. However, if personal emotions, memories, or themes do not help solve a particular problem, inventors will be guided away from them by functional considerations to particular solutions. For Gutenberg, if his experience with grape presses had not helped solve the problem of affixing print to paper, he likely would have searched elsewhere—possibly beyond his personal experiences and emotions—to find a solution.

Another personhood aspect vital to inventors is their reputational interest.



“Any intellectual property yet, honey?”

Empirical studies show that inventors are heavily concerned with the prestige and reputation that can result from their creative activities. Merton, despite describing a communism pervading the scientific community, observes that scientific norms give innovators a claim to “recognition and esteem,” such as via eponymy for their results (as in the Copernican system or Boyle’s law). This reputation interest is so important, in Merton’s view, that society’s systems of priority in discovery are designed to protect this interest.

All in all, the evidence suggests that inventors’ typical personhood and labor interests in their inventions are qualitatively similar to those characteristic of authors in their artistic works. However, some notable differences appear between the two, particularly based on inventions’ functionality, a quality not necessary for artistic works. Therefore, inventors’ personhood interests might easily deform to accommodate functionality.

Given the importance to authors and inventors of their personhood and labor interests in their creative works, copyright and patent laws advance their utilitarian goals when they incorporate this significance into the incentives they offer to creators. By providing incentives that express solicitude for and effectuate creators’ moral rights—something critical to them—copyright and patent laws can provide a strong incentive to creators to make socially valuable works. Drawing on a rich legal literature on the interaction of law and norms and expressive theories of law, I call the ways in which copyright and patent law can protect creators’ labor and personhood interests and employ rhetoric communicating concern for these interests “expressive incentives.” The law’s careful use of expressive incentives can bolster the utilitarian inducement to create valuable intellectual property. This particular marriage of the utilitarian and moral-rights theories in

the use of expressive incentives has been under-theorized, if not overlooked, as a valuable arrow in intellectual property’s quiver. When scholars have explored incentives in intellectual property, they have not looked much beyond offering pecuniary incentives to appreciate that utilitarian incentives can be expressive as well. I ground the notion of expressive incentives in intellectual property in the analogous philosophical issue of the possibility of rights in utilitarian systems.

I approach this broadening of incentive possibilities from the utilitarian position, which is concerned with promoting society’s cultural, technological, and scientific progress at a minimal cost to society, through limited grants to authors and inventors of rights in their works. By complicating the conceptual landscape of intellectual property incentives to include expressive incentives, this article seeks to open another line of inquiry into the optimal structure of incentives. For society’s benefit, intellectual property utilitarians seek to award the least incentive possible in exchange for a requisite degree of valuable artistic, scientific, and technological creation. Expressive incentives are likely to assist utilitarians in this quest. Many might be relatively cost-free for society to provide but are very valuable to creators themselves, thereby enhancing the intellectual property incentive at little loss to society at large. In fact, it is plausible that, to secure expressive incentives, individual creators would be willing to relinquish some traditional pecuniary incentives that are costly for society to provide. Expressive interests, however, ought to be protected only when the utilitarian analysis indicates that the benefits of doing so exceed the costs. Moral-rights interests ought to yield to the utilitarian calculus whenever there is a conflict between the two, largely because extensive protection of moral rights is likely to harm society’s cultural, scientific, and technological progress.

I examine areas in American copyright and patent laws in which expressive incentives already seem to be at work. This discussion is tentatively normative. Some areas seem to be promising ones for employment of robust expressive incentives, such as: attribution; copyright’s structure of duration, right of reversion, and originality requirement; and patent’s former first-to-invent rule and written-description requirement. Current copyright and patent laws already employ such incentives in these areas, but their current form is typically anemic.

Perhaps the most promising expressive incentive is a right attributing a protected work to its creators. A work’s attribution to its creators can be an expressive incentive for two reasons, both related to personhood interests. First, attribution can bolster an author’s or inventor’s reputation. Attribution makes it easy to broadcast a creator’s involvement, enabling the public to give kudos to the creator. A strongly positive reputation can provide the creator with financial rewards, such as increased professional opportunities and a higher salary. In this sense, providing attribution to creators is nothing more than a traditional pecuniary incentive. Yet attribution can also be expressive. By bolstering a creator’s reputation, attribution expresses the creator’s central value to his or her work. Just as Robert Merton observed with regard to eponymy in scientific theories, attribution rewards the creator with reputational gain, something important to the creator in having created the work.

Attribution can also serve as an expressive incentive in another way. In a visible way, it establishes a link between the creator and the creator’s work. By doing so, it concretizes the personhood interest creators have in viewing their creations as strong components of their self-concept. Even if the creator ends up having no rights to control the work’s use, attribution retains for the creator this visible link.

By contrast, providing forceful, expressive incentives in other areas of the law, such as integrity, adaptation, and restraints on creators’ alienation of their rights, is likely to be problematic in light of the overall utilitarian goals of copyright and patent law. Take adaptation. Authors and artists often have strong feelings of integrity with regard to their works. They will often be worried about the changes that might be made to physical copies of the work they have distributed as well. Moreover, they also might be concerned with others making adaptations or other uses of their work, even when these adaptations or uses do not affect the physical copies of their work. By comparison, even though inventors might have similar feelings, their integrity is less likely to be at risk because changing an invention—either physically or conceptually—in some way might make it stop functioning. That said, inventors frequently seek to make improvements to others’ inventions by building upon them conceptually. Despite authors’ frequently strong interests in integrity, there is a critical countervailing societal interest



in allowing subsequent authors' modifications, destructions, and adaptations of existing creations to create further art. Any diminishment in such modifications or adaptations has an impact on those in society who would possess and enjoy such works. Thus, even though a robust right of integrity to authors might serve as a strong expressive incentive, it is likely to be inadvisable due to the intense expressive and other costs it might impose on society and its cultural progress.

Further work is important to shed light on the precise ways in which incentives either enhance or weaken creators' creative output and on the costs and benefits that various incentives might impose on society at large. In carrying out future work, it is important to keep in mind that the set of authors and inventors is heterogeneous. Some creation happens with individuals working alone; other creation happens in firms. Some creators need pecuniary incentives to create; others might care more about expressive incentives. Some creators are attentive to the extent of exclusive rights that patent and copyright law provide; others are happy to do no more than list the patents they have received on their curriculum vitae.

As such, in reconceptualizing the role of incentives in intellectual property, it might be sensible to provide creators with a menu of incentive packages from which to choose as to the extent of their protection. For example, one incentive package might be heavily pecuniary with little expressive reward, another might be principally expressive with little pecuniary incentive (such as attribution), and another might be a tempered mix of the two. In an ideal world, each incentive package would be carefully calibrated to offer maximal societal benefits at minimal cost. Creators—presumably knowing what they need—can then choose the incentive package that best fits their needs, thereby maximizing the utility of the incentive.

It is the hope that this article can launch a conversation—both theoretical and empirical—on establishing the ideal mix of expressive and pecuniary incentives to maximize their roles in the American utilitarian intellectual property system. □

Professor of Law **JEANNE FROMER** specializes in intellectual property and information law, with particular emphasis on unified theories of copyright and patent law. This excerpt is adapted from an article of the same title published in the December 2012 Virginia Law Review.

Antitrust Courts: Specialists v. Generalists

DOUGLAS GINSBURG finds commonly raised objections to specialist tribunals surmountable—even elegantly so.

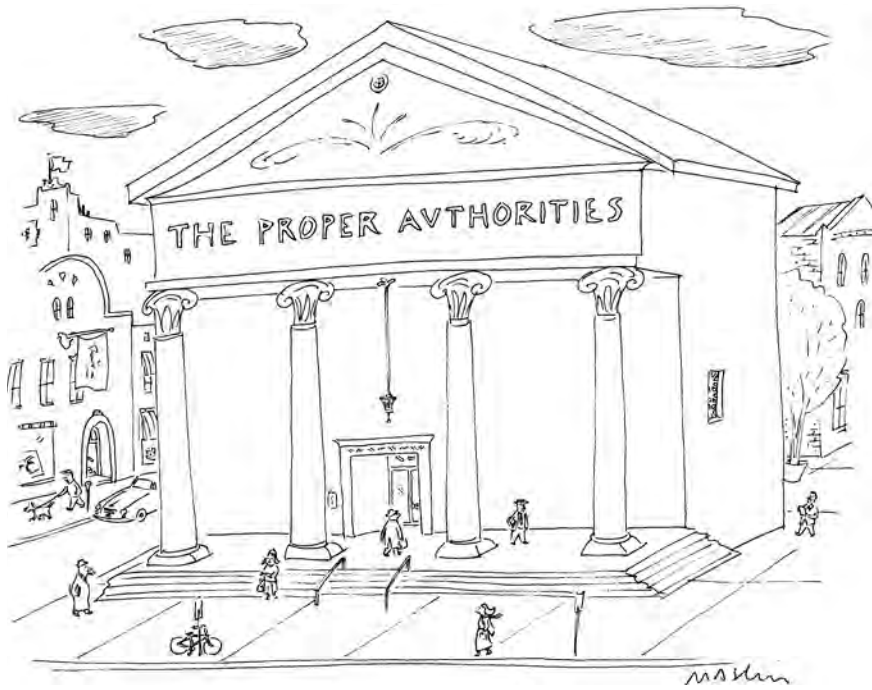


IN THE LAST SEVERAL DECADES, scores of new competition laws have been adopted and National Competition Authorities (NCAs) established around the world. In every instance of which we are aware, a decision of the NCA is subject to judicial review. The path to review varies, as does the destination. The reviewing court may be a court of general jurisdiction or a tribunal that specializes in the review of NCA decisions. In countries that provide a private right of action for an antitrust violation, again a generalist or a specialist court may hear the matter in the first instance and/or on appeal.

Specialization can take any of several forms, so it is best seen as a matter of degree, depending upon both the percentage of a court's cases (or workload) arising under the antitrust laws and the degree to which the judges of a court have skills or training specific to antitrust.

At one end of the spectrum are the entirely generalist federal courts of the United States, such as the 12 circuit courts

of appeals, which review the decisions of the Federal Trade Commission (FTC) and, in private cases, the judgments of the federal trial courts; in none of the appellate courts do antitrust cases account for even one percent of the total. A somewhat more specialized model can be found in some countries, such as Portugal, where (from 2008 until the creation in 2012 of a single antitrust court) the review of NCA decisions had been vested in the commercial section of the geographically competent general court. Another variation appears in France, where all challenges to the decision of the NCA are referred to a particular chamber of the Paris Court of Appeals that hears other types of cases as well. A still more specialized model puts review of the NCA's decision in a "business" or "commercial" court, such as the Market Court in Finland or Chamber 13 of the Council of State in Turkey. A bit further along the spectrum are courts that specialize in reviewing economic regulatory decisions, such as the Competition Appeals Tribunal in the United Kingdom, which reviews decisions of



the NCA and of various sectoral regulators. Finally, there are courts, such as the Competition Appellate Tribunal of India, that review decisions of the NCA alone. In addition, informal or “opinion” specialization by a particular panel or judge is yet another possibility.

No matter what the arrangement for initial review of the NCA decision or review of a trial court in a private action, there is always an upper-level reviewing court of general jurisdiction, whether mandatory or discretionary. Few antitrust cases, however, reach that level in any jurisdiction except the European Union.

In addition to the antitrust share of a reviewing court’s total docket, another important dimension is the specialized human capital it brings to bear. For example, the specialized tribunals in Canada and the United Kingdom may, variously, include on a three-judge panel one or two lay members expert in industrial organization economics or public affairs, or with relevant business experience. In this way, the mix of skills among the judges may be tailored to the needs of each particular case.

The proliferation of tribunals reviewing NCA decisions invites inquiry as to whether one degree or another of specialization provides more satisfactory results, however measured. We set out to investigate what has made for a more or less successful institutional design using economic sophistication as our criterion of success. As it turned out, however, there were not enough decisions dealing with common issues for one to identify

empirical relationships between court design and economic sophistication or any other measure of performance. In part, the paucity of data reflects the short time since many NCAs were established or since a specialist tribunal was created to review the decisions of a preexisting NCA.

With our preferred research path blocked, we were remitted to evaluating the case for specialist versus generalist tribunals by reference to criteria that have been widely accepted in the legal and political science literature evaluating actual or proposed specialized courts, and to applying those criteria to the particular context of antitrust cases.

The conventional claims of benefit from specialized courts are three: 1. efficiency, meaning simply outputs per unit of inputs; 2. subject matter expertise, a proxy for the quality of judicial decisions, which is subjective and difficult to measure; and 3. uniformity, meaning consistency of decisions over time and space within a jurisdiction. Because these three putative virtues of specialization need not correlate with ideological shifts in substantive policy, they are sometimes referred to in the literature as the “neutral virtues.” We consider each with particular attention to how it might apply to antitrust cases.

I. EFFICIENCY

Efficiency is an objective function measuring the rate at which judicial decisions are produced from judicial resources. The argument that a specialist tribunal is more efficient for handling any particular type of case has an undeniable

appeal but remains speculative. There are many specialized courts around the world and in the US, but there is no empirical foundation for the proposition that specialist courts are more efficient than generalists in the production of judgments. Even as simplistic a metric as the time it takes for a specialist versus a generalist court to dispose of comparable claims remains undocumented.

With respect to a specialist court for the trial or appeal of antitrust cases, we do think it reasonable to believe at least that a judge with experience in the subject matter will be quicker to recognize a claim that should be dismissed early on or an argument on appeal that can quickly be put to the sword. This may be true in any field of law, but the point probably has more heft applied to antitrust than to most fields because economic evidence is central to the merits of almost all antitrust cases. The ability early on to spot a gap in either a party’s economic reasoning or its factual allegations is surely improved by frequent exposure to recurring economic issues and evidence.

Efficiency specifically in reviewing the decisions of an NCA is also likely gained with experience. A judge who reviews the decisions of an administrative agency that regulates a complex field of economic activity, whether sectoral or, as with antitrust, economy-wide, becomes familiar with the regulatory scheme overall and sees more quickly how a case fits into the relevant statutory framework or body of precedent.

II. UNIFORMITY

If a single judge in a court of first instance or a single court of appeals has a monopoly on a type of case, then there is no possibility that the outcome of a particular case depends upon “the luck of the draw,” i.e., the particular judge(s) to whom the case is assigned. The monopoly also facilitates business planning and precludes forum shopping. At the trial level, however, no one judge could possibly hear all the antitrust cases filed in a jurisdiction that allows private antitrust suits or requires its NCA to bring enforcement cases to a court of first instance, as the US Department of Justice must do. A multiplicity of trial judges is therefore inevitable.

Non-uniformity of the decisions made in the first instance may be eliminated retrospectively by a court of appeals with a monopoly over the subject matter. Concentrating all cases of a particular type in a single appellate forum also conserves the resources of the higher (generalist,

often supreme) court for review of the most important issues rather than the resolution of conflicts among the lower courts.

Achieving uniformity without resort to the highest court is not entirely costless. As Judge Richard Posner has pointed out, an appellate court with a monopoly over a subject matter deprives the supreme court of “the benefit of competing judicial answers to choose among when deciding questions within the domain of the specialized court.” That is true at least in civil law jurisdictions, where the courts do not publish dissenting opinions that may also provide competing judicial answers. In any event, it is customary for common law courts, including supreme courts, to rely upon adversarial presentations and, increasingly, upon amicus briefs.

Still, we think the advantages of uniformity outweigh the drawback hypothesized by Judge Posner. There are, however, other weightier drawbacks to be considered before concluding a specialist tribunal is a superior forum, as he and others have emphasized.

III. EXPERTISE

In determining whether a specialist tribunal is likely to bring greater expertise to its decision making, one should distinguish between technical facility and the substantive change in the law that may ensue from having specialists with established views deciding cases. By technical facility we mean substantively neutral improvement in the quality of decisions, as reflected in their clarity and logical rigor. An expert in antitrust likely will bring to bear a more accurate and a more sophisticated use of the specialized legal terminology and economic concepts peculiar to antitrust cases than would a generalist.

There appears to be broad support within the US antitrust bar for the view that generalist courts suffer from their lack of antitrust expertise. The Antitrust Section of the American Bar Association created a Task Force on Economic Evidence, comprising prominent antitrust economists, lawyers, and academics and a federal trial judge, to study the role of economic evidence in federal court. Their survey of antitrust economists revealed that only 24 percent believe judges “usually” understand the economic issues in a case. Similar views are shared in other jurisdictions, as the International Competition Network found in a survey of competition authorities in seven countries, noting that “all countries but one reaffirm that lack of specialized knowledge on competition issues by the judiciary is

an important issue affecting competition policy implementation.” (The debate over an expansive interpretation of the FTC’s authority under Section 5 of the FTC Act to prohibit “unfair methods of competition” also hinges upon whether the FTC’s expertise renders it better situated to evaluate the economic evidence.)

At the same time, a specialist is likely to have—either before or after becoming a judge—a particular outlook on substantive antitrust issues. To the extent that any field of law is contested by different schools of thought, the selection of a specialist to sit on a specialist tribunal will be more controversial than is the appointment of a judge to a court of general jurisdiction because special interest groups will have more at stake.

In recent decades, improvements in empirical economics and the increased diffusion of technical economic skills among both theorists and practitioners have narrowed the gap between schools of antitrust thinking. For example, there is now widespread agreement about the diminished relevance of market definition and market structure in inferring competitive effects, and that resale price maintenance is efficient more often than not. Still, there remain areas in which fundamentally different views can affect the outcome of a case: How likely are exclusionary practices to harm competition? Is price predation a significant threat in view of the likelihood of entry? Does the promise of acquiring static market power lead to more rapid innovation? Because there are such important issues over which reasonable judges may disagree, a specialist court, for all its expertise, may be or at least appear to be more subject to political influences (as explained below) than is a generalist court.

A. SELECTION BIAS

In the case of a specialist antitrust tribunal, the groups with the most at stake will be the NCA and the organized antitrust bar that practices before either the NCA or the specialist court that reviews decisions of the NCA. The interested parties might also include consumer organizations and various confederations of business, both general and those specific to industries facing frequent antitrust claims. None of these interest groups ordinarily speaks out for or against the appointment of a judge to a generalist court.

Although it is reasonable to expect special interests will try to influence the selection of specialist judges, evidence of their efforts is hard to come by because

their influence ordinarily must be exerted through private channels to the government officials who will make or block the appointment. An interested party—particularly the NCA and the antitrust bar—would not publicly oppose a possible appointee lest its effort fail and it must then appear in court before the new judge.

The need for access to political officials inevitably gives an advantage to the NCA as an arm of the government. There is at least some evidence that specialist tribunals, often established to hear a type of case to which the government is usually a party, are more favorable to the government’s interests. This bias may be less pronounced in an antitrust jurisdiction where there are many private suits—such as in the US, where the NCAs bring fewer than 25 percent of all antitrust cases—but in the great majority of jurisdictions there are few or no private antitrust actions. To the extent that courts already indulge administrative decisions with a lenient standard of review and place the burden of persuasion upon the regulated party, any additional bias in favor of the NCA would deprive the public of a meaningful check upon the agency. Unless this potential for pro-government bias can be avoided, as we suggest in Part IV that it can be, a specialized antitrust court does not seem to be an attractive proposition.

B. LOSS OF PERSPECTIVE

There is another likely source of bias, more subtle than that arising from the appointment or cultivation of specialist judges, one that may with the passage of time affect even the most neutral appointee: Judges, perhaps even more than most people, would like to think the work they do is important beyond the salary it brings them. A judge newly appointed to a specialist antitrust court might conceivably think it important to confine the scope of antitrust law at every turn, but it is more reasonable to expect all but the most curmudgeonly judge will come to believe antitrust is a worthwhile project, to be preserved and perfected, even if the NCA must occasionally be reminded of its limitations. The more typical judge specializing in antitrust will likely take an expansive view of the subject, one that will bring to the court a continuous flow of interesting issues.

There is also a plausible concern that specialists are inherently less desirable than generalist judges precisely because of their expertise. Whereas the specialist brings to the court a depth of knowledge about the subject that enables the judge

immediately to place a new issue in its evolutionary context and hence to grasp its significance beyond the case at hand—especially in the more path-dependent common law—generalists by definition have a breadth of experience upon which to draw. Judge Diane Wood makes the point specific to antitrust:

If one never emerges from the world of antitrust, to take one field that I know well, one can lose sight of the broader goals that lie behind this area of law; one can forget the ways in which it relates to other fields of law like business torts, breaches of contract, and consumer protection, and more broadly the way this law fits into the loose industrial policy of the United States.

Indeed, exposure to other areas of the law may give the generalist insights unavailable to a specialist but nonetheless helpful in penetrating an argument or seeing an issue in a broader context, perhaps one that implicates the limitations of government institutions. If, for example, regulators generally display certain systematic biases, such as excessive risk aversion or a tendency toward mission creep, so too may competition authorities, but that would be less likely apparent to the judge who sees only the handiwork of a single agency. Therefore, replacing a generalist court with a specialized court may entail trading a lower rate of error for a higher degree of bias, as illustrated in the graph below, right.

Historically, special courts have been proposed to remove from generalist courts the burden associated with some type of case, such as claims for social security, that are heard in large numbers but are typically rather simple. The idea is to free up resources so the generalist courts can devote more time to each of their remaining cases. The caseload of any specialized court, however, is going to be more volatile than that of a court with broad jurisdiction, making it more difficult to match the supply of and demand for specialized judicial services.

Another objection is that difficult boundary questions may arise whenever there is a specialist court the subject matter of which may arise as a defense in a court of general jurisdiction. Where there is a special court for the review of antitrust cases and another special court for the resolution of intellectual property disputes, as there now is in Portugal, the boundary problem might arise when the defendant in the antitrust matter interposes its patent as a

defense to antitrust liability; similarly, a contract or other action brought in a court of general jurisdiction may be met with an antitrust defense. The boundary problem could be mitigated by legislation assigning both antitrust and patent law to a single semi-specialized court, which would then be able to work out the relationship between the two bodies of law as applied in particular cases.

IV. SYNTHESIS

To review, the principle drawbacks associated with a specialized competition court are two. First, the selection of judges for the specialist tribunal may be unduly influenced by one or another repeat player, such as the NCA or the defense bar, each seeking to turn the specialized court into a friendly forum. Second, a court specializing in antitrust risks losing the broad perspective of the generalist judge, who approaches the occasional antitrust case usefully informed by knowledge of other areas of the law. The outstanding question is whether sparks jump from one field of law to another, as the generalist judge moves across subject matters, frequently enough to warrant sacrificing the greater depth a specialist brings to the adjudication of antitrust cases.

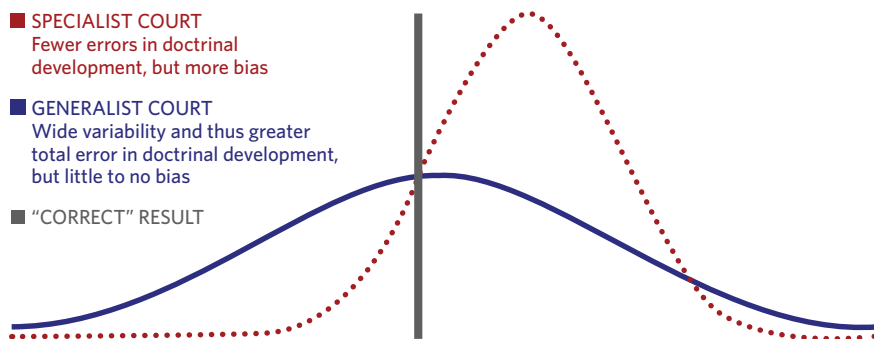
We believe the drawbacks associated with having a specialist court for the resolution of antitrust cases can be met, perhaps entirely, by proper institutional design: The specialist court should be staffed by judges drawn from generalist courts for only a limited term of years and only as needed by the workload of the specialist tribunal. This elegantly simple solution has been used in the United Kingdom (Competition Appeals Tribunal), Canada (Competition Tribunal), and the United States. Modern US examples include the Temporary Emergency Court of Appeals and the Foreign Intelligence Surveillance Court and its associated special Court of Appeals.

In the US examples, the selection of the particular judges to serve on the specialist courts has been left to the Chief

Justice, sometimes providing the appointment is for a fixed term and prohibiting reappointment. In this way, generalist judges who had accumulated experience with the range of matters that come to a federal court would spend the plurality if not the majority of their time upon a single type of case, after which they would return full time to their previous role. The result should be to benefit the specialist court with the insights brought by a generalist judge who, while acquiring expertise in the subject matter of the specialist court, would not be a captive of the particular legal subculture of that court's specialty.

By deputing the Chief Justice to choose generalist judges to serve on a specialist competition court for a limited time, the problem of pressure groups influencing the choice of judges would disappear. Judges would continue to be selected for their qualifications as generalists, and the slight chance that a particular prospective judge might in the future serve on the antitrust court would be insufficient reason to expend resources to further or oppose his or her selection for a court of general jurisdiction. During the time of the judge's incumbency on the specialist court, there would no doubt be efforts by the NCA and by the organized bar to ingratiate themselves with the judge, but the limited term of special service and the certainty of returning full time to a court of general jurisdiction would both mitigate the judge's susceptibility to influence and diminish the return on, and therefore the supply of, efforts to influence the judge during his sojourn on the specialist court.

This institutional arrangement would also overcome the objection based upon the greater degree of volatility in the caseload of a specialized court. The Chief Justice could appoint more judges when the special court's docket grew, and could refrain from filling vacancies as that court's docket contracted. Indeed, in a slack period judges would simply sit more in the "home" courts.



The expertise of specialist judges chosen in this way from a pool of generalist judges would not, particularly at the outset of their service, be as well developed as that of a lawyer who comes to the bench after some years of having practiced antitrust law. Even supposing, however, that it takes two or three years to achieve the level of expertise that a seasoned practitioner would bring to bear on day one, the result would still be to elevate considerably the average degree of expertise on a panel of three appellate judges. A trial judge hearing mostly antitrust cases would likely adapt even more quickly and would of course be subject to correction by a still more expert court of review.

Unlike specialists chosen solely to serve a term of years on a specialist court, generalist judges diverted mid-career for a five-year stint on the antitrust court would be secure in their life tenure and certain of returning to their generalist courts for the remainder of their careers. In contrast, the inevitability of a specialist going (or returning) to a specialized practice after serving on the bench may well affect the judge's views on substantive legal issues; at the least, he or she may not want to make decisions that impair the prospects for lawyers practicing in that field.

V. CONCLUSION

The careful reader will have noticed that we make no recommendation for or against the use of a specialist court for antitrust cases where they do not already exist. Our point is more modestly that the objections commonly raised against specialist tribunals, at least as applied to antitrust cases, are not daunting, much less insurmountable. Whether all antitrust cases—or perhaps only cases seeking review of a decision of an NCA—should be singled out for resolution by a specialist court depends, therefore, entirely upon the claim that the economic evidence in such cases would be better understood and analyzed by judges who deal repeatedly with cases of the same ilk. □

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Rights and Votes

DARYL LEVINSON shows how these tools of democracy, often considered in opposition, are functionally similar.



RIGHTS AND VOTES are commonly cast in stark opposition to one another. Constitutional lawyers have long been obsessed with what they see as an inherent conflict between constitutional rights and democracy—and, at the institutional level, between judicial and legislative supremacy. Even where rights and votes are not pitted against each other, they are treated as categorically different phenomena. Disciplinary boundaries divide political and constitutional theorists—who tend to “think in terms of rights and equality”—from political scientists and election law scholars who are interested in “the organization of power.”

Yet rights and votes need not be seen as working at cross-purposes or taxonomized as deeply different kinds. At least in some settings, rights and votes might be viewed instead as compatible tools for performing the same basic job: both are used in domains of collective decision-making to protect minorities (or other vulnerable groups) from the tyranny of majorities (or other dominant social and political actors). One way of protecting a minority is to create and enforce rights against majoritarian exploitation.

Another is to structure the political process so that minorities are empowered to protect themselves. In fact, rights and votes have been viewed as functionally similar in this way in a wide array of constitutional and political contexts.

A. STRUCTURE AND RIGHTS

The division between rights and votes cuts through the middle of constitutional law. A central organizing principle of doctrine, scholarship, and curriculum is the distinction between the “structural” provisions of the Constitution, which create the institutional framework of democratic government, and the “rights” provisions, which place limits on what that government is permitted to do. The structural parts of the US Constitution—consisting primarily of the first three Articles, which constitute the three branches of the federal government—are supposed to create a framework for democratic governance. Rights provisions, such as those enumerated in the Bill of Rights, are supposed to protect individuals and minorities against majoritarian abuses perpetrated through that framework.

But the rights/structure distinction is in many ways misleading. For one thing, it obscures the fact that the Bill of Rights, as originally conceived, was as much about

protecting the political decisionmaking power of local majorities as about protecting the rights of individuals and minorities. Many of the rights it enumerated were meant not to protect against majoritarian tyranny, but, quite the opposite, to bolster majoritarian governance by placing limits on the self-serving behavior of federal officials and by safeguarding institutions of state and local self-government to insulate citizens from these officials' despotic reach. Separating structure from rights also misses the point that the original design of the Constitution relied primarily on structural arrangements to protect rights. Convinced that direct protection of constitutionally enumerated rights would be futile, the Federalist Framers, led by James Madison, attempted to secure rights indirectly, by creating a structure of government that would empower vulnerable groups to protect their interests through the political process.

Madison doubted that constitutional rights could do much to protect individuals or minorities against plunder by powerful political factions. The problem was that countermajoritarian rights could not be backed by the "dread of an appeal to any other force within the community" more powerful than the very majorities who posed the threat. On the assumption that "the political and physical power" in society were both lodged "in a majority of the people," countermajoritarian rights would simply be disregarded or overridden when push came to shove.

Madison and the other Framers decided to take a different tack. Rather than attempting to protect rights directly, they contrived a structure of government that they hoped would protect individual liberty and minority interests indirectly. This structure had several important components. Perhaps most important, shifting power to the national government of the extended Republic would bring more factions into competition with one another and therefore make it more difficult for a stable, unified majority to capture the government and tyrannize minorities. Madison made the case that "the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects." At the same time, Madison believed that federal election districts and the indirect election of senators and the president would select for representatives who would "possess most wisdom to discern, and most virtue to pursue, the common good of so-

ciety" and insulate them from the heat of majoritarian political pressure.

One obvious drawback of the Framers' structural solution to the problem of majority tyranny was that it threatened to open the door to a different kind of tyranny—perpetrated not by popular majorities but by despotic government officials, unconstrained by any kind of meaningful democratic accountability. Responding to this concern, Madison offered a further structural solution, this one focused on the branches of the federal government. Just as a multiplicity of factions would compete with and check one another in society and the electorate, Madison reasoned, competition among the branches and levels of government might create a self-enforcing check on untrustworthy national officials. Thus, Federalist No. 51 describes how the constitutional separation of powers between the legislative and executive branches invites "ambition...to counteract ambition." Here again, the idea was that the structural design of government would create politically self-sustaining protections for the rights and liberties of citizens.

Viewed in this way, as Alexander Hamilton put it, "[T]he [structural] constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS." Some decades after ratification, Madison continued to believe that "the only effectual safeguard to the rights of the minority, must be laid in such a basis and structure of the Government itself, as may afford, in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side."

B. PROTECTION FOR SLAVERY

The constitutional law and politics of slavery, from the founding through the Civil War, offers a vivid illustration of how constitutional structure was supposed to protect rights—in this case, the rights of slave owners. While it was generally accepted at the Founding that some sort of constitutional protection for slavery was a necessary condition for Southern states to join the Union, there was little inclination at the Philadelphia Convention to write explicit protections for slaveholders into the constitutional text. Madison, for one, thought it would be "wrong to admit in the Constitution the idea that there could be property in men." Southern Federalists had their own reasons for avoiding rights. Sharing Madison's theory of constitutional design, if not his moral outlook on slavery, they were convinced that "parchment guarantees for human

bondage would not restrain a Northern majority committed to abolishing slavery."

The slaveholding South preferred to stake its fortunes on the structural design of the federal government. Proportional representation in the lower house of Congress and the electoral college, bolstered by the three-fifths clause, held out the hope of eventual Southern control of the House of Representatives and the presidency. Even without majority control, Southern representatives would have sufficient power to block any national movement to do away with slavery.

Or so slaveholders were assured at the Founding. As it turned out, however, the Founding bargain over slavery reflected a major miscalculation about the demographic future of the Republic. Northerners and Southerners alike had expected faster population growth in the South than the North, but in fact the opposite turned out to be true: the relative population and political power of the North increased dramatically through the early decades of the 19th century.

Left politically vulnerable to Northern dominance over the national government, white Southerners sought additional protections for slavery. One possibility was the belated introduction of some form of a constitutional right to own slaves. In common with the Federalist Framers, however, antebellum white Southerners doubted that a national majority united against slavery would be long detained by constitutional rights. Echoing Madison, James Randolph declared, "I have no faith in parchment." In place of ineffective rights, political thought in the antebellum period focused on presumptively more effective structural defenses against abolitionist majorities. Chief among these were the "concurrent voice" or "concurrent majority" arrangements advocated by John Calhoun. Calhoun and his fellow Southern politicians advocated a number of institutional instantiations of these principles, on the model of sectional balance in the Senate. These included a proposal for a constitutional amendment creating a dual executive (comprising a Northern and a Southern president, each with veto power over national legislation), as well as similar suggestions for balancing the Supreme Court between justices from slaveholding and non-slaveholding states.

The Madisonian premise of these proposals, and of Southern political thought more generally during the antebellum period, was that institutional arrangements allocating political decisionmaking power would be more reliable guarantors

of rights than explicit prohibitions on particular political outcomes. Politicians and constitutional theorists like Calhoun clearly understood that bolstering the representation and political power of white Southerners was a means of securing the rights of slave owners, morally dubious as those rights might be.

C. VOTING RIGHTS AND CIVIL RIGHTS

On behalf of a very different group of rights-holders, Martin Luther King memorably proclaimed, “Give us the ballot, and we will no longer have to worry the federal government about our basic rights.” This prediction had a firm foundation in the post-Civil War history of race and politics in America. Political empowerment has indeed served as an important shield for African Americans against discrimination—and thus as an effective substitute for, as well as a means of securing, judicially enforced rights.

King’s position on the sufficiency of the ballot can be traced back as far as congressional debates surrounding the Reconstruction Amendments and early civil rights laws. Some argued that federal guarantee of political rights for blacks would allow them to secure civil rights through the ordinary workings of state and local political processes, without any further federal involvement. While that prediction proved overly optimistic, the enfranchisement of Southern blacks, effected by the Reconstruction Act of 1867 and the 15th Amendment, did lead to significant improvements in their civil and social status. The three Southern states that had black voting majorities at the time each enacted bans on racial segregation in public schools and accommodations. Other Southern states equalized funding for black and white schools and eliminated bans on interracial marriage. As blacks also began to serve on juries and as police officers, black citizens came to enjoy greater protection against violence and discrimination than they would experience in the South for another hundred years. All of these benefits disappeared with Redemption and the subsequent disenfranchisement of most Southern blacks in the 1880s and ’90s.

The Great Migration of blacks to the North, combined with competition for black votes between Democrats and Republicans, led to a surge in black political power at the national level in the 1930s and ’40s. This power resulted in the first important national civil rights victories since Reconstruction, including Presi-



“I guess we’ll all just have to vote a little bit harder next time.”

dent Truman’s creation of a presidential Civil Rights Commission and a Civil Rights Division within the Department of Justice, and the 1948 executive orders forbidding segregation and discrimination in the Army and the federal civil service. Had Southern blacks been voting during this period, the results could have been even more dramatic. It is entirely possible that the enfranchisement of blacks in the South after World War II would have brought about school desegregation without *Brown v. Board of Education*.

In reality, it was only after the enactment of the 1965 Voting Rights Act that blacks in the Deep South began voting in large numbers. The predictable consequences included improvements in municipal services and employment for blacks, a decline in discriminatory law enforcement, and the enactment of antidiscrimination legislation. Indeed, the causal relationship between black political power and protection against discrimination has become a central theme in the judicial implementation and scholarly assessment of the Voting Rights Act. Starting with, and partly motivating, its earliest forays into the “political thicket,” the Court has viewed voting rights as special because they are “preservative of other basic civil and political rights.” Even as the Court has retreated to a narrower and more intrinsic focus on electing black representatives, as opposed to protecting and advancing the interests of black citizens, scholars have continued to emphasize the “protective” power of voting rights for minorities, and cor-

respondingly to invoke Martin Luther King’s vision of political representation as the key to fair treatment.

D. COMPARATIVE CONSTITUTIONAL DESIGN

The choice between protecting minorities through political empowerment or through rights arises in constitutional systems beyond the United States. In societies divided by enduring sociopolitical conflicts between or among ethnic or religious groups, unfettered control over government by one or more groups can create unacceptable risks of domination and discrimination for those left in the minority. One solution, foremost in the minds of comparative constitutional lawyers, is to adopt bills of rights and judicial review as checks on political power. Another solution, foremost in the minds of comparative politics scholars, is to give vulnerable groups enough political power to protect themselves through the ordinary processes of democratic decisionmaking.

The latter approach is exemplified by the theory and practice of consociational democracy. The consociational model features institutionalized power-sharing among the major groups through arrangements like grand coalition cabinets, proportional representation in the legislature, and mutual veto power over important decisions. In its emphasis on avoiding “majority dictatorship” by empowering minorities to block government actions that threaten their fundamental interests, the consociational approach is similar to Calhoun’s concurrent voice. Other structur-

ally oriented approaches to constitutional engineering in divided societies counsel different strategies, but all share the basic approach of protecting vulnerable groups by giving them greater voice in political decisionmaking.

For a glimpse at how consociational and similar strategies might compare to, and trade off with, protecting minorities through rights, consider the choices facing South Africa in designing its post-apartheid constitution. Under domestic and international pressure in the late 1980s and early 1990s, South Africa's politically, militarily, and economically dominant white elite began the process of sharing power with the previously excluded black African majority. But South African whites had no intention of creating a system of unfettered black majority rule. Prime Minister F. W. de Klerk and the ruling National Party (NP) pursued two strategies in an attempt to protect white privilege against impending democracy.

The first strategy was to advocate for a power-sharing political structure. De Klerk proposed a number of institutional features based on the consociational model, ranging from a presidency that would rotate between white and non-white leaders to consensus requirements among the major political parties for all important decisions—in effect, a white minority veto. The 1993 interim constitution did, in fact, provide for power-sharing between the NP and Nelson Mandela's African National Congress (ANC) in the executive by way of a “government of national unity.” Ultimately, however, an essentially majoritarian democratic system won out, giving the ANC effective political control over the country.

Confronted with the inevitability of black majority rule, the NP turned to a second strategy to protect their interests: rights and judicial review. Throughout the long history of apartheid, white elites had been hostile to the idea of judicially enforced rights, dismissing them as inconsistent with the communitarian nature of the South African state. But the prospect of permanent minority status prompted the NP to reconsider. The NP began to take the position that constitutional rights and an independent judiciary to enforce them were necessary checks on the “dictatorship of a democratic majority.” The ANC initially opposed a judicially enforceable bill of rights, viewing it as a likely means of entrenching the “property, privileges, power and positions of the white minority”—a veritable “Bill of Whites.” Ultimately, however, the ANC's opposition

softened and rights became a central feature of the constitution. The 1996 constitution establishes a Constitutional Court with the power of judicial review and contains an extensive bill of rights—one that begins by declaring itself a “cornerstone of democracy in South Africa.”

E. CORPORATE LAW

Threats to individual and minority interests stemming from collective decisionmaking processes are hardly limited to political and constitutional contexts. Similar uses of and trade-offs between rights and votes—or their functional equivalents—are evident in private organizations, such as corporations. Like constitutional law, corporate law in the United States and other countries relies on two basic strategies for protecting vulnerable groups. In the corporate context, such groups include both shareholders as a class, who must be protected against their managerial representatives, and minority shareholders, who must be protected against their majority brethren.

One approach taken by corporate law, analogous to “structural” constitutionalism and to voting and representation-based strategies more generally, is to give shareholders direct or representative voice in corporate decisionmaking. Just as the constitutional institution of electoral democracy is the primary mechanism through which citizens control their representatives in government, electoral selection of directors is the primary mechanism through which corporate shareholders as a class exercise control over managerial decisionmaking. Ratification requirements for high-stakes corporate decisions (like mergers and charter amendments) give shareholders additional voting power.

These voting and representational mechanisms generally operate to enhance the power of shareholder majorities over their managerial agents, but they are also modified in ways that reduce the power of majorities in order to protect minorities. Mandatory cumulative voting, which facilitates board representation for minority shareholders, was once a common feature of US corporate law and still survives in several states. Every US jurisdiction demands a supermajority vote for corporate decisions that require shareholder ratification—effectively empowering large minorities to block action. Conflicted transactions between controlling shareholders and the corporation typically require the informed approval of minority shareholders. All of these

voting and approval mechanisms directly increase the voice of minority shareholders in the corporate decisionmaking process. The role of independent directors in corporate decisionmaking can be understood as indirectly serving the same purpose, on the theory that relatively insulated directors are more likely to be evenhanded and attentive to minority interests than are the controlling shareholders who appointed them. (Compare Madison's hope that federal representatives would “refine and enlarge” the views of the majorities who elected them, to the benefit of minorities and individual rights-holders.)

The other main strategy in corporate law for protecting vulnerable shareholders is to prohibit particular corporate decisions or transactions that are adverse to their interests—in other words, to grant them rights. Beyond the weak duty of care that applies to all decisions by corporate officers and directors, the heightened duty of loyalty protects shareholders as a class against self-dealing and other forms of self-interested behavior by managers and directors. Judicial review of anti-takeover tactics likewise serves to guard shareholders against self-serving behavior by their managerial agents. Rights-like rules are also used to protect minority shareholders against majoritarian exploitation. Pro rata requirements forbid the discriminatory treatment of minority shareholders in the distribution of dividends or the repurchase of shares, and appraisal rights provide comparable protection in the context of cash-out mergers. Courts defend minority shareholders against various other forms of discrimination at the hands of controlling shareholders by scrutinizing potentially threatening transactions for “entire fairness” or for breach of fiduciary duties.

Of course, legal entitlements to representation and rights-like prohibitions or requirements are not the only means of protecting shareholders. An important distinction between corporate and constitutional law is the existence of market constraints on managerial and majoritarian misconduct. Nonetheless, rights and votes remain important, and functionally interchangeable, means of protecting shareholders against managers and against one another. □

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Student Scholarship

Driving Toward Equality: Responses to Auto-Loan Discrimination



YAN CAO '13

THE CENTER for Responsible Lending has described car ownership in America as “not merely a luxury, but a prerequisite to opportunity.” Yet the financing that many families need to buy a vehicle, and thus gain improved mobility and opportunity, is offered on racially discriminatory terms. In May 2010, the National Consumer Law Center released a report showing “widespread racial disparities, *unrelated to credit risk*, in the markups added by auto dealers to auto loan rates [emphasis added].” In every region of the United States, black consumers were paying average markups that were at least 130 percent what white consumers with similar income levels and credit

histories were paying. Six states, including New York, showed black-over-white markup disparities of over 300 percent.

Good credit is no protection from race-based markups. Ford Motor Credit Company’s largest markup in a 10-year period, constituting over 200 percent of the total risk-based APR, was charged to a black customer with the highest level of creditworthiness. Even after a settlement imposed a strict tiered system for credit-based markups, Nissan Motors Acceptance Corporation (NMAC) bumped black consumers to lower credit tiers than the tiers for which they qualified at twice the rate that white consumers were bumped so that higher APRs could be charged.

The Equal Credit Opportunity Act (ECOA) attempted to close the lending

gap by prohibiting loan discrimination with respect to protected classes. In 2002, plaintiffs brought the first ECOA cases to challenge race-based discrimination in the auto-lending industry. But, a decade later, plaintiff-driven litigation has died out without producing effective solutions.

I argue that government enforcement of ECOA is needed to address widespread race-based discrimination in auto-lending. First, I explore why market competition has failed to correct for race-based discrimination. Next, I analyze the doctrinal applicability and practical limitations of ECOA litigation. Finally, I compare the results of private class actions and public enforcement cases, and conclude that public enforcement is needed to develop more robust solutions.

PEEKING UNDER THE HOOD OF THE AUTO-FINANCE MARKET

Market forces have not been able to correct for anti-competitive race-based discrimination in the auto loan market. Consumers haggle hard over sticker price but most don’t know that dealerships make much of their profit by brokering debt through the Finance and Insurance (F&I) Office. In a typical sale, the F&I agent collects credit data from the consumer and shops that data to various Auto Finance Companies (AFCs). The AFCs then return a “buy rate”—an objective risk-based APR which reflects the cost of lending to that customer. The dealer may offer the customer the buy rate or add a discretionary markup.

Although race-based markups are technically illegal, one subprime lender testified in a mortgage case that if a customer “appeared uneducated, inarticulate, [or] was a minority” she would try to smuggle extra costs into his or her loan. As former Supreme Court Justice John Paul Stevens wrote of discretionary sentencing guidelines, in the auto-loan market “discretion and discrimination travel together.”

In *The Economics of Discrimination*, economist Gary Becker argues that non-discriminating firms will prevail through free-market competition. However, his model does not explain the continuing race-based discrimination in auto lending. A trio of market failures contribute to this problem.

First, dealers price gouge because, as with a cartel, so long as everyone charges anti-competitive prices to minority customers, each dealer can reap higher profits. In a recent article, law professor and economist Ian Ayres argues that dealers charge black customers more because

they believe that black consumers have higher search costs and worse alternatives than white consumers do. This differential may reach back to historic practices such as redlining, where lenders refused to serve minority communities. Now, the mere perception by dealers that black customers have fewer and worse choices is enough to perpetuate a self-fulfilling prophecy of continuing price discrimination.

If one dealership wanted to undercut competitors by offering fair rates to minority customers, it would face a second problem: informing the buyer. Most car buyers see the F&I officer as their loan agent and do not know that they can negotiate rates, much less that dealers can make discretionary markups. To advertise competitive loan prices to black customers, a dealership would have to reveal that F&I officers work at cross-purposes with their customers. Publicizing this information may not be desirable or cost effective, given the relatively low percentage of black consumers in the overall auto market.

Additionally, the opacity of the loan market further enables price gouging. Loans are highly individualized and based on sensitive personal information, making consumers unlikely to share or compare prices. As NYU Law's Oren Bar-Gill and now-Senator Elizabeth Warren argue in "Making Credit Safer," for the average consumer, full information is not worth its cost in time. Black consumers face even steeper information costs: controlled experiments show that black consumers must spend more time bargaining with dealers to get pricing information that dealers more readily disclose to white consumers.

Finally, AFCs could limit dealers' discretion to add discriminatory markups. But they are locked into a collective action problem: each AFC claims that it cannot act because dealers would simply cut ties and sell loans to competitors with less restrictive terms. Although they hold the purse strings, AFCs are unwilling to bear that risk.

THE NUTS AND BOLTS OF ECOA

ECOA mandates that "[i]t shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction...on the basis of race, color, religion, national origin, sex or marital status, or age." Regulation B invokes legislative history to allow an "effects test" or disparate impact model for proving discrimination.

Plaintiffs have argued that AFCs violate ECOA because their policy of allowing dealers to discretionarily mark up loans adversely impacts minority consumers. By showing that race-based disparities in markups exist even after controlling for objective factors like creditworthiness, plaintiffs have argued that discretion is a policy that produces discrimination.

A discretion-based disparate impact proof model offers two main advantages over a disparate treatment model. First, as a matter of aggregation, disparate impact allows cases to reach AFCs and aggregate a nationwide pool of loans. Under a disparate treatment model, only loans coming from the same dealership could be aggregated, and litigation costs would likely exceed potential awards. Second, disparate impact solves a problem of proof. Since lending decisions are based on many variables, it is difficult to prove that a particular plaintiff was charged a markup because of race, and not because of other factors such as appearance, negotiating style, or type of car selected. In disparate impact cases, plaintiffs do not need to prove discriminatory intent. Courts look at aggregated outcomes, not simply individual motivations. If private litigation is to address the problem of discriminatory markups, it must proceed according to a disparate impact theory of litigation.

GREASING THE WHEELS TOWARD EFFECTIVE ENFORCEMENT

Comparing settlements from private and public ECOA enforcement actions illustrates possible benefits of government intervention in the auto-loan market. In private settlements the majority of the award goes to attorneys' fees (\$2 - \$10.6 million), while a smaller sum is directed toward consumer programs (\$150,000 - \$2 million), and an even smaller amount, if anything, goes to compensate named representatives who were victims of discrimination (\$0 - \$170,000). Many of the private settlements have non-monetary programmatic features, including caps on future dealer markups. Markup caps narrow the range of dealer discretion, but, as illustrated by the NMAC example in the introduction, discrimination continues.

Furthermore, since 2007, the plaintiffs' bar has stopped bringing these cases. Procedural hurdles made these cases more difficult: standing requirements were enforced to preclude participation by impact litigation organizations, pleading standards have been heightened, class certification requirements are more difficult to

meet in discretion-based discrimination claims, and, finally, arbitration clauses may prevent aggregation. Even as these cases have become more risky, the deepest pockets have already been emptied by early settlements. Remaining claims may be too small to be worth the rising risk and cost of litigation.

While government enforcement faces many of the same procedural hurdles, the cost calculus is less prohibitive and the government is better positioned to clarify the law and negotiate injunctive relief. In 2007, just as the private bar was abandoning this field of litigation, the DOJ entered the field by filing actions that differed from the private litigation in two important ways. First, it sued individual dealers, a move that private litigators have not attempted. Second, the settlements required dealers to document good faith, competitive reasons for each markup that was lower than the capped rate. By asking dealers to account for lower rather than higher markups, this settlement clause aligned equal protection with business interests. It invoked Justice Robert Jackson's maxim that "the principles...impose[d] upon a minority must be imposed generally" to provide an "effective practical guaranty against arbitrary and unreasonable" decision-making. These strategic improvements, together with the potential for government to avoid some barriers to private litigation, reach the merits on a case and clarify the law, revealing the advantages of government enforcement. □

YAN CAO became interested in predatory lending practices while working at the Consumer Financial Protection Bureau during her 1L summer. At NYU Law, she was a Root-Tilden-Kern Public Interest Scholar, Furman Academic Scholar, co-chair of the Coalition for Law and Representation, and editor-in-chief of the NYU Law Review. Through the ACLU Racial Justice Clinic, Cao also worked on *Adkins v. Morgan Stanley*, the groundbreaking mortgage discrimination suit challenging securitizers for their role in producing large-scale racial disparities wrought by sub-prime lending. This excerpt is from a work-in-progress. Cao is currently clerking for Judge J. Paul Oetken of the US District Court for the Southern District of New York. She will clerk for Judge Raymond J. Lohier '91 of the US Court of Appeals for the Second Circuit in the following term and then plans to represent borrowers in predatory and discriminatory lending cases.

The Child Paradox in First Amendment Doctrine



YOTAM BARKAI '13

IN THEORY, the First Amendment embodies lofty principles of truth, democracy, and self-determination. But the Supreme Court has created a strange tension in First Amendment doctrine by scaling back children's speech rights and deferring to schools' fear of disruption, while repeatedly striking down regulations of speech addressed to children despite the state's interest in monitoring child development. These dueling trends have created a paradox. Although First Amendment principles indicate that children's speech is more important than their access to others' speech, the doctrine errs in the wrong direction and protects speech to children more strongly than it protects children's own expression.

The Court has repeatedly rejected restrictions on children's access to sexually explicit, commercial, and violent speech. In *Ginsberg v. New York* and *FCC v. Pacifica*, the Court upheld restrictions on the sale of "girlie" magazines and on the broadcast of George Carlin's "Filthy Words" comedy routine. But in *Sable Com-*

munications v. FCC, *United States v. Playboy*, *Reno v. ACLU*, and the recent *FCC v. Fox*, the Court rejected regulations of indecent sexual material to shield children on television and on the Internet. Meanwhile, while commercial speech was once unprotected under the Amendment, the Court in *Lorillard Tobacco v. Reilly* invalidated a ban on outdoor advertising of cigarettes within a thousand feet of a school or public playground. The Court found that the regulation would "constitute nearly a complete ban" on advertising, though the impact of the regulation was in dispute. Although commercial speech theoretically receives only intermediate protection, the Court's approach was strict and inflexible. Finally, the Court has curtailed the state's ability to regulate violent video games. Because violence is fully protected expression, a regulation of violent media is invalid unless it survives strict scrutiny: It must be justified by a compelling government interest and be narrowly tailored to that interest. Using strict scrutiny, courts have consistently rejected regulations on children's access

to video games, including in the Supreme Court's recent decision in *Brown v. Entertainment Merchants Association*.

Meanwhile, courts have rejected children's claims to vindicate their own free speech rights. In *Tinker v. Des Moines Independent Community School District*, the Court affirmed students' rights to wear black armbands to protest the Vietnam War and made clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." But through *Bethel School District No. 403 v. Fraser*, *Hazelwood School District v. Kuhlmeier*, and *Morse v. Frederick*, the Court now grants wide discretion to officials to suppress speech if it is school-sponsored or lewd, or if it ambiguously promotes illegality. Decisions from the Second and Fourth Circuits have extended these doctrines even to online speech delivered outside school, at least in cases where the students targeted their school communities.

The Supreme Court today grants third parties greater rights to approach children than it grants to contributions from children, who face school discipline for even online, off-campus expression. This result is inconsistent with the three main principles underlying the First Amendment: the marketplace of ideas, democratic self-government, and autonomy and self-fulfillment.

The primary rationale for the First Amendment is the search for truth in the "marketplace of ideas." Justice Oliver Wendell Holmes wrote, "The best test of truth is the power of the thought to get itself accepted in the competition of the market."

Despite children's immaturity, some particularly astute children's opinions may be intrinsically valuable to the marketplace of ideas. More important, children's speech is instrumentally valuable by conferring intellectual and developmental benefits. By contrast, disciplining and silencing children may hurt their maturity and critical-thinking capabilities. Without speech rights, children may lack practice developing their thoughts, persuading others of their opinions, and weighing their thoughts against others, and are less likely to grow into effective adult participants in the marketplace.

Admittedly, speakers addressing children also have marketplace rights. But these rights need not extend specifically to children. Because the marketplace tests ideas for their validity, it assumes that people can distinguish truthful ideas from false ones—a task better suited for adults than for children. This theory therefore

does not provide sufficient reason to reject government regulation of speech aimed directly at children. Furthermore, social science research has linked children's exposure to cigarette advertising to increased tobacco use; associated children's access to sexually explicit content online with changes in their attitudes and behavior; and suggested a connection between media violence and real-world aggression. These studies illustrate potential countervailing costs of strong protection for speech to children and indicate that it could stunt their development rather than promote the rationality required of marketplace participants.

The second rationale for the First Amendment holds that free speech, by enabling citizens to criticize government policies and ensure government accountability, is necessary to achieve democratic self-government.

Though they are too young to vote, some children may nonetheless participate in public debate or check official misconduct. Moreover, children's free expression builds critical thinking and inquisitiveness, which promote effective government by preparing children to criticize government policies as adults. By contrast, a censored child is less likely to become an active citizen-critic engaged with public issues. Even when children's speech seems valueless, the doctrine should default to protecting children's speech in order to prevent a chilling effect. Otherwise, children may not exercise their rights to even protected speech out of fear of punishment.

Some argue that the self-government rationale requires unrestricted speech to children as well, such that they become educated voters exposed to multiple viewpoints. But the limited regulations at issue here do not risk widespread censorship. Furthermore, unfettered speech to children may have countervailing effects inconsistent with democratic values. For example, some empirical studies claim that violent video games increase aggression, which would be counterproductive for functioning government.

Under the third rationale for the First Amendment, free speech promotes individual autonomy and self-fulfillment. In the younger Justice John Marshall Harlan's words, the right of free expression "comport[s] with the premise of individual dignity and choice."

Strong speech rights further children's autonomy and dignity by boosting their maturity and self-confidence. By contrast, suppressing children's speech is likely to insult their dignity and cause resentment

and alienation, which run counter to the autonomy theory. While tobacco advertisers and video game manufacturers also have autonomy interests, those interests are minimally affected by narrow regulations allowing access to most of the population. Moreover, research has found that children's exposure to advertising increases their tobacco use and that sexual solicitations online cause feelings of insecurity. These studies further suggest that reasonable government regulations could bolster rather than impair children's autonomous decisionmaking.

Judged by these three theories, current free speech doctrine paradoxically runs counter to the policies underlying the First Amendment. The Supreme Court should therefore make two adjustments.

First, the Court should analyze narrow commercial restrictions of speech to children using a more relaxed level of scrutiny. (Expansive regulations that alter availability for adults, even if they aim to benefit children, should be subject to typical strict scrutiny.) In such cases, the stakes are high: children's development into full First Amendment participants. By contrast, regulating speech channeled directly to children is, in Justice Stephen Breyer's words, "no more than a modest restriction on expression." Relaxed scrutiny would therefore let the government protect children from potentially harmful material without dramatically curtailing adult speakers' rights.

Some argue that such speech might not be harmful or might even be beneficial, or that speakers' rights are more significant than protecting children's development. But this adjustment would address only regulations in which speech infringements are minimal, as compared with the state's substantial regulatory interests. In such circumstances, First Amendment formalism should yield to the state's rational conduct.

Second, the Court should uphold stronger speech rights for children, especially off campus, because their self-expression boosts their growth into effective First Amendment participants. Admittedly, children's expression can harm teachers and other students, particularly through harassment and "cyberbullying," and the government maintains a legitimate interest in dissuading such speech. But the *Tinker* rule—allowing student speech to be suppressed if it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school"—already allows bullying to be regulated when it substantially interferes with discipline, at least on campus.

The difficult question, then, is how to address digital speech that originates off campus but causes effects within school. One possible rule would allow schools to regulate speech only when the author has intentionally targeted the school. This rule may leave open some legitimate safety concerns. However, other doctrines provide at least partial solutions. First, the government may regulate "true threats," when speakers intimidate others through intentionally causing a fear of harm. Second, children may occasionally be subject to defamation suits. While neither doctrine would completely solve the problem of harmful off-campus speech, erring on the side of overprotection is more consistent with free speech values than underprotection. Rather than punishment, administrators' efforts should focus on education, communication, and school culture, all of which are more likely to lead children to be mature thinkers.

By overvaluing speech to children and undervaluing speech by children, the courts have created a "child paradox" in First Amendment doctrine. Current doctrine runs counter to the amendment's values by suppressing children's speech and potentially debilitating a future generation of citizen-critics. Therefore, the Supreme Court should allow reasonable regulation of speech to children and more strongly protect children's speech. This modified doctrine promises an approach to free speech more consistent with the purposes of the amendment. □

YOTAM BARKAI was inspired to investigate children's speech rights while researching recent cases, including *Brown v. Entertainment Merchants Association*, for Professor Samuel Issacharoff. Barkai graduated from Yale University, where he majored in ethics, politics, and economics, then worked for Teach for America. At NYU Law, he was a Furman Academic Scholar; a Law, Economics, and Politics Scholar; and a fellow at the Center on the Administration of Criminal Law. He was also an articles editor of the NYU Law Review, which published the original note from which this excerpt was taken in the November 2012 issue; it won the Paul D. Kaufman Memorial Award for the most outstanding Law Review note by a graduating student. Barkai is currently clerking for Judge Katherine B. Forrest of the US District Court for the Southern District of New York, and will clerk for Judge Stephen F. Williams of the US Court of Appeals for the District of Columbia Circuit in the 2014–15 term.



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MSNBC host Rachel Maddow interviews Theodore Olson and David Boies LLM '67 about their historic Proposition 8 Supreme Court case at a symposium organized by the NYU Review of Law & Social Change.

A Bold Lawyer, a Visionary CEO



Kelleher, Rosenfeld

Legendary Southwest Airlines founder Herb Kelleher '56 kicks off the NYU Leadership Series in Law and Business.

WHEN HERBERT KELLEHER '56, the charismatic founder of Southwest Airlines, sat down on February 28 for an intimate lunchtime conversation with students in the Snow Dining Room in Vanderbilt Hall, the first thing he did was ask the waiter if he had any whiskey. He was joking, of course. Or was he? Because while Kelleher's claim to fame is founding and building what is arguably the only truly successful airline in the industry's history, he's also got an equally legendary taste for Wild Turkey. In the end, he settled for an iced tea.

Kelleher was in New York for the launch of the NYU Leadership Series in Law and Business that evening, where he received the Arthur T. Vanderbilt Medal, the Law School's highest alumni award. The organizers of the series, the Mitchell Jacobson Leadership Program in Law and Business and the Pollack Center for Law & Business, had Kelleher in their sights for the debut interview from the very start. And why wouldn't they? Kelleher's incomparable achievements derive, above all, from his insights about leadership, which the evening's audience would listen to with bated breath. But first, his student lunch companions would have a crack at him.

Kelleher's accomplishments at Southwest—where he spent 20 years as president and CEO—are well documented. Starting with three airplanes in 1971, the airline was fielding 694 planes performing

more than 3,400 flights per day by the end of 2012. The company has never had an unprofitable year, it has never furloughed an employee, and today it carries the most originating domestic passengers of any US airline. Shareholders have profited, too: From 1972 until 2002, Southwest delivered the highest return of any S&P 500 company, at 26 percent per year.

What is less known? That Kelleher spent 25 years as a corporate lawyer before founding Southwest, and that he views that experience as the key to his later success, not just something that came before it. If he hadn't had a talent for legal tussle, he explained, Southwest would never have left the gate—Kelleher spent 10 years litigating with other carriers before the airline flew a single flight. In one six-year period, he endured 31 administrative and judicial proceedings.

One profound observation Kelleher offered was that the value of a law background resides purely in how a lawyer chooses to use it. Too many lawyers, he said, spend their time telling their clients (or themselves) why they can't do something. "But that's the comfortable answer," he said. "The best lawyers are those that help you to do anything you want to do, by rearranging—within legal, ethical, and moral bounds—any obstacles to the outcome you seek. You can't let people who are too scared or too negative control your actions."

The chance to found Southwest, he added, came because of that openness to possibility, which led to his founding a San

Antonio law firm to help clients start entrepreneurial ventures. It was over a drink with one of those very clients that the original plan for Southwest was sketched out on a cocktail napkin. And while he clearly harbors no regrets, he did admit to missing a few opportunities, such as passing on the chance to own 10 percent of two clients' ventures in exchange for waiving a \$75 incorporation fee. One went on to invent roll-on deodorant, and the other, the strip that unwraps cigarette packs. (As a chain-smoker, Kelleher continues to pay for that second mistake daily.)

If there was a common thread between Kelleher's lunchtime chat and his evening interview with Gerald Rosenfeld, co-director of the Leadership Program, it was that the airline really is about people. While some of Southwest's success can be attributed to pure business decisions—such as using a point-to-point model versus traditional hub-and-spoke, and operating one model of airplane instead of several—both discussions returned to the idea that the most successful corporate leaders remember what made them successful in the first place. And in Southwest's case, that was people.

Southwest, Kelleher explained, was founded with the understanding that the best businesses respect the worth of every person who works for them, not just as employees but also as human beings. Southwest succeeded by never losing sight of that premise. "There were those who predicted that our 'family feeling' would go away as we grew bigger," he said, "but that didn't happen—because taking care of people remained our primary focus." In 1973, Southwest instituted the industry's first profit-sharing program. "It was easy to do when we had no profits," he said with a laugh. But it showed that the company was willing to put its money behind its motto.

In distilling his insights on leadership, Kelleher quoted the great poet Robert Frost: "Isn't it a shame that when we get up in the morning our minds work furiously—until we come to work." The secret at Southwest, he insisted, was to make sure that didn't happen. And how did they do that? With another counterintuitive insight: that work and fun are not mutually exclusive. "Most people don't want to look like they're having fun at work for fear of getting fired," said Kelleher. "But at Southwest, we'll fire you if you aren't smiling and having fun." When the interview was over, Kelleher suggested that everybody join him at the bar for a drink—of Wild Turkey. □ *Duff McDonald*

A Man of the House

US Representative Hakeem Jeffries '97 talks about his hopes as a new member of a divided Congress.

IN THE INCREASINGLY STARK left-right divide in the United States today, said Hakeem Jeffries '97 at NYU Law's Annual Alumni Luncheon in January, "compromise,' among many, seems to be a dirty word." Lamenting that attitude, he argued that meeting in the middle on everything from the Constitution and the makeup of Congress to the troubled institution of slavery and the matter of selecting presidents has characterized the country from its founding: "Compromise is uniquely American. Compromise gave birth to this great union."

Just two days before a local swearing-in ceremony to celebrate his resounding win in New York's recently redrawn Eighth Congressional District, Jeffries delivered the alumni luncheon's keynote speech to a crowd of more than 300.

In that speech and in his inaugural address, Jeffries addressed the challenges of finding common ground in a multicultural democracy. He observed at the luncheon that although the issues have changed—he rattled off the current problems of the stagnating economy, a difficult immigration policy, and gun violence—the need for compromise, he said, has not.

The congressman reinforced this point by observing how the Republican-Democrat pendulum has swung back and forth every two years in recent elections. With no party achieving consistent primacy, working across ideological divides is more important than ever.

"In politics," Jeffries said, "it's often been said that there are no

permanent friends, there are no permanent enemies. All there should be are permanent interests. I believe that we as members of Congress have a sacred charge to make sure we advance the permanent interests of the people of the United States of America."

He has been appointed to the Judiciary and Budget committees as well as a bipartisan House Judiciary Committee task force on over-criminalization. During the 113th Congress, Jeffries has stated, he will work on economic growth, reforming the criminal justice system, preventing gun violence, and assisting neighborhoods in his district—which is anchored in Brooklyn and parts of southwest Queens—that were devastated by Superstorm Sandy.

Jeffries, who spent six years in the New York State Assembly before running for Congress, was born in Brooklyn and raised in Crown Heights. He attended New York City public schools and earned a bachelor's degree in political science from the State University of New York at Binghamton, as well as a master's in public policy from Georgetown and a JD from NYU Law, where he graduated magna cum laude and served on the *Law Review*.

After law school, Jeffries clerked for Judge Harold Baer Jr. of the US District Court for the Southern District of New York. Before being elected to the assembly, he practiced law for several years at Paul, Weiss, Rifkind, Wharton & Garrison and served as counsel in the litigation departments of Viacom and CBS.

Jeffries's prepared remarks at the luncheon were polished, and his response to a question from the alumni audience regarding his position on gun control showed glimmers of a passionate public servant and representative. Jeffries replied that he recently asked for a meeting with the director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) after a string of fatal shootings occurred in his district. "In New York City, in Brooklyn, in the district that I represent, I don't see any gun manufacturers," he said. "Every single gun that comes into the Eighth Congressional District, it seems to me, is a gun that's flowing in from the Deep South, up the I-95 corridor, and is being illegally trafficked in. I thought it was relevant to figure out what the ATF is doing, because if the ATF is not in Bedford-Stuyvesant, East New York, the South Bronx, Harlem, I'm not sure where they are."

His passion was also evident at his local swearing-in, surrounded by family, friends, neighbors, and some of New York's political power players. He dared to be funny about bringing his Brooklyn culture to a more buttoned-up Washington, DC. He noted that he represents much of the district served by the legendary seven-term Congresswoman Shirley Chisholm. Assuring the crowd that he'll do his best, he said he imagines her voice in his head, saying, "Young man, we sent you down to Washington to stand up, so don't go down there and act up." And in a nod to his extraordinarily diverse constituency, he said he was grateful to receive Jewish, Muslim, and Christian prayers—"I am exponentially blessed!" he quipped—adding, "I'm down there with John Boehner and Paul Ryan, I need all the blessings I can get." □



Going Twice...

Sold! The 19th annual Public Service Auction in February raised a grand total of \$84,148, which will be used to help fund Public Interest Summer Funding Grants for 1L and 2L students. Notable auction items included live competitive cake decorating against Dean Richard Revesz; an afternoon of canine therapy with Professor Erin Murphy and her dog, Normandy; an evening billed as a "sci-fi/fantasy movie night with a 1L geek providing entertaining commentary"; and a month of daily jokes e-mailed to the winning bidder.



A Supreme Courtship

Former adversaries David Boies and Theodore Olson unite to make marriage equality the law of the land.

PROPOSITION 8 LITIGATORS David Boies LL.M. '67 and Theodore Olson joined MSNBC host Rachel Maddow at NYU School of Law for an in-depth interview about the future of marriage equality. The October 2012 conversation, which preceded oral arguments at the Supreme Court six months later, ranged widely over the course of an hour, touching on points such as how to win over Justice Scalia on the issue, the public's support for gay marriage, and the worst-case scenario for this legal challenge.

The high-profile team of Boies, current chairman of Boies, Schiller & Flexner and in the late 1970s chief counsel of the Senate Judiciary Committee, and Olson, who is now partner at Gibson, Dunn & Crutcher and during the presidency of George W. Bush was US solicitor general, is especially remarkable because the two attorneys had argued on opposite sides of *Bush v. Gore* in 2000. Between them, the men have argued many of the landmark cases of our time, including *Citizens United v. Federal Election Commission* and *United States v. Microsoft*. Both were named to *Time's* list of the 100 most influential people in the world in 2010. They also have strong ties to NYU Law, where Olson is a board member of the Dwight D. Opperman Institute of Judicial Administration, and Boies is a trustee and has endowed the David Boies

Professorship of Law. Boies would also speak at both the 2013 University Commencement and the NYU Law Convocation. (See story on page 106.)

With no fewer than 60 Supreme Court cases under their belts, they spoke authoritatively and confidently about their chances. "The Supreme Court has made erroneous decisions in its history," said Olson, pointing to rulings such as *Plessy v. Ferguson*, the Dred Scott decision, and the upholding of the government's right to intern Japanese Americans. But in the end, he said, the Supreme Court will struggle with these issues and ultimately do the right thing. "We believe the Supreme Court will get it right. David and I are writing no justice of this court off," Olson continued. "We have a little joke—David will ensure that we get the ones that voted his way on *Bush vs. Gore*, and I'll get the side of the court that I got, so it will be unanimous."

As for how to convince the conservatives to support the issue of marriage equality, Boies noted that Justice Scalia has said that his job is not to impose his own personal views but to enforce the constitutional guarantees that we have. "I think it's easy to recognize the constitutional guarantee of the right to marry. What we now have to do is recognize that there's no basis to discriminate based on sexual orientation," said Boies. "That is an argument that isn't

Republican or Democrat, conservative or liberal. It is an argument that appeals to everybody who shares the basic principle that all Americans do of equality under the law, justice for everybody."

Olson and Boies said they would aim for a unanimous decision, but they acknowledged that in a realistic worst-case scenario, the Supreme Court might deny same-sex marriage as a constitutional right and rule that states must decide the issue. (In fact, in June, the Court ruled 5–4 that Proposition 8 supporters did not have standing to appeal the 2010 district court ruling, meaning that the lower court's legalization of same-sex marriage in California would be upheld and that only California was affected by the Supreme Court opinion.) In conclusion, said Boies, we all have a lot of work to do to reverse the "pain and evil" of this discrimination against gays and lesbians.

"I love talking to old, straight white guys about this issue," quipped Maddow, who is openly lesbian.

The keynote panel with Boies, Olson, and Maddow kicked off the "Making Constitutional Change: The Past, Present, and Future Role of *Perry v. Brown*" symposium organized by the *NYU Review of Law & Social Change* in collaboration with Professor Kenji Yoshino, NYU OUTLaw, and Epic Theatre Ensemble. The two plaintiffs in the headlining case, Kris Perry and Sandy Stier, were present throughout the daylong event and the previous evening, when members of the Epic Theatre Ensemble performed a stage reading of *8*, a play by Oscar-winning screenwriter Dustin Lance Black based on the Proposition 8 trial transcripts.

Perry, whose surname is now shorthand for one of the most famous cases in modern legal history, spoke of her experience: "Being somebody who's different from other people and then trying to go into a courtroom to say, 'I need to be protected' was something I thought I'd never do. So the good thing about the case has been having straight lawyers say, 'This is not OK. You need to fight back and we're going to help you, and you don't need to be so good at coping anymore.' For Sandy and I to be given that permission by two very sensitive, caring attorneys really changed our lives in a way that we would never have predicted."

Appearing on CNN eight months after the NYU Law event, and only a few days after the June ruling, Boies reaffirmed his dogged determination to continue to fight for the right to marry: "Our goal is to have marriage equality that's guaranteed by the United States Constitution enforced in every single state in the union." □

Enforcement Through Self-Interest



Sykes, Kindler, Revesz

DELIVERING THE INAUGURAL lecture of the Robert A. Kindler Professorship of Law, Alan Sykes, the holder of that chair title, applied economics principles to an analysis of international law in his talk, “When Is International Law Useful?”

Sykes, an international law and economics expert who joined the faculty last fall from Stanford Law School, confessed that, as a Yale Law School student, he had considered international law “largely pointless”: “When international law asks

reflect negotiated agreements under the multilateral General Agreement on Tariffs and Trade (GATT). “The system appeared to be one in which there were some disputes and some noncompliance,” he said, “but the overwhelming majority of obligations were respected.”

Without a central enforcer or formal sanctions, Sykes wondered, how can a system of law succeed? He described the economic theory of repeated games, which governs strategic interaction among institutions or individuals that repeats itself

nations to behave in ways that they would not otherwise, it will fail, I thought, because it lacks the sort of enforcement mechanism that gives much of domestic law its bite.”

He changed his mind when he began working on international trade matters in the early 1980s and recognized striking similarities between domestic and international law, with US trade statutes having been amended to

over time (for example, a long-term contract). Both parties, he said, are better off if both honor their agreement, whereas if both sides cheat, then both are worse off.

Sykes and Eric Posner formulated an “algorithm” in their book *Economic Foundations of International Law*, which addresses the ability of international law to orchestrate cooperation in various situations. The algorithm involves identifying the source of gains from international cooperation, asking whether and how those gains can be distributed so that each cooperating state can benefit, and examining whether a particular system can be made to be self-enforcing. Within that last element lie three “subconsiderations,” said Sykes, namely, whether governments are patient enough to forgo cheating, whether the agreement has a fixed endpoint (if it doesn’t, each side is less likely to cheat in its twilight), and whether it is reasonably easy to define what constitutes cooperation and to detect what counts as reneging. After applying his algorithm to GATT and its successor, the World Trade Organization, Sykes considered how the theory might be used in security matters, immigration law, and international human rights law to assess the likely success of multilateral agreements in those areas. □



Examining the Economy

As the political dust settled the week after last November’s presidential campaign, the

Comfort Global Economic Policy Forum provided a timely opportunity for a host of experts from government, the media, industry, and academia to weigh in on the state of the economy.

Peter Orszag, a vice chairman at Citigroup and former director of the Office of Management and Budget under President Obama, gave a keynote speech and Q&A at the event, which was co-sponsored by NYU’s Center for Financial Institutions and the Mitchell Jacobson Leadership Program in Law and Business.

Orszag suggested that two aspects of the US economy—the dramatic drop in labor’s share of the national income over 30 years and the deleveraging process occurring in the aftermath of the financial crisis—need to be separated in order to make sense of the current situation. While recent fiscal policy got a lot right over the past few years, he said, a misunderstanding exists about the nature of the recovery because various government macroeconomic models treated the housing bust as “IT Bust 2.0.” In fact, Orszag argued, “The IT losses were highly diversified across broad financial markets, whereas the housing losses were highly concentrated in very leveraged institutions and therefore were propagated and exacerbated in a way that the IT losses were not.” Those calculations affected the stimulus bill significantly and led to a less robust approach to shoring up the housing crisis, he said—to the recovery’s detriment.

In addition to the keynote, the forum also included three expert panels. The first, chaired by Max E. Greenberg Professor of Contract Law Clayton Gillette, looked at municipal bankruptcy and state takeovers; the second, led by Distinguished Scholar in Residence and Senior Lecturer Gerald Rosenfeld, examined municipal finance markets, pensions, and budgets; and the third, moderated by Bernard Petrie Professor of Law and Business Barry Adler, discussed sovereign debt. □

Citizens, Aliens, and National Identity



WITH PENDING SUPREME COURT cases on Arizona voting rights and Guantánamo Bay detainees, the topic of Judge Karen Nelson Moore's James Madison Lecture last October, "Aliens and the Constitution," proved to be timely and politically charged.

"Today courts and civic leaders alike grapple with difficult questions as to the proper treatment of millions of individuals, either living among us or interacting with our government, but not bearing the title of United States citizen," said Moore, a judge on the US Court of Appeals for the Sixth Circuit and former clerk for Supreme Court Justice Harry Blackmun, who delivered the Madison Lecture in 1984. "I would submit that formulating the answers to these difficult questions requires us to articulate and refine our shared conception of civil liberty, national purpose, and identity as a nation." These issues, she argued, were more pressing than ever.

Moore invoked three overarching questions: what constitutional rights aliens have; when and how treating aliens differently than citizens violates the Constitution; and whether all aliens should have identical constitutional rights. She then suggested that James Madison's writings seem to indicate that aliens do have constitutional rights, although those rights are not unlimited and vary according to how closely an alien is tied to the US by a variety of criteria.

In her lecture, Moore covered an array of points of law regarding unauthorized aliens, including constitutional references to aliens and cases involving illegal immigrants and detainees charged with terrorism. Further, she said, Congress has created specific categories of aliens in making

immigration law. As a result, Moore explained, aliens can be thought of in a constitutional setting, an immigration setting, and a national security setting, with each context playing an important role in the legal implications: "As US criminal prosecutions and investigations become more global in scope, questions more frequently

arise as to how far in a territorial sense and to which classes of aliens those rights extend."

Despite limitations on aliens' constitutional rights, Moore said, "that aliens are protected by our core foundational and governing document says much about our identity as a nation. The rights we cherish

deeply inhere in the dignity of the human being and do not attach only to those with the label of citizen."

The perpetually thorny issue of those immigrants living in the US illegally, she said, involves unsanctioned residents with "the contradiction of often having the most deeply rooted community ties to the United States despite their unauthorized status. It is thus not surprising that the constitutional rights of this group remain in the greatest state of uncertainty."

Moore emphasized the seriousness of questions, in terms of both law and national security, raised in grappling with "constitutional alienage jurisprudence": "How far outside the territorial bounds of the United States does the Constitution extend, and what are the implications of an alien enemy label to the robustness of the Constitution's reach and protections? The extent to which our constitutional norms apply to aliens is a deeply complicated question that intersects with important and contested realms of executive and legislative power." □

And Access for All

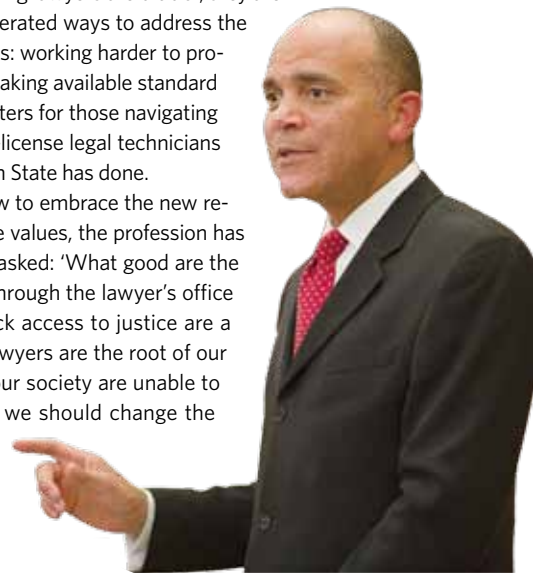
For Some: How the Legal System Falls Short in Protecting Basic Rights." In the 19th annual lecture last February, Jefferson, chief justice of the Supreme Court of Texas, highlighted a lack of equal access to justice for not only the indigent but also the middle class.

"The rule of law, practiced by experts in the legal profession, exists to afford a remedy even for the poor, the ignorant, the powerless," said Jefferson. "Yet in the real world, many fundamental rights are illusory.... A larger swath of litigation exists in which the parties lack wealth, insurance is absent, and public funding is not available. Some of our most essential rights—those involving our families, our homes, our livelihoods—are the least protected."

Jefferson explained that in some cases it is easier for the poor to find legal aid than the middle class, whose incomes are too high to qualify for assistance but too low to afford a lawyer easily. As a result, people are increasingly representing themselves, even as the number of attorneys per capita in the US has more than doubled in the past half-century.

He argued that although pro bono efforts by practicing lawyers are crucial, they are not sufficient to address the problem. Jefferson enumerated ways to address the ongoing reality of significant numbers of pro se litigants: working harder to provide due process for those representing themselves; making available standard forms that litigants can fill out easily; opening help centers for those navigating the judicial system on their own; and allowing limited-license legal technicians as an alternative to full-fledged lawyers, as Washington State has done.

The legal profession, Jefferson noted, has been slow to embrace the new realities: "Time and again, in the name of protecting core values, the profession has rejected reform efforts. But as one commentator has asked: 'What good are the profession's core values to those who do not make it through the lawyer's office door?'... Courts must step in, because those who lack access to justice are a constituency without a voice. Am I suggesting that lawyers are the root of our system's ills? Not at all. But when vast segments of our society are unable to utilize the legal system, we must examine whether we should change the way legal services are delivered and how courts can create more accessible systems." □



A Conversation with Judges

THE FINAL ARGUMENT of the 41st annual Orison S. Marden Moot Court Competition put four of NYU Law's best student oralists before a distinguished panel of judges to argue the "routine booking" exception to the Miranda rule and whether the Fifth Amendment right against self-incrimination protects a suspect from compulsory disclosure of encrypted data on an electronic device.

With Judge Raymond Kethledge of the US Court of Appeals for the Sixth Circuit, Judge Albert Diaz '88 of the US Court of Appeals for the Fourth Circuit, and Judge Kimba Wood of the US District Court for the Southern District of New York presiding, Yotam Barkai '13 argued that the rights of fictional petitioner George Janus were violated when an officer repeatedly asked him before the reading of his Miranda rights whether a cell phone he had been carrying at the time of his arrest was his own property. Co-counsel Harold Williford '13 tackled the self-incrimination question, asserting that compelling Janus to comply with a government subpoena to provide the password for an encrypted data folder on his laptop would be a tacit disclosure that those files, which might implicate him in illegal acts, belonged to him.

Representing the respondent, Theresa Troupson '14 argued that the officer had asked about ownership of the phone for administrative purposes, not to elicit evidence of potential guilt, and thus the questions fell within Miranda's routine booking exception. Zoey Orol '13 then asserted that the Fifth Amendment did not protect the contents of the appellant's business records, the material believed to be

encrypted on the laptop. The judges subsequently questioned her about the amount of certainty required by the government to determine that it was a "foregone conclusion" that the encrypted data folder did contain the incriminating evidence the government sought.

In an exchange with Kethledge, who suggested that the government was relying almost entirely on a single witness with a "one for one" record in terms of reliability, Orol replied, "Respectfully, Your Honor, it's not one for one." She swiftly enumerated several ways in which the witness's information had proved to be accurate, prompting Kethledge to say, "I retract the one for one," to general laughter. Orol concluded that quashing the government's subpoena would create a Fifth Amendment right to privacy: "It would be to tell anyone who has anything he wants to hide from a potential government investigation, 'Put it under digital lock and key. We can't get it, we can't ask for it, and we'll consider that as part of your constitutional rights.'"

While the judges deliberated, Professor Samuel Rascoff announced the Moot Court Board's year-end awards, including the Albert Podell '76 Advocacy Awards, which went to Julie Simeone '14 (Oral Advocacy Award), Barkai and Williford (Brief Writing Award), and Daniel Eisenberg '14 (Moot Court Advocacy Award). Barkai also won the Marden Brief Writing Award.

The judges returned and named Orol as Best Oralist, to thunderous applause. Diaz then reflected that "argument" is a misnomer: "If it's done well, it really should be a conversation, which is what we had here today." □



A capacity crowd filled Tishman Auditorium in March to observe something usually seen inside a courtroom: federal appellate oral arguments. Making a conference table their bench were Judge Barrington Parker and Judge Robert Katzmann, both of the US Court of Appeals for the Second Circuit, and Judge Miriam Cedarbaum of the US District Court for the Southern District of New York.

The four cases concerned a wide variety of legal issues: discovery of US-based documents in foreign proceedings before a foreign tribunal, the question of federal liability protection for employees of a health care facility in a medical malpractice suit, the admissibility of the legal boilerplate on a lift ticket in a skiing injury case, and allegations of fraud and conversion against the executor of an estate.

After the judges deliberated briefly, they took questions from NYU Law students. Although the judges were not able to discuss the specific merits of the argued cases, they freely engaged with the assembled students in discussion of broader judicial matters.

"I found it extremely eye-opening to be able to hear the different attorneys' styles of legal argumentation," said Dolly Krishnaswamy '15 after the event. "I gained a greater appreciation for how judges can operate as guides, by directing the attorneys to the heart of the legal issue and pushing them to test the limits of the relevant line of reasoning."

Second Circuit Chief Judge Dennis Jacobs '73, while not present that day, is behind the court's growing tendency to hold oral arguments outside its home on Manhattan's Foley Square. "Everybody knows what the Supreme Court does, and everybody knows what goes on in a trial court. But an intermediate appellate court is not something that is familiar to most people," he said. "It's not just for law students. It's also for lawyers, for the press, the public. People can see what it is we do."



An American Story



THOMAS JEFFERSON'S RELATIONSHIP with his slave Sally Hemings was an attractive research topic for Annette Gordon-Reed, Charles Warren Professor of American Legal History at Harvard Law School, because she thought the way most historians approached the question was problematic. "The way biographers wrote about Jefferson and Hemings is that they discounted the word of slave people who said

that this liaison took place," she said. "At the same time, they looked at the words of the Jefferson family—white, upper-class, slaveholding people—as though they were sacrosanct."

Her comments were part of the 17th annual Derrick Bell Lecture on Race in American Society last November. The author of *Thomas Jefferson & Sally Hemings: An American Controversy* and *The Hemingses of Monticello: An American Family*, Gordon-

Reed spoke about how the law shapes historical understanding, particularly in the case of the family history of Jefferson and Hemings.

In *Thomas Jefferson & Sally Hemings*, published in 1998, Gordon-Reed contended that the Hemings family was correct about Jefferson being the father of Sally Hemings's children. Later, a DNA study confirmed her argument. "It is not very often that historians make claims

and then science comes to answer them," Gordon-Reed said. "It was a bigger issue to me than whether Tom and Sally had children together. I was interested in proving how white supremacy infected the writing of history."

She followed up that book with *The Hemingses of Monticello: An American Family*, published in 2008, which presents the story of Sally Hemings's family—a story history overlooks, Gordon-Reed said, because of the lack of legal protection for slave families. "Law helps construct our understanding of what we think family is," she said. Whereas the story of the Jefferson family is easy to trace through legal documents such as marriage licenses, for slave families there is no such document trail. In her book, Gordon-Reed wanted to demonstrate how families such as the Hemingses would keep their families intact, even without the protection of law.

In her lecture, Gordon-Reed paid tribute to the late Derrick Bell as an important influence in her career as a legal historian. Her very first publication was a review of Bell's book *And We Are Not Saved: The Elusive Quest for Racial Justice*. Seeing that Bell's writing traversed beyond the realm of work normally expected of law professors, Gordon-Reed said she was inspired to pursue her own interest in the history of Jefferson and Hemings. □

Reverse Ideology

TWO PROMINENT CONSERVATIVES. Two foes of the Affordable Care Act. But ultimately, two opposing positions. Michael Paulsen, distinguished university chair and professor at the University of St. Thomas, and Richard Epstein, Laurence A. Tisch Professor of Law at NYU, debated the constitutionality of the health-care-reform legislation at an event sponsored by the Federalist Society.

"I am most liberal constitutional law professors' worst nightmare," said Paulsen in his provocatively titled talk, "The Power to Destroy." "I believe...that there is a single correct method to interpreting the Constitution, and that is to follow the original public meaning of the words and phrases as they would have been understood by ordinary English-language interpreters at the time they were adopted in that political and social context. And if the Supreme Court has said something contrary to that, the Supreme Court is wrong." But, he added, "I come out in a blasphemous wrong way with conservatives on the Obamacare decision."

Paulsen agreed with the Court's opinion from Chief Justice John Roberts, who provided the swing vote, which deemed the Affordable Care Act's individual mandate within Congress's largely unfettered taxing power. The Constitution, Paulsen said, gave the legislative branch that authority: "I think Obamacare is a stinking, rotten mess, but I don't think it's unconstitutional.... Congress has the power to tax.... Congress can tax anything that it can get its grubby mitts on." He pointed out that none of the four dissenters on the Supreme Court claimed that Congress lacked that taxing power but rather that the individual mandate did not constitute a tax. But Paulsen disagreed.

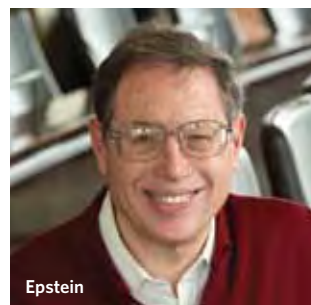
Epstein has long been a fierce opponent of the Affordable Care Act and disagreed

strongly with Paulsen about Congress's power to tax, arguing that its power to address federal debt through taxation did not extend to the matter of one state helping to pay the debts of other states.

"It's very difficult to go back and announce, You know what, Medicare is now unconstitutional. Every 88-year-old person has to go and fend for himself," said Epstein. "But what you can do is you don't have to yield to new extensions."

Epstein vigorously characterized the health-care legislation's constitutional rationale as unprecedented: "In the entire history of the United States, there has never been a tax on any form of inactivity ever....

The point is this is not a tax on any of the permissible objects of taxation. It is simply a random form of tyranny." □



At Times Judge, Dean, and Professor, but Always Guido

FEW ARE SO LARGE IN LIFE as to be known by a single name. Elvis. Hillary. Tiger. Among the community in law and letters, there is also Guido—as in the Honorable Guido Calabresi, senior judge of the US Court of Appeals for the Second Circuit and former dean and now Sterling Professor Emeritus at Yale Law School. He is considered one of the most significant contributors to the field of law and economics, but he always asked to be called just Guido, even by the lowliest 1L student.

So Guido it was to all gathered on February 26 to dedicate the 70th volume of the *New York University Annual Survey of American Law*. In accepting the *Annual Survey* dedication and gift, presented by Editor Theodore Kelly '13, Calabresi spoke of humility as central to a judge's role in the law's evolution.

Dean Richard Revesz said that Calabresi's remarkable biography could only be compared with that of the fictional hero Declan Walsh, protagonist in the late constitutional scholar Walter F. Murphy's 1979 novel *The Vicar of Christ*, who would become not only Chief Justice of the United States but also an American pope. (Noting that the conclave to select a successor to Pope Benedict XVI was about to take place in Vatican City, the famously quick-witted Calabresi remarked, "Should I be named, I shall be known as Ricky the First.")

Calabresi was an inspiring professor (many of his students went on to great accomplishment, including feminist legal scholar Catharine MacKinnon; former US Attorney General Michael Mukasey; and Supreme Court Justices Sonia Sotomayor, Samuel Alito, and Clarence Thomas), complementing a scholarly side. Among his four books is the 1970 masterwork *The Costs of Accidents: A Legal and Economic Analysis*. And among more than 100 articles is the still frequently cited "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," published in 1972.

But the evening's agenda was mainly to honor Calabresi's humanity. Distinguished speakers including Judge Robert Katzmann, also on the Second Circuit, and Judith Kaye, former chief judge of the New York Court of Appeals, plus law professors Kenneth Abraham of the University of Virginia, Akhil Reed Amar of Yale, Vincenzo Varano of the University of Florence, and Kenji Yoshino of NYU, spoke with humor and warmth of

a teacher, a helper, and a lover of literature, art, and nearly anything Italian. "The word that best captures your spirit is mensch," Kaye told him. "Just plain mensch."

Katzmann noted a professional duality in Calabresi's mark on the Second Circuit: the "teacher as judge, the judge as teacher." It's so legendary a mark, said Katzmann, that "when I tell people abroad that I sit on the Second Circuit, they say, 'Oh, isn't that Guido's court?'"

Varano, a global visiting professor at NYU Law, met Calabresi 40 years ago in Italy when the then Yale professor took his sabbatical at the University of Florence. "All of us, including myself," said Varano of his friend, "have learned great lessons from him."

Varano noted Calabresi's humility in accepting that teachers may gain knowledge from students, too. Calabresi, he said, is "always young in his perceptions."

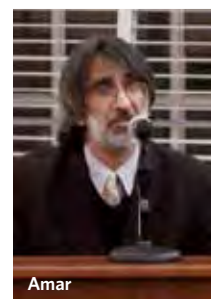
Abraham drew knowing nods in mentioning "Guidoisms" students will not soon forget. A classic example, involving an unusual lecture pose, was reported in the judiciary blog *Underneath Their Robes*: "[O]ne of Guido's favorite classroom stunts is to leap up onto his desk, lie down on his side, and continue his lecture" in approximation of *Une Odalisque*, an 1814 painting of a reclining French concubine by Ingres. Students dubbed the pose "the Guidolisque."

Nine years ago, Amar attended a birthday party at the Calabresi farm in Connecticut. Calabresi's son, Massimo, told guests, "The thing about my dad is that he likes helping people. I bet he's helped every person here."

At that moment, Amar recollected, "there was a barn full of bobbling heads."

Yoshino was not only a law student of Calabresi's and the first chairholder of the Guido Calabresi Professorship of Law, but he also clerked for Judge Calabresi in 1996-97. They share a fondness for classic literature. (Calabresi's mother was Bianca Maria Finzi-Contini, scholar of European literature.) Yoshino said he sometimes related to the fictive commoner from Oxford who travels to Italy in service to the Marquis of Saluzzo—per "The Clerk's Tale," among the stories in Chaucer's *The Canterbury Tales*.

After all, said Yoshino, gesturing to his greatly amused former boss, "I served an Italian noble." □ *Thomas Adcock*



Amar



Katzmann



Varano



Yoshino



Revesz



Abraham



Kaye



Kelly



A Call for Change in China

Political consciousness is growing among Chinese citizens, and the time is ripe for change, according to Chen Guangcheng, activist and former NYU Law author-in-residence. In a keynote speech at the 18th Hauser Annual Dinner last February, Chen compared the current political climate in China with Taiwan in the 1980s and added that he is concerned that if citizens are not able to achieve justice in the courts, they might resort to other means to right wrongs.

"Change in China is inevitable," said Chen, who is blind and fought on behalf of the disabled and victims of forced sterilization in his home country. "Whether or not the [Chinese] authorities are willing to change, this is the course of history."

Chen arrived at NYU in May 2012 after a dramatic escape from home imprisonment in Shandong province, China. In New York he has continued to call for human rights reform in China and for the US government and American citizens and businesses to support such efforts. He has also advocated for his nephew Chen Kegui, who was sentenced to three years in prison for assaulting law enforcement officials who raided his home while searching for Chen Guangcheng.

Living with his wife and two children in the Big Apple, Chen said he has finally been able to rest for the first time after seven difficult years. The activist said he was spending his time working on his memoir, studying English and law, and meeting with various organizations.

Asked what role he might play in China's evolution, Chen answered that he is preparing for the future shifts in China by studying key texts: the Declaration of Independence and the US Constitution.

A Happy Warrior

China is facing "unprecedented environmental problems" after more than 30 years of rapid economic growth, said Wang Canfa, one of China's top environmental lawyers. The founder of the Center for Legal Assistance to Pollution Victims, a public interest legal organization in Beijing, spoke at NYU Law's US-Asia Law Institute.

The institute's executive director, Ira Belkin '82, noted that not only environmental advocates but also government officials and judges in China have praised Wang's work. Jerome Cohen, NYU Law professor and institute co-director, called him "a happy warrior."

Wang first began teaching environmental law in 1983 at Xiamen University and is now a senior professor at China University of Political Science and Law. Through his center, Wang files lawsuits on behalf of pollution victims, works to raise awareness of environmental issues, and trains lawyers and judges on handling cases.

Even though China has passed a multitude of environmental laws in the last 40 years, resources for enforcement and compliance are lacking, said Wang. As a result, China suffers from serious air, soil, and water pollution. Some scholars, for instance, believe 15 to 20 percent of the country's arable land is contaminated with heavy metals, according to Wang.

Wang proposed a number of ways to address China's issues: The government, he said, must prioritize environmental concerns when they conflict with economic development; performance evaluations of local officials should be tied to environmental protection; and punishments for violators must be more severe. □



Greece and the Euro Crisis

FORMER PRIME MINISTER of Greece George Papandreou delivered the ninth annual Emile Noël Lecture on "The State of the (European) Union," an event sponsored by the Jean Monnet Center for International and Regional Economic Law & Justice in April. Papandreou, who serves as president of Socialist International, spoke with University Professor Joseph Weiler, director of the Jean Monnet Center, about the Eurozone crisis and the winding path through revolution and national upheaval that led to Papandreou's turbulent, pivotal presidency.

The scion of a Greek political dynasty, Papandreou grew up watching his grandfather serve twice as prime minister before being imprisoned in the 1967 military coup d'état that temporarily ended democracy in Greece. He spoke of hiding his father, also a two-term prime minister, from the authorities on the roof of their family home as one

of the defining moments of his childhood and discussed his years spent in exile. "I had decided not to go into politics," said Papandreou, to appreciative laughter.

Papandreou discussed ongoing reform of EU institutions, focusing on the role of the European Central Bank as a stabilizing force in the ongoing banking crisis. He described the "profound negative effect" that the media's portrayal of Greece had on popular sentiment toward both reform and European unity—which he referred to as the "European project"—and admitted his working relationships with other EU heads of state, especially German Chancellor Angela Merkel, were sometimes strained.

But he also shared his shock at learning how deeply his predecessors had misstated Greece's deficit values. He publicly restated them when he assumed office in 2009, explaining, "I wanted to show the EU that Greece was ready to change." □



Papandreou, Weiler

An Untenable Tax?

TRANSFER PRICING is the valuing of transactions between related parties and often bears significant tax consequences for the taxpayer and taxing jurisdictions. Robert Couzin, founding

jurisdiction and a retail subsidiary in another. The price at which the manufacturing subsidiary is deemed to have sold products to the retail subsidiary determines the allocation of the MNE's



H. David Rosenbloom, Director of the International Tax Program, with Tillinghast and Couzin

overall profits among the jurisdictions, and thus the tax revenue received by each jurisdiction. And in cases where one jurisdiction bears a lower tax rate, an MNE might be able to reduce its overall tax burden by shifting more profits to the lower-rate jurisdiction.

Couzin argued that the established paradigm for determining transfer prices, the “arm’s

partner at Couzin Taylor, an international Canadian tax law firm allied with Ernst & Young, questioned the continued viability of the prevailing model in the 17th annual David R. Tillinghast Lecture on International Taxation, “The End of Transfer Pricing?”

In transfer pricing, a multinational enterprise (MNE), for instance, might have a manufacturing subsidiary in one

length principle,” in which transfer prices are determined through a hypothetical open-market transaction between two unrelated parties, is neither theoretically nor practically tenable. He suggested instead that “formulary apportionment,” wherein profits are attributed to each jurisdiction based on factors such as sales or wages, is a “true alternative” to the arm’s length paradigm. □

Judging Judges

Albie Sachs, a former judge on the Constitutional Court of South Africa who was active in the anti-apartheid movement before ascending to the bench,

gave a lecture sponsored by the Center for Constitutional Transitions and the African Law Association on the reform of the Kenyan judiciary in April.

A Distinguished Global Fellow at NYU Law, Sachs had been appointed a member of Kenya’s Judges and Magistrates Vetting Board in 2012, charged with seeking out corruption.



The perceived malfeasance of Kenya’s judges deeply disillusioned the populace, Sachs said: “You know that politicians can be crooked, you know that people run for office and bend the rules all the time, but you expect the judges to hold out.”

The board began its vetting with the senior judge of the Court of Appeal (who, along with three of his colleagues on that court, was deemed unfit to continue in his position) and made its way down from there. “There was no precedent we could work with,” said Sachs. “I’d been sitting on the bench for a long time, but I’d never been judging judges. It’s a whole new experience and I found it emotionally quite difficult, intellectually very challenging, and grueling in many ways.” They not only interviewed judges for hours on end, and sometimes for several

days, but they also had to do their work swiftly.

In the context of Kenya’s reform efforts, Sachs also discussed the March 2013 presidential election, which was so close that the runner-up contested the results to Kenya’s Supreme Court but ultimately accepted the court’s decision against him. That was a promising sign of stability, said Sachs, who hoped the president would respect the limits placed on him by the new constitution, promulgated in 2010. “Then some of the worst features—the assassinations, the thievery, the nepotism, the tribalism entering into everything—might become a thing of the past,” he said, noting that Kenya may serve as a model for any other countries that might be envisaging similar processes. □

What Hinders Hindustan?

Is India destined to be a superpower? Not in the foreseeable future, in the eyes of historian Ramachandra Guha, Distinguished Global Fellow at NYU Law last year. Guha, whose award-winning books include *India After Gandhi: The History of the World’s Largest Democracy* (2007) and *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya* (1989), discussed the past and potential of India as a democracy and global power at two Law School events last October.

In a conversation with David Malone, then-president of the International Development Research Centre and an adjunct professor at NYU Law, Guha focused on the his-



tory of India as a democracy, tracing the successes and challenges of the country’s constitutional development. “Whereas

[India’s] experiment with religious pluralism is a very qualified success—it’s partly successful, partly failure—our experiment with linguistic pluralism is a substantial success, and in my view it’s Indian democracy’s greatest contribution to the practice of modern democracies,” Guha said at the event sponsored by the Hauser Global Law School Program. “It’s an underappreciated achievement.”

In his second lecture, sponsored by the Center for Constitutional Transitions, Guha argued that India’s internal fault lines will prevent it from becoming a global power anytime soon. He identified several challenges facing India today: continuing conflicts over linguistic, caste, and religious identity; enduring inequality in Indian society; and the abuse of India’s natural environment. Guha also emphasized that India is still a relatively young experiment in democracy, national unity, and pluralism—all of which need to be “carefully nurtured”—noting that only 65 years have passed since the country declared independence from Britain.

Fine Ones to Talk

Ambassadors, journalists, Hall of Fame linebackers, and others debate hot-button issues at the third annual 2012-13 Milbank Tweed Forum series.

Ask the GC: Corporate Counsel Offer a View from the Top

Paul Cappuccio, EVP and GC, Time Warner; Richard Cotton, EVP and GC, NBCUniversal; Randal Milch '85, EVP and GC, Verizon; Deirdre Stanley, GC, Thomson Reuters; Esta Stecher, CEO, Goldman Sachs Bank USA; Samuel Estreicher (moderator)

Living La Vida Corrupción: Wal-Mart, Mexico, and Corporate Bribery

"Wal-Mart had, on paper, this incredibly elaborate culture of compliance. On paper it looked like the *Titanic*. It looks like it's unsinkable, and yet it's very sinkable." —David Barstow, Investigative Reporter, *The New York Times*

with Jennifer Arlen '86, Norma Z. Paige Professor of Law; Michael Nolan, Partner, Milbank, Tweed, Hadley & McCloy; Kevin Davis (moderator)

Rule of Law in China: A Conversation with Chen Guangcheng

Ira Belkin '82, Executive Director; Chen Guangcheng, Distinguished Author-in-Residence; Jerome Cohen (moderator), Faculty Director, all of the US-Asia Law Institute



Cohen, Guangcheng, Belkin

Climate-Proofing New York

Eddie Bautista, Executive Director, New York City Environmental Justice Alliance; Malcolm Bowman, Distinguished Service Professor and Professor of Physical Oceanography, State University of New York at Stony Brook; Stuart Gruskin, New York Chief Conservation and External Affairs Officer, Nature Conservancy; Cortney Worrall, COO, Metropolitan Waterfront Alliance; Katrina Wyman (moderator)

Diplomacy in the Twenty-First Century: Challenges for the New Administration

Christopher Hill, Former US Ambassador to Iraq; Charles Kupchan, Whitney Shepardson Senior Fellow, Council on Foreign Relations; Sujit Choudhry (moderator)

Cliffs Forever? Tax Reform and the Future of Fiscal Policy

Rosanne Altschuler, Professor and Chair, Rutgers University Department of Economics; David Kamin '09, Assistant Professor of Law; Daniel Shaviro, Wayne Perry Professor of Taxation; Joshua Blank LLM '07 (moderator)

Why Top Law Schools Still Aren't Hiring Enough Faculty of Color

Leonard Baynes, Professor of Law, St. John's University School of Law; Dorothy A. Brown, Professor of Law, Emory University School of Law; Peggy Cooper Davis, John S.R. Shad Professor of Lawyering and Ethics; Sarah Burns (moderator)

Mandatory Detention:

The Mass Incarceration of Immigrants

Judy Rabinovitz '85, Deputy Director, ACLU; Ravi Ragbir, Organizer, New Sanctuary Coalition of New York City; Silky Shah, Communications Director, Detention Watch Network; Alina Das '05 (moderator)

Concussions, Litigation, and the Future of Football

"The reality is, I knew I could hurt my shoulder, I knew I could hurt my knee, I knew that I might have a lifetime of pain, but nobody told me of the neurological ramifications of playing the game." —Harry Carson, NFL Hall of Fame Linebacker, New York Giants

with Jodi Balsam '86, Former Counsel for Operations and Litigation, NFL; Robert Boland, Academic Chair, Preston Robert Tisch Center for Hospitality, Tourism, and Sports Management at NYU; Kenneth Feinberg '70, Founder and Managing Partner, Feinberg Rozen; David Buchanan, Partner, Seeger Weiss; Arthur Miller (moderator)

US Reproductive Rights in 2013:

A Critical Look at Where We Stand

Dina Bakst, Co-President, A Better Balance; Angela Hooton, State Policy and Advocacy Director, Center for Reproductive Rights; Ariela Migdal '01, Senior Staff Attorney, ACLU Women's Rights Project; Denise Tomasini-Joshi (moderator)

Is this a 1% Court?: The 2012-13 Supreme Court Preview

"In a government paralyzed by partisan gridlock, the Supreme Court has become the decider. After a dogged 40-year effort by the conservative movement to capture the courts, hard-won legal principles have now been eroded, and the promise of equal justice has devolved into a hard reality of unequal justice." —Katrina vanden Heuvel, Editor and Publisher, *The Nation*

"Is the system rigged toward the one percent? The answer is no. The Court tries to create a system of laws in order to benefit clearer rules that have the effect of predictability, transparency, and consistency. That is a fundamentally more democratic, equal, and just system than the alternative, which is a feudal system of capital allocation based upon opaque rules, uncertain results, and uncontrolled and arbitrary power." —Viet Dinh, US Assistant Attorney General for Legal Policy from 2001 to 2003

with Nancy Gertner, Professor of Practice, Harvard Law School; Barry Friedman (moderator)

Covering the Supreme Court:

The View from the Press Corps

Jess Bravin, Supreme Court Correspondent, *Wall Street Journal*; Adam Liptak, Supreme Court Correspondent, *The New York Times*; Samuel Estreicher (moderator)

A New Framework for Success:

Fine-Tuning Your Academic Approach

Jayla Randleman '13; Arin Smith '14; Joel Todoroff '14; Troy McKenzie '00 (moderator)

Making the Most of Law School:

What We're Doing and What You Can Do

(See story on page 20.)

Melody Barnes, Vice Provost for Global Student Leadership Initiatives, NYU, and Former Domestic Policy Adviser; Evan Chesler '75, Presiding Partner, Cravath, Swaine & Moore; Kevin Davis, Beller Family Professor of Business Law; Sally Katzen, Senior Adviser, Podesta Group; Richard Revesz (moderator)



Professor Robert Cooter of the University of California, Berkeley School of Law and faculty co-director of its Law and Economics Program delivered the eighth annual Friedrich A. von Hayek Lecture, "Freedom, Innovation, and Intellectual Property," last October. The event was presented by the NYU Journal of Law & Liberty.

War on Prescription Drugs?

NYU Law hosted a Clinton Foundation forum on prescription drug abuse featuring former President Bill Clinton, New York City Police Commissioner Raymond Kelly LLM '74, NYU President John Sexton, and National Institute on Drug Abuse Director Nora Volkow.

According to a foundation statement, in the United States one person dies every 19 minutes from a drug overdose, a tragedy driven largely by the misuse of prescription painkillers. And in the last 20 years, adds the statement, the consumption of prescription stimulants has increased 900 percent. At the forum, Clinton noted that prescription drug abuse has grown dramatically among 18- to 26-year-olds.

Kelly, who served under Clinton as US Customs Service commissioner, said prescription drug abuse can foster violent crime but is often underestimated: "There's a tendency on people's part to think somehow that they're safer because we have them as a result of a prescription."

Focusing its efforts on college students, the Clinton Foundation, through its Clinton Health Matters Initiative, hopes to raise the profile of the issue and work with agencies to improve drug monitoring programs and get universities to join campus initiatives.

"This is insane to have the brightest of our young people dropping out under conditions of which their addiction has not been treated or their abuse is out of ignorance," Clinton said. □



West Wing Wisdom

NYU LAW'S STUDENT CHAPTER of the American Constitution Society for Law and Policy enlisted Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, to interview Robert Bauer, White House counsel during Barack Obama's first term and a 2012-13 distinguished scholar in residence and senior lecturer at the Law School, about his career as a political lawyer.

Bauer has also served as Obama's personal attorney and as general counsel to Obama's presidential campaigns and the Democratic National Committee, and his clients include an array of party committees, corporations, trade associations, unions, and tax-exempt advocacy groups, among others. In an increasingly complex regulatory landscape, he said, "Our role is to counsel on the legal risks and opportunities for conducting political activity."

Regarding suggestions that the White House counsel's office has become overgrown and overly influential as it provides advice on everything from questions of presidential authority and the constitutionality of signing statements to the thorniest

national security matters, Bauer said, "It's just impossible to imagine that the president of the United States, given the authority that he possesses and the responsibility that he is expected to exercise, would not have access to legal advice in his capacity as president." A range of perspectives both within and outside the counsel's office, he said, means that the White House counsel's influence certainly does not go unchecked.



Bauer was candid about the difficulty of the job, which during his 18-month tenure saw him grappling with Guantánamo detention policy, drones, and the killing of Osama bin Laden. "These are really hard issues.

You can see lawyers going through 20, 30, even 40 drafts of a memorandum on a complicated issue and still not feeling they have it quite right," he said. "The task of the White House counsel is to make sure that when the conversation gets to the president, it's not just this pluralistic jumble. Somebody has been able to cut through all of that and really give the president a very clear view of what the best arguments are and what his choices genuinely are." □

NYU Law's Got TALENT

But we'll let you be the judge of that.

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Crisis Prevention

MEREDITH FUCHS '93, general counsel of the Consumer Financial Protection Bureau (CFPB), gave the annual Frank J. Guarini Government Lecture at NYU Law in January. Fuchs, who joined the CFPB when the bureau was established by the Dodd-Frank Act in 2010, spoke about the bureau's evolution from a group of 10 people "in the basement of the Treasury Department" to an agency of more than a thousand people, and discussed the actions that the bureau has taken to protect consumers in the aftermath of the financial crisis.

"This financial crisis reminded us in a very, very hard way that unregulated or poorly regulated financial markets can affect not only the welfare of individuals, not only the welfare of specific financial firms that make poor choices, but the stability of the economy itself," Fuchs said. "The bureau was created, among other reasons, to try to prevent this from ever happening again."

Because irresponsible underwriting of mortgages was the principal cause of the financial crisis, the most significant task that the CFPB has taken on so far is the regulation of the mortgage market—the single biggest market for consumer finances. The CFPB was tasked with regulating to end the problematic practices of mortgage service providers, such as the use of robo-signed affidavits in foreclosure proceedings, deceptive practices in the offering of loan modifications, and the failure to process homeowners' requests for modifications of payment plans. The bureau recently issued its first set of mortgage-servicing rules, which are intended to "help prevent borrowers from being caught off guard by surprises, and provide special protections for borrowers who are having trouble making their mortgage payments," Fuchs said. □



Serve the People Right

PUBLIC SERVICE is in the Udall family blood. Before his election to the US Senate from New Mexico in 2008, Tom Udall served two decades as the state's attorney general and a US representative. His father, Stewart, was the Secretary of the Interior in the cabinets of presidents John F. Kennedy and Lyndon Johnson. His uncle Morris was a congressman from Arizona for three decades. And he has first and second cousins currently serving in the Senate. It is difficult to imagine a more appropriate public servant to have delivered the 16th annual Attorney General Robert Abrams Public Service Lecture last September.

In his lecture, Udall focused on how he addressed two public safety issues when he was attorney general: drunk driving and smoking.

When he took office in 1991, New Mexico was first in the nation in drunk driving deaths, he said. Udall made the issue a priority in his campaign and during his first years in office. After creating a task force, consulting interest groups, and lobbying legislators, however, his efforts gained traction only, he admitted, after a woman who lost her grandchildren in a drunk driving accident spoke out about the issue, leading to the passage of comprehensive state legislation that cut the number of yearly drunk driving deaths in half.

Udall also played a role in a lawsuit against the tobacco industry brought by 46 state attorneys general alleging that several major tobacco companies misled the

public, enhanced addictive properties of cigarettes, and marketed their products to children. Udall said that in 1997, New Mexico alone spent \$26 million in Medicaid costs for residents suffering from smoking-related illness. The tobacco companies settled for a historic \$206 billion. Udall noted that the attorneys general working in concert were better able to address the problem than the federal government because they were not beholden to tobacco industry political funding.

Peppered throughout his lecture were observations on the value and benefits, both to oneself and the nation, of public service. At the outset of his speech, Udall wryly noted the difficulty in encouraging public service at a time when Congress's approval rating (nine percent) rested just below that of the Communist Party (11 percent). And he quoted the philosopher Albert Schweitzer: "The only ones among you who will be truly happy are those who will have sought and found how to serve."

While talking about his work as attorney general Udall stressed the importance of the unelected staff, acknowledging the impossibility of facing down complex policy problems without their talent and passion. "The people are what you come back to," he said. "Many of them were hardworking lawyers who made a big difference on real issues." Emphasizing that the stakes are no less than the future of the nation, Udall quoted his father: "If the good people don't go into public service, the scoundrels will take over." □



In-Depth Analysis

The 2012-13 student symposia feature day-long explorations of complex legal issues and themes.

Breaking the Glass Ceiling: Exploring the Continued Existence of Gender Bias in the Legal Profession and Understanding How It Can Change

Law Women
Keynote speaker Jean Molino '76, general counsel at McKinsey & Co., reflected on her own career and her experience with women in high levels of the legal profession. Encapsulating the spirit of the symposium, which examined why gender bias still exists in legal private practice, offered potential avenues of reform, and sought to empower women to achieve their potential in the legal field, Molino said, "None of us should settle for a state of affairs that limits personal achievement due to defining characteristics such as gender or race. And until we're convinced that there is no more to be done, that we are truly and forever beyond that point and that the glass ceiling has been shattered, we should continue to talk about this topic, to share ideas, and to gain commitment to action." In addition to Molino, fourth from left, panelists, pictured above, included Vivia Chen '83, Stephanie Scharf, Lauren Stiller Rikleen, Roberta Liebenberg, Deborah Epstein Henry, Ellen Ostrow, Laurin Blumenthal Kleiman, and Sheila Birnbaum '65.

Criminal Justice in the Age of DNA

Annual Survey of American Law
Keynote speaker: Jonathan Lippman, Chief Judge, State of New York Court of Appeals
Addressed the legal and practical issues involved in the use of DNA typing in the criminal justice system, focusing on issues that arise in regulation at the laboratory stage, use of DNA in criminal investigations, and DNA use as evidence at trial.

Separate and Unequal: Education, Race, and the Law

Black Allied Law Students Association; Suspension Representation Project; Education Law and Policy Society
Explored the current state of American public education, with a focus on school discipline, education equity, and legal practitioners' participation in education reform, and drilled down to examine the school-to-prison pipeline, segregation in America's schools, and strategies for litigating on behalf of education equality today.

Developments in the Law of International

Project Finance *Journal of Law & Business*; NYU Law & Business Association
Keynote speaker: Carlos Urrutia, Ambassador of Colombia to the United States
Examined the financing of infrastructure, oil and gas, and other long-term projects in developed and emerging economies in the wake of the post-2007 financial crisis, as well as the urgent need to adapt and respond to changed rules and circumstances in the global marketplace.

Democracy Unfiltered: Discussing 100 Years of Direct Elections and Modern Issues Affecting the Law of Democracy

Journal of Legislation and Public Policy
Commemorated the 100th anniversary of the ratification of the 17th Amendment and addressed historical and current issues affecting American democracy.

18th Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium Tug of War: The Tension Between Regulation and International Cooperation

Journal of International Law and Politics; International Law Society; Center for Transnational Litigation and Commercial Law
Featured: Lord Lawrence Collins of Mapesbury, Former Justice, Supreme Court of the United Kingdom; Diane Wood, Judge, US Court of Appeals for the Seventh Circuit
Focused on how US courts balance domestic regulatory interest and the need for international cooperation in transnational litigation.

Making Constitutional Change: The Past, Present, and Future Role of Perry v. Brown

Review of Law & Social Change
Featured: David Boies LLM '67, Chairman, Boies, Schiller & Flexner; Theodore Olson, Partner, Gibson, Dunn & Crutcher, and Former US Solicitor General; Rachel Maddow, host, *The Rachel Maddow Show*, MSNBC
Please see story on page 88.

Green for Green: The Business and Law of Renewable Energy Finance

Environmental Law Journal; Environmental Law Society; Frank J. Guarini Center on Environmental and Land Use Law
Keynote speaker: Neil Auerbach LLM '84, Founder and Managing Partner, Hudson Clean Energy Partners, "The Future of Clean Energy Finance"
Probed the key legal, financial, and policy issues involved in the finance of renewable energy. What can our governments do to facilitate investment and production? What can private companies do in uncertain times? What lessons can we learn from abroad?



Commemoration of the 50th Anniversary of the New York Civil Practice Law and Rules

Dwight D. Opperman Institute of Judicial Administration; *Journal of Legislation and Public Policy*
Featured: Jack Weinstein, Judge, US District Court for the Eastern District of New York, who was one of the principal architects of the CPLR as reporter to the advisory committee on practice and procedure
Examined both the process that yielded the CPLR and the major innovations it brought, taking stock of the principal procedural arrangements effected by the CPLR; also looked ahead to future challenges. Joining Weinstein, above, second from left, were David Ferstendig '81, Judith Kaye '62, Oscar Chase, Vincent Alexander, and William Nelson '65.

Settled on the Court

RYAN KIM '13 COULDN'T BELIEVE IT. "The shot felt great on the release, but even after I saw the ball drop through the net," he says, "the moment didn't feel real until Patrick Ekeruo ran toward me screaming and lifted me into the air."

With the score tied at 67 and the game clock winding down, Joey Kaempf LLM '13 found co-captain Kim open for the three-point shot and NYU Law's fifth consecutive win in the annual Deans' Cup—stunning Columbia and sending the home crowd into a frenzy at the final buzzer. Proceeds from the game help fund public interest law organizations at NYU and Columbia; NYU received an estimated \$20,000 from this year's match, the 12th in the series.

Kaempf, the leading scorer, torched Columbia for 21 points and kept NYU in the game throughout the second half. Unselfishly, he made the right play on the final possession. "Ryan's a great shooter," he says. "An open shot is better than a contested one, even if I had already made a few before."

Kim and Kaempf credit the intensity and defense of co-captains Ekeruo '13 and Peter Ajayi '13, the toughness of Sherwin Salar '13, and the hard work of Coach Jay Rosser for the win.

Rosser, now 6-0 in Deans' Cup games, led the team through two months of practice that included 7:00 a.m. sessions before class. Among the members was Brandi McNeil JD/MSW '13, preparing for her fourth Deans' Cup game.

At halftime, NYU led 27-22 when the faculty came out for their annual game. Professor Samuel Rascoff—listed at 7'1" in the program—says the faculty game was unexpectedly high-scoring, considering that the final score was only 4-2 two years ago. Columbia won 18-11. "Even though the other team came out ahead, it was great fun for our squad," he says. "All of us who played were thrilled to share the court with the student stars."

The biggest question of the night was whether then-Columbia Law Professor and soon-to-be NYU Law Dean Trevor Morrison would play in the faculty game. Instead, he watched from the sidelines and took the chance to get to know a few NYU students.

NYU Law's student body came out in large numbers to support their players. Adam Karman '15 says he didn't expect the game to be so close: "I almost left after the opening tip-off. I thought the game was already locked up when NYU came down with the ball, even though it looked like Columbia wanted it more."

Columbia watched the final moments in shock, visibly deflated. As NYU Dean Richard Revesz presented the cup to the winning team, many Columbia students lingered in the bleachers before having to take the long subway ride home and wait another year for the chance to bring the Deans' Cup back uptown.

Continuing the tradition of close games, it was the sixth Deans' Cup to be decided by three points or less. NYU now leads the series 9-3. □



Back to the NYUture

After being thrust back into the '80s by a LEXIS product gone terribly awry, Allie McFly partnered with "Doc" Lauren Rooney and a cast of loveable, if stereotypical, law school friends to help her get back to...well, you get the picture.

This riff on the classic '80s movie with a similar name was the 39th production of the NYU Law Revue. A true student effort, it involved more than 100 NYU Law students in cast, crew, band, writing, and creative capacities.





RELEVANT PARTIES

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- 111 Frank J. Guarini '50, LLM '55 honored at Weinfeld Gala

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A proud Nkoyo-Ene Effiong '13 and her jubilant family paused after Convocation at the Beacon Theatre.

The Class of 2013



Who's Who: Legacy Families

1. Brittany Bettman with her father, Gary Bettman '77
2. Patricia Carreiro with her fiancé, Michael Gigante '11
3. Sally Davis with her brother, Hal Davis LLM '87
4. Eli Fuchsberg with his father, Trustee Alan Fuchsberg '79
5. Joshua Goldman with his brother, Zachary Goldman '09
6. Jake Yormak with his uncle, Trustee Leonard Boxer '63
7. David Morduchowitz with his sisters, Daphne Morduchowitz '05 and Sarah M. Nissel '08
8. Subash Iyer with his partner, Helam Gebremariam '10
9. Jaclyn Saffir with her uncle, Richard Saffir LLM '87
10. Anna Schoenfelder with her sister, Jeanne Schoenfelder '10
11. Hanna Seifert with her father, Norbert Seifert '80
12. Joseph Straus with his father, Trustee Daniel Straus '81
13. Hannah Rodgers with her brother, Philip Rodgers '09
14. Eleanor Jenkin with her sister, Rebecca Jenkin LLM '08









Who's Who: Scholars and Donors

1. Fay Zarin/Shirley Rosenfeld Scholar (AnBryce Program) Isiah Harris was hooded by Gerald Rosenfeld
2. Robert M. and Carol Colby Tanenbaum Scholar Keturah Carr was hooded by Carol Colby Tanenbaum
3. Judge Charles Swinger Conley Scholar (AnBryce Program) Josie Morris was hooded by Ellen Conley
4. Wachtell, Lipton, Rosen & Katz Scholar (AnBryce Program) Sharde Armstrong was hooded by Trustee Eric Roth '77
5. M. Carr Ferguson Scholar Orly Mazur was hooded by Trustee M. Carr Ferguson LLM '60
6. Thomas M. Franck Scholar in International Law Celeste M. Reyes Cruz was hooded by Rochelle Fenchel.
7. Bickel and Brewer Latino Institute for Human Rights Scholars Kevin Terry, Lisandra Fernandez, and Jordan Wells were hooded by Professor Alina Das '05
8. Coben Root-Tilden-Kern Scholar Semuteh Freeman was hooded by Jerome Coben '69
9. Michael A. Schwind Global Scholars Hadrien Servais and Francisco Muñoz were hooded by Katherine Herrmann
10. Derrick Bell Scholars in Public Service Ashley Harrington and Kellsie Barton were hooded by Janet Dewart Bell
11. Furman Academic Scholars Zachary Savage, Yan Cao, Yotam Barkai, Subash Iyer, and Paul Hubble were hooded by Trustee Jay Furman '71
12. Frank J. Guarini Government Scholars (front row) Maximilian Feldman, Erinn Martin, Abid Hossain, Randall Johnston, Alexander Kondo, Leslie Coleman, (back row) Christine DiDomenico, Andrew Fine, Jeffrey Bengel, Joshua Goldman, and Kevin Friedl were hooded by the Honorable Frank J. Guarini '50, LLM '55
13. Erich Leyens Scholar Ayesha Lewis was hooded by Professor Randy Hertz
14. Jacobson Public Service for Women, Children, and Families Scholar (Root-Tilden-Kern Program) Julia Kaye was hooded by Kathy Jacobson
15. Carroll and Milton Petrie Foundation Scholars (front row, from left) Harold Leslie, Raquel Manzanara, Ying Ying Fok, (back row) Christopher Davis, John David Connelly, Tristan Freeman, and Lilian Lo were hooded by Beth Lief '74
16. John D. Grad Memorial Scholar (AnBryce Program) Natasha Silber was hooded by Dr. Joyce Lowinson
17. Rochelle J. Buckstein Scholar Benjamin Butterfield was hooded by Eric Martins '63
18. Jacob Marley Foundation in memory of Christopher Quackenbush '82 Scholar (AnBryce Program) Britton Kovachevich was hooded by Gail Quackenbush
19. Alex E. Weinberg Scholar Alexander Plaum was hooded by Kimberly Blanchard '81
20. Thomas Heftler Scholar Wentao Yuan was hooded by Lois Weinroth
21. Anthony Welters '77, chairman of the Law School's board of trustees, and Ambassador Beatrice Welters hooded AnBryce Scholars (front row, from left) Francesca Corbacho (also Root-Tilden-Kern Scholar), Jayla Randleman (Kenneth and Kathryn Chenault Scholar), Christopher Ramos, Natasha Silber (John D. Grad Memorial Scholar), Britton Kovachevich (Jacob Marley Foundation in memory of Christopher Quackenbush '82 Scholar) (back row) Sharde Armstrong (Wachtell, Lipton, Rosen & Katz Scholar), Cassandre Davilmar (Clifford Chance Scholar), Justin Roller (William Randolph Hearst Scholar), Isiah Harris (Fay Zarin/Shirley Rosenfeld Scholar), and Josie Morris (Judge Charles Swinger Conley Scholar)



In Praise of Platitudes

IN WHAT MAY BE A FIRST, renowned litigator David Boies LLM '67, chairman and founder of Boies, Schiller & Flexner, addressed NYU's Class of 2013 at both the University's 181st Commencement Exercises at Yankee Stadium on May 22 and the Law School's Convocation on May 24 at the Beacon Theatre.

Boies was introduced at Commencement by Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, and received an honorary Doctorate of Laws from NYU President John Sexton, who described Boies as "arguably the lawyer of the century." Indeed, Boies's case

for the legality of same-sex marriage was also arguably the most widely watched of the Supreme Court's term. And, at the time of the ceremonies, the decision had yet to be rendered.

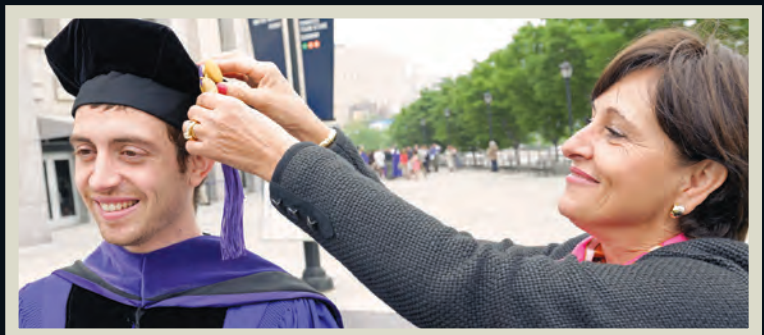
Boies, a Law School Trustee, remarked on the inevitability of clichés in commencement speeches: "We tend to talk on a day like this in platitudes. Change the world. Don't be afraid to fail. The problem is that it's too easy to dismiss platitudes." But, with a nod to his historic Proposition 8 case, he quickly pointed out how important they nonetheless are: "One of the

platitudes of our country is that all people are created equal. One is that every person has an inalienable right to life, liberty, and the pursuit of happiness. We are engaged today in a civil rights struggle to try to end the last official bastion of discrimination in this country." Mentioning the violence and officially sanctioned discrimination that gays and lesbians have historically faced, Boies said, "We've come a long way since then, but we have a long way still to go."

Continued



Commencement



"We represent the liable, the culpable, the guilty. Some of these people have some pretty nasty things to say. Sometimes the things that these people have to say are difficult for us to hear. Sometimes they just want someone, anyone, to hear them. But without lawyers these individuals would have no voice at all in our system. It's our job as lawyers to make sure that these people are heard."

Cameron Tepfer '13



"If you look at the people who are successful in this profession, it is not the people who are the smartest. It's not even the people who work hardest. It's the people who are most trusted."

David Boies LLM '67

"We are a class who survived a hurricane, a blackout, and a never-ending winter. We are a class who witnessed America's presidential election, eyed the fiscal cliff, followed the gun-control debates—and actually have opinions about these things. Most importantly, we are a class who has met as strangers but leave as friends."

Rivana Mezaya
LLM '13



"The first day you come, you fall in love and say, 'I'm a New Yorker,' and you are."

Joseph Weiler,
University Professor



Convocation



The co-chairs of the Class Gift Committee—Alison Puente-Douglass '13 and Hannah Rodgers '13, above left, and Aaron Gaynor LLM '13 and José Antonio Batista De Moura Ziebarth LLM '13, above right—presented the Class of 2013 gift at the morning and afternoon ceremonies, respectively. Anthony Welters '77, chair of the Law School's board of trustees, and Trustee M. Carr Ferguson '60, respectively, received the donations, which totaled more than \$38,000. "Our gift sends a powerful message to alumni, our peer schools, and the legal community that we feel strongly enough about our time at the Law School to give back even before we begin our careers," said Puente-Douglass.

This year's Convocation marked the last time that Dean Richard Revesz, who stepped down from his deanship on May 31, would preside over the festivities. He said he related to the feelings of all the newly minted graduates: "As my tenure ends I share with you that mixed sense of pride regarding what's been accomplished, relief that it's over, and more importantly, excitement for what is to come."

Speaking to an audience of lawyers, Boies cited personal contribution to the justice system as perhaps the most important criterion for professional success. "The law can be written down. It can be in books," he said. "The law in the Soviet Union was just like our law. The law in Castro's Cuba was just like our law. The difference was whether it was enforced by lawyers and by judges."

Later in the afternoon, University Professor Joseph Weiler, Joseph Straus Professor of Law and European Union Jean Monnet Chaired Professor, praised the gathered LLM and JSD graduates, many of whom are not American, for their decision



to combine legal educations from their home countries with US training, for what he called "the finest of legal educations."

Weiler gave a close reading of a passage from Genesis 18, which he described as "one of the founding moments of the development of the notion of justice in Western civilization." In the passage, Abraham asks God, who is about to destroy the cities of Sodom and Gomorrah, whether God would

also destroy the righteous with the wicked. Parsing the passage, Weiler argued that since Abraham has not yet received divine instruction in the ways of justice, he is presumed to know it in his very constitution as a human being. "In real life...we typically know what is the right moral choice," Weiler said. "The problem is not to know what I should do but to have the courage to do that which I know is the right thing to do." □

Graduates with a Global Edge

A member of Singapore's Parliament addressed the 37 graduates at the NYU School of Law and National University of Singapore Dual Degree Program convocation ceremony at the Asian Civilisations Museum in March. The ceremony marked the penultimate convocation for the program, which will end in 2014.

Indraneel Rajah, senior minister of state for law and education and a graduate of NUS Law, stressed the unique advantage of the NYU@NUS graduates. "You will return to your different countries, but the fact that you can pick up the phone or send an e-mail and say, 'I want to do this deal and that is going to have some impact on your country; can I check the laws there?' or 'Can I work with you on this deal there?'—that is going to be invaluable."

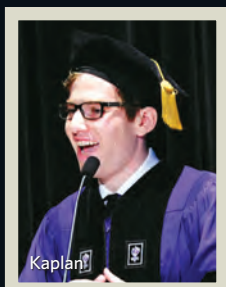
Student speakers Ellie Siu of Hong Kong and Jared Kaplan of the United States also expressed gratitude for having a global perspective in their education. "While much of the rest of the world has been reactionary," said Kaplan, "the students of the NYU@NUS program have taken the vanguard, not accepting to be a mere cog of the status quo but an instrumentality of embracing change." For the first time in the program's history, a student, Sudeshna Chatterjee, was hooded by her husband, Jitesh Kumar Shahani '11.



Rajah



Siu



Kaplan

Scholar and Donor Reception



1



February 11, 2013

2



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5



6



7



8



9



10

1. Judge Charles Swinger Conley Scholars Josie Morris '13 and M. Gabrielle Apollon-Richardson '15 with Ellen Conley
2. BLAPA Board Member Vanessa Pai-Thompson '08 and Janet Dewart Bell with Derrick Bell Scholars for Public Service Ashley Harrington '13 and Kelsie Barton '13
3. Coben Root-Tilden-Kern Scholars Nicholas Melvoin '14, Semuteh Freeman '13, and Andrew Jondahl '15 with Jerome Coben '69
4. Trustee Kathryn Chenault '80, benefactor of the Kenneth and Kathryn Chenault Scholarship within the AnBryce Program, gave the keynote speech.
5. Starr Foundation Global Law Scholars and C.V. Starr Scholars So Yung Kang '15, Rahim Manji '15, Jamaal Myers '13, Christopher Anderson '13, Stefan McDaniel '15, Christoffer Stromstedt '15, Janice Claire Tan '15, Igor Felipe de Macedo LLM '13, Peter Ajayi '13, and Anthony Askew '13 with Anthony Gooch '63, LLM '64 and Trustee Florence Davis '79
6. Herman Diamond Scholar Nicholas Harmon '14 with Jessica Diamond and Nancy Diamond
7. William Randolph Hearst/AnBryce Scholars Joshua Espinosa '15, Justin Roller '13, and Lauren Pignataro '14 with Mason Granger
8. Ira Nordlicht '72 (far left) and Nordlicht Family Scholar Nnenne Okorafor '15 (third from left) with Mitchell Jacobson '76 (center) and the Mitchell Jacobson Leadership Program in Law & Business Scholars James Ganley '15, Daryl Kleiman '15, Zachary Kolodin '14, Colleen Lee '13, Megan Ward '13, Craig Pacheco '15, Tumi Adebiji '15, Stephanie Coco '14, Andrew Krause '13, and Alyssa Campbell '13
9. A.H. Amirsaleh Scholar Marzieh Tofighi Darian LLM '13 gave the student speech.
10. Wilf Tax Scholars Devan Patrick LLM '13, Olga Goldberg LLM '13, Taylor Davis LLM '13, and Rafi Mottahedeh LLM '13 with Trustee Leonard Wilf '77



Reunion 2013



On a gorgeous spring weekend, alumni returned to Washington Square to examine aspects of democracy and the democratic process. José Alvarez led a panel on the Middle East after the Arab Spring; Stephen Gillers '68 moderated a discussion about corruption in government and business and touched on whistleblower laws; Richard Pildes explored campaign finance reform ideas and their likelihood of success; and David Kamin '09 refereed a discussion of whether tax reform is possible.

Five members from reunion classes, left, received honors at the Annual Awards Luncheon. Pauline Newman '58, a judge on the US Court of Appeals for the Federal Circuit, and Charles Klein '63, founding partner of American Securities, each received the Alumni Achievement Award; Jane Harris Aiken '83, a professor at Georgetown University Law Center, received the Legal Teaching Award; Mónica Roa LLM '03, director of programs at Women's Link Worldwide, received the Recent Graduate Award; and Ellen Barry '78, executive director of Insight Prison Project, received the Public Service Award.



Honorees



May 3-4, 2013



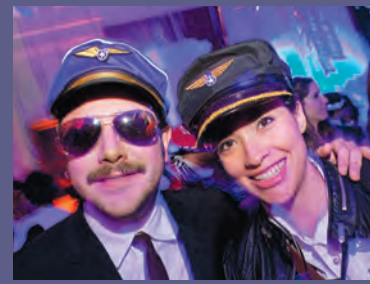
Thanking the People Who Make a Difference

THE LAW SCHOOL showed its gratitude to top donors with a lively cocktail reception at Alice Tully Hall last September. The Weinfeld Gala recognizes donors who give at the \$5,000 level or more annually, or \$1,000 or more during their first 10 years as alumni. NYU Law also presented Frank J. Guarini '50, LL.M. '55 with its Judge Edward Weinfeld Award, established to recognize the professional

accomplishments of alumni who graduated 50 years ago or more. Guarini was a seven-term congressman from New Jersey, US representative to the United Nations General Assembly, and two-term New Jersey state senator. He is senior partner at Guarini & Guarini. In 2008, the main post office in Guarini's birthplace, Jersey City, was dedicated as the Frank J. Guarini US Post Office.



Fall Ball



Barristers' Ball



This year, Sherrilyn Ifill became the seventh president

and director-counsel of the NAACP Legal Defense and Educational Fund (LDF). A professor at the University of Maryland School of Law for 20 years, Ifill '87 also litigated and consulted on a wide range of civil rights cases. In 1991, when she was LDF assistant counsel, she won the landmark case *Houston Lawyers' Association v. Attorney General of Texas*, in which the Supreme Court held that trial judges' elections are covered by the Voting Rights Act. In the wake of the high court's June decision to gut the VRA, Ifill spoke with Marlen Bodden '86, an attorney at the Legal Aid Society, to discuss the challenges ahead for herself and the nation.

What are your top priorities as the head of the LDF? Many civil rights organizations have been playing an important and aggressive defense game to hold onto the extraordinary gains of the civil rights movement. But I want to play offense, and my focus is on those who are the most marginalized—at the intersections of race and class, and race and poverty—and on the legal barriers to educational and economic opportunities.

Does the discussion about race obscure other injustices, such as those rooted in poverty? Actually, race illuminates poverty. The most egregious injustices in our country occur at the intersection of race and poverty.

LDF defended the VRA. What will be the long-term impact on the country after the Supreme Court's decision to effectively allow states to change their election laws without advance federal approval? It changes what we have come to expect of democratic participation in this country. Unless Congress can pass a fix to the VRA we'll see the success of voter discrimination and suppression, especially at the local level, so in judicial elections, and those for school boards, town councils, water districts.

What about the short-term impact? Within hours the Texas AG announced plans to immediately implement that state's voter ID law, known as the most onerous of its kind in the nation. South Carolina, Alabama, and North Carolina announced plans to implement voter suppression measures that had been stopped by the VRA. We expect more as we get closer to the 2014 elections.

LDF is co-counsel with the Legal Aid Society on a case that deals with unconstitutional stops, frisks, and arrests in public housing. What other policing issues is LDF working on? We are increasingly concerned about the relationship between law enforcement and education. So we just filed a complaint with the Department of Education's Office of Civil Rights against the Bryan Independent School District in Texas, where police officers are empowered to give misdemeanor tickets to students for engaging in profanity. The figures show African-American students disproportionately get these tickets. The issue of police in schools is delicate because we have to calibrate our concern about safety in schools with an understanding of what it means



when we begin to criminalize the merely inappropriate conduct of middle school and high school students.

You wrote a book called *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-First Century*. Why, today, is lynching so important to confront? What inspired me to write the book was seeing how people abroad—in Rwanda, South Africa, Yugoslavia—were dealing with traumatic incidents of violence in the past. It wasn't perfect, but they were dealing with it with tremendous courage and honesty. And here I was in a country that had never confronted lynching. The silence surrounding lynching was toxic, in both the black and white communities. The reaction to those events has almost frozen those communities in amber.

What, if any, are the special responsibilities that you feel taking on the mantle of such an historic organization? It's not a rest-on-your-laurels job. I don't even regard it as a make-your-name job because your name is going to be mud as much as it is going to be lauded. The reality is, you take this because somebody passed you the baton. I have to make the best of it as did all of those director-counsels like Thurgood Marshall and Elaine Jones who came before me. They ran their race and they left a great American institution for those of us who came later to steward.

Ted Shaw, former head of LDF, said about you, "She has a toughness about her that I think will serve her very well. I mean the right kind of toughness." What is the right kind of toughness? I have a pretty unrelenting view of justice. You have to be willing to fight and lose the battle sometimes in order to win the war. You also have to have contempt for failure. I like to think I have that kind of toughness. It's not the toughness of just being intimidating. Unfortunately, very few people find me intimidating.

Well, you are from New York City. Yes, I'm from Queens.

I'm from the Bronx. You got me. When you say "Bronx," people back up. We Queens girls couldn't live off the name of our neighborhood, like, "Oh, I'm from Harlem." No, we had to really bring it. That's why Queens girls have an attitude. □



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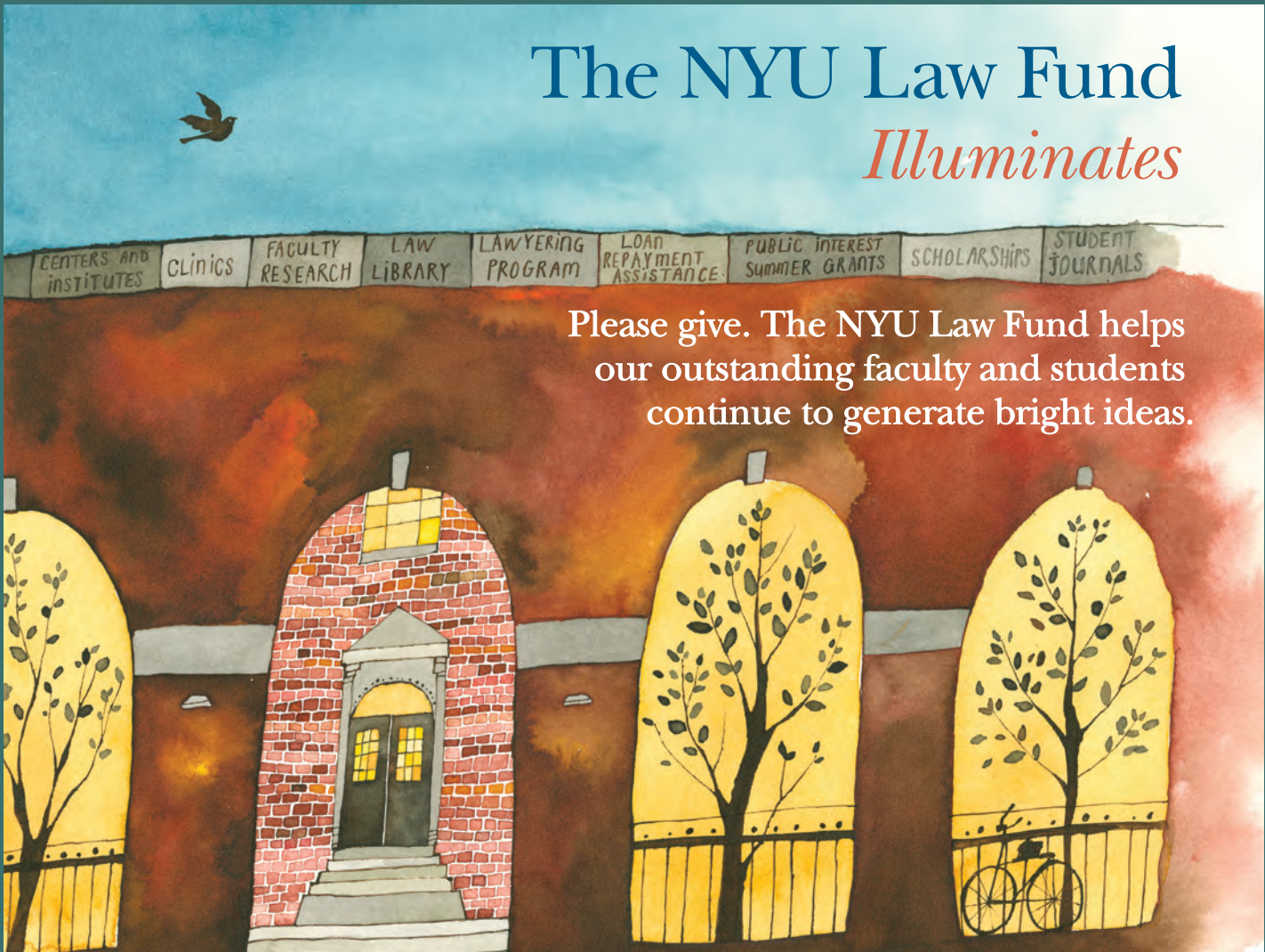
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