

NYU LAW

MAGAZINE



Under Her Wing

Since founding her specialty law firm three decades ago, Karen Freedman '80 has helped 50,000 children in crisis and transformed New York City's foster care system.

It's going
to be a **BLAST!**

**FRIDAY TO SUNDAY,
MAY 1-3, 2015**

Please visit
www.law.nyu.edu/reunion/2015
for more information

REUNION!



The Morrison Memo

One of the many qualities that attracted me to NYU Law is the institution's deep commitment to public interest, and the extraordinary quality, character, and diversity of the students who come here as a result. NYU Law takes a broad view of public interest that hinges on the belief that all of us in the legal profession are responsible for promoting justice—whether that means building careers in nonprofit organizations or the government, or doing



pro bono work while in private practice. In choosing to apply their considerable skills toward promoting the public interest, our students and graduates render vital service to our country while also maintaining and extending an enduring value of our Law School.

In the pages of this magazine, we celebrate the pioneering work of Karen Freedman '80, founder and executive director of Lawyers For Children, and Sherrilyn Ifill '87, president and director-counsel of the NAACP Legal Defense and Educational Fund and this year's Convocation speaker. We also commend the accomplishments of Sheila Birnbaum '65, a partner at Quinn Emanuel Urquhart & Sullivan and special master of the September 11th Victim Compensation Fund; Marshall Camp '02, a partner at Irell & Manella and lead attorney in the first case to test changes to California's criminal sentencing policies regarding juveniles; and Scott Fein LLM '81, a partner at Whiteman Osterman & Hannah who was counsel for one of the longest-litigated civil rights cases in US history. Plus, we take great pride in the public interest work that our faculty and students do on a range of issues, including protecting free speech and challenging unlawful government surveillance through our new Technology Law and Policy Clinic, which is described in this issue's story on intellectual property law.

In keeping with our expansive view of public interest, the Law School in recent years has forged a number

of new connections to legal and policy work in government. Last year, for example, we launched a new semester-long clinic in Washington, DC, that places students in a range of offices across the federal government. And thanks to the generosity of Trustee Jay Furman '71, we also instituted the Furman Public Policy Scholarship Program, which is designed to train and support outstanding students interested in pursuing careers in public policy.

At the same time, we are working to expand our connections at the state and local government levels. One way we're doing this is through the New York State Excelsior Service Fellowship Program, which places graduates of select New York law schools in state agencies ranging from the Department of Environmental Conservation to the Department of Labor. Through these various programmatic initiatives, we will help new generations of NYU Law graduates follow in the long tradition of alumni working at all levels of government, from Anthony Foxx '96, US secretary of transportation, to Lisa Landau '87, chief of the Health Care Bureau at the New York State Office of the Attorney General, to Kenneth Thompson '92, the newly elected Kings County district attorney. Government is a creature of law, but its laws are only as good as the lawyers attending to them. I'm tremendously proud to have our talented alumni helping to ensure that our government runs efficiently and fairly, safeguarding both our collective welfare and our individual rights.

This year marks the 60th anniversary of the first graduating class of the Root-Tilden-Kern Scholarship Program, the bedrock of our strong public interest mission. The program covers the full cost of tuition for outstanding students who plan to dedicate their careers to public service. The RTK program also had an instrumental role in establishing the Public Interest Law Center, thereby inspiring the spirit of public interest that permeates our larger community. This important anniversary allows us to reflect on how RTK's aims are shared by NYU Law as a whole. Collectively, we are dedicated to shaping the next generation of leaders, to fostering a dynamic community of scholars, and to ensuring that a concern for the public interest is an integral part of our students' conceptions of themselves and their roles, no matter which career paths they pursue.

The 2014 magazine was begun and finished during my first term as dean. The magazine staff and I are eager to learn what you think of our news and stories and how we deliver them. Please take a moment to let us know by filling out the reader survey on the last page or online at bit.do/nyulaw2014survey.

As always, I welcome your thoughts at deanmorrison@nyu.edu.

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MANAGING EDITOR

Jeanhee Kim

CREATIVE DIRECTOR

David Niedenthal

DESIGNERS

Michael Bierman, Cheryl Hark,
Kara Van Woerden

WRITERS

Rachel Burns, Atticus Gannaway,
Michael Orey, Michelle Tsai

SPECIAL ACKNOWLEDGMENT

Elyse Mall Klayman, former
Assistant Dean for Communications

CONTRIBUTING WRITERS

Thomas Adcock, Chelsea
Allison, Christopher Borgen '95,
Peter Carbonara, Candy J. Cooper,
Amy Feldman, Catherine Fredman,
Jennifer Frey, Erin Geiger Smith,
David Krajicek, Robert Levine,
Duff McDonald, Christine Pakkala,
Larry Reibstein

PHOTOGRAPHERS

Cover photograph by
Sam Hollenshead

Mathieu Asselin, Riccardo Cavallari,
Dan Creighton, Mark Finkendaedt,
Phil Gallo, Sam Hollenshead,
Elena Olivo, Brooke Slezak,
Juliana Thomas

COPY EDITOR

Heidi Ernst

EDITORIAL COORDINATOR

Gina Rodriguez

DESIGN COORDINATOR

Christine Perez

EDITORIAL ADVISER

Elizabeth Rohlfing

DIRECTOR OF DIGITAL CONTENT

Jill Rachlin Marbaix

WEB DIRECTOR

Clayton Gates

EDITORIAL ASSISTANT

Sarah Kwon

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law.magazine@nyu.edu

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NYU LAW

MAGAZINE

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Lily Batchelder is appointed to the National Economic Council; NYU Law to launch the Institute for Executive Advancement; Gabrielle Apollon '15 testifies on human rights violations in Brazil; Scott Fein LLM '81 closes a 14-year-long pro bono civil rights case; and more.

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We want to hear from you! Take our survey here or online at bit.do/nyulaw2014survey.



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Karen Freedman '80 came to NYU Law as a Root-Tilden Scholar on a mission. Now the founder and executive director of Lawyers For Children, she marshals coolheaded leadership and unflagging determination to help New York City's children in crisis.

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Clayton Gillette guides a team of NYU Law students in an extracurricular project, creating a "mini law firm" to advise the emergency manager of the City of Detroit on how to rebuild failed governance structures.

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Over its 60-plus-year history, the Root-Tilden-Kern Scholarship Program has cultivated an abundant community that supports lawyers in every genus of public service and public interest law.

A Higher Higher Ed

In recent years, the Law School has revamped its curriculum by increasing offerings that emphasize practice skills and business training for law students. Now it is preparing to bring the curriculum to executives and practicing lawyers.

Last fall, a Law School working group, aided by a McKinsey education consulting team led by McKinsey Partner David Chubak '05, found that there is demand for higher-level, non-degree legal training among practicing attorneys and business executives.

Leveraging the broad expertise of its faculty and its proficiency in delivering

online education such as through the Executive LLM in Tax, NYU Law will launch the Institute for Executive Education (IEE), which will develop short-term and custom-tailored training for organizations and individuals, with instruction taking place both on campus and online. Led by Faculty Director Gerald Rosenfeld, who is also faculty co-director of the Jacobson Leadership Program in Law and Business, and Executive Director Erin O'Brien, who was formerly associate dean of NYU Stern's Global Degree Programs and Executive Education, IEA hopes to offer its first classes in 2015.

"I am delighted to be joining Dean Trevor Morrison and Gerald Rosenfeld in the establishment of the Institute for Executive Education," says O'Brien. "IEE will provide an opportunity to broaden the reach of the Law School through executive education programs in the US and abroad. Our programs will be designed for lawyers, executives, policy-makers, and entrepreneurs who want to

expand their understanding in areas where the Law School has deep expertise."

Morrison notes that through the IEE, the Law School can meet the evolving needs of lawyers and other professionals: "I am excited about this opportunity to extend our academic mission, continue our tradition of innovation in legal education, and deepen our connections to the legal profession and business community both here and abroad."



Fear of Detection

Question: Why are Americans the most compliant taxpayers in the world? Answer: They are afraid of getting caught.

A Bloomberg writer/artist duo used a 2010 *Virginia Law Review* article by Joshua Blank LLM '07 and Daniel Levin as the basis of a cartoon published on Tax Day. The strip, "The American Way to Pay," cites Blank and Levin's data that shows a flurry of IRS press releases about audits in the weeks before April 15.



YOUR
TAX
DOLLARS
AT
WORK!

A Witness for Brazil's Haitians

As an inaugural Ford Foundation Law School Fellow, Gabrielle Apollon '15 worked at Conectas Human Rights in São Paulo during

the summer of 2013.

Just two months later, she testified before the Inter-American Commission on

Human Rights about the difficult journeys Haitian migrants undertook to reach Brazil.

While Brazil offers humanitarian visas for Haitians, migrants typically paid racketeers \$3,000 to \$5,000, unaware of or misinformed about visa requirements. Along the route, the migrants were often arrested and extorted by Brazilian state authorities. "Many told me, 'We've already spoken out about what's happening in our journeys here,'" Apollon, who speaks Kreyòl and French, testified. "'We've told journalists, we've told government leaders, but every day we hear that our brothers and sisters who come after us are going through the same things.'" With Apollon's testimony, that might change.

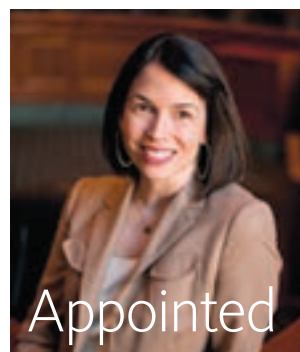


From Passion to Action

Asia Society named Rajeev Goyal '06 (top) and Winston Wenyan Ma MCJ '98 two of its 2013–14 Asia 21 Young Leaders, tasked with focusing on solutions to transnational issues facing Asia. They were among 30 leaders under the age of 40.

A rural development activist, Goyal helped build a water pump for a village in Nepal as a Peace Corps volunteer, then successfully lobbied Congress to increase funding for the Peace Corps. Now he has founded the Koshi-Tappu Kanchenjunga Biodiversity Education Land Trust Project to build a conservation corridor that protects thousands of species of flora and fauna in eastern Nepal.

Ma, a Chinese national who studied capital markets law as a Hauser Fellow, is managing director of China Investment Corporation, a \$575 billion sovereign wealth fund. Ma landed at CIC after successful stints at Davis Polk & Wardwell, JPMorgan, and Barclays Capital. In April, the University bestowed its Distinguished Alumni Award on him.



The White House has tapped Lily Batchelder, professor of law and public policy on leave, as deputy assistant to the president and deputy director at the National Economic Council. No stranger to high-pressure positions, the taxation and social insurance expert was recently part of the Senate Finance Committee's tax team, advising chairman Max Baucus, who praised her "wide range of experience and expert knowledge of tax and public policy."

"Bottom-feeding trolls... simply fire off boilerplate demand letters to any conceivable recipient, hoping to maximize their return by preying on as many victims as possible, with as little effort as possible. To impose a 'homework' requirement of actually analyzing the accused product or service disrupts this equation and makes many forms of 'bottom feeder' trolling less profitable and thus less appealing."

Professor of Clinical Law
Jason Schultz testified about abusive patent demand letters before the House Committee on Energy and Commerce's Subcommittee on Commerce, Manufacturing, and Trade.

Sticks and Stones

After hazing on his team came to light last fall, Miami Dolphins owner Stephen Ross LLM '66 approached Dean Trevor Morrison, Professor Troy McKenzie '00, and University Professor Arthur Miller to discuss ways to increase civility in sports. The NYU Sports and Society Program, led by Miller, issued a white paper, held an anti-bullying summit, and commissioned research firm Ipsos to conduct a survey of more than 1,000 Americans, ages 13 to 54, that produced interesting insights into public perception of bullying in youth sports.

17%
bullied someone

36%
were bullied in a sports setting

52%
admitted to not stopping someone from bullying another while playing or coaching a sport



Joining a New Corps

Immigrant Rights Clinic alums Sean Lai McMahon '14, Kendal Nystedt '14, Amy Pont '14, and Jessica Rofé '14 (left to right) were named to the first class of 40 fellows of the Immigrant Justice Corps (IJC). They will be trained to provide legal representation for immigrants in New York City. The IJC is the brainchild of Chief Judge Robert Katzmann of the US Court of Appeals for the Second Circuit, an adjunct professor, who has long advocated for a solution to the lack of legal representation for immigrants.



Brown, Fein

Brown v. State

In 1991, an elderly Oneonta, NY, woman reported an attempted rape. She never saw her attacker, but believed he was black and may have cut his hand. A dragnet ensued, with the police stopping and questioning every black man they could find in the city.

A new documentary, *Brothers of the Black List*, tells the story of the resulting civil rights case waged by Scott Fein LLM '81, partner at Whiteman Osterman & Hannan in Albany and pro bono counsel to the

plaintiff, college student Ricky Brown. It is one of the longest-litigated civil rights cases in US history, running over 14 years and 50 state and federal court

appearances, plus two Second Circuit arguments. At the end, though Fein did succeed in having the NYS Court of Appeals recognize the existence of a constitutional tort, a class action was dismissed. The assailant was never found.

Chevron Two-Step

Some people study using notecards and outlines. Lewie Briggs '15 uses song and dance. While a 1L in Professor Adam Cox's course on Legislation and the Regulatory State, Briggs came up with a rap song about Chevron's two-step analysis, based on the Supreme Court's 1984 decision in *Chevron USA v. Natural Resources Defense Council*. The lyrics, Briggs notes, were actually helpful in studying for exams. This year Briggs developed a dance for the song and recruited fellow students to film a music video. The result? A viral video that earned praise from *Above the Law* and administrative law professors at NYU and beyond.



IT'S A WRAP Catherine Corbo '15, Ashley Ferguson '16, Briggs, Keli Young '15, and Melanie Walker '15 show their dance moves.



Très Bien

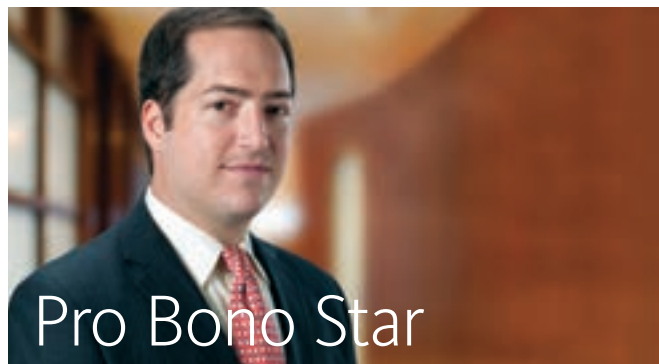
French president François Hollande conferred the title of Grand Officer of the National Order of Merit on Theodor Meron, Charles L. Denison Professor of Law Emeritus and Judicial Fellow. Meron is head of the International Criminal Tribunal for the Former Yugoslavia and International Residual Mechanism for Criminal Tribunals.



Q: A recap that has a July, August feel to it?

A: Summery Summary

After getting a call on his birthday inviting him to play the *Sunday Puzzle with Will Shortz* on NPR's *Weekend Edition*, Jacob Taber '14 put his wit to the test last November, coming up with pairs of homophones starting with the letter S. He correctly answered every question.



Last fall Marshall Camp '02, a partner at Irell & Manella, argued the first case under California's Fair Sentencing for Youth Act—and won. As a result, one man who has served 22 years in prison now has the possibility of parole in three years or less.

Signed into law by California Governor Jerry Brown in 2012, the act allows those sentenced to life without parole for crimes committed as minors the opportunity to apply for a reduced sentence of 25 years to life. Camp, who formerly served as a federal prosecutor, argued for a reduced sentence on behalf of Edel Gonzalez, who participated in a 1991 carjacking resulting in the death of the robbery victim. Although Gonzalez, then age 16, was unarmed during the robbery, he received the same life sentence as the adult offender responsible for pulling the trigger.

Gonzalez "lived a model life in prison, avoiding gangs, drugs, and violence, while taking advantage of educational opportunities and finding religion. I can't imagine how someone could do that with no realistic prospect of ever getting out," said Camp in an interview with *Super Lawyers*.



Women of Action Helaine Barnett '64, Sheila Birnbaum '65, Betty Weinberg Ellerin '52, and Judith Kaye '62 (left to right) were presented with Lifetime Achievement Awards at the 125th anniversary celebration of the *New York Law Journal* last November.

Elected to the American Law Institute

Catherine Amirfar '00

John Attanasio '79

Vicki Been '83

Julie Brill '85

Herbert Hammond '76

Jonathan Lippman '68

Bridget McCormack '91

Erin Murphy

Richard Pildes

Stephen Schulhofer

Catherine Sharkey

In addition,
**Dean Emeritus
Richard Revesz**
became the ALI's new
director in May.

"Whatever it costs"

On June 30, Kenneth Feinberg '70, the alternative dispute resolution and compensation expert hired by General Motors, announced that the company would establish an "open-ended" fund and pay "whatever it costs" to victims of car failures due to its faulty ignitions. Feinberg set minimum payments of \$1 million for families who lost loved ones. In the first six months of the year, the beleaguered company has already recalled more than 29 million cars. Earlier, in May, US Secretary of Transportation Anthony Foxx '96 imposed on the car maker the largest fine legally allowed—\$35 million—for failure to address safety concerns, saying, "What GM did was break the law."

Voices of America

Salma Rizvi '16 (top) and Sarahi Uribe '16 won 2014 Paul & Daisy Soros Fellowships for New Americans that provide tuition and stipends for graduate education. Rizvi speaks Urdu, Punjabi, Hindi, and Arabic—her parents are Pakistani and Guyanese—and worked as a linguist and intelligence analyst for the US Department of State and the National Security Agency, where she worked on translation and reports that were included in the president's daily briefings.



Uribe, the child of Mexican immigrants, has dedicated her career to the immigrant rights movement. She has worked at the National Day Laborer Organizing Network, helping to educate the public about deportation policies. Uribe plans to continue her work in this area after law school. "I want to be a progressive Latina voice in local politics," she says.



"It is clear that mandatory minimum sentences fail to achieve any of the purposes for which they were enacted and, instead, result in an unjust system with disproportionate and racially biased outcomes.... Eliminating mandatory minimum sentences from our justice system is an important step forward in making our system more rational, balanced, and equal."

Professor of
Clinical Law

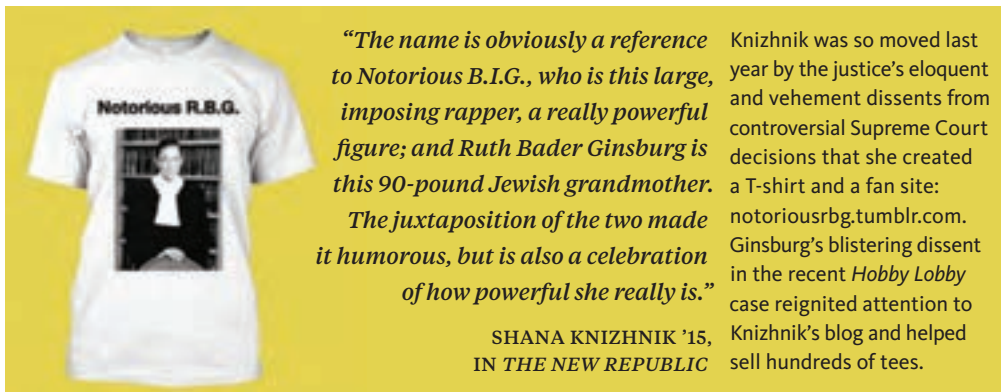
Bryan Stevenson testified before the House Judiciary Committee's Over-Criminalization Task Force at a hearing on penalties.



Front and Center

NYU Law alums played major roles in the closely watched trial of Egyptian Islamic preacher Mustafa Kamel Mustafa, who was convicted of terrorism-related charges in May.

Jeremy Schneider '77 (far left) represented Mustafa as defense attorney; Assistant US Attorney Ian McGinley '06 was the prosecutor; and Judge Katherine Forrest '90 of the US District Court for the Southern District of New York presided.



"The name is obviously a reference to Notorious B.I.G., who is this large, imposing rapper, a really powerful figure; and Ruth Bader Ginsburg is this 90-pound Jewish grandmother. The juxtaposition of the two made it humorous, but is also a celebration of how powerful she really is."

SHANA KNIZHNIK '15,
IN *THE NEW REPUBLIC*

Knizhnik was so moved last year by the justice's eloquent and vehement dissents from controversial Supreme Court decisions that she created a T-shirt and a fan site: notoriousrbg.tumblr.com. Ginsburg's blistering dissent in the recent *Hobby Lobby* case reignited attention to Knizhnik's blog and helped sell hundreds of tees.

"Discovery restrictions can negatively impact a citizen's meaningful access to civil justice and impair the enforcement of many important public policies embedded in federal statutes. Rule amendments should be undertaken only with great caution and require a demonstrated need as well as the absence of less Draconian solutions."

University Professor **Arthur Miller** testified about civil discovery before the Senate Committee on the Judiciary's Subcommittee on Bankruptcy and the Courts.

Seller's Remorse?

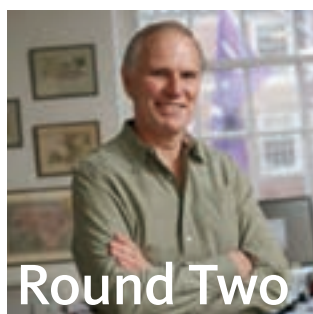


While works of art often appreciate in value over time, artists don't receive a cut from secondary market sales. Does the US need resale royalty legislation? This is a major question before the US Copyright Office, and in its report on the issue the office cited a comment by students in the Art Law Society (guided by Professor Jason Schultz) as well as articles by Professor Christopher Sprigman.

Flag by Jasper Johns was originally sold directly by the artist to the writer Michael Crichton for an undisclosed sum in 1973. In 2010, the Crichton estate sold it at auction at Christie's for \$29 million.

Who's Your Kale Daddy?

Studying for the bar can be stressful. Sophie Milrom '13 sweetened her experience by concocting the perfect study snack: homemade juice-based popsicles. Now an associate at Kirkland & Ellis, Milrom passed the bar. But the JD/MBA grad didn't let the time spent procrastinating, er, *experimenting* with recipes, go to waste. Instead, she started Innocent Ice Pops, vegetable and fruit juice-based alternatives to ice cream and other summer treats. Milrom's pops, now sold at a number of New York City locations, are available in four flavors: Green Juice, Kale Daddy, Topicarrot, and Sweet Beets.



The UN Human Rights Council has tapped Philip Alston, John Norton Pomeroy Professor of Law, to serve as special rapporteur on extreme poverty and human rights. This is Alston's second appointment as a UN special rapporteur—he previously reported on extrajudicial, summary, or arbitrary executions.

"Extreme poverty needs to be re-characterized as involving fundamental violations of rights," Alston says. "People who are really poor... are engaged in a daily struggle for existence that makes it much harder to exercise most other civil rights, and that needs to be emphasized in a way that it hasn't been."

Purple Reign

Several NYU Law alumni now hold top posts in the administration of New York City Mayor Bill de Blasio. Clockwise from top left: Steven Banks '81 heads up the Human Resources Administration; Vicki Been '83, Boxer Family Professor of Law on Leave, is commissioner of housing preservation and development; Gladys Carrión '76 is the welfare commissioner; Law School Trustee Zachary Carter '75 serves as corporation counsel; Barry Cozier '75 serves as vice chair of the Mayor's Advisory Committee on the Judiciary; Stacey Cumberbatch '86 leads the Department of City-wide Administrative Services; and Carl Weisbrod '68 chairs the Planning Commission.



NSA SEX(UAL)INT(ELLIGENCE)
IS THE ABUSE YOU'VE ALL
BEEN WAITING FOR

HOW WE READ A NYTIMES
STORY ON DRONE STRIKES
IN YEMEN

CIA REPORTEDLY SPIED
ON SENATE INTELLIGENCE
COMMITTEE WHICH MAY
BE A FEDERAL CRIME

Blog Blockbusters

Just Security, launched by Anne and Joel Ehrenkranz Professor of Law Ryan Goodman, is making waves in the national conversation on law, rights, and US national security with widely read posts such as the ones above, and its expert commentary has been cited regularly by outlets like the *New York Times* and *Wall Street Journal*.

Change of Venue

For nine years, the Forum on Law, Culture & Society (folcs.org) has enriched the cultural life of New York City through its lively, public conversations with such luminaries as President Bill Clinton, film director Oliver Stone, and Supreme Court



Justice Sonia Sotomayor. This fall, the forum moved downtown from Fordham Law School to NYU Law, where it will continue its public and online conversations that shine a spotlight on the relationships among law, politics, and society. “Our hope is that this move will lead to more expansive

programming, even larger audiences, and the potential to reach beyond our home in New York,” said forum founder and director Thane Rosenbaum.



The Long Lens on the Law

New Yorkers Lawrence Lederman '66, of counsel at Milbank, Tweed, Hadley & McCloy and former chairman of its global corporate practice, left, and Len Speier '52, a veteran copyright lawyer, have been getting attention for the more colorful documents they have produced. This year, both lawyer-photographers had solo shows: *The Presence of Trees: Photographs by Larry Lederman*, an exhibit of landscapes at the Jewish Theological Seminary, and *Len Speier: A Life in Photography*, at Chelsea's Calumet Gallery.



“Sound criminal justice policy—in all areas, not just regulatory offenses—should rest on an assessment of the costs and benefits of criminal punishment to determine whether limited federal dollars are best spent on prison terms or if less costly options are just as effective.”

Segal Family Professor of Regulatory Law and Policy **Rachel Barkow** testified on regulatory crime before the House Judiciary Committee's Task Force on Over-Criminalization.



A Shirt Story

Green Bay Packers quarterback Aaron Rodgers sported an NYU Law Deans' Cup T-shirt while visiting girlfriend Olivia Munn on the set of her HBO show, *The Newsroom*. The pro athlete told ESPN his shirt came from friend Joey Kaempf LL.M. '13 (also known as the leading scorer in the 2013 charity game against Columbia Law). Rodgers liked the tee so much he wore it twice in the same week (the QB did admit he was out of clean laundry). Go Violets!

Turning Detroit Around

By Michelle Tsai



With the future of the Motor City on the table, seven students and their professor reimagine the structure of its municipal government.

Overwhelmed by \$18.5 billion in debt, the City of Detroit sent out a rescue flare last July. The resulting municipal bankruptcy—the largest in history—presented lawyers and policymakers with a rare opportunity to fundamentally rewire the complex legal and financial circuitry of a major metropolis.

Enter Max E. Greenberg Professor of Contract Law Clayton Gillette and a team of NYU Law students. They devoted a substantial part of the 2013–14 academic year to a project to help secure Detroit's future: developing governance structures to promote fiscal stability.

With the assistance of Beth Heifetz '83, a partner in the Washington, DC, office of Jones Day, Gillette approached Kevyn Orr, the emergency manager for Detroit, in the spring of 2013 with a proposal for a project to consider which forms of municipal governance best ensure fiscal stability. The ensuing assignment sought answers to two questions: Given what other distressed cities had done, which short-term governance structures might be appropriate after the emergency period ends? And what long-term structures could ensure fiscal health?

Gillette was the ideal candidate to spearhead the undertaking. Long a leading expert on local government law and financially distressed municipalities, he has authored books on municipal governance and municipal debt finance, and he has written about relations between localities and their neighbors and the privatization of municipal services. In his 2011 book *Local Redistribution and Local Democracy: Interest Groups and the Courts*, Gillette examined ways in which local governments engage in substantial redistribution to both the wealthy and the poor, through tax incentives for development and “living wage” ordinances, for example. The book also discussed the role of the courts in reviewing local redistributive programs.

Gillette invited seven students to work with him on the extracurricular project: Daniel Barron '14, Hampton Foushée '14, Zachary Kolodin '14, David Leapheart '14, Joshua Lobert '15, Andrew Walker '15, and Amy Wolfe '15. “This was an incredibly diligent and creative group,” Gillette says. “The time they spent on this project was the equivalent of an additional course in their schedule. They had to learn areas of the law to which they had no previous exposure and think outside the box about how to reform municipal institutions that had failed to provide basic local goods and services.”

Meeting once a week or more for about three months, the Detroit team operated as a “mini law firm,” in Gillette's words, with the Office of the Emergency Manager as its sole client. Supervised by Gillette, students deliberated big questions as a group, divvied up research for specific issues, and collaborated on drafting memos. The focus of their inquiries ranged widely. One evening they would investigate the benefits of a “strong mayor” system, while the next they would discuss the appropriate role of a financial control board. In the process, they considered municipal debt, tax structure, relations with the state, relations with suburban areas, labor, and internal governance structure.

The Detroit project, says Gillette, offered “a once-in-a-lifetime opportunity for law students to be involved in institutional design and to have the experience of seeing how a municipality both works and could work.”

“We were doing a lot more than just law,” says Wolfe. “We were problem solving. Here's a city. This is the condition it's in. Now how do we make it better? Professor Gillette was asking open-ended questions that I didn't have answers to, and it made me rise to the occasion. I was given the opportunity to learn and give my opinion.”

The interdisciplinary nature of the assignment gave students the opportunity to think more broadly than they would have if they were simply reading casebooks and statutes for a class. Members of the group interviewed officials and business leaders from Detroit and other jurisdictions that had confronted financial distress. They then discussed their findings and recommendations. Wolfe recalls at one point making a big chart of all the positions in the city government to try to untangle the powers of appointment and removal.

“It was incredibly refreshing to see the ideas we'd vocalized as students actually make it to the finish line, and it's encouraging to know you can do anything with this degree,” says Leapheart, who grew up in Michigan with grandfathers who were United Automobile Workers members.

“We think we had substantial input into the conversations that are continuing about post-bankruptcy Detroit,” concludes Gillette. “But regardless of what happens with our proposals, this was a remarkable opportunity and a great learning experience for the students.”

Following the success of the Detroit project, Gillette has created an interdisciplinary seminar, Law and Economics of Municipal Governance, that he will co-teach in Spring 2015 with adjunct professor Robert Inman, an expert in urban fiscal policy at the University of Pennsylvania's Wharton School. □

Michelle Tsai is the public affairs officer for NYU Law.

Minding Other People's Business

□ By Peter Carbonara

□ Illustrations by Yau Hoong Tang

A surge of regulatory activity—aimed especially at Wall Street—is giving JDs opportunities in compliance and risk management, white-collar defense, and enforcement all over the world.

In today's environment of *Flash Boys* and its adrenaline-pumped tales of high-frequency trading, success is measured in nanoseconds. It is easy to forget that trading systems not too long ago had to be created on keypunch cards fed by hand into mainframe computers. As recently as the early 1990s, says Andrew "Buddy" Donohue '75, deputy general counsel of Goldman Sachs Asset Management, compliance officers could look only at records after trades were completed, effectively making compliance a back-end function.

With the advent of computerized trading, however, compliance has moved to the fore as a key consultation before trading systems are developed. That movement has coincided with a dramatic growth in activity as federal government and regulatory bodies issue reams of new regulations. The result is a surge of compliance demand not only in finance but also in information security, environmental standards, and equal employment, among many other regulated functions of American and global business. "There has been a tsunami of regulatory activity," says Randal Milch '85, executive vice president of public policy and general counsel for Verizon. "Hiring lots of people is the only logical reaction."

Long before the boom of new regulation began, NYU Law assembled a uniquely deep bench of scholars and practitioners

of compliance and enforcement who are unleashing new work of their own that will influence the next generation of lawyers: new courses, new publications, new scholarly forums, and new research opportunities. First and foremost, they are preparing students for careers in an area that is both booming in terms of jobs and coming into its own as a distinct and rigorous legal specialty. "Over the last 10 years, compliance has become a profession within the legal profession," says Bruce Yannett '85, a white-collar litigator at Debevoise & Plimpton. "It is now a career path."

A LOGICAL REACTION

Several laws enacted or significantly amended in the wake of the big corporate scandals of the early 2000s (Enron, Tyco, etc.) and the credit market collapse of 2008 have put corporate conduct squarely on the radar of federal prosecutors. A possible violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or the Foreign Corrupt Practices Act of 1977 (FCPA)—to name two—can mean an expensive investigation followed by litigation, big settlements, and fines, or even jail time for managers. It used to be that most corporate criminal actions involved small, privately held companies and produced average fines of around \$50,000.



The New Legal Trinity

Responding to the growth of compliance operations throughout the world, Geoffrey Miller, Stuyvesant P. Comfort Professor of Law, has written the first case-book that examines three related areas of corporate legal practice together: *The Law of Governance, Risk Management, and Compliance*.

Miller's book has two goals: to serve as a resource for courses such as his own Compliance and Risk Management for Attorneys, and to encourage legal scholars to look at the three areas as a field of legal study of their own.

"Compliance is inseparable from the two other functions," Miller explains. "Governance, because how a complex institution is governed is a key part of how it complies with the law; risk management, because nearly all programs pertinent to compliance are fundamentally grounded in risk assessment and operated according to an organization's enterprise risk management system."

While this is a well-recognized trinity in the business world, referred to as GRC, it is only now making waves in legal academia. "The carryover is very obvious," Miller says.

He compares the birth of this new field with the development of administrative law. In the early 20th century, scholars realized that the administrative process, formerly part of the law of remedies, was in fact a separate discipline with its own content and structure. Similarly, aspects of compliance have been dispersed among the various fields of legal thought, such as corporate law and even constitutional law. "People are realizing GRC is not a hodgepodge of ideas," Miller says. "There's an intellectual core to the topic."

Now, however, US attorneys are making headline-grabbing cases against large public companies. The amounts involved can be enormous.

Since 2011, Wal-Mart, for instance, has been under investigation by the Department of Justice and the Securities and Exchange Commission for possible violations of the FCPA. The company says it has been cooperating with both US and Mexican investigators looking into allegations that it paid off officials south of the border. Earlier this year, Wal-Mart announced that it was anticipating spending up to \$240 million in its fiscal year 2015 on the investigations. Similarly, cosmetics retailer Avon has spent more than \$300 million since 2008 on investigations by US authorities into charges that it bribed Chinese officials.

Meanwhile, recent settlements in corporate criminal and civil enforcement actions have been even greater. Last November, pharmaceutical giant Johnson & Johnson paid \$2.2 billion to resolve criminal and civil liability actions by the US government for marketing several prescription drugs for uses not approved by the FDA. And in August, news outlets reported that Bank of America agreed to the largest-ever civil settlement between a corporation and the US government: more than \$16 billion to resolve allegations that the bank's Countrywide Financial and Merrill Lynch units knowingly sold faulty mortgage-backed securities.

Corporate enforcement matters like these involve not only big money but also a high degree of complexity. Typically, multiple state, federal, and private parties are involved, and dealing with all of them can require large legal teams well versed in different varieties of criminal and regulatory law. The trend toward ever larger

and more complex cases shows no sign of abating. That means more work—and more jobs—for lawyers.

CORPORATE LAW IN THE PUBLIC INTEREST

NYU Law is a particularly intense center of activity for compliance law and enforcement and related areas. At the heart of this activity are Jennifer Arlen '86, Norma Z. Paige Professor of Law, and Geoffrey Miller, Stuyvesant P. Comfort Professor of Law. The two have joined forces before. Several years ago, with scholars from the Cornell and University of Texas law schools, they founded the Society for Empirical Legal Studies, which aimed to give legal theory a more scientific basis through data and analysis. Now they have teamed up as faculty co-directors of the Program on Corporate Compliance and Enforcement, launched in spring 2014.

The program has a few purposes. The first is to provide intensive training to students who are planning to make careers in compliance or enforcement. The second is to promote research and policy reform. In

April, for instance, the program co-sponsored with the American Law Institute an invitation-only conference called "Deterring Corporate Crime: Effective Principles for Corporate Enforcement." It attracted star enforcement officials, defense lawyers, and academics, such as Preet Bharara, US attorney for the Southern District of New York, and Benjamin Lawskey, New York State's superintendent of financial services, who both gave keynote speeches; former SEC director of enforcement Robert Khuzami; and white-collar investigator Jules Kroll. (See more on page 16.)

Arlen, who is frequently quoted by the press on corporate crime, has published extensively on the subject. A particular focus of her work is the question of how criminal responsibility should be allocated between the corporation and the individuals who committed the crime. Arlen argues that corporate officers who break the law do so ultimately for their own benefit, not the corporation's. She teaches a four-credit Business Crime course and a seminar entitled Corporate Crime and Financial Misdealing.

Her intense intellectual passion for corporate criminal enforcement policy comes from a belief that compliance is the place where the sometimes conflicting demands of business and the public meet head-on and where the law attempts to reconcile them. "This is corporate law in the public interest, and that's what I love about it," she says. "It can have social utility whether you are prosecuting crimes or defending a corporation." She is also happy to point out that "none of my students are having trouble finding jobs."

Miller looks at compliance from a slightly different perspective: the management of corporate risk. Miller teaches Compliance and Risk Management for Attorneys and another course called Professional Responsibility and the Regulation of Lawyers. He is also the author of the casebook *The Law of Governance, Risk Management, and Compliance* (2014), the first explicitly linking the three subjects.

Miller says corporate compliance officers used to be kept far away from important decision-making. Now most report to corporate boards and are charged with making sure corporations are aware of and in compliance with a huge body of changing laws—laws that now have real teeth.

He sees compliance as an important risk-management function that should figure into almost any significant corporate decision. Would, for example, the benefits of a merger outweigh the costs of absorbing the target company's potential compliance problems? Key information for making that call has



Miller and Arlen form the nucleus of compliance and enforcement scholarship and pedagogy at NYU Law.

to come from a senior compliance officer who has the respect of other top executives. Says Miller: "You need to be able to sit at the table and have your voice heard."

The Law School faculty members with expertise in compliance and corporate enforcement range from Beller Family Professor of Business Law Kevin Davis, who teaches a course on the FCPA and money laundering, to Segal Family Professor of Regulatory Law and Policy Rachel Barkow, who joined the US Sentencing Commission last summer

and is faculty director of the Center on the Administration of Criminal Law. In 2011, NYU Press published the center's *Prosecutors in the Boardroom: Using Criminal Law to Regulate Corporate Conduct*, a collection of papers by scholars who attended the center's first major annual conference, "Regulation by Prosecutors."

Harry First, Charles L. Denison Professor of Law and a former chief of the New York State attorney general's Antitrust Bureau, wrote one of the first business crime casebooks, *Business Crime: Cases and Materials*, originally published in 1990. Marcel Kahan, George T. Lowy Professor of Law, and Stephen Choi, Murray and Kathleen Bring Professor of Law as well as director of the Pollack Center for Law and Business, are among the most prominent scholars in corporate law and, especially, securities fraud. Indeed, they are the two most recognized scholars in the 20-year history of the annual *Corporate Practice Commentator* list of the Top 10 Corporate and Securities Articles. William Allen, Nusbaum Professor of Law and Business, joined the faculty in 1997 from the Delaware Court of Chancery, where he had been judge or chief judge for a dozen years. That court has primary jurisdiction for matters of corporate law and governance for the many large US companies incorporated in Delaware. In 1996, Allen wrote a decision (*In re Caremark International Inc. Derivative Litigation*) that virtually created the modern compliance industry, holding that boards of directors could be found liable for the



First-line executives, counsel, and other experts have joined the dialogue at compliance- and enforcement-related events this year.

DETERRING CORPORATE CRIME, *April 2014*
1. Robert Khuzami, former Director, Division of Enforcement, SEC;
2. Jules Kroll, Co-Founder, K2 Intelligence; 3. Jed Rakoff, US District Judge, SDNY; 4. Preet Bharara, US Attorney, SDNY

SUDDENLY SEXY: HOW COMPLIANCE WENT FROM HO-HUM TO HOT, *January 2014*
5. Andrew Donohue '75, Managing Director and Deputy General Counsel, Goldman Sachs Asset Management; 6. Pamela Root '80, Managing Director, Citigroup Global Markets

BUILDING ETHICAL AND SUSTAINABLE GLOBAL COMPANIES, *April 2014*
7. Ben Heineman, former General Counsel, GE

INSIDER TRADING: HEDGE FUNDS IN THE CROSSHAIRS, *October 2013*
8. Bonnie Jonas, Deputy Chief of the Criminal Division, DOJ

BUSINESS BEYOND BORDERS: LAW, FIRMS, AND MARKETS IN THE US AND CHINA, *January 2014*
9. Hu Ruyin, Chief Economist, Shanghai Stock Exchange



misdeeds of employees if the corporation did not have in place a “reasonable system” for monitoring compliance.

Terms like “reasonable” are open to interpretation, of course. And training lawyers to make those calls is a particular goal of Helen Scott, professor of law and co-director of NYU Law’s Mitchell Jacobson Leadership Program in Law and Business, and Karen Brenner, executive director of law and business initiatives at NYU and an affiliated professor of law. They teach Law and Business of Corporate Governance to mixed classrooms of NYU Law and Stern students who learn together how to navigate both the legal and business sides of corporate governance. “What we’re really trying to do is have students cultivate judgment,” says Brenner. “It’s about their ability to make judgments where the law doesn’t prescribe a simple answer, or a simple answer is not sufficient to do what we perhaps think is right or best in the circumstance.”

NOT JUST ANOTHER LEGAL JOB

NYU Law grads in senior compliance jobs emphasize how much more the chief compliance officer is involved now in running the business day to day than in past decades. “This kind of job is attractive for people who want a blend of legal and operational,” says Lauren Steinfeld ’92, senior adviser for privacy and compliance at the University of Pennsylvania.

Tim Lindon ’80, for instance, is chief compliance officer and vice president for brand integrity at tobacco maker Philip Morris International (PMI). Based in Geneva, he manages a staff of 40 and reports to the audit committee of the company’s board.

Lindon says his job requires him to be a combination of legal counselor, risk manager, and organizational psychologist. The latter part, he says, comes from working constantly to stay on top of every aspect of his company’s business and to find what he calls its “stress points”—areas or situations in which individuals



are most likely to succumb to temptation or poor judgment. (In general, he says, those tend to be jobs far away from corporate headquarters or those that have been occupied by one person for a long time.)

One recent responsibility was vetting companies PMI had targeted for acquisition in Indonesia and the Philippines. Business practices, laws, and customs are much different in those countries than in the United States. Lindon had to make sure that

nothing the target companies had done in their previous usual course of business could turn out to be a violation of, for instance, the FCPA. That meant learning the target companies from the ground up—not only their operations but also their history and culture, which was not entirely what he had expected when moving from PMI’s general counsel office to being its chief compliance officer. “I thought this was another legal job, and that’s what surprised me,” he says.

At a January Milbank Tweed forum on compliance, “Suddenly Sexy: How Compliance Went from Ho-Hum to Hot,” panelists such as Goldman Sachs’s Buddy Donohue and Pamela Root ’80, managing director of Citigroup Global Markets, echoed that sentiment, emphasizing that compliance practitioners need to know not only the law but also the day-to-day operations of their business. The role is more hands-on than that of the traditional general counsel, stressed Root. Effective compliance officers need to know what employees are doing before it becomes a regulatory problem and to help them get back in line as necessary. That means a lot of face time with and understanding of a business’s people, not just its org chart.

Above all, the compliance officers seemed to say, this requires not just a different kind of practical training, but a difference in attitude as well. “Don’t go into compliance if you don’t want to get your hands dirty,” said Root. “You’ve got to be in the trenches.” □

Peter Carbonara is a NYC-area freelance writer whose work has appeared in Fortune, Businessweek, and The American Lawyer.



THE KEYS TO SUCCESS

By Atticus Gannaway

Professionals who rise to the top of their fields can often read people and situations well. This ability—called emotional intelligence—is now considered crucial in leaders. Can it be taught? Yes, and why not cultivate it in all students?

Among even the most talented and capable professionals, a particular quality moves certain people ahead of the rest. Some might call it confidence, a deftness in interacting with others. This secret ingredient for being an effective leader in business, law, and many other spheres is what behavioral psychologists call emotional intelligence. It augments one's technical expertise and is often referred to as EQ, for emotional quotient.

The EQ movement hit its stride after psychologist Daniel Goleman's 1995 book, *Emotional Intelligence: Why It Can Matter More Than IQ*, spent more than a year on the *New York Times* bestseller list. Over time, an emphasis on honing skills to better understand, empathize, and negotiate with other people permeated the workplace. Research now supports the career-affirming power of EQ: meta studies such as one in the peer-reviewed *Journal of*

Organizational Behavior in 2011 have found a significant positive correlation between EQ and job performance.

The increased awareness of EQ as a predictor of success did not escape NYU Law's board of trustees, which formed a strategy committee to address how to shape legal education in the 21st century. An October 2012 report from the committee, headed by Cravath, Swaine & Moore chairman Evan Chesler '75, called for training in leadership and collaboration, skills captured by EQ. "EQ sets leaders apart from the rest," says board chairman Anthony Walters '77, the just-retired executive vice president of United-Health Group. "Smart people are not too difficult to find. But people with a combination of IQ plus EQ are rare and valuable."

Seeing an opportunity to help prepare its students to become leaders, NYU Law recently rolled out an EQ training program to the entire student population. Part of a broader leadership



development initiative at the Law School that includes a speakers series, seminars, and a peer leadership program, the series of EQ workshops is led by Vice Dean Jeannie Forrest, who has a PhD in applied psychology.

In the workshop's introductory segment, Forrest lists three "buckets" necessary to be a good lawyer: knowing your stuff, getting stuff done, and exhibiting emotional intelligence. While many professionals shine in the first two areas, the third can sometimes be a challenge, she explains. In the argot of the workshops, EQ is comprised of four distinct elements: self-awareness, self-management, social awareness, and relationship management. But boiling it down to its essence, Forrest tells students, EQ is really about interpersonal acuity. "The one with the high EQ?" she asks. "That's the well-rounded problem-solver who can lead with confidence." And, she adds, all other things being equal, that person excels.

Justin Sommerkamp '15, who was part of the pilot EQ program last spring, used his EQ training to gauge how he was doing as a summer associate at a top law firm. "Every office conversation involves nonverbal communication that can be absolutely vital to performing well," he says. "Reading the body language and nonverbal communications of the attorneys allowed me to adjust my behavior and work without needing a constant performance review conversation." Sommerkamp says that when his work drafts were being reviewed, he paid attention to the assigning attorney's adjustments in posture and changing facial expressions, as well as his level of focus. Sommerkamp returned to the firm this summer for a second year.

Danielle Arbogast '15 also participated in the workshops, where she learned how to initiate interactions more effectively.

"The beauty and the strength of the strategies explored in these workshops is that they are easy to practice, yet have a tremendous impact," she says. Simply making a habit of greeting people by name in large-scale social situations, for example, has helped Arbogast generate a more immediate connection with new people and overcome her tendency to withdraw in group interactions.

On the job, says Arbogast, the lessons have been equally beneficial. "I've worked in two public defense offices since I began law school," she says, "and I simply cannot overstate the importance of being able to accurately read and effectively respond to emotions—both the client's and my own. When a client's liberty—and often employment, housing, custody of their children, or immigration status—is at stake, emotions are often running high. Learning to recognize and respond to those emotions allows you to use them to improve communication and potentially reach a better outcome for your client."

Forrest points out that there are 40 million Google hits for "define leadership," but little agreement on the definition of leadership. With a deeper knowledge of how to foster successful working relationships, however, NYU Law students have the tools to define leadership for themselves.

"The Law School isn't just interested in creating great lawyers," says Forrest. "We're creating lawyers who are going to be leaders in their lives. Every single one of our students has leadership potential." The EQ workshops are a way to unlock that potential, she adds. "If they are aware of who they are and what they're bringing to the table and how they interact with other people, then they will be leaders." □

Senior Writer Atticus Gannaway is the author of a young adult novel.



**INSPIRED BY HER OWN
PARENTS' SERVICE TO
THE CITY OF NEW YORK,
KAREN FREEDMAN '80
BUILT A FORMIDABLE
ORGANIZATION TO
GIVE KIDS IN CRISIS
A FIGHTING CHANCE.**

One morning last year, Karen Freedman '80 took a short walk from her offices on Lafayette Street in lower Manhattan to the white granite fortress that is the Manhattan Family Court. Freedman is the unassuming yet powerful executive director of Lawyers For Children (LFC), and her history with the court spans 30 years and thousands of proceedings. On this day, she peeked in on a juvenile hearing in progress. What she saw made the calm and steady Freedman, in her own words, "absolutely crazy."

A teenage girl, clenching her lawyer's business card between her teeth, stood with her hands shackled behind her back.

The scene set off Freedman's highly attuned sense of injustice. Who handcuffs children? It was degrading, inhumane, and unconstitutional—and occurring in front of her eyes. Still, as always, Freedman turned indignation into strategy.

After the hearing, Freedman launched an investigation. She asked the girl's attorney about the handcuffs; surveyed her staff of some 65 other lawyers and social workers; and called the head of another Manhattan nonprofit, the Center for Family Representation (CFR), to ask whether their clients, many of them teen parents, were being routinely manacled.

A bigger picture came into focus. Court officers who escorted teens charged with minor offenses from criminal to family court kept them in handcuffs during child welfare hearings. Everyone in

Tombs, as the Manhattan Detention Complex is known. "No one will say that this should be happening. They say, 'You're absolutely right!' And then nothing changes."

Nothing changes, that is, until Freedman grabs hold.

MICRO AND MACRO

There, in microcosm, is Freedman's modus operandi. First comes her empathic connection to a child, which often triggers her intuitive sense about a social injustice on a large scale. She investigates and finds allies, then outlines a list of demands. These are her first steps before taking legal action (if necessary) toward reform. Most effectively, perhaps, Freedman persists—without bombast or bullying—until she gets what she wants.

In this way, Freedman has wielded her New York University law degree as a sword for the public good: to improve, vastly, the lives of mostly poor children in foster care in New York City. If, at 60, she is as deceptively mild-mannered as Clark Kent, she is also as apparently mighty as his alter ego. Like the superhero, she is a merger of opposite traits: low-key and take-charge; steady and passionate; creative and rational; self-effacing and wickedly smart.

"There's something so centered and focused and powerful within her," says Vaughn Williams, an LFC board member. "And it's an interesting dichotomy, because in a polite way she's very tough. She's motherly and sensitive to the kids that she's representing, but then she's

also demanding and businesslike as a lawyer. And she has taken such a solid, consistent path, year after year, in an upward trajectory."

The result is a New York City foster care system that is "way way better," according to Martin Guggenheim '71, Fiorello LaGuardia Professor of Clinical Law and a mentor of Freedman's. "It's a mind-boggling success story."

In addition to representing some 50,000 children in court over three decades, LFC has filed scores of class-action lawsuits and appeals,

almost always winning. It has shone a light on many subsets of aggrieved foster children, from those who witness domestic violence to older teens aging out of foster care to immigrants, sexual abuse survivors, and, most recently, lesbian, gay, bisexual, transgender, and questioning youth.

And, from her start in 1984 with a team of two and a donated office, Freedman has built a nonprofit firm with a \$7 million annual budget—almost \$2 million raised privately—in a warren of offices on three floors. She exemplifies "how a lawyer wanting to do something different and entrepreneurial and outside the mainstream of big law can build an institution," says Williams, former partner and now of counsel at Skadden, Arps, Slate, Meagher & Flom.

The surprising power of that institution derives, in part, from its ability to succeed at its micro and macro missions: helping children personally while formulating public policy. Freedman's

Fostering Justice

By Candy J. Cooper

the courthouse had become inured to the sight of children standing in manacles throughout their proceedings, Freedman learned.

Under the law, every litigant is entitled to be free of restraints unless they present a danger of violence to themselves or others. In Manhattan—and in no other family court in New York City—that presumption had been flipped on its head. The Lawyers For Children client had faced a marijuana charge, hardly a violent offense.

Freedman sent a demand letter to the New York Office of Court Administration, the administrative arm of the state court system, which also happens to be the source of most of her agency's funding.

The office agreed that handcuffing children had to stop. Freedman's lawyers began to demand that their nonviolent clients be free of restraints. Still, nearly a year later, the practice continued.

"It's like pushing against Jell-O," says Freedman, seated in her big-windowed, award-filled corner office that looks out onto the

work rests on the proposition that every child deserves a voice. Toward that end, every client at LFC is assigned a lawyer as well as a social worker, so that a trained professional examines every facet of a child's life. Relationships form and deepen. By the time the court hearing arrives, children are presented as fully dimensional people, not as cardboard cutouts of foster kids.

"Her lawyers stand out," says former Family Court Judge Jody Adams, now special adviser to the commissioner of the Department of Homeless Services for Children and Families in Shelter. "They're really smart, they know the law, and they know their clients. And her social workers are equally brilliant. They often brought older children into the court who then expressed themselves to me. I came to see their clients as individuals."

LFC's young clients, in turn, serve as experts on foster care. They are eyewitnesses to a system that has left them in violent homes, removed them from loving families, and often attempted to discard them as they entered adulthood—alone, jobless, and homeless.

Freedman's gift is to listen to their voices and discern trends in everyday accounts. Then she goes to work at the very top of the child welfare food chain, meeting with commissioners she has known for decades, enlisting the aid of family and state court judges who respect her work, tapping New York's prestigious law firms to lend their name—and letterhead—to particular fights.

ESCAPE FROM RIKERS

If a single client comes to mind for Freedman, it is Darren Martin. A brilliant student, Martin began to slip academically in 1996, when he was 15. He would threaten his classmates, and ravenously eat two free school lunches a day. Soon, his school's dean learned that Martin's mother had abandoned him for her boyfriends. He had been living alone in their Harlem apartment with no money and no food for three weeks.

The city's child welfare agency, the Administration for Children's Services, offered Martin some unappealing choices, including living in a group home—"That's like dumping you in jail," Martin says—or moving in with his sister in Baltimore. "The City of New York was just thinking of the quickest and easiest solution to get me off of their rolls. They clearly wanted to ship me away."

A caring teacher called LFC, and Martin met with his new social worker and lawyer. "I felt understood," says Martin, who told his team that his top priority was his education. "For how angry I was, I needed someone to redistribute and articulate those feelings into something else."

"IT'S LIKE PUSHING AGAINST JELL-O. NO ONE WILL SAY THAT THIS SHOULD BE HAPPENING. THEY SAY, 'YOU'RE ABSOLUTELY RIGHT!' AND THEN NOTHING CHANGES."

Martin was placed in "kinship foster care" with an aunt and uncle, allowing him to complete high school. But two days after graduation, his foster parents handed him a plane ticket to Wisconsin; he was to enroll that fall at the University of Wisconsin—Madison. Until then, he had nowhere to live. "They're kicking me out of the house and I have nowhere to go," Martin told his LFC attorney.

It may as well have been the lament of every young adult who aged out of foster care in New York City, especially those placed in care voluntarily by parents who don't want them. Young adults like Martin were cast adrift without an anchor to face adulthoods as bleak as those in a modern-day Dickens novel—of homelessness, prostitution, drugs, prison, or early pregnancy. One New York City study found that youths formerly in care comprised roughly one-quarter of the city's homeless shelter population.

For Freedman, Martin's case crystallized the aging-out crisis. With Legal Aid as co-counsel, she began negotiating with New York City to stop discharging foster youths into homelessness. The result, in 2011, was a sweeping court-ordered class-action settlement mandating that all foster children be released to stable housing and provided connections to jobs, further education, and at least one caring adult when they age out of the system.

In addition, Freedman led the creation of a special court, within New York City Family Court, whose sole job is to work with and track closely the well-being of foster children from age 18 until 21.

"These kids were in very bad shape," says Douglas Hoffman '81, supervising judge of New York County Family Court. "Karen suggested a radical change. She proposed a court that could be a model nationally. We're still tweaking it, but it's really a turnaround from A to Z."

As for Martin, LFC negotiated with New York City to pay for summer housing and Martin boarded the plane to Madison, where he enrolled in a pre-college program until the fall. He graduated, then earned a master's degree, married, and became a father. Today, at 33, Martin serves as the student services coordinator in the financial aid office of the University of Wisconsin—Madison.

Karen with parents
Doris and Alan, 1954

With husband Roger Weisberg, 1974

At Wesleyan University's commencement, with mother
Doris, sister Nina, husband Roger, and father Alan, 1975



"If I had been fending for myself," says Martin, "I probably would've been that angry black teenager who ended up at Rikers."

DO-GOOD DNA

Freedman, an NYU School of Law trustee, is well aware of the distance between her usually penniless clients and her own privileged origins in New York City.

Freedman's energetic mother, Doris, was a crusader for art and artists. She presided over the Municipal Art Society, a private organization dedicated to landmarks preservation and New York City's building landscape, and founded the Public Art Fund, a non-profit organization dedicated to mounting contemporary art in the city's public spaces. A plaque and named plaza at the southeast corner of Central Park honor her legacy. Freedman's father, Alan, a businessman, founded the WNYC Foundation to increase private funding for public radio.

In Karen's early teens, her family moved into the Century building on Central Park West. It was designed and built by Freedman's maternal grandfather, Irwin Chanin, a New York City architect responsible for many of New York's jazziest Art Deco buildings, as well as half a dozen Broadway theaters. The Irwin S. Chanin School of Architecture at Cooper Union memorializes his work.

In 1969, not long after that move, the *New York Times* published a feature showcasing the work and home of Doris, who had become New York City's first director of cultural affairs. The story, "Even Buying Art Is a Democratic Process in Freedman Home," peered into the Freedmans' life, suggesting facets of wealth and influence that, Freedman says, told only part of her family's story.

Alan had grown up modestly in Brooklyn and Cleveland. He joined the Air Force, and afterward went to work rather than college to support his young family. He began selling advertising for a small New Jersey company that made desk accessories and marine instruments, working his way up steadily to become president. All along the way, Doris and Alan Freedman insisted on raising their family on their own earnings.

Freedman modeled her parents' dedication to work. In 1970, she took a job as a counselor at Camp Ramapo for Children, in Rhinebeck, New York, for kids with emotional and social disabilities. The experience would deeply affect her and influence the course of her life.

"Most of the campers were inner-city kids," says Freedman, who is petite and speaks in a thoughtful cadence, without "ums" or "uhs."

The camp philosophy then was to hire counselors close in age to the campers. Freedman, at 16, had the charge of a cabin of

15-year-olds, a practice she now thinks of as "insane" and legally suspect. Yet it opened her eyes.

"It was transformative," she says. "I loved working with kids. I felt energized by them. They were difficult, complicated, tough kids, but that's what I knew I wanted to do. I didn't know how, I didn't know in what form, but I knew that going forward in my life I wanted to work with children."

The very idea of making a difference had been cultivated during Freedman's formative years at the progressive Ethical Culture Fieldston School, with its emphasis on social justice. The school's charge is not to teach students to adapt to the existing social order, but rather "to change their environment to greater conformity with moral ideals." Three generations of Freedmans are graduates.

She found similar values at Wesleyan University, where she graduated summa cum laude, and where she met her husband, Roger Weisberg, a documentary filmmaker, whose work on social justice issues often dovetails with Freedman's. In a highly competitive field of boosters, Weisberg says he is his wife's greatest. He fell, in part, for her "selflessness and compassion." He admires how she has given voice to children. He respects Freedman's agility as both adversary and ally. "She can collaborate with the very people she's dragging to court to force a reform," he says.

After college, Freedman went to work in the Manhattan District Attorney's Office, where she came to appreciate the power of the law. She decided on law school. "I felt that law school would allow me the greatest opportunity to advocate on behalf of individual children and make positive systemic change," says Freedman. "That was the trajectory that I wanted to follow."

That clarity of thought and purpose led her to become a Root-Tilden Scholar. In 1977, Freedman was one of about 20 NYU Law students selected for the program, which encourages careers in public service and public interest law. At the scholars' first meet-and-greet, Freedman befriended Elaine Fink '80.

"I was taken with her," says Fink, who is the managing attorney for children's advocacy at the Legal Aid Society of Southwest Ohio. "The way she talked about her work touched me and intrigued me. We both knew we weren't competing for the best law firm job out there. We had lofty, improve-the-world goals."

At NYU, Professor Guggenheim's seminar on Children and the Law began to shape Freedman's thinking. In his scholarship, Guggenheim has examined the unwitting harm that can occur when lawyers represent children. Under the banner of children's rights, he argues, lawyers for children often create antagonisms

In Paris as an exchange student, 1975



Karen and Roger with friends Elaine Fink '80 and her husband Bob Shapiro, 1989



Oldest, middle, youngest: Karen, Nina, Susan, 1990



with parents, resulting in more broken families and more children harmed in foster care.

Freedman considers Guggenheim her most influential mentor and, at times, her most formidable ideological adversary.

“The notion of an attorney acting in the ‘best interests of the child’ can be used to cause great harm and detriment to children,” Freedman says. “That is why at Lawyers For Children the voice of the child is paramount. There is a social worker and a lawyer assigned to advocate for every child, and in those circumstances where a child is developmentally incapable of comprehending and participating in the court proceedings, it is the skilled social worker who will use substituted judgment to help the attorney formulate the legal strategy on that case.”

But before graduating from law school, Freedman faced a series of devastating family losses. In 1979, her mother underwent routine surgery. In recovery, she stopped breathing and lapsed into a coma from which she never recovered. Two years later she died, at 53. Doris’s passing was followed little more than a year later by Alan’s death from a heart attack. He was 58.

Eulogizing Alan for a *New York Times* obituary, Mayor Edward Koch ’48 said the Freedmans had performed “magnificent service” to the people of New York, leaving behind “monuments of spirit” to the city. They also left behind both inspiration and challenges for their three daughters just as they were entering adulthood.

“We had a very, very close family,” says Freedman, “and there was this unwritten thought, amongst all three of us, that the way to honor our parents would be to carry on a legacy of giving that we saw them emulate for us.”

All three sisters have done so amply. Susan Freedman is the current president of the Public Art Fund. Nina Freedman is part of the Global Philanthropy and Employee Engagement team at Bloomberg. Karen Freedman assumed the role of matriarch, keeping the family glued together through years of loss and grief.

“Probably the hardest thing in having something like that happen to you when you’re relatively young—and I was in my early 20s and my youngest sister was just turning 20—is to try and ensure that you don’t go on living the rest of your life in the crash position, fearful and immobilized,” says Freedman. She wills herself instead “to face challenges and take risks and allow my own children to have the confidence, independence, and courage necessary to make a difference in the world.”

Her three children are on their own paths toward public service in art, medicine, and law. Allison Weisberg founded an interactive

alternative art space in SoHo, Recess, where artists work while the public may observe and interact. Daniel Weisberg is in an internal medicine residency at Harvard, with a specialty in public health. Liza Weisberg may hew most closely to her mother’s line of work; she completed a two-year trial preparation assistant position at the Manhattan District Attorney’s office and has just begun her first year at Harvard Law School. “In the best possible way, she’s given me totally unreasonable expectations about what’s possible as a mother and a professional and a lawyer,” says Weisberg.

But a family joke reveals the extent of her mother’s caution. Departing Cuba at the end of a family vacation during which Allison stayed behind for a college exchange program, the family was battered by a heavy rainstorm. Freedman fretted about leaving Allison.

What could possibly harm her, a family member wondered aloud. “I don’t know,” said Freedman. “She could get washed into a drainpipe?”

The drainpipe became code for Freedman’s awareness of her overprotective instincts, as in a text she might write to one of her children: “Are you home yet or are you in a drainpipe?”

Then again, her protectiveness—of New York City’s foster care children—has been a life force.

THE MOST VULNERABLE

The colorful waiting area on the eighth floor of 110 Lafayette Street features a fanciful mural of an airplane flying through clouds, with the plane’s cockpit windows opening to the real receptionist’s window. A boy and a dog in a rowboat float alongside the plane, and a Lawyers For Children banner flaps in the wind.

The inviting décor underscores the youth-friendly, one-on-one services of the organization—perhaps the Clark Kent side of the operation—while in the offices beyond, Freedman and her staff use legal muscle to challenge wrongdoing on a large scale.

Recently, Freedman turned her attention to the crisis among LGBTQ youth, one of the most preyed-upon subsets of children in foster care. Lawsuits and academic reports chronicle the overrepresentation of LGBTQ youth in care—usually black and Latino—and how they suffer every imaginable abuse almost from the moment they come out to family: homophobic bullying, broken bones, sexual assault.

LFC has long had a project to support individual clients, but in early 2012, Freedman perceived an opportunity to make change on a larger scale. A client served as catalyst. He reported abuse and neglect at his group home, Green Chimneys Gramercy Residence,

At an NYU Law roundtable on children’s rights, 2007



Receiving the American Bar Association’s Hodson Award for public service, on behalf of LFC, with son Daniel and husband Roger, 2008



Four generations: Daniel Weisberg, Roger Weisberg, Karen Freedman, Lionel Freedman Huelster, Idell Weisberg, Allison Weisberg, Peter Barker-Huelster ’12, Larry Weisberg, Liza Weisberg, 2013



“THERE’S NO WINNING KAREN OVER. SHE’S NEVER GOING TO DECIDE TO FAVOR SOMETHING BECAUSE SHE LIKES YOU, OR YOU WANT HER TO. SHE’S TRUE TO HERSELF AND HER CORE BELIEFS.”

a nondescript brownstone in the East Village touted as a cutting-edge program for LGBTQ youth. “He was telling us of inappropriate sexual advances being made by staff members to the young people living there,” Freedman says. “He told us there was no viable programming, children were routinely locked out of the residence and left on the streets, food was scarce, and staff were clearly without adequate training—bullying, humiliating, and even abusing the young teens in their care.”

She contacted an old friend, Ronald Richter, who, under Mayor Michael Bloomberg, had been appointed commissioner of the Administration for Children’s Services. Richter was the city’s first openly gay child welfare commissioner, and, coming from a long career as a family court judge, was well acquainted with the miserable plight of LGBTQ youth in foster care. Freedman invited Richter, who is married and has a daughter, to LFC’s offices, where he heard stories from several of Lawyers For Children’s LGBTQ clients. “They felt incredibly validated, having that kind of access,” Freedman says.

Richter, in turn, was moved. “When you’re running a child welfare agency, everything is very, very important,” says Richter, who has since returned, under the new city administration, to his judgeship at Queens Family Court. “And there are only certain things that you can act upon with the force of a city agency. Karen made sure that this issue was acted upon with force.”

Commissioner Richter himself made a series of unannounced visits to the Gramercy residence, and while he worked with the agency to remedy deficiencies with both the facilities and the services, he finally ended the contract. “We agreed to disagree about their ability to provide programming,” says Richter, “so there was a parting of ways.”

(Green Chimneys declined to comment on the Gramercy closing.)

Freedman pushed on. She enlisted LFC board member Williams, of counsel at Skadden. They co-signed a demand letter to Richter, outlining specific protections for LGBTQ youth. Williams’s

presence in a series of meetings signaled Freedman’s intent to sue if change was not imminent.

Despite her longstanding friendship with Richter, she pressed him, demanding that the city vastly increase the number of safe placements for LGBTQ youth, and that it train and advocate up and down the chain of child welfare services.

“There’s no winning Karen over,” Richter says. “She’s never going to decide to favor something because she likes you, or you want her to. She’s true to herself and her core beliefs. Which, of course, can be very annoying. She has a ton of integrity.”

TURNING UP THE HEAT

Freedman’s agenda is never-ending. She has engaged professionals on her firm’s board to teach public speaking and self-presentation to a cadre of rotating “ambassadors” from among her 18- to 21-year-old clients. They will advocate on behalf of LFC, spread word of its programs to others, and learn how to best advocate for themselves in the process. And she is determined to take the most cutting-edge research on brain science and apply it to New York City’s child welfare system.

“We have a system that’s about 30 years behind in terms of good practice,” says Freedman. Many agencies still use confrontational, behavior-modification methods on youths who carry traumas akin to those brought home by war veterans. And when agencies seek arrest warrants for AWOL youths, the result often triggers a negative spiral, she says. “It’s really an abuse of the entire police system,” Freedman adds.

Then there is the matter of the handcuffs. Freedman’s second demand letter elicited silence from the same state court office that awards LFC \$5 million annually. Self-preservation might dictate backing down; Freedman, however, stepped up pressure. She tapped the prominent law firm Simpson Thacher & Bartlett, which sent yet one more letter. “It’s a way of strong-arming them,” Freedman says mildly. “It will get their attention.”

This summer, the wheels started turning. In a letter, the state court agreed to adopt new rules to remove handcuffs in family court “in a timely manner.” That may not end the practice. But if history serves, Freedman will win this contest. On matters of justice for children, she always does.

As sure as time goes on, the cuffs will come off. □

Candy J. Cooper, a Pulitzer Prize finalist, is a journalist and author living in Montclair, New Jersey.

Presenting to a delegation of judges and social workers from Morocco, 2014



With fellow Root-Tilden alumnus Judge Douglas Hoffman '81, 2014



LFC Youth Ambassadors: Luis Alonso, Sharabia Wilson (back row), and Tyasia Nicholson, Crystal Claixto, Quotasia Johnson (front row), 2014



With Tyasia Nicholson, a client and Youth Ambassador for LFC, 2014





PLANTING SEEDS

For more than 60 years, the Root-Tilden-Kern Scholarship Program has been nurturing a community and enriching a school that sends passionate public interest lawyers into the world.

1940s

Arthur Vanderbilt, who was dean of the Law School from 1943 to 1948, conceives of the Root-Tilden Program with two goals: By offering a quality, debt-free education to top-tier students, it will both elevate the Law School—drawing excellent candidates away from competing schools—and create leaders who value public service.

1950

The Avalon Foundation donates \$360,000 to create the Root-Tilden Scholarship Program, which the foundation's trustees initially intend as a five-year "experiment" in nurturing public leaders for the American bar. The first Root-Tilden Scholars matriculate in 1951, receiving full tuition plus a stipend for books and living expenses.

1956

Inspired by the program's success, the Avalon Foundation donates \$875,000 to endow the program long-term; the Law Center Foundation and the University match the donation.

1968

Non-RTK students Janice Goodman '71 and Susan Deller Ross '70 form the Women's Rights Committee to lobby for women's inclusion in the program. Thanks to their efforts, the first Root-Tilden women matriculate in 1969: Barbara Burnett, Erica McLean, and Mary Morgan.

1970

Against the backdrop of a national economic decline, rampant inflation, and massive unemployment, the Law School reduces Root-Tilden Scholarships to the cost of tuition only. It also adds a public service internship requirement.

Fayetteville, North Carolina, native Brandon Buskey '06 had a lot to adjust to. New to New York, new to public interest law, he was a tad intimidated entering NYU Law as a Root-Tilden-Kern Scholar.

Before law school began, however, Buskey attended RTK orientation, which included overnight camping and hikes. His uncertainty evaporated. "The programmatic support at NYU—in the Root Program and in the Public Interest Law Center—really surprised me," says Buskey, now an attorney for the ACLU's Criminal Law Reform Project. And that first impression stayed true throughout his three years. "There was always someone willing to discuss issues and problems," he says, "someone who would help you think through what kind of lawyer you wanted to be."

Angelica Jongco '05, a senior staff attorney at Public Advocates, a nonprofit law firm and advocacy organization in San Francisco, still remembers the nurturing she received "grabbing falafel with my mentor, Kathleen Guneratne, my first day. She answered all my questions and made me feel completely at home." Guneratne '04, now an Alameda County (California) public defender, remains a friend and mentor.

The RTK Program has a rich history. Since 1954 it has produced leaders in all aspects of law and even business, including two of the founders of Wachtell, Lipton, Rosen & Katz, Martin Lipton '55 and Herbert Wachtell '54; the founder of Southwest Airlines, Herbert Kelleher '56; and the former general counsel of AIG, Florence Davis '79, who is now president of the Starr Foundation.

RTK alumni also hold influential public service positions throughout the country (see illustration on the next page). The program has, over time, spurred the growth of the public service community at NYU Law. In fact, the founding of the Public Interest Law Center (PILC) in 1992 would begin to make Root's programming accessible to the entire school population, including making available to all students funding for public interest summer internships and entrance to the Monday night Public Interest Speaker Series.

"The public interest community at NYU is large enough that there is space to assemble your own family," says Kendal Nystedt '14. "I've built my own family through relationships formed during two years in the Immigrant Rights Clinic, while on the *Review of Law & Social Change*, and as a member of the Coalition on Law & Representation's leadership collective." Nystedt received funding available to any NYU Law student to organize an Alternative Winter Break trip to Arizona, where seven students worked on immigration enforcement issues at the southern border.

This sharing of the wealth, as it were, is to everyone's advantage, according to Chief Judge Theodore McKee of the US Court of Appeals for the Third Circuit. He has served on the RTK Selection Committee annually since 2004 and has become one of the program's biggest cheerleaders. "NYU understands the importance of gathering a critical mass of public interest law students," McKee says. "That critical mass transforms qualitatively the experience of public interest law students." RTK Scholars are "not an isolated bunch," he adds. "They're an extraordinary group of scholars integrated into a vibrant and vital community of public interest-minded folk." □ *Christine Pakkala*

1982

A faculty committee chaired by Norman Dorsen examines the state of the Root-Tilden Program. The "Dorsen Report" makes recommendations to preserve both the program's original mission and the program itself, such as further reducing its scholarship amount to two-thirds of tuition only. Implemented in 1984, this mandate saves Root-Tilden from economic failure.

The report also recommends that Roots promise to work in public service for 10 years and that those who pursue for-profit work repay their scholarships. Today, this is considered a moral obligation for Roots earning above the prevailing public interest salary.

1990

Dean John Sexton asks professors Lewis Kornhauser and Richard Revesz to examine this question: "Is the high cost of a law school education the reason more students do not choose public service jobs after graduation?" Their research leads to the Innovative Financial Aid Study, which grants \$10 million—half provided by an anonymous donor, half by the Law School—to fund three Root-Tilden classes beginning in 1995.

1998

The program is renamed Root-Tilden-Kern in honor of Root-Tilden alumnus and NYU Law Trustee Jerome Kern '60, who donates \$5 million, doubling the program's endowment. This jump-starts a fundraising campaign to raise \$30 million by 2004, the 50th reunion of the inaugural class. Nearly 470 alumni of the program donate, and the campaign surpasses its fundraising goal.

2006

The University of Washington School of Law creates the Gates Public Service Law Program, explicitly modeled after Root-Tilden-Kern.

2008

Sixteen RTK Scholars graduate with zero tuition debt for the first time in more than two decades.

2014

This year's 1L class includes 19 scholars: 12 of them are women, 16 are students of color. They hail from 12 states, the District of Columbia, Puerto Rico, and Canada and bring with them a range of expertise such as political science, mathematics, journalism, sociology, Spanish, and chemical engineering.

Tending the Roots

Get to know Deirdre von Dornum, who became the assistant dean for public service in September 2013.



What made you decide to give up Federal Defenders after 11 years, during which you represented clients like the Somali pirate depicted in the Tom Hanks movie *Captain Phillips*, to lead the Public Interest Law Center? I really want to be a positive force to create more

public interest lawyers and support students to do the kind of work that I've done. That said, I continue to take cases representing indigent defendants and always will.

Continuing the Hollywood theme for a moment, I heard that Julianna Margulies trailed you for several days to research the role she plays on *The Good Wife*. What does she do on the show that she picked up from you? You'll see on the show that she always touches the client on the shoulder in front of the jury or the judge. I taught her to always show through her manners or gestures that she really cares about her client.

What are your goals for the RTK Program? I have two initial goals: first, making sure every form of public service is viewed equally, from the tremendous pro bono work by law firm partners such as Catherine Amirfar '00 [of Debevoise & Plimpton], to the amazing work by direct-services lawyers like Dorchen Leidholdt '88 [director of Sanctuary for Families' Center for Battered Women's Legal Services]. Second, connecting the Roots more strongly with the public interest community.

Are there particular challenges for a public interest scholarship program at a school noted for its public interest opportunities? At a recent Admitted Students Day, a prospective student asked—given how strong individual students such as the RTK Scholars are—how he could possibly be a standout and get attention and resources? I see each of the students as a standout based on what he or she cares about individually. But it's a good thing to keep in mind that the resources must be spread equitably.

What are your priorities as head of PILC? My immediate priorities are to forge stronger connections with government employers; to help every student at NYU participate at some point during law school in public interest work; and, as with the RTK Program, to connect students more strongly with the public interest alumni.

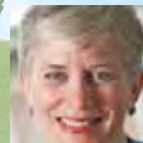
Why is it so important that every law student participate in public interest work? To get the feeling early on of directly helping people in need so that this can be carried into every legal career.

On a personal note, I noticed you have an unusual middle name, Dionysia. Yes, my parents meant it to counteract Deirdre, the queen of sorrows in Irish mythology.

Do you think it works? Sure. I balance a great deal of awareness of the sorrows of the world with a lot of joy and interest in people celebrating who they are.



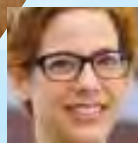
Disability Rights
Kara Janssen '10
Staff Attorney,
Disability Rights
Advocates



Social Services Advocacy
Deborah Ellis '82
Executive Director,
New Jersey
Coalition to End
Homelessness



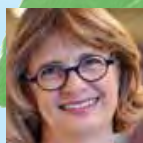
Labor Law
Matthew Ginsburg '05
Associate General
Counsel, AFL-CIO



International Human Rights
Margaret Satterthwaite '99
Professor of Clinical Law,
Global Justice Clinic,
NYU School of Law



Widney Brown '94
Director of Programs,
Physicians for
Human Rights



Housing
Vicki Been '83
Commissioner, New
York City Department
of Housing Preservation
and Development



Environmental Law
Martha Roberts '12
Policy Advisor to the
Deputy Administrator,
US Environmental
Protection Agency



International Law
Thomas Buergenthal '60
Judge (2000–10),
International Court of Justice



Shamiso Mbizvo '07
Associate International
Cooperation Adviser,
International Criminal Court



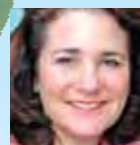
Public Defense
Derwyn Bunton '98
 Chief Public Defender,
 Orleans Public
 Defenders



Prosecution
Philip Kovoor '12
 Assistant District Attorney,
 New York County District
 Attorney's Office



US Congress
Lamar Alexander '65
 US Senator (R-TN)



Diana DeGette '82
 Chief Deputy Whip,
 US Representative
 (D-CO)



Immigrant Rights
Nancy Morawetz '81
 Professor of Clinical Law,
 Immigrant Rights Clinic,
 NYU School of Law



Alina Das '05
 Associate Professor
 of Clinical Law,
 Immigrant Rights Clinic,
 NYU School of Law



Judiciary
Jenny Rivera '85
 Associate Judge, New York
 State Court of Appeals



Federal Government
Christopher Meade '96
 General Counsel,
 US Department of
 the Treasury



Carlos Siso '07
 Attorney,
 Federal Aviation
 Administration



Civil Rights
Margaret Fung '78
 Executive Director, Asian
 American Legal Defense
 and Educational Fund



Baher Azmy '96
 Legal Director,
 Center for
 Constitutional
 Rights



Academia
James Milliken '83
 Chancellor,
 City University
 of New York



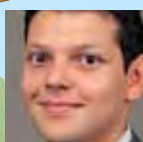
Erin Scharff '11
 Associate Professor of Law,
 Sandra Day O'Connor
 College of Law



Veterans Affairs
Margaret Middleton '07
 Executive Director and
 Founder, Connecticut
 Veterans Legal Center



Education Policy
Alexander Fong '04
 Attorney, New York
 City Department
 of Education

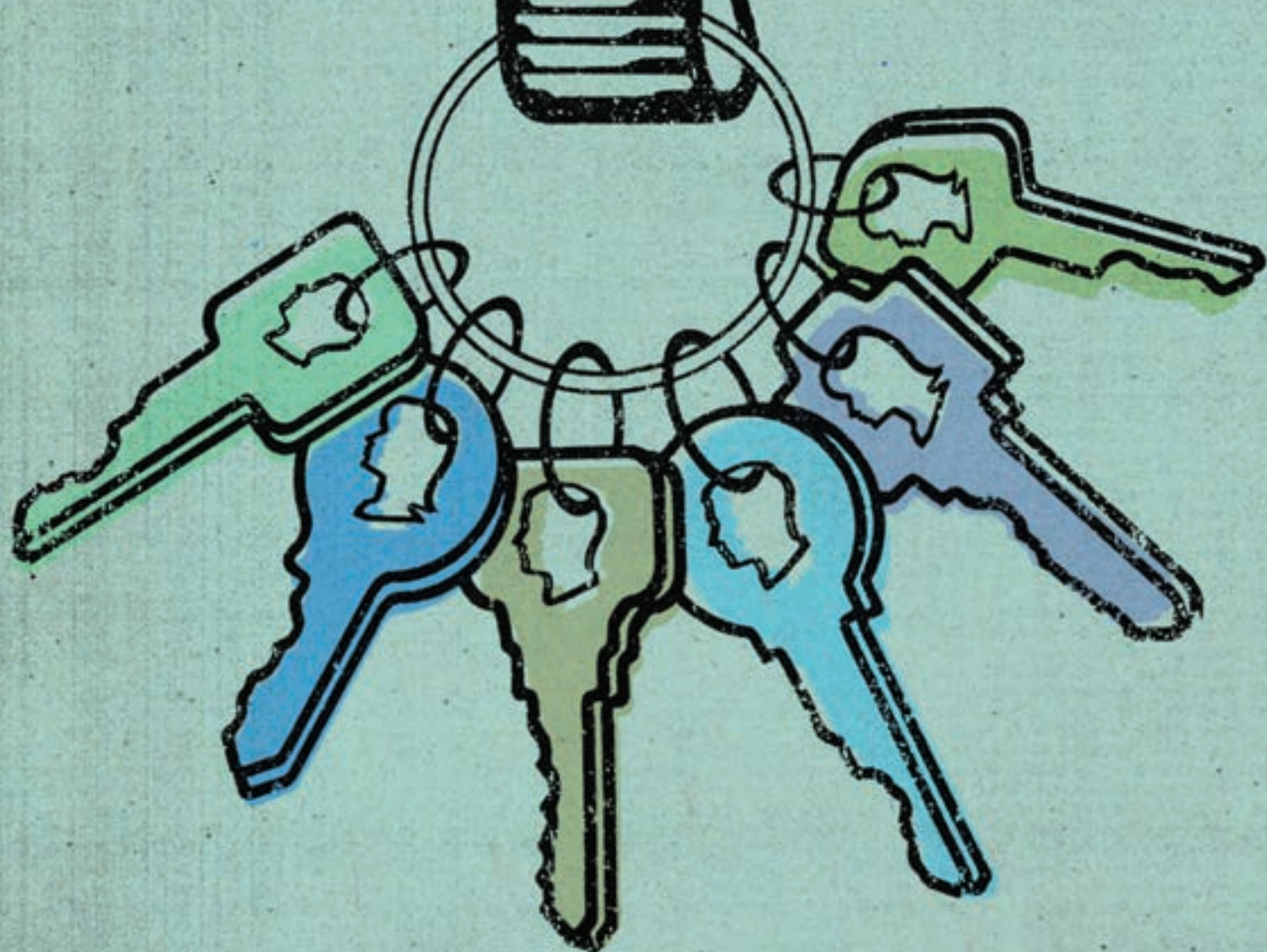
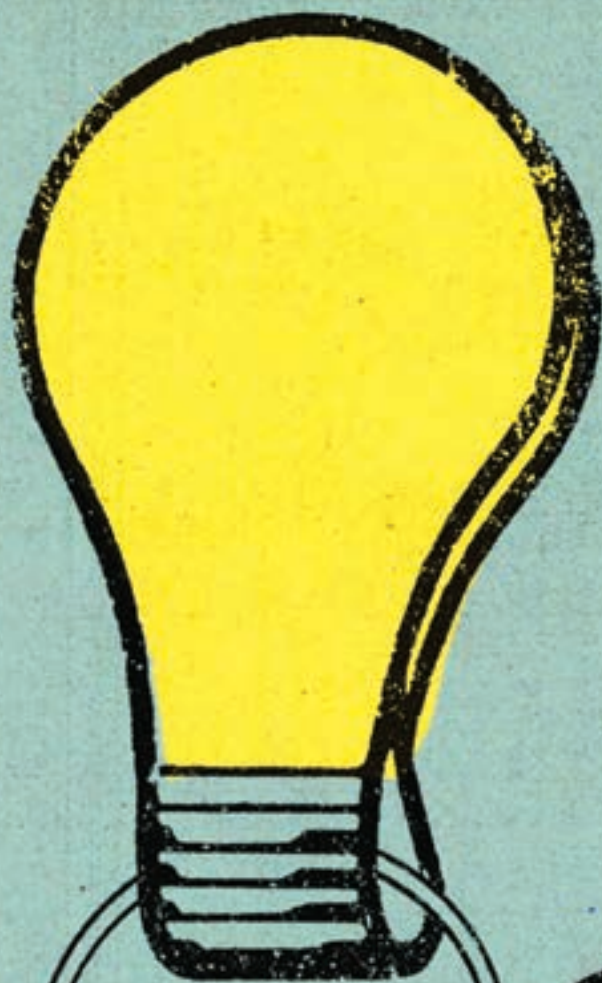


LGBTQIA Rights
**Iván Espinoza-
 Madrigal '05**
 Legal Director,
 Center for HIV
 Law and Policy

IN BLOOM

In the last 60 years, the RTK Program has produced more than 900 graduates. Above is just a sampling of RTK alumni who are at the top of their public interest fields, and some who are just emerging.

Read about other RTK alumni in our pages:
Julie Brill '85, page 40; **Jenny Yang '96** and
Steven Hawkins '88, page 42; **Julie Mao '11**, page 45;
Nicholas Melvoin '14, page 48; **Anthony Foxx '96**, page 80.



Creative License

With a series of recent hires, NYU Law's formidable IP faculty now numbers six. While their expertise ranges across patents, copyrights, and trademarks, the group explores a common question: What best drives innovation?

In a unanimous and controversial 2012 ruling, the US Supreme Court held that Prometheus Laboratories could not patent a method of determining whether a patient is receiving an optimal amount of a therapeutic drug. The method relied on correlations between a patient's response to certain drugs used to treat gastrointestinal disorders and the proper treatment dose.

In the Court's opinion, Justice Stephen Breyer quoted from an amicus brief authored by Alfred B. Engelberg Professor of Law Katherine Strandburg warning against such patents. If "claims to exclusive rights over the body's natural responses to illness and medical treatment are permitted to stand," the brief argued, "the result will be a vast thicket of exclusive rights over the use of critical scientific data that must remain widely available if physicians are to provide sound medical care."

As technology infiltrates nearly every aspect of our lives, intellectual property issues are growing in importance. They are also becoming more pervasive. During their most recent term, the justices took several major patent cases—including one involving software—as well as a much-watched copyright dispute involving retransmission of television broadcasts. In the not-too-distant future, jokes John M. Desmarais Professor of Intellectual Property

Law Barton Beebe, the age-old Property course will largely revolve around the ownership of things like inventions and expressions rather than land and goods.

With an eye to the 21st-century economy, NYU Law has added five of the country's most active and sought-after IP academics to its faculty during the past five years. Beebe and Strandburg joined in 2009, followed by Jeanne Fromer in 2012 and Christopher Sprigman and Jason Schultz in 2013. They all join Rochelle Dreyfuss, who has been a faculty member and IP stalwart since 1983.

"NYU Law has assembled an amazing group in IP in just a few years," says Mark Lemley, a Stanford Law School IP professor and a founding partner of the complex civil litigation firm Durie Tangri in San Francisco. "It is arguably one of the best."

While the six IP professors focus on different (though often overlapping) areas, one question they all explore is what best drives innovation—the primary reason for having laws that create intellectual property rights. Along with other full-time faculty members and adjunct professors, they offer nearly 30 intellectual property courses a year, including core and advanced courses in patents, copyright, and trademarks. The professors' scholarship has had a major impact on the subject matter, including Dreyfuss's

By Erin Geiger Smith
Illustrations by Dan Page

analyses on changing patent law; Strandburg's studies of cultural behavior to understand innovation; and Beebe's groundbreaking paper examining trademark law as the new sumptuary code.

The other professors have also made early marks in the field, including Fromer's examination of the proper audience for IP infringement and Sprigman's book *The Knockoff Economy: How Imitation Sparks Innovation* (2012), which suggests that copying in creative areas, such as fashion, promotes rather than harms innovation. Schultz, who founded NYU Law's Technology Law and Policy Clinic, is known for having developed a top-notch clinic at Berkeley and for generating innovative strategies for updating law and policy to serve citizens in the digital revolution.

An expert in copyright protections and their expansion, Diane Zimmerman, an award-winning former reporter for *Newsweek* and the *New York Daily News*, is now Samuel Tilden Professor of Law Emerita and continues to make significant contributions to the intellectual life of the group.

Because IP law so often overlaps with greater issues of culture and business, it also draws in faculty with non-IP specializations, such as Emily Kempin Professor of Law Amy Adler, who teaches art law and has weighed in on moral rights. Practitioners also teach various electives in particularly IP-heavy fields, including biotechnology, fashion, and entertainment. And, with the constant crossover between competition law and IP, including whether patent settlements that delay the release of generic drugs are illegally anti-competitive, antitrust professors Harry First, former chief of the Antitrust Bureau of the New York State Attorney General's Office, and Eleanor Fox '61, an expert in global antitrust issues, also play a role in the curriculum.

All this activity adds up to what Sprigman describes as an "invigorating" academic environment where endless sparks generate ideas and an unparalleled group of colleagues helps develop them.

PATENTS



Patents protect original inventions on everything from car parts to prescription drug formulas to plastic bracelets on the arms of elementary-schoolers. Patents must be applied for and approved, and the owner of a patent has the exclusive right to use his or her invention. That means if a company wants to sell a product that would use another's patented property, it must either pay the owner for a license or risk being sued.

Many patent law practitioners and experts, including Dreyfuss and Strandburg, have technical or scientific backgrounds in areas such as physics or engineering. So while patent litigation might have gone mainstream, courts continue to struggle with the theoretical question of which inventions are and aren't eligible for patent protection—and should and shouldn't be. Both professors' work delves into the issue of patentability, using empirical research to develop theories on the broad question of what levels of protection will lead to the most innovation.

When Dreyfuss, Pauline Newman Professor of Law, first joined NYU Law, she had planned to focus on civil procedure. But when longtime NYU professor and renowned copyright expert Alan Latman became ill, she was asked to teach a patent law course as well. Latman helped Dreyfuss get up to speed and even to develop her first research paper on patents. Over the course of her more-than-30-year career in academia, Dreyfuss has produced a vast array of scholarship that has made her sought-after by governments from Russia to China seeking to improve their own patent systems.

Dreyfuss also has a reputation for practical scholarship on domestic patent law issues. "Her work is very appreciated not only by intellectual property scholars but also by judges, which is unfortunately rare in the legal academy," says Jane Ginsburg, a Columbia Law School IP professor and a frequent collaborator with Dreyfuss. Ginsburg also cited Dreyfuss's deep knowledge of the US Court of Appeals for the Federal Circuit.

About the time she began focusing on IP, Dreyfuss says, patent law "happened to get hot" following the 1982 founding of the Federal Circuit, unique among the appeals courts in that it has sole jurisdiction over most patent appeals and was created to allow the development of unified patent law.

When the Federal Circuit celebrated its five-year anniversary, Dreyfuss was asked to write a paper evaluating the court on its then-short history. She has repeated that analysis on several anniversaries since and jokingly advises her students to be careful what they write about, lest they be doing it for 30 years.

These days, Dreyfuss, who has a master's degree in chemistry and worked as a research chemist at the company that is now Novartis before becoming a lawyer, is particularly interested in patent law as it relates to life sciences and pharmaceuticals.

Cases in that arena, addressing questions such as whether human genes can be patented and whether drug patent owners



"The Supreme Court has weighed in pretty heavily on this question of whether patents impede rather than promote the progress of science.... They've been looking for ways to make sure the fundamental principles of science stay in the public domain and allow patenting only of applications."

ROCHELLE DREYFUSS

can strike deals with generic drugmakers to maintain market exclusivity, have been subjects of focus at the nation's highest court. "The Supreme Court has weighed in pretty heavily on this question of whether patents impede rather than promote the progress of science," says Dreyfuss. "They've been looking for ways to make sure the fundamental principles of science stay in the public domain and to allow patenting only of applications."

Dreyfuss has continually advocated for a patent system that allows progress in scientific research without taking away developers' incentives to innovate. She served on an advisory committee for the secretary of health and human services on genetics, health, and society, which issued a report on how gene patents and licensing practices affect patients' access to genetic testing. Dreyfuss argues that enterprises that offer gene-based testing should receive protections from patent infringement claims and that those conducting research on genes should be granted exemptions from infringement. Such exemptions remain a hot topic in the patent world.

Strandburg, who has a PhD in physics, seeks answers to the more theoretical questions of IP law in an effort to understand how the patent system could best work to promote scientific and technological progress. In recent years, she has conducted research studies of what she calls "knowledge commons," broadly defined as any group that collaboratively shares knowledge or information with the purpose of creating and innovating. Strandburg and her fellow researchers, including standout student Can Cui '12, now an associate in the Hong Kong office of Morrison & Foerster, have

looked at groups ranging from news gatherers to surgeons to roller derby teams. Strandburg's book *Governing Knowledge Commons* (2014), co-authored with Brett Frischmann of Cardozo Law School and Michael Madison of the University of Pittsburgh School of Law, examines how each of those groups innovate and whether they do so without seeking or being able to seek formal patent protection.

For instance, in an evaluation of doctors who, under the auspices of the National Institutes of Health, are researching rare diseases that affect children, Strandburg and her collaborators discovered that the researchers worked together and shared data with apparently little concern about which of them could patent what. Patents may be of increasing concern later, Strandburg says, as the research teams interact with pharmaceutical companies to develop treatments based on their research.

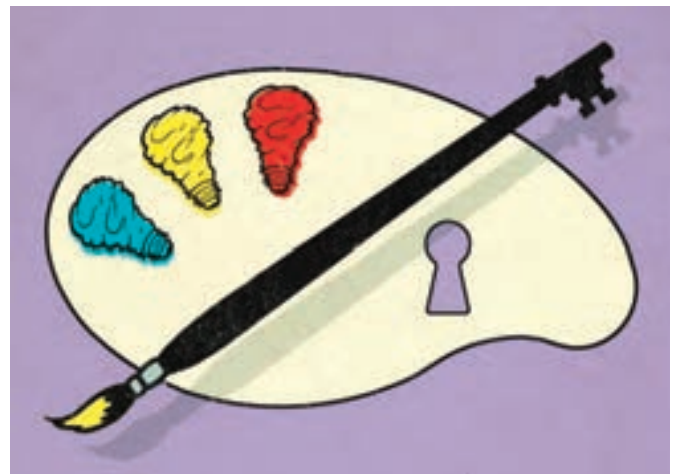
"One reason people innovate is because they want to use something themselves. So I started asking myself, Well, how does that relate to what patent law is doing? Maybe you need less patent law in some cases, maybe there are some ways in which patent law interferes with those things."

KATHERINE STRANDBURG



In other research, Strandburg addresses how much patent protection is necessary to spur innovation. Though Strandburg says more research is necessary to reach any final conclusions, empirical research she and others have done leads her to believe that the question of what is patentable should depend not only on the details of the particular invention but also on whether there is a community that will innovate regardless of whether patents are available. In other words, where patent protection is unnecessary to spur innovation, perhaps the law should take that into account and consider limiting the availability of patent protection for those areas.

COPYRIGHT



Unlike a patent, which must be applied for, anyone who writes an original song or creates a new painting is eligible for copyright protection. Whether a photograph that incorporates part of another's painting is "transformative" enough not to violate the earlier work's copyright, or whether a website's use of a news organization's reporting or imagery is "fair use" are common questions being hammered out in court.

Addressing themes similar to those explored by Dreyfuss and Strandburg, Fromer and Sprigman have identified the broader pressing issue in copyright cases as whether the assumptions on which IP law is built—that protection is required to promote creativity and innovation—are actually true.

Landmark Supreme Court decisions—such as the 1994 ruling in favor of rap group 2 Live Crew over its use of Roy Orbison's "Pretty Woman" lyrics—and new litigation—like the 2013 Second Circuit decision for the artist Richard Prince concerning fair use, or the battle between Robin Thicke and Marvin Gaye's estate over Thicke's 2013 summer hit "Blurred Lines"—make it easy to grab copyright students' attention, Fromer says.

Fromer splits her time fairly evenly between copyright and patents. She is attracted to the fact that the two systems—both designed to protect inventors and promote innovation—look so different.

Fromer compared the two in a paper published this year and co-authored with Stanford's Lemley. The professors examined copyright and patent case law, noting that, in some copyright cases, the audience used to determine infringement is a mix of the so-called ordinary observer and experts in the relevant field.

In patent cases, on the other hand, whether a person's patent has been infringed is often judged only from the perspective of experts.

Copyright and patent protection exist, Fromer says, to provide incentives for people to create valuable things, and the general idea is that people will cease creating if they can't recover their investments of time or money. Therefore, if the copy doesn't harm the creator in the marketplace, she says, "there's no reason to care because it shouldn't be diminishing their incentive to create."

For that reason, patent lawyers, judges, and scholars can learn from copyright cases that ask both whether a consumer would have substituted the copy for the original and what is original about the work the party is looking to protect, Fromer says.

Fromer is also working on a research project with Sprigman that seeks to evaluate what drives creativity and, in turn, what sort of formal intellectual property protection is necessary to develop incentives for continued creativity.

Such empirical work is important, says Sprigman, "because for too long, a lot of intellectual property protection has been a faith-based enterprise. That is really changing. There is a real turn in the scholarship toward trying to understand at a pretty basic level how the mechanism does or doesn't work."

Sprigman and Fromer's project, done in partnership with Christopher Buccafusco of the Illinois Institute of Technology Chicago-Kent College of Law and Zachary Burns, a postdoctoral fellow at the Kellogg School of Management at Northwestern University, involves asking volunteers to complete tasks that require creativity.

One group is told that anyone who completes the task will be eligible for a \$1,000 drawing but that those who do it best will receive more tickets. Another group is told that only those who are best at the tasks will get tickets. The purpose of the study, which they plan to complete in 2014, is to gauge whether participants are encouraged to be more creative when they're eligible for a reward no matter what, or if they're more creative if they have to meet some sort of threshold of creativity to be eligible. The results will suggest whether requiring a threshold level of achievement to receive copyright protection—as is required to receive a patent—would lead to increased creativity.

Another arm of Sprigman's work involves analyzing creative areas, such as food, fashion, and open-source software, in which, for whatever reason, there is very little or no intellectual property protection.

Some of that work was captured in *The Knockoff Economy* (2012), co-authored with University of California, Los Angeles law professor Kal Raustiala.

"The value of looking at low-IP industries is you learn something about how they get along in the absence or the partial absence of IP, and how they innovate. There are many ways to innovate and to capture the gains of innovation without relying necessarily on formal law," Sprigman says. He points to stand-up comedy as an example. Comedians don't rely on formal law, he says, but they've developed a system of community norms against joke stealing that they enforce against one another. (For more on Sprigman, see page 56.)

Like all of their IP faculty colleagues, both Sprigman and Fromer are also closely watching cases in which innovation, and how it pushes against intellectual property law, are playing out in court. One recent high-profile example is the so-called Google Books case, in which the Authors Guild sued the search giant over its plans to scan thousands of books and make them searchable for free online.

In a landmark decision, Second Circuit Judge Denny Chin, who heard the case at the district court level, ruled in November 2013 that Google's project was fair use because it was transformative and contributed to the public good. The decision is currently on appeal.

Chin's decision and a few other recent holdings "really shape the fair use analysis in favor of the defendants" and expand what "transformative" can mean in the analysis, Sprigman says. Whereas fair use is most commonly thought to be transforming the nature of the work, such as 2 Live Crew turning "Pretty Woman" into hip-hop, in the Google Books case the transformation was of the way the works would be used, in this case for research. The works themselves stayed the same.

Sprigman and Fromer's colleague Jason Schultz was also closely watching the Google Books case. As it turned out, the judge was keeping an eye on Schultz's thoughts on the subject of fair use. In his opinion, Chin repeatedly cited an amicus brief authored by Schultz and others on behalf of humanities and law scholars. The brief touted the positive impact the Google project would have on research including "data mining," which involves searching large amounts of data to detect patterns.

"The significance of this case extends far beyond" Google's book project, the Schultz amicus brief said. Allowing books to be searched on a mass scale has endless potential for research progress to benefit society, it continued, "and none of the works in question are being read by humans as they would be if sitting



"A lot of scholarship is patent or copyright or trademark, and I try to break that down a little bit. I try to ask, Can these areas learn from each other?"

JEANNE FROMER

"For too long, a lot of intellectual property protection has been a faith-based enterprise. That is really changing. There is a real turn in the scholarship toward trying to understand at a pretty basic level how the mechanism does or doesn't work."

CHRISTOPHER SPRIGMAN



Ideas in Action

Celebrating the 20th Anniversary of the Engelberg Center

Justices Ruth Bader Ginsburg and Sonia Sotomayor, Second Circuit Chief Judge Robert Katzmann, alumni who specialize in IP, and trustees joined the faculty directors of the Engelberg Center on Innovation Law and Policy for a three-day conference at NYU's campus in Italy. Honoring the center's 1994 launch, guests including its benefactor, Trustee Alfred Engelberg '65, discussed diverse issues including IP's role in fashion, patents in the life sciences, software development's uneasy relationship to IP, and privacy in the age of "big data."



Sprigman, Beebe



Engelberg, Morrison



Schultz



Sotomayor



Dreyfuss



Fromer



Strandburg



Sotomayor, Morrison, Ginsburg, Katzmann, and his wife, Jennifer Callahan

Drones for Ordinary People

The next wave of drones was the topic of the Engelberg Center's October conference, at which robotics enthusiasts considered commercial applications of drones while others were wary of their surveillance uses.



Eirik Solheim



Sergei Lupashin



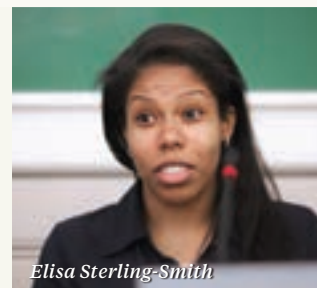
Diane Zimmerman, Burt Neuborne

Young Bloggers Learn the Law

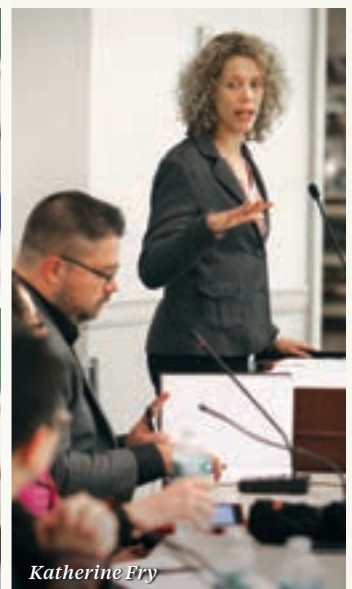
With so many technologically savvy teens making blogs, videos, and other works, often incorporating copyrighted material, NYU Law hosted a panel on fair use with high school, college, and graduate students.



Neil Kosslyn



Elisa Sterling-Smith



Katherine Fry

1, 2013

A Founding Father of IP Law

"IT HAS BEEN ESTABLISHED AS COMMON LAW and recognized by our courts that rules attending property must keep pace with its increase and improvements...and copyright law must correspondingly extend," Nathan Burkan, Class of 1900, wrote in his testimony to the US Congress and Senate in 1906.

Burkan, representing the Music Publisher's Association, was advocating for increased copyright protection for intellectual property owners like authors and musicians.

His efforts led to the passage of the landmark Copyright Act of 1909, making this NYU Law alumnus one of the founding fathers of IP law.

Burkan was a legendary copyright attorney with a client roster that reads like a Who's Who of show business at the turn of the last century. His first important client, the *New York Times* wrote upon his death in 1936, was "light opera" composer Victor Herbert, known for 1903's *Babes in Toyland*, among other pieces. Herbert was followed by Charlie Chaplin, Florenz Ziegfeld, and motion picture companies including United Artists, Columbia Picture Association, and Metro-Goldwyn-Mayer.

Burkan, the *Times* obituary said, was "an expert cross-examiner" who "frequently baffled witnesses into statements which upset their case."

As a celebrity lawyer, Burkan appeared on behalf of Gloria Vanderbilt in the infamous custody battle over her daughter, also named Gloria.

In 1930, he successfully defended Mae West, accused of obscenity in her show *Pleasure Man*, referred to as a "gay play" for its inclusion of cross-dressing men. Burkan knew how to play the press, and reportedly instructed the colorful West to dress in demure black frocks for the trial. Unfortunately, however, after winning West's case, Burkan reportedly sued her for failing to pay his fees.

Tabloid-worthy stories aside, Burkan is best known for his role in the February 1914 founding of the American Society of Composers, Authors and Publishers (ASCAP). Burkan's client, Victor Herbert, and other musicians had become increasingly frustrated that their music was being played in restaurants and dance halls throughout the country with no compensation to the artists.

Burkan helped Herbert and a group of composers and music publishers, including Irving Berlin, to form ASCAP with the purpose of protecting their intellectual property rights.

The ASCAP model involved selling licenses to businesses

who wanted to play ASCAP members' works, and proceeds were distributed to members based on the number of compositions they owned. Though the group reportedly struggled to sell licenses at first, a trip to the nation's highest court eventually ensured its long-term success.

A lawsuit filed by Burkan on behalf of Herbert against a New York City restaurant that allowed a performance of his song "Sweethearts" tested ASCAP's theory that copyright owners deserved to be paid for such public performances of their work.

The US Supreme Court heard the case, and the justices, in a 1917 opinion authored by Oliver Wendell Holmes, sided with Burkan's client. Copyright owners, the *Herbert v. Shanley* opinion said, should be paid if their music is performed in a commercial place, such as a restaurant, even if the music is not the sole reason the patron is visiting the business and there is no charge for admission.

Burkan continued to represent the group, and appears in a 1924 photograph with Herbert, Berlin, John Philip Sousa, and others on a

trip to Washington, DC, to promote increased copyright protection.

In New York City, Burkan was at times a divisive political figure. His *Times* obituary describes him as "a leader" in the Tammany Hall political machine, "swaying considerable power behind the scenes." He was instrumental in the building of New York's Triborough Bridge (now known as the Robert F. Kennedy Bridge).

Unlike many of today's most prominent lawyers, Burkan was not a member of a white shoe firm and never took on any partners. He did employ associates, however, at one point occupying an entire floor of the Continental Building at Broadway and 41st Street, the *Times* said.

A century after its founding, Burkan and Herbert's rights project is still going strong. ASCAP boasts more than 480,000 members and distributed to them more than \$4.2 billion over the last five years. —E.G.S.



Nathan Burkan escorts his client, Mae West, from the Jefferson Market Courthouse in Manhattan during the 1930 obscenity trial for her show Pleasure Man.

on the shelves of a library or bookstore.” Thus, the brief argued and Chin agreed, the project doesn’t infringe the authors’ rights or violate the ideals of copyright protection.

Schultz’s scholarship also addresses copyright’s “first sale” doctrine, which says that when someone purchases a copyrighted work, such as a book at a bookstore, it is then his to loan or sell as he pleases. How that doctrine works in the digital realm, where consumers download books or songs, is unsettled. “If we don’t find a way for consumers to maintain a personal property interest in digital media, it will leave the copyright system out of balance,” Schultz says, because purchasers will have less incentive to buy copyrighted works and instead might download them illegally.

In a forthcoming paper with Case Western Reserve University School of Law’s Aaron Perzanowski, Schultz argues that any new law drafted on the topic should simply say that whether the copyrighted work is in digital or analog form, the consumer owns it and has the right to resell it. “If you drafted a law that says those things, you’d win in the digital age,” he says.

“In the non-digital world, we collect books, movies, paintings, and music that we can keep, pass on to friends, resell, or donate. If we aren’t allowed to own media and do that in a digital world, we’re much less likely to have a problem downloading something without paying for it or disregarding the copyright interests of the creator. Being a legitimate owner of a copy promotes legitimacy of the system as a whole.”

JASON SCHULTZ



As a professor of clinical law, Schultz works with students on what he calls the “big policy issues.” Students in his Spring 2014 clinic submitted two amicus briefs to the Supreme Court. In the high-profile patent case *Alice v. CLS Bank*, the students argued that abstract patents are particularly problematic in the software realm because they encourage frivolous litigation and prompt businesses to create large patent portfolios for the sole purpose of defending against such suits. The students also filed a brief in *ABC v. Aereo* on behalf of smaller broadcasters in support of streaming Internet television service Aereo. The startup charges users a small monthly fee to watch local programming on their computers or mobile devices—the same local programming that could be watched for free on a TV with rabbit ears, Aereo argued. The US Supreme Court sided with ABC and other major broadcasters in June, however, ruling that Aereo infringed on their copyrights.

The main focus of students’ projects, Schultz says, will be to advocate protection of the public interest. Spring 2014 students advised the New York Public Library system on how

to best make available to other libraries and institutions the software it is developing to make library works more digitally accessible. Some students also were placed at the ACLU under the supervision of ACLU attorneys Catherine Crump and Ben Wizner ’00, director of the ACLU’s Project on Speech, Privacy, and Technology. The students evaluated and made recommendations to criminal defense lawyers on how to defend against law enforcement’s use of individuals’ cell phone location data, and drafted model pleadings to be used by these lawyers in requesting such cell-related information from the government.

“There is no end to the kinds of projects that students can work on that really make a contribution” to IP law, Schultz says of his clinic.

Amanda Levendowski ’14, a clinic student who will join Cooley this fall as an associate, said she found working in the not-for-profit environment invaluable. Schultz was instructive, she said, on how she can integrate that type of service into her work at the law firm.

TRADEMARK



The third prong of intellectual property, trademark, involves the various tools, including logos, words, symbols, and colors, that companies use to identify their products. Trademark law allows companies to seek damages from those who try to sell knockoff products or trade on their brands by confusing consumers into thinking they’re buying a product that was made by another, usually inferior, company.

Despite its undisputed relevance in the business world, trademark law has historically received less academic attention than patents and copyright law. That hole in intellectual property scholarship led Barton Beebe to develop his expertise in trademark law.

“When I really started reading [about trademark law], I thought it was the lens through which you can see the rest of the universe. Everything was there—economy, culture, politics, expression,” says Beebe, who has a PhD in English, including work in cultural studies. And yet, he says, it seemed that it was undertheorized and understudied.

Beebe’s research—and his interpretations of trademark’s broad reach—allows NYU to be one of the few law schools that offer an advanced course in trademark law, though that’s something Beebe expects will change soon. “It’s becoming obvious

that [trademark law] is so wrapped up with the state of the 21st-century economy,” he says, especially as branding becomes more important in global commercial centers like New York, Tokyo, Paris, and, increasingly, Silicon Valley.

Adjunct Professor David Bernstein, a partner at Debevoise & Plimpton, teaches the advanced class with Beebe. Bernstein is a renowned trademark lawyer who defended luxury company Yves Saint Laurent (YSL) against allegations it violated a mark owned by high-priced shoemaker Christian Louboutin. In a landmark 2012 decision, the Second Circuit allowed Louboutin to keep its trademark on red soles but said YSL could continue to sell its all-red shoes.

Bernstein has known Beebe since the latter’s law school days, when Beebe was a “star” summer associate at Debevoise, Bernstein says. Today, Beebe is more widely known as a standout for his groundbreaking 2010 *Harvard Law Review* paper “Intellectual Property Law and the Sumptuary Code,” which compared trademarks to laws that restrain luxury and extravagance for the purpose of enforcing social hierarchies.

“I’m obsessed with how trademark law facilitates status distinctions in society—not necessarily hierarchical distinctions in terms of status distinctions, but also how trademark law helps facilitate horizontal distinctions in a mass culture. It’s as if in a mass capitalist democracy, if we didn’t have trademark law, we’d have to invent it,” he says.

People buy signs, which include branded clothing and products, Beebe continues, to distinguish themselves from others. “If you don’t have religious or ethnic identity, if you live in a massive, multicultural, globalized city...people rely more on

trademarks and brands. And trademark law is the regulation of that distinction.”

Trademark law protects the world’s most recognizable brands—such as Coca-Cola or Nike—from “dilution” of their marks by allowing them to sue those whose products might reflect badly on their brands, even if no consumer would think the major brand-owner actually made the product. “What’s interesting about anti-dilution protection, and IP law in general, is that trademark law is increasingly designed to protect the strong more than the weak,” Beebe says.

One wonders to what extent IP law is following the increasingly large divide between society’s rich and poor, he says. “Anti-dilution law is a really obvious expression of the 1 percent,” Beebe adds, since only the most famous trademarks qualify for such protection.

“When I really started reading about trademark law, I thought it was the lens through which you can see the rest of the universe. Everything was there—economy, culture, politics, expression.”

BARTON BEEBE



MOVING FORWARD

Beebe’s analysis of trademark law’s representation in greater society goes part and parcel with his fellow faculty members’ continued evaluation of how IP laws should mold and change to best contribute to society. They are all eager to use available case law and their own empirical research to contribute to that conversation.

Spring 2014 represented the first time all six professors were on campus together, and it brought not only expanded course offerings but also new life to the school’s Engelberg Center on Innovation Law and Policy.

The center is unique at NYU Law in that all full-time IP professors serve as faculty co-directors. The center pursues a mission to foster interdisciplinary work in the area of innovation and law, and to bring in top-notch IP practitioners and experts to interact with faculty and students.

To that end, the center held an array of events that attracted a wide spectrum of audiences, including “Taking on the Take-Down Notice: Copyright, Youth and Educators in Harmony,” which featured a panel of media-savvy New York high school, college, and graduate students, and “Drones and Aerial Robotics,” which drew together aerial photographers, former military personnel, privacy wonks, and robotics enthusiasts.

In celebration of the Engelberg Center’s 20th anniversary this year, the IP faculty took part in substantive panels on IP topics with NYU Law trustees and guests such as US Supreme Court Justices Ruth Bader Ginsburg and Sonia Sotomayor. (Please see sidebar on page 35.)

The center is launching an Empirical Innovation Law & Policy Research Initiative this fall that will focus on the data-driven study of the interplay between law, policy, and innovation. It will kick off in October with a two-day conference on Empirical Scholarship in Intellectual Property: New Evidence Relevant to Policy.

In September, the center will host the 2nd Thematic Conference on Knowledge Commons Governing Pooled Knowledge Resources. Organized by Strandburg, the event aims to take stock of the latest developments in the interdisciplinary study of knowledge commons, and will seek to better understand how knowledge commons work, where they come from, what contributes to their durability and effectiveness, and what undermines them. The conference will pay special attention to knowledge commons in the fields of medicine and the environment.

What stands out about these faculty is how invested and excited each is in the others’ works. It is a cohesive group that also benefits from a diverse set of interests. That allows the center to approach analysis of innovation law and policy from many angles.

Each of his new colleagues, Sprigman says, “has done more than one thing in their career that has changed the way people think” about an IP question. They are the people who have driven him throughout his legal career, he says, “and now I’m hanging out with them.” □

Erin Geiger Smith is a freelance journalist in New York City. A former legal reporter at Reuters, she has written for the Wall Street Journal and the Daily Beast, among other outlets.



The People

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Vijaya Gadde '00 brings passion and expertise in international and corporate law to her role as Twitter's general counsel.

Consumer Guardian

Law Women's 2014 Alumna of the Year zealously protects the American public.



As a Vermont assistant attorney general in 1991, Brill and her staff discovered that a prominent consumer credit reporting agency had erroneously listed 3,000 residents of several Vermont towns as having tax liens against them. Brill testified in front of Congress about the ways in which credit reporting agencies were hurting consumers, which contributed to the 1996 revisions to the Fair Credit Reporting Act, the first substantial revisions in 25 years.

When Julie Brill first became a commissioner for the Federal Trade Commission in 2010, her job was a mystery to her neighbors. “They’d say, ‘Oh, are you involved in international trade? Do you negotiate treaties?’” says Brill ’85.

“People don’t realize that what we do is consumer protection, competition, and enforcement,” Brill explains. As both a consumer watchdog and a barometer for market trends, the FTC, she says, “follows what’s happening to consumers, which is directly related to what’s happening in the economy.”

It’s a perfect position for Brill, who chose law over economics in order to realize her dream of shaping public policy. As she recounted when receiving the Law Women Alumna of the Year Award in February, Brill was inspired by Louis Brandeis, whose championship of local causes won him a national reputation, and she espouses a Yiddish proverb: “God created a world full of small worlds.”

“I found my small world in Vermont,” Brill says, having landed there after law school by clerking for Judge Franklin Billings Jr. of the US District Court for the District of Vermont. After a brief stint at Paul, Weiss, Rifkind, Wharton & Garrison to strengthen her practical experience, she returned to Vermont to work in the state attorney general’s office. “State AGs usually have relatively few attorneys compared to federal agencies, but they have a much broader mandate,” she explains, which gave her the chance to have a lot of responsibility early in her career.

Soon after joining Vermont’s Consumer Protection Unit, Brill was blitzed with complaints from people who were being rejected for mortgages and refinancing. The local issue—how big errors by big

companies affected people in small towns—led to testimony before Congress and ultimately to substantial revisions in the Fair Credit Reporting Act.

That experience, in turn, took Brill to North Carolina, to head up the AG’s Consumer Protection Division and, from there, to her FTC appointment.

In 2010 the country was still reeling from the financial crisis, so much of Brill’s focus early on as commissioner was on what she calls “last-time frauds”—scams targeting people who have lost their jobs, are in danger of foreclosure, and, consequently, are susceptible to fraudulent claims of relief.

As the economy has started to improve and these kinds of frauds have slowed, Brill is turning to other issues. Paramount among them is parsing the privacy implications of emerging technologies: specifically, big data analytics (how personal data is gathered and used) and its effect on consumer privacy (think not only Target’s credit card security breach but also using personal data to influence decisions on health insurance coverage and loan approvals). Brill, who earlier this year was interviewed on *60 Minutes*, is right in the thick of the conversation. Last year she launched Reclaim Your Name, a comprehensive initiative that would give consumers the knowledge and technological tools to reassert some control over their personal data.

In addition to privacy issues and consumer protection, Brill would like to see the FTC continue its focus on competition in health care. Citing a 2013 Supreme Court decision against the practice of pharmaceutical brands signing agreements with generic drug makers to delay the entry of those lower-cost brands, she says: “Moving forward, I want to see that what the Supreme Court said gets implemented in the lower courts and in the industry.”

An accomplished public speaker, Brill gives talks about privacy issues and big data several times a month. She relishes the pulpit the FTC provides to communicate complicated issues to the public and explain how these issues—and the FTC’s rulings—affect their lives. In her speech accepting the alumna award, Brill quoted “that sage of the workplace, Ferris Bueller”: “Life moves pretty fast. If you don’t stop and look around once in a while, you could miss it.” It’s advice that she admits she doesn’t always follow herself.

But she’s not complaining. “Like every job, there are times you tear your hair out,” says Brill. “But most of the time, I feel like I’m eating strawberries and drinking champagne. I can’t believe I’m so privileged to do what I get to do.” □ Catherine Fredman

Andreas Lowenfeld,

1930–2014

When I heard that Andy Lowenfeld had passed away, the first thing that came to mind was not his stature as a giant of international law, but the impish twinkle in his eye.

Yes, his rank as a scholar and an advocate was second to none. In an era when so many lawyers became hyperfocused on one or two specific areas, Andy not only had incredible depth and precision, but he also brought the panoramic view and sweeping vision of an earlier generation of international lawyers. He taught us how public and private international law interact in an interconnected system, and, by his example, he showed us how diverse aspects of the international legal profession could be integrated into a coherent career. His work set the stage for the current focus on complex regulation, transnational law, and dispute resolution.

When I was at NYU, the general course in international law was team-taught by Andy and Theodor Meron. Learning international law from “Ted and Andy,” as we affectionately referred to them (behind their backs, that is), was everything you would expect: a lively dialogue interweaving law, history, politics, and economics. In what was perhaps his signature course, his International Litigation and Arbitration seminar, Andy paired each JD student with a foreign LLM to brief and argue an issue in a case. It was a wonderful bit of experiential learning that has stayed with me and taught me as much about how to be a good teacher as how to be a good litigator.

In the years since I graduated from law school, Andy remained generous with his time and provided wise counsel. I became a professor, but he never stopped being my teacher.

Perhaps my favorite memory of Andy is from a judicial conference in San Antonio. One hot summer afternoon, we toured the Alamo together. I will always remember his enthusiasm in examining the exhibits, especially anything having to do with the deeds, land grants, and international agreements concerning the disposition of territory.

He interspersed our conversation about the history of the US-Mexico border with reminiscences from the State Department, career advice, some thoughts on scholarly projects I was considering, and anecdotes from his incredible career. At one point there was

a boy, about seven years old, standing near us and holding a large faux-parchment facsimile of a document, probably recently acquired from the gift shop. Andy started questioning the boy about the topic of the text on his souvenir, whether the reproduction was accurate, and so on. (The boy stared, then shrugged; Andy walked on.) Watching Andreas Lowenfeld attempt a Socratic dialogue with a first-grader made me smile. Even while walking around

the Alamo, Andy was first and foremost an educator and a mentor.

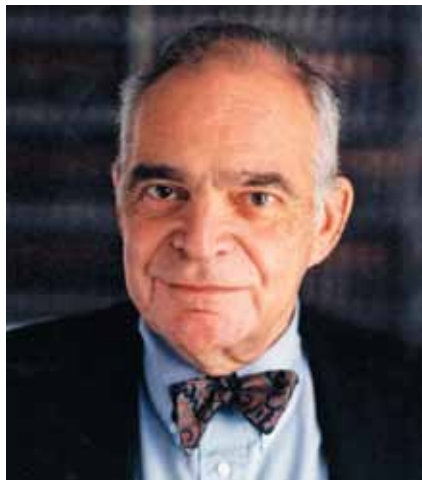
I want to close with a few of Andy’s own words, taken from his magisterial *International Economic Law*. In the closing passage, he puts more than his treatise into perspective:

It is evident that this book has made more use of narrative and illustration, and less of flat normative statements than might have been expected from a treatise. This approach reflects my belief that the answers cannot be understood without the question, and that abstract statements cannot be comprehended without awareness of the underlying facts and continuing controversies.

This is not to deny the normative character of international economic law. But international economic law—like all law but perhaps more so—is a process. Any attempt to define the law as of a given moment cannot help but distort. The process continues, and the hope is that this book has illuminated the path.

It has. And so has Andreas Lowenfeld’s life. □

*Professor Christopher Borgen ’95 is co-director of the Center for International and Comparative Law at St. John’s University School of Law. A version of this essay appeared on the blog *Opinio Juris*.*



CAREER HIGHLIGHTS

NYU Law faculty member for 47 years

Wrote or edited 19 books and over 115 law review articles

Associate Reporter of the Third Restatement on the US Law of Foreign Relations

Co-Reporter for the American Law Institute project on Recognition and Enforcement of Foreign Judgments

Lectured at the Hague Academy twice

Served in the US State Department’s Office of the Legal Adviser during the Kennedy and Johnson administrations

Argued before the US Supreme Court, the Iran-US Claims Tribunal, and the International Court of Justice

Received the Manley O. Hudson Medal of the American Society of International Law

Honored for Their Service

AT ITS ANNUAL SPRING DINNER IN APRIL to celebrate the accomplishments of alumni of color and support the next generation of public service leaders, the Black, Latino, Asian Pacific American Law Alumni Association honored Steven Hawkins '88, executive

director of Amnesty International USA, and Jenny Yang '96, vice chair of the US Equal Employment Opportunity Commission, with Distinguished Alumni Achievement Awards.

Hawkins has had a varied career in public interest law, from the NAACP LDF, where he successfully won the release of three black teens wrongly convicted in Tennessee, to the National Coalition to Abolish the Death Penalty's successful campaign to end executions for juvenile crimes. He also advocated for social justice from the phil-

anthropic side, directing Atlantic Philanthropies' \$60 million campaign targeting human rights and national security abuses.

Professor Alina Das '05, in presenting his award, spoke of Hawkins's inspiration for social justice

stemming from meeting people when he was young who were incarcerated. "Steven Hawkins has had the audacity to act on behalf of those whom our society has chosen to lock up and throw away the key," she said. "By bringing human rights home, he is breaking down the walls, not drawing lines between the deserving and undeserving, but recognizing the need to dismantle the racist and oppressive systems that infringe on all of our human rights."

Yang was appointed by President Barack Obama to the EEOC and at the close of her first year named vice chair. Previously a partner at Cohen Milstein Sellers & Toll and a member of its Civil Rights and Employment practice group, she worked on cases such as *Beck v. Boeing Company*, in which she successfully represented 28,000-plus female employees alleging sex discrimination. She also served as a senior trial attorney in the Civil Rights Division of the Department of Justice.

Inez Milholland Professor of Civil Liberties Burt Neuborne presented Yang's award. Later, he said: "I thought she was a terrific student with a great future when she was a star in my Brennan Center seminar. I was right. During a distinguished career in private practice, and now as vice chair of the EEOC, Jenny has more than lived up to my very high hopes for her. She has become a formidable force for equality, decency, and respect in the law. And she's only just begun." □



Yang with Neuborne



Hawkins with Das

Bridge Builder

As vice president and deputy general counsel at Scholastic, Linda Gadsby '92 is responsible for handling all labor and employment law issues for the company's 7,000 domestic employees, as well as international labor and employment issues in locations including the UK and Canada. NYU Law's Women of Color Collective honored Gadsby with this year's Woman of Distinction Award, recognizing her work both as an attorney and as a mentor and advocate.

"Building bridges is what I do," Gadsby said of her position at Scholastic, noting that she serves as a liaison between employees and employers. Indeed, it is a theme throughout her work and life. Gadsby also emphasized the importance of building bridges outside of one's personal career and making sure to give back by creating opportunities for others. "We are our sisters' keepers, and I truly believe that we will rise or fall together," she said. "Make a commitment to take one girl under your wing and serve as a mentor to her.... There's no greater pleasure than being able to help another person succeed."



Trending Now @Twitter



Growing up in the Deep South, Twitter General Counsel Vijaya Gadde '00 knew early on that she wanted to be a lawyer. “Being a minority and an immigrant made me feel it was important to know my rights, how to protect myself and my family and not be taken advantage of,” she says. “I thought no one messed with lawyers.”

Fast forward to the present, when it's Gadde's job to make sure no one messes with Twitter. She landed at the company in July 2011, not long after the Arab Spring uprisings. The company's mission, to be a platform for global self-expression and conversation, is intertwined with the legal issues it confronts, she says, enabling her to fulfill an early desire to empower the voiceless.

As an undergrad at Cornell, Gadde majored in industrial and labor relations, focusing on the rights of workers. Afterward she set her sights on law and picked NYU, in part, she says, for its strength in international law.

The corporate law path might seem a surprising course for someone so impassioned by these issues. But it was important to Gadde to build a sound legal foundation first, she says. “I got this advice pretty consistently, that your legal career will be a long one and going to a firm allows you to build your skills and enables you to really focus on developing as a lawyer,” she recalls. “Then you can take those skills and do anything that you want.”

She interned at Wilson Sonsini Goodrich & Rosati's California office in 1999 and was so taken by the entrepreneurial corporate work—from mergers and acquisitions to securities issues—that she ended

up staying a decade. “Clients loved her, and I mean loved her, underscore,” recalls Katherine Martin, a partner. When Gadde transferred for a time to Wilson Sonsini's office in New York, her many California clients stuck with her. She brings what Martin calls a “good emotional head” to everything she does.

Gadde says she had always thought about moving in-house, under certain conditions. “I was looking for an opportunity where I could have a leadership position and use my skills and learn from somebody who could teach me,” she says. She reached out to her friend Alex Macgillivray, then general counsel at Twitter, but the timing wasn't right. Six months after she accepted an offer to lead the corporate securities team of a client, Juniper Networks, Macgillivray called: Would she join Twitter now?

At the time, Egyptians and Tunisians were rising up, facilitated by technology, in what the media dubbed a Twitter Revolution. “It was a no-brainer for me, because I wanted to be part of a company that was really dramatically changing the world,” Gadde says. She credits her boss at Juniper, General Counsel Mitchell Gaynor, for being supportive.

Gadde spent two years as head of Twitter's corporate team before taking the GC reins from Macgillivray in August 2013, just weeks before the company announced its initial public offering. Gadde had been working on the IPO long before, collaborating with Twitter's CFO and outside counsel Wilson Sonsini, as the company's top lawyer on the deal.

Twitter's stock flew high in its November debut. But the company confronts myriad issues falling within Gadde's bailiwick, from privacy to intellectual property. Here, she relies on her earlier experience at Twitter when she also managed its international team. That group, organized by regions, confronts a wide array of issues from litigation to user concerns as they arise in their area. Gadde views her role as a coach, providing context to what's happening at the board and executive levels, asking the right questions, and helping reach a decision that meets the company's needs.

Gadde says the greatest challenge on the horizon is transforming the legal department into a more global enterprise, to mirror the company's international reach. “We are working hard to protect our users so that they can speak on our platform and use this to change the world or voice political dissent or whatever it is they want to do, and that just makes us so proud,” Gadde says. “It makes it exciting to come into work every day.” □

Chelsea Allison

“It was a no-brainer for me, because I wanted to be part of a company that was really dramatically changing the world.”

The Negotiator

Born in Israel in 1973, Roy Schöndorf JSD '07 was six weeks old when the Yom Kippur War erupted and his father was drafted into military service as a reservist. "It's not something that I myself remember," says Schöndorf. "But it was a very difficult war, and certainly made an impact on my upbringing and even my choice to pursue a career in international law."

Now, as the deputy attorney general for international law in Israel's Ministry of Justice, Schöndorf is responsible for providing legal advice on all aspects of international law, including international litigation and treaty negotiations. His work is crucial to the current state of play of the Israeli government's actions, both internally and abroad. In recent months, this has included providing advice in heightened security situations, such as confrontations between Israel and Hamas in Gaza this summer.

Schöndorf, 40, is relatively young to hold such a high position in the Israeli government; however, he already has an impressive record of working in the field of international law, with a particular focus on the negotiation of peace.

After receiving two LLBs and an MA in law and economics from Tel Aviv University, Schöndorf served as a senior legal adviser in the international law department of the Israeli Defense Forces Military Advocate General Unit. When Israelis and Syrians came together in 2000 in Shepherdstown, West Virginia, to negotiate the terms of a possible peace treaty, Schöndorf was part of the Israeli delegation.



It was a particularly significant experience for him on a personal level, he says, as someone who was born into the last war with Syria "to be able to be there and meet people that there was previously no way for an Israeli to meet, then...to meet them in person and be able to exchange views about the future of our region, of our children, of our countries."

Later, while serving in the Israeli delegation to the assembly of states working on the formation of the International Criminal Court, Schöndorf became interested in writing a dissertation in the field of international criminal law. He came to NYU Law as a Fulbright and then Hauser Scholar,

and wrote his dissertation under the direction of Professor Theodor Meron, who is now president of the International Criminal Tribunal for the Former Yugoslavia and the International Residual Mechanism for Criminal Tribunals.

Schöndorf returned to Israel in 2010, when he was asked to establish the Department of Special International Affairs, a new department in Israel's Ministry of Justice. Daniel Geron LLM '02, who began his studies at NYU Law at the same time as Schöndorf, and who is now the acting legal adviser for the National Security Council in the Israeli Prime Minister's Office, describes Schöndorf's meteoric rise in the field of international law as a result of the very high regard in which he is held across government ministries. "Everyone recognizes that he understands the intricacies of international law, and the sensitivities of the issues, particularly well," says Geron, "and he's able to explain the complexities to the people who need to ultimately make the decisions." □ Rachel Burns

Glenn Greenwald's Headline-Making Year

Over the past year, Glenn Greenwald '94 has rocked the world with a series of revelations about the intelligence-gathering practices of the National Security Agency (NSA) and the scope of United States spying abroad.

Greenwald began his career post-graduation as an associate at Wachtell, Lipton, Rosen & Katz before hanging his own shingle to litigate US constitutional law and

civil rights cases. In 2005, he closed the firm and launched a political blog, *Unclaimed Territory*, that delved into the unauthorized leak of CIA agent Valerie Plame's identity as well as the indictment of Scooter Libby. Greenwald became a *Salon* columnist in 2007, and then a *Guardian* columnist in 2012.

A look back at 2013–14: Greenwald was the first journalist whom government systems contrac-



tor Edward Snowden contacted to share his classified NSA documents. Beginning in **June 2013**, Greenwald and his colleagues at the *Guardian* revealed the magnitude of the NSA's metadata collection, uncovered the NSA's PRISM program, and exposed the extent

THE // INTERCEPT

to which the US spies on foreign leaders, among other revelations.

February 2014 marked the debut of the *Intercept*, an online magazine funded with \$250 million from eBay founder Pierre Omidyar and edited by Greenwald and his journalist-partners, Laura

Poitras and Jeremy Scahill. "Our central mission is to hold the most powerful governmental and corporate factions accountable," they wrote in their debut post.

That same month, Greenwald, with Poitras and Ewen MacAskill of the *Guardian* and Barton

A Champion for Immigrant Rights

Soon after landing her first job as a lawyer, Julie Mao '11 found herself working to protect more than 300 students hailing from Turkey, China, Ukraine, and elsewhere from labor exploitation—just the type of injustice that inspired her to pursue law.

The students had each paid thousands of dollars to come to the US as part of the State Department's J-1 cultural exchange program, only to find themselves working in a Pennsylvania factory, packing chocolates for subcontractors of the Hershey Company in grueling conditions and under threat of deportation.

"I remember one student showing me her first paycheck for 6 cents. They were trying to figure out, 'How do I survive? How do I leave?'" says Mao, an Equal Justice Works Fellow at the New Orleans Workers' Center for Racial Justice who was named to *Forbes'* 2014 list of "30 Under 30" in law and policy. The Department of Labor ultimately awarded the students more than \$200,000 collectively in back wages, and the State Department banned the recruiter from the program.

At NYU Law, Mao, a Root-Tilden-Kern Scholar, served as a Center for Human Rights and Global Justice Fellow and landed an internship with the UN High Commissioner for Refugees in Malaysia the summer after her 1L year. Working on the cases of individuals seeking refugee status, Mao developed an interest in addressing human trafficking, refugee rights, and state criminalization of migration.

She also learned to navigate what she calls a Kafkaesque immigration system when she was a student in the Immigrant Rights Clinic. "The training and



mentorship [by Professors Nancy Morawetz '81 and Alina Das '05] was foundational to my career as an immigrant rights advocate," Mao says. As part of the clinic, she and fellow students spent two years helping a civil rights activist in deportation proceedings win the right to remain with family and community.

Mao's deep interest in immigration reform is both professional and personal. Her father came to the US from China under a guest worker program. She grew up witnessing the separation of immigrant families by visas and borders, and the destabilizing effect of rigid immigration policies. "My family was very fortunate to have emigrated to the US with the opportunity to achieve full citizenship," she says, "but many of our family and friends were not that lucky." □ Michelle Tsai



Gellman of the *Washington Post*, received Long Island University's George Polk Award for national security reporting.

In April 2014, the Pulitzer Prize for public service was awarded to the *Washington Post* and the *Guardian* in recognition of their reporting on the



NSA. The prize committee praised the *Guardian's* team—led by reporters Greenwald, MacAskill, and Poitras—for "helping through aggressive reporting to spark a debate about the relationship between the government and the public over issues of security and privacy."



Greenwald published *No Place to Hide* in May 2014. An account of Greenwald's first meeting with Snowden and his subsequent work reporting on the NSA disclosures, Greenwald's fifth and latest book quickly hit the *New York Times* best-seller list. Before long,



Sony Pictures announced it had acquired the film rights, too.



Clinical Acclaim

FACULTY BRIEFS

Selected honors, awards, and appointments.

Rachel Barkow gave the criminal law keynote at the Administrative Conference of the United States workshop.

Paul Chevigny was honored by the Arab American Association of New York for his continuing role in litigating against NYPD surveillance of Muslims.

Stephen Choi and **Marcel Kahan** were recognized on *Corporate Practice Commentator's* annual top 10 corporate and securities articles list for the seventh time in the last eight years.

Norman Dorsen received the 2014 Lifetime Achievement Award at the Hefner Foundation's First Amendment Awards.

Eleanor Fox '61 was given the Antitrust Law Section Public Service Award from the New York State Bar Association and delivered her 30th annual lecture to Europe's Competition Directorate-General.

Burt Neuborne participated in—and won—the Intelligence Squared debate on political spending.



EACH YEAR, the NYU Law Alumni Association honors great teachers, as manifested in both their scholarship and their dedication to the education and training of law students. This year, the LAA lauded an alumna on the NYU Law faculty, Margaret Satterthwaite '99, faculty director of the Root-Tilden-Kern Program and the Center for Human Rights and Global Justice, who received the Legal Teaching Award at the 2014 reunion in April.

Linda Gadsby '92, vice president and deputy general counsel of Scholastic and co-chair of the awards committee (see more about Gadsby on page 42), presented the award. "Meg Satterthwaite was a standout candidate," said Gadsby later, "due to not only her outstanding scholarship, but also the variety of roles she holds at the Law School, and the

deep relationships with and impact she has had on her students, past and present."

Satterthwaite, who co-teaches the Global Justice Clinic, is currently engaged in scholarship on empirical methods in human rights settings, economic and social rights, and human rights in counterterrorism. She has led her clinic in a number of major projects, including several in Haiti—both before and after the devastating 2010 earthquake there—regarding the right to food, the right to water, and gender-based violence and economic and social rights. Other projects have tackled targeted drone killings as well as Central Intelligence Agency practices involving extraordinary rendition, secret detention, and torture. In 2011 Satterthwaite received the Law School's Podell Distinguished Teaching Award.

Satterthwaite co-founded and then directed Amnesty International USA's program on the human rights of those persecuted for their sexual orientation, and worked for the Haitian National Truth and Justice Commission as a human rights investigator. She was also a human rights consultant to the United Nations Development Fund for Women. □

A Unanimous Win and a Debut Book

MOST YEARS PROFESSOR BRYAN STEVENSON, founder and executive director of the Equal Justice Initiative (EJI), a nonprofit law organization focused on social justice and human rights, wins a few awards. Over the course of his career he has won several of the world's best-known honors, including a MacArthur Award (1985) and the Olof Palme Prize (2000). But in addition to five more awards and honors in 2014, Stevenson earned a unanimous Supreme Court decision for a long-time death-row client, and this fall his very first book will be published.

February's Supreme Court decision in *Anthony Ray Hinton v. Alabama* was a welcome milestone in Stevenson's 15-year effort to vindicate his client. The Court agreed that Hinton did not receive effective counsel during his 1986 capital trial, declaring the lawyer's performance deficient in violation of the Sixth Amendment.

Hinton had been arrested for two Birmingham-area murders in 1985. With no eyewitnesses or fingerprints, the case hinged on ballistics evidence in a third shooting that prosecutors tied to the murders. Mistakenly believing he could pay only \$1,000 for an expert ballistics witness, Hinton's attorney hired someone who was inexperienced and blind in one eye and who was discredited at the trial. Meanwhile, Stevenson contends Hinton was working in a



locked warehouse at the time of the third shooting, and Hinton's supervisor and co-workers have all attested to his innocence. The case has now been reversed and remanded back to the Alabama courts for further review. "I'm delighted to win relief for Mr. Hinton, who has been on death row for 28 years for crimes he did not commit," said Stevenson. "There is more work to do, but this is an important step forward."

Stories like Hinton's populate Stevenson's debut book, *Just Mercy*, an intimate portrait of mass incarceration and capital punishment and its collateral damage to American society, slated for October publication. (Read a brief excerpt on page 66.)

Among his several awards and honors, Stevenson was elected to the American Academy of Arts and Sciences, received the Vera Institute of Justice Public Service Award, and won the \$100,000 ALBA/Puffin Award for Human Rights Activism—all in the month of April.

Closer to campus, Stevenson earned the Dr. Martin Luther King Jr. Faculty Award from NYU, which recognizes teaching excellence, leadership, social justice work, and community-building in King's spirit. The awardees are nominated by students, one of whom wrote, "He inspires countless people to care about issues of race and the ways in which we treat the most vulnerable in society." □

Extolling a Life and Mind

Three deans and a distinguished group of legal theorists, jurists, and cultural influencers shared their stories at the Law School's memorial for Ronald Dworkin, one of the most revered and influential legal philosophers of the past half-century, who died last year.



Dworkin, a faculty member for 38 years, was remembered foremost for his love of ideas and debate. US Supreme Court Justice Stephen Breyer, who has acknowledged the importance of Dworkin's work in his own adjudication, recalled his long

conversational walks with Dworkin. "Ronnie loved the back and forth, the intellectual exchange of a good argument," said Breyer, who noted that Dworkin used these talks strategically. "He was building, bit by bit, a highly influential, coherent, detailed philosophical approach to the law."

Philosopher T.M. Scanlon spoke of Dworkin's boldness in addressing some of life's deepest quandaries. "Ronnie's confidence involved no attitude of superiority, no suggestion that he knew better and could do better than the rest of us," said Scanlon. "Rather, his confident enthusiasm invited us to join him in taking on these difficult and interesting questions."

Many speakers also remembered the famous Colloquium in Legal, Political, and Social Philosophy, which had run for 25 years with Dworkin and Thomas Nagel at its helm, as a highlight of their intellectual lives. Frank Henry Sommer Professor of Law Lewis Kornhauser called it "the centerpiece and poster child of the intellectual renaissance at NYU."

Nagel, now professor of philosophy and law emeritus, reflected on Dworkin's life well lived: "Ronnie managed to combine creative intellectual achievement at the highest level, motivated by powerful moral and political convictions, with a life filled with pleasure, brilliant society, and aesthetic style, and he seemed to be able to give equal attention to them all.... The brilliant life is now over, and the brilliant work remains." □

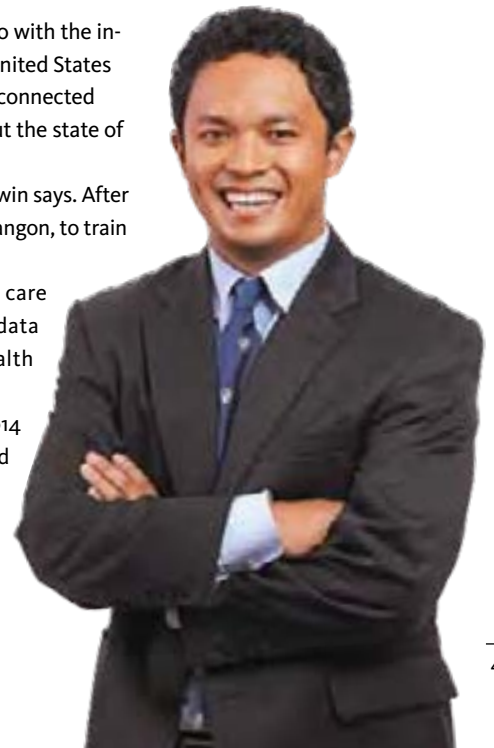
FOR YOUR (HEALTH) INFORMATION

When Michael Lwin '09 visited Myanmar in 2009 after graduating from law school, he did not go with the intent of founding a company. A first-generation American whose parents left Myanmar for the United States in the 1970s, Lwin was primarily interested in learning more about his roots. During the trip, he connected with his cousin Yar Zar Min Htoo, a doctor and computer scientist, who was deeply critical about the state of the healthcare system in Myanmar at the time—in particular, the state of health care records.

"There are zero electronic records in Myanmar, so if you walk into a clinic or lab, it's all paper," Lwin says. After his trip, Lwin stayed in touch with his cousin, and together they founded Koe Koe Tech, based in Yangon, to train local people in computer programming and develop software for the country's health sector.

"What we're trying to do is to collect data and consolidate it for doctors making health care decisions," says Lwin. In addition to creating jobs for the local population and providing data for public health research, the company's long-term goal is developing a nationwide health information exchange.

In recognition of their achievements, the cousins were recently named co-recipients of a 2014 Echoing Green Global Fellowship (Lauren Burke '09, profiled in the 2013 *NYU Law Magazine* and founder of Atlas:DIY, is also a recipient). The fellowship supports emerging social entrepreneurs working to bring about positive social change. Erica Lock, associate director of the Echoing Green fellows program, calls Koe Koe Tech's mission both important and timely. "Above all," she says, "Mike's resounding leadership, passion, and dedication to this work has placed him in an echelon of the highest-potential social entrepreneurs across the globe." □ Rachel Burns



Back to School

A 3L learns how to use the law to improve education for all children.

Nicholas Melvoin '14 did not originally plan to go into the law; he thought he would become a teacher. His interest in education began when he volunteered at a camp for homeless children in Los Angeles and noticed the disparity between his private school and the schools that the kids were going to. "In my mind, the greatest civil rights struggle of our generation is educational inequity," says Melvoin. "So I thought teaching, and being on the front lines of that struggle, was really the best way to address it."

When he graduated from Harvard College in 2008, Melvoin joined Teach for America, assigned to Markham Middle School in Los Angeles. But after his first year, Melvoin lost his job due to budget cuts. Under California's seniority statutes (known as "Last-In, First-Out," or LIFO), the newest teachers are the first to be laid off.

The following year, he returned to teach at the same school, only to be laid off again. Seeing the negative effects of this policy on his school, Melvoin worked with the ACLU to bring a lawsuit on behalf of his students. In *Reed v. California*, the ACLU successfully argued that the seniority-based layoffs at several LA schools violated the students' rights to equal opportunity to access quality education.

Melvoin began to consider how to address education inequality through the law and was accepted at NYU Law as a Root-Tilden-Kern Scholar.

As a law student, Melvoin served as chair of the Education Law Society. His first summer, he interned

at the ACLU in LA, where he worked on statewide education litigation and policy. The following summer, Melvoin worked on the White House domestic policy council team, focusing on civil rights and criminal justice reform. As editor-in-chief of the

Review of Law and Social Change, Melvoin also helped organize a conference on diversity in education and the future of affirmative action.

This spring, Melvoin testified for the plaintiffs in yet another successful anti-LIFO case, *Vergara v. California*.

Melvoin says that his involvement in *Vergara* was a good capstone to his time in law school. "Nick's poise on the witness stand would be the envy of any professor, much less student," says Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law.

Drawing on his experiences in *Reed* and *Vergara*, Melvoin wrote his student note on education litigation, supervised by Professor Paulette Caldwell. "His commitment to public service is infectious, and he will leave a memorable mark on the field of educational leadership and the other areas of public concern that command his attention," she says.

Melvoin is now director of policy, communications, and legal counsel of Great Public Schools: Los Angeles, a start-up that aims to help elect reform-minded candidates to the LA school board—the governing body of the second-largest school district in the country. "I'm very excited about working on behalf of children in Los Angeles again," Melvoin says. "That's what catalyzed my interest in law school." □ Rachel Burns



"Nick's poise on the witness stand in the Vergara case would be the envy of any professor, let alone student."

KENJI YOSHINO



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They Got the Beat

THEY MET LIKE SO MANY OTHER BANDS DO, singing about the 1938 Supreme Court case *Erie Railroad Co. v. Tompkins*. Andrew Jondahl '15 (bass), Amir Badat '15 (rhythm guitar), Michael Pernick '15 (fiddle), and Alexander Cousins '15 (vocals) first performed on Erie Day in University Professor Arthur Miller's Civil Procedure class. Following a decades-long tradition, Miller's students enact different parts of the famous trial each year with skits, musical numbers, and dance performances. This is the first time, however, that a band was born. (Raphael Holoszy-Pimentel '15 [drums] and James Aliaga '15 [lead guitar] joined shortly after Erie Day.) "I told Professor Miller that he has inspired something far larger than he ever imagined," says Holoszy-Pimentel.

In a short time, the band known as Champagne Friday has become an endearing part of the Law School community. They performed at the 2014 Public Service Auction and for Student Bar Association Band Nights at the Red Lion and the Bitter End.

Keeping a band together under normal circumstances can be difficult, but rehearsing regularly while participating in student organizations, summer associate programs, and other activities is nearly impossible. "It's pretty tricky," says Aliaga. "It helps that we're all very understanding." Jondahl agrees: "Once you get it on your calendar that from 7:00 to 10:00 p.m. on Sundays this is where I am, you just start to plan around it."

The band practices at a small studio in the East Village where Sonic Youth, David Bowie, and Third

Eye Blind have all rehearsed, says Pernick. Their musical inspiration is as varied as their legal interests, ranging from the Clash to the Roots, from education law to intellectual property litigation. For that fateful Erie Day performance, they pre-



Badat, Pernick, Holoszy-Pimentel, Cousins, Jondahl, and Aliaga

sented the Bob Dylan/Old Crow Medicine Show song "Wagon Wheel" with lines describing the majority opinion.

For now, and especially while they are full-time students, they are content being a cover band. "Our goal is to give our friends and colleagues who come to our shows a really great time," says Pernick. And, he says, if all six remain in New York past graduation, the band will play on. □ *Christine Perez*

Boots on the Ground



Three years after South Sudan became an independent state, the country still faces serious internal conflict. More than one million people have been internally displaced, and 400,000 have fled to neighboring countries. Elizabeth Ashamu Deng '11, a South Sudan researcher with Amnesty International, and David Deng '10, research director for the South Sudan Law Society, have reported extensively on the grave situation. David has been based in Southern Sudan since 2010, and Elizabeth followed one year later. They married in 2012 and now live in Nairobi, Kenya.

"Although South Sudan's independence was widely celebrated, the new country already faced a range of problems," said Elizabeth in a Q&A published by Amnesty International in July. She explained that these problems included unorganized armed forces that were fractured by soldiers' allegiances to former militia leaders and a weak justice system that did not hold accountable the people responsible for human rights abuses.

The Dengs have co-authored a couple of opinion pieces in African media. In a January 2014 commentary in *African Arguments*, the Dengs proposed the creation of a court to ensure justice after the mass killings that took place in the country in December. "Until South Sudan's leaders are made accountable to the people they serve and punished for the wrongs they commit," they wrote, "the country will continue to experience violence...and the dream of a peaceful and prosperous nation will never be realized."

In Their Words

"[T]he global trend towards abolition will eventually persuade the government of South Sudan, along with the other nations that continue to administer judicial executions, to stop killing its own citizens. The only question that remains is how many more people will be hanged before this occurs."
—From a September 2012 opinion piece in the Sudan Tribune by Elizabeth and David Deng

Measuring Law's Long Arm

As fellows at NYU Law, former federal enforcers assess the government's reach.

ALUMNI BRIEFS

Raymond Chen '94

was confirmed to the US Court of Appeals for the Federal Circuit.

Keith Harper '94 became US ambassador to the UN Human Rights Council.

Richard Ketchum '75 was appointed to the President's Advisory Council on Financial Capability for Young Americans.

Sheryl Lipman '87 was confirmed to the US District Court for the Western District of Tennessee.

J. Mark McWatters LLM '03 was confirmed to the National Credit Union Administration Board.

Francesca Odell '96, partner at Cleary Gottlieb Steen & Hamilton, and **David Rosewater '95**, partner at Schulte Roth & Zabel, were among the *American Lawyer's* 2014 Dealmakers of the Year.

Michael Pollack '11 will clerk for Justice Sonia Sotomayor in the 2014 term; **Amy Marshak '11** will clerk for Justice Ruth Bader Ginsburg in the 2015 term.

Jessica Rubin-Wills '12 is a 2014 Skadden Fellow.

Manuel Vargas '84 received a Lifetime Achievement Award from the National Association of Criminal Defense Lawyers.

The way in which US power has applied abroad is "the great theme of American public law since 9/11," says Michael Farbiarz, former co-chief of the Terrorism and International Narcotics Unit at the US Attorney's Office for the Southern District of New York. "When we think about American power, we think about the military and the CIA, but what we see less frequently is that law enforcement works very closely with the national security apparatus."

The list of cases Farbiarz has prosecuted or supervised reads like a capsule history of this shift: *US v. Abu Ghayth*, an Osama bin Laden son-in-law who was convicted on terrorism charges; *US v. Ghailani*, a Guantánamo detainee convicted for his role in the US embassy bombings in Kenya and Tanzania; and *US v. Muse*, the first piracy case tried in a US court in more than 100 years. But Farbiarz also knows that the application of US law overseas raises "immensely consequential questions."

In July, Farbiarz began researching possible answers as a senior fellow at both the Center on Law and Security and the Center on the Administration of Criminal Law. "I look forward to examining and reexamining issues that I've been professionally steeped in from a different perch and a different perspective," he says.

He'll be in good company: Already examining similar issues is Andrew Weissmann, former general counsel for the FBI (and before that director of the Enron Task Force), who last October joined the Law School with the same joint appointment. Both men have taught or will teach National Security Law. Farbiarz will also teach National Security Law: Transnational Exercises of American Power, and Weissmann will teach both Criminal Procedure and Judging National Security.

Weissmann is also continuing work on three research projects. The first is an article about whether the "public safety exception" to the Fifth Amendment would also apply to the Sixth Amendment.

His second project examines documents declassified in the wake of the Edward Snowden leaks to determine whether they were properly declassified—and properly classified in the first place. Since the government usually only declassifies large amounts

of documents at once after a certain amount of time has passed, "there's never been an instance where a bulk set of data has been declassified like this," says Weissmann.

Weissmann's third project will essentially ask, "What qualifies as a search or seizure under the Fourth Amendment?" When critics discuss the NSA's telephone metadata program, they often decry the outcome of the 1979 Supreme Court case *Smith v. Maryland*, which held that telephone company customers had no legitimate expectation of privacy in the numbers they dialed. But "what everyone who has been critical of the NSA telephone metadata program ignores is that the government didn't go into the telephone company and seize the information; it went to court to get a court order," Weissmann says. "That's not necessarily a search or seizure—it's like a subpoena, and the article will examine whether the Fourth Amendment should apply to such government actions."

This take on privacy isn't common in legal academia. "Both Andrew and Michael are coming from senior positions in government, so they might be more predisposed to believe there's some truth to the government line than other scholars," says Samuel Rascoff, associate professor of law and faculty director of the Center on Law and Security. "But neither one is the type to be drinking the Kool-Aid," continues Rascoff, "so they also know where the government is on less solid ground."

Giving both men a chance to think about the issues is what the fellowships promise. "The model we have is to bring in people who have had top-notch government careers who want some time to reflect on that service in written projects while participating in the academic life of the Law School," says Rachel Barkow, Segal Family Professor of Regulatory Law and Policy and faculty director of the Center on the Administration of Criminal Law.

That's exactly what Weissmann and Farbiarz plan to do. "At the bureau, your life often involves the best decision that can be made in seven minutes," Weissmann says. "It's wonderful to have time, and smart people with whom to think through a problem." □

Robert Levine



Farbiarz



Weissmann

New Faculty

KWAME ANTHONY APPIAH

Professor of Philosophy and Law

When Anthony Appiah talks about cosmopolitanism, he could be discussing his theory for living harmoniously in a diverse world, or recounting his life story.

He is the son of a prominent Ghanaian politician and upper-crust British mother whose biracial society wedding caused an international sensation and is thought to have inspired the film *Guess Who's Coming to Dinner*. He spent his youth in two privileged but very different environments in Ghana and England, moving seamlessly between them.

Appiah now lives in Tribeca with his spouse, Henry Finder, editorial director of the *New Yorker*, in an apartment filled with art and artifacts that reflect his many interests and travels—from Ghanaian spoons once used to weigh gold to oils by painters of the British royal court. Hosting book parties with influential writers such as Malcolm Gladwell and Adam Gopnik, Appiah is as conversant on the philosophy of language as he is on shearing sheep—and he can talk about those subjects in English, French, German, Latin, and Asante Twi.

"We live in worlds shaped by many identities—race, gender, sexual orientation, religion. I had many identities that helped cultivate my interest in managing the diversity around us," says Appiah, a renowned philosopher who joined NYU Law this year with a dual appointment in the Department of Philosophy.

"He is the cosmopolitan citizen that he writes about," says Amy Gutmann, Appiah's co-author on *Color Conscious: The Political Morality of Race* (1998) and University of Pennsylvania president. "He knows and appreciates many different cultures, contributes to every community of which he is a part, and is absolutely comfortable wherever he is." Appiah is charming and disarming, *New Yorker* editor David Remnick says: "I would not mistake the great elegance of his carriage, conversation, and bearing for a lack of really ferocious rigor in what he writes and thinks."

Appiah first gained widespread prominence with the publication of his groundbreaking, partially autobiographical 1992 book *In My Father's House: Africa in the Philosophy of Culture*. It analyzes the misconceptions that have clouded discussions of race, Africa, and nationalism since the 19th century and asserts that race is a social construct with no legitimate biological basis.

Appiah's ideas about identity reached their greatest expression in his celebrated 2006 work,

Cosmopolitanism: Ethics in a World of Strangers. In it, Appiah sets forth a challenge: to be a global citizen with shared moral responsibilities to all of humanity, while also accepting and valuing differences in belief, color, and creed. "My slogan is: cosmopolitanism is universality plus difference."

"I grew up in a place where people believe in witchcraft," says Appiah. "Though I don't, I can still be friends with people who disagree over that rather fundamental question of how the world works." Appiah takes on his share of moral responsibility by advocating for human rights in his work with PEN American Center, where he was president, and with other organizations. In 2008 he was inducted into the American Academy of Arts and Letters. This year he joined the board of the New York Public Library.

Appiah's father, Joseph Emmanuel, was an ambassador and occasional member of Parliament. His mother, Enid Margaret "Peggy," was a writer who was active in the philanthropic and cultural life of Kumasi, Ghana. Joseph was related by marriage to two Ashanti kings, while Peggy could trace her blue-blooded lineage to the Norman Conquest. "My father and mother insisted that we be proud of both sides of the family," says Appiah. "I never felt any difficulty about who we were, though other people often did."

Growing up in Kumasi, Appiah recalls visiting his great uncle, King Prempeh II, who sat on a heavy chair and dressed in rich African togas. His family's home, in a black upper-class neighborhood, held more books than the local library and was an obligatory stop for visiting dignitaries. When his father was abruptly jailed for sympathizing with the opposition, seven-year-old Anthony was sent to live with his maternal grandmother, Lady Cripps, in England. She was herself "a cosmopolitan thinker," Appiah says, who had spent time in China distributing money for famine relief.

Appiah continued his education in England after his father was freed, attending exclusive private schools. As a teen, he was part of an intellectual left-leaning evangelical group that read the major 20th-century theologians and philosophers. He entered Clare College at the University of Cambridge intending to study medicine, but switched to philosophy. There he met Henry Louis Gates, who tried to recruit him to help build a black studies program in the US.

Appiah, however, earned his bachelor's and doctorate in analytical philosophy from Cambridge and taught briefly in Ghana before

"I would not mistake the great elegance of his carriage, conversation, and bearing for a lack of really ferocious rigor in what he writes and thinks."

DAVID REMNICK



joining Gates at Yale in 1981. Within the next decade, he would follow Gates to Cornell, Duke, and Harvard, where the two co-edited *Africana: The Encyclopedia of the African and African American Experience* and built up the W.E.B. Du Bois Research Institute, which Gates now heads. “I’ve never met a person more comfortable in his own skin and in the complexity of all that that means,” says Gates about Appiah. “Anthony’s mind is too subtle to succumb to categorizations of being black or white, Ghanaian or English. He taught me that we are all the product of multiple identities.”

In 2002, Appiah left Harvard to become the Laurence S. Rockefeller University Professor of Philosophy at Princeton University. He was drawn to NYU in part to work once again with law students, as he did while a visiting professor in 1998. He will teach a course that explores how honor—the subject of his 2010 book *The Honor Code: How Moral Revolutions Happen*—supports and competes with the law. Appiah plans to spend at least part of every year at NYU Abu Dhabi and NYU’s other satellite locations, and to teach jointly with colleagues abroad.

Closer to home, he and Finder spend weekends in an 18th-century farmhouse near Princeton that they share with ducks, geese, and sheep. Appiah cherishes having a respite from the city and a place for their extended family to visit. Yet even the cosmopolitan, he says: “If I had to choose between one or the other, I would choose the city.” □ *Jennifer Frey*

EMILIANO MARAMBIO CATAN LL.M. ’10

Assistant Professor of Law

When Emiliano Marambio Catan takes a vacation from his research, there’s no poolside lounging for him. He prefers scuba diving.

“When you get the balance between your belt weight and your buoyancy control device just right, you don’t tend to sink or to rise,” he says. “That’s an amazing feeling; you feel like you are flying.”

He has soared through academia as well. Catan, 34, earned a PhD in economics and a law degree from NYU, where he specialized in corporate law, mergers and acquisitions, and corporate governance.

Catan is known for innovative scholarship backed by solid empirical research. In “The Irrelevance of Active Poison Pills,” which he presented at the 2014 American Law and Economics Association annual meeting, he examined how the adoption of a poison pill—a defense tactic

against unwanted takeovers—affects corporations. Several studies have found that having a pill in place is negatively correlated with firm value, Catan says, and during the last decade institutional investors have pressured firms into dropping their active pills.

The commonly accepted theory was that adopting the pill was not in the shareholders’ interest, and that is why those firms would have lower value. Catan claims, however, that other factors may render any correlation meaningless. “It may be the case that firms adopt the poison pill because the directors perceive the shares as being mispriced,” he says, which would confound any attempt to infer how the presence of a pill affects firm value or operating performance. “This begs the question of whether the anti-pill crusade of the past decade was actually warranted.”

Catan is also writing “The Significance of State Anti-Takeover Statutes: A Law and Finance Perspective” with Marcel Kahan, George T. Lowy Professor of Law. “Catan is a very careful, sophisticated empirical scholar who has a detailed understanding of legal doctrine,” Kahan says. “His approach is to employ his knowledge of the law and of empirical methodology. Very few other scholars share this combination.”

Catan plans to teach Corporations this fall, and he’ll be co-convening the Law and Economics Colloquium with Jennifer Arlen ’86, Norma Z. Paige Professor of Law. At some point, he’d like to teach courses on mergers and acquisitions, and shareholder activism.

Earning his JD in 2003 from Universidad Torcuato Di Tella in Buenos Aires, Catan received the gold medal for achieving the highest GPA in his class.

The son of an engineer and a kinesiologist, Catan was born in Buenos Aires in 1980. He has younger twin brothers, one an accountant and the other an engineer, and is married to Cecilia Parlatore Siritto, who also received a PhD in economics from NYU. She was an assistant professor of finance at the Wharton School of the University of Pennsylvania and has recently joined the faculty of NYU Stern.

As the couple prepared for their return to New York, Catan reflected on their good fortune: “I couldn’t ask for a better fit than NYU,” he says. “I’m honored to be a member of this faculty and feel especially lucky that others are interested in analyzing legal institutions from an economic perspective.”

Besides anticipating his new job, Catan is also looking forward to reuniting with another passion: the restaurants of New York. “I’m looking forward to a nice bowl of khao soi from Pok Pok in Brooklyn. You wouldn’t know it to look at me, but I love food,” he says with a laugh. □ *Christine Pakkala*

“His approach is to employ his knowledge of the law and of empirical methodology. Very few other scholars share this combination.”

MARCEL KAHAN



SIR MERVYN KING

Professor of Economics and Law

You'd think that after safely steering the British economy through the biggest financial crisis since the Great Depression, Mervyn King would spend his first year of retirement taking things easy—tending his garden, luxuriating in his library, cheering on his favorite cricket and soccer teams. Instead, the former governor of the Bank of England is moving to New York to teach economics and law.

"It's the intellectual excitement," King explains. (A note about how to greet him: His title, given in 2013 in recognition of his distinguished public service, is Baron King of Lothbury, so he is formally addressed as Lord King. But he urges people to call him Mervyn.) "NYU is a unique law school because it brings together people of different disciplines to understand how different institutions operate. To understand many of the issues which affect the monetary system, it's crucial to understand the legal framework in which banking has grown up. I have a lot of experience to reflect on some of those issues."

Indeed he does. Born in 1948 to a railway worker and his wife, King studied at King's College, Cambridge, and Harvard (as a Kennedy Scholar), then taught at Cambridge and Birmingham universities. He also served as visiting professor at both Harvard and MIT (where he had an adjoining office with future Federal Reserve Chairman Ben Bernanke). After teaching at the London School of Economics, where he co-founded the Financial Markets Group in 1987, King was offered the opportunity in 1991 to put economic philosophies into practice as chief economist of the Bank of England. He was appointed governor 12 years later.

While he easily qualified as one of the smartest guys in the room, King "was never an academic prima donna," Bernanke says. One reason, Bernanke hypothesizes, is that King moved out of academia and into policymaking relatively early in his career. "The world of policy, where you're trying to deal with the complexities of what's happening in the economy and the markets," he explains, "is messier and, consequently, tends to induce more humility in its practitioners."

King attributes his clarity amid the confusion of the crisis to the fact that he is a history buff. He notes that events that occurred more than 200 years ago still have relevance, such as Alexander Hamilton's idea of a central bank that would assume individual states' debts and talk in European financial circles recently about whether that could work in today's eurozone. "My interest in history was a big antidote to thinking that mathematical models explain everything," he says. "They're very important, but they're just tools of the trade."

That's only one of the lessons King looks forward to teaching would-be policymakers in his 12-session seminar, *Money and Modern Capitalism: Law and Business*. Yet even though he is aware that overreliance on mathematical models can lead to a myopic mindset, he notes that "it's very helpful to have an intellectual framework in which to think about policy questions, and that framework is economics." During the financial crisis, he points out, "people who were trained in economics and were doing economic policy had a clear intellectual framework that allowed them to think through the issues and come up with answers." Those without a background in economics risked approaching each question as a one-off issue rather than seeing the bigger picture.

"I suspect he'll be a very popular teacher, because he's able to explain complicated ideas in an accessible and entertaining way," Bernanke says. "I've read a few of his speeches; they're quite unusual for a central banker. They're not dry and technical, like my speeches."

Known for his wide range of interests, King frequently sprinkles his speeches and lectures with references to cricket, music, art, and his beloved Aston Villa soccer team. (When he was interviewed for the BBC's popular *Desert Island Discs* program, one piece of music he chose to listen to if marooned on an island was a song cheering on Aston Villa to victory in the 1982 European Cup.) "Regardless of background or education, people can be touched by a painting or a piece of music or sport," King explains. "All three can bring people together, and that is important."

Since retiring from the Bank of England, King has picked up a new hobby: With his wife, Barbara Melander, King has been taking lessons in fox trot and swing dancing. Will he be tempted to compete on *Dancing with the Stars*? "No, no," he demurs. Then, demonstrating his much-lauded analytic skills and judgment, he adds, "That would be far too risky." □
Catherine Fredman

"I suspect he'll be a very popular teacher, because he's able to explain complicated ideas in an accessible and entertaining way."

BEN BERNANKE



CHRISTOPHER SPRIGMAN

Professor of Law

One afternoon last October when Christopher Sprigman heard that the provocative British graffiti artist Banksy was staging a street performance in nearby Union Square, he rushed out to join the crowds and snapped photos of a giant fiberglass Ronald McDonald having his oversize clown shoes shined by a street urchin.

For some, the moment was mere entertainment. For Sprigman, 48, the performance was “a brilliant piece of trademark appropriation art—great material for my teaching and inspiration for research.”

Moving from the University of Virginia School of Law to join NYU Law has invigorated Sprigman, an intellectual property law scholar with a focus on the intersection of IP and culture.

Writing for the popular *Freakonomics* blog, Sprigman has weighed in on Banksy as well as Cronuts, Trader Joe’s, and multiplex cinemas.

He published a series of op-eds in the *New York Times* and elsewhere on the NSA controversy and has written for other influential media outlets. “He’s always got his antennas up,” says colleague Jeanne Fromer. “He sniffs out an issue that people care about and connects it to something deeper that he is thinking about.”

Sprigman has carved out a niche in the area of “IP without IP,” or industries that survive in the absence of strong IP protection. “There’s lots of conversation about ‘IP without IP,’” says Professor Mark McKenna of Notre Dame Law School. “Chris is one of the first and most prominent voices in that mode of scholarship.”

Conventional wisdom holds that copying kills creativity and that laws protecting against imitation are essential to innovation and economic success. Sprigman, along with his co-author and childhood friend Kal Raustiala, have challenged that notion in their book *The Knockoff Economy: How Imitation Sparks Innovation*. Drawing on fashion, food, finance, comedy, and even football, which enjoy fewer IP rights than industries like music, movies, and pharmaceuticals, they show that innovation can thrive in a world of less, and less effective, IP protections. [Please see “Creative License,” on page 30, for more on Sprigman’s scholarship.]

Sprigman’s ideas and arguments are often bold and self-assured, traits that were apparent early in life. He was raised in Smithtown, on Long Island’s

North Shore, by his parents Fred and Marilyn, both schoolteachers, with a large extended family. He spent his days by the water Huckleberry Finn style, “fishing, clamming, eating my lunch on the beach, and watching birds,” he recalls. “I was self-directed and interested in a lot of things, master of my own time.”

This willingness to dive into diverse interests is reflected in Sprigman’s winding path to academia. After earning his bachelor’s degree from the University of Pennsylvania in history, magna cum laude, he worked at a publishing company, played guitar in various bands, traveled through East Asia, and toyed with the idea of pursuing journalism before entering the University of Chicago Law School.

He earned his JD with honors, then clerked for Judge Stephen Reinhardt of the US Court of Appeals for the Ninth Circuit, worked as an associate at Davis Polk & Wardwell, and clerked for Justice Lourens Ackermann of the Constitutional Court of South Africa in Johannesburg while teaching at the University of

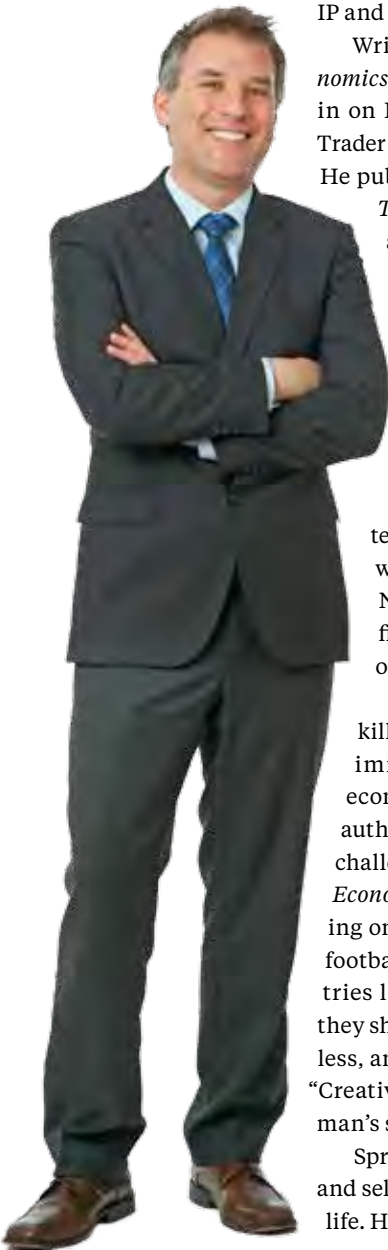
the Witwatersrand School of Law. Returning to the US in 1999, he worked as an appellate counsel in the Department of Justice’s Antitrust Division during the time that *US v. Microsoft Corp.* was going to trial. “It was absolutely fascinating,” he says. “We were deeply immersed in the facts that made law.”

Sprigman returned to law practice, making partner at King & Spalding at age 35. But not yet ready to settle down careerwise, he landed a fellowship in 2003 at Stanford Law School’s Center for Internet and Society. Sprigman set a goal of writing an article within four months that he could take on the job market, if his mentor and the center’s founder Lawrence Lessig deemed it satisfactory. The result was a paper that reintroduced the idea of formalities in copyright law. Its boldness won Lessig’s approval. “The conventional wisdom in the world of IP scholars at the time was that this was a crazy, radical idea. It was a brave thing to do,” says Lessig, now at Harvard Law School, adding that Sprigman’s current work in “IP without IP” demonstrates the same ahead-of-the-curve “edginess.”

Since moving from Charlottesville, where he earned a reputation for caring equally about teaching, scholarship, and colleagues, Sprigman has been enjoying living once again near his extended family and parents, who are still in the house where he grew up. When not working, he cooks gourmet meals for friends; spends time with his children Iain, 14, and Arin, 12; and cycles. “Down in Virginia, I used to get a lot of thinking done on the bike. That’s more challenging in New York,” he says. “Maybe it’s time to start running again.” □ J.F.

“He’s always got his antennas up...He sniffs out an issue that people care about and connects it to something deeper that he is thinking about.”

JEANNE FROMER





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Defining Richard Epstein

Summarizing his life's work, the famous libertarian examines how he has mellowed.

To place Laurence A. Tisch Professor of Law Richard Epstein on the political spectrum, just consider the titles of some of the columns he has written over the past year for the *Defining Ideas* journal of the Hoover Institution, where he is a senior fellow: “The Obamacare Train Wreck,” “Government Overreach Threatens Lives,” and “The Many Problems with ‘Equal Pay.’”

A champion of private property and foe of much government intervention in business and personal affairs, Epstein has for decades been renowned as one of the nation's leading intellectual exponents of libertarian conservatism. But in recent remarks about *The Classical Liberal Constitution*, his newly published book that he calls “a lifetime summation,” Epstein discussed a process of ideological “retooling” that he has undergone. “I emerged,” he said, “from somebody who was libertarian through and through to somebody who managed to think that there were systematic weaknesses associated with that position which required serious discourse and switching the title ‘libertarian’ to ‘classical liberal.’”

Rooted in the ideas of Locke, Hume, Madison, and other Enlightenment thinkers, classical liberalism, Epstein explains in the book, guided the drafting of the Constitution and held sway in US Supreme Court jurisprudence through the first third of the 20th century. It was dismantled by the Court's deference to the economic and social regulation of the New Deal, and since then a broad swath of the political spectrum, not just Democrats, has acceded to the “progressive” (or “social democratic”) view of individual rights and the role of government. “My full-throated defense of classical liberal positions leads me to conclusions on many issues that are at sharp variance with those of both modern liberals and conservatives,” he writes.

Epstein's differences with modern liberals will surprise no one. But his evolution away from more doctrinaire libertarianism had gone less noticed until now. “This is not the book that Richard would have written 25 years ago,” says Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law. Professor Christopher Sprigman, who first got to know Epstein in the early 1990s when he was a student and Epstein a professor at the University of Chicago Law School, agrees: “Richard's understanding now of how history and path dependency complicate principled constitutionalism is far more supple compared with the understanding he had a quarter-century ago.”

No one expects Epstein to slap a “Hillary 2016” bumper sticker on his car anytime soon, but areas in which his views have moderated include:

Antitrust: Formerly a hardcore free-market proponent, Epstein says he has mellowed and now appreciates that “the cartelization of commerce is a serious threat that no one can ignore.”

Affirmative action: Issacharoff and Sprigman credit Epstein's pragmatism on this issue in part to Epstein's experience as interim dean at the University of Chicago Law School in 2001. As the Supreme Court has considered cases involving racial-preference programs at universities during the past few years, Epstein has called on the justices to be hands-off. “Universities and colleges struggle to make considered trade-offs between diversity and academic merit...to produce the best

institution they can,” he wrote in a column for *Defining Ideas*, adding that the Court should give deference to the good-faith decisions that schools make about their programs.

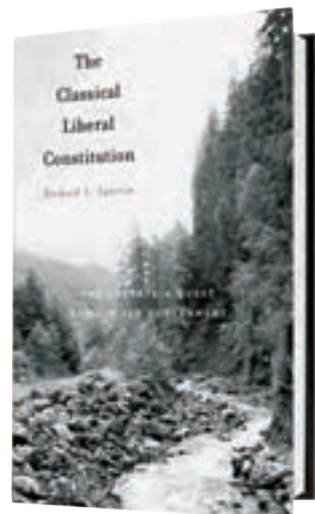
Same-sex marriage: Epstein calls gay marriage a “libertarian's dilemma,” and was torn on the proper course of action for the justices. In *Defining Ideas*, he acknowledged being swayed by the “huge sea change in popular sentiment” on the issue and wrote, “Gay marriage is a case where the legal norms would do well to get in line with social practices.”

Epstein's path from libertarian to classical liberal is not merely an exercise in rebranding. It reflects a willingness to adjust his positions in response to arguments made by others, as well as to on-the-ground facts as law plays out in the real world—a mindset that is dynamic, not doctrinaire. “I wouldn't say that Richard has changed his mind about essential tenets of his thought, but he has rethought the way his principles actually work out in the formulation of law and policy,” says Sprigman. “The fully realized power of Richard's thinking grows from his understanding of how principle doesn't just yield to pragmatism but can include it.” □ *Michael Orey*



A RELATED ENDEAVOR

As Epstein was preparing to publish *The Classical Liberal Constitution*, he and Mario Rizzo, an associate professor of economics at NYU, launched the Classical Liberal Institute (CLI) at NYU School of Law. CLI's mission, as it notes on its website (classicalliberalinstitute.org) is to examine “the central question of classical political theory: How does a theory of human nature inform us about (1) the social and legal norms that should govern ordinary interactions between private individuals and (2) the formation and maintenance of the system of limited government needed to protect individual rights?”



Judging the Nudge

It started with lunch at a Japanese restaurant on West Third Street and ended with a co-authored article in the *Harvard Law Review* that has prompted a response from President Obama's former budget and regulatory chiefs.

In the year before he joined NYU Law in Fall 2010, Ryan Bubb worked as a policy analyst for Cass Sunstein, then the "regulatory czar" for President Obama. The position gave him an insider's view of what would become Sunstein's legacy as head of the Office of Information and Regulatory Affairs (OIRA): the incorporation of the "nudge approach" into federal policy that attempts to preserve freedom of choice by encouraging but not mandating people to do everything from saving for retirement to using less gas.

Richard Pildes, Sudler Family Professor of Constitutional Law, has focused his recent scholarship on such things as voting rights and national security, but also has a deep background in regulatory law. In 1995, he and Sunstein co-authored "Reinventing the Regulatory State," a seminal article on the topic, and Pildes helped develop NYU Law's required first-year course Legislation and the Regulatory State. In 2008, just as the financial crisis was unfolding, he wrote a piece criticizing the nudge approach to regulation of mortgages and consumer credit products.

Over sushi in late 2012, Bubb, who has a PhD in economics from Harvard, said that he wasn't a fan of the nudge approach, which is rooted in behavioral economics; Pildes said he suspected that bridging political differences, rather than social science, was driving its popularity. "It was one of these wonderful, fortuitous moments of unexpected connection that came out of nowhere," Pildes recalls. "He had no idea that I had had some of these views, and I had no idea that he was skeptical in similar sorts of ways."

Their resulting paper, "How Behavioral Economics Trims Its Sails and Why," drew immense attention. Even before publication, the draft was downloaded from SSRN more than 800 times. It also received a response from Sunstein, who, with his former boss Peter Orszag, director of the Office of Management and Budget (of which OIRA is a part) during the first Obama administration, wrote a column for *Bloomberg View* that describes the criticism as "not a persuasive critique of nudges in general."

Readers can judge for themselves. Bubb and Pildes attack what is often cited as the poster child of nudging's success: the automatic enrollment approach to retirement saving. With this kind of



policy, workers automatically default into their company's savings plan, such as a 401(k), but can opt out. Previously, workers had to opt in to be enrolled. While increasing retirement savings participation, Bubb says in an interview, the policy "has actually been a stunning failure" because the overall amount saved for retirement has declined.

The reason: Most companies set the automatic default contribution at an insufficient three percent of salary, and many workers who would have contributed much more under a traditional opt-in plan instead stick with the default, Bubb and Pildes write.

Nudge tools like default settings only preserve "an illusion of choice that few people exercise rather than give consumers meaningful choice," says Bubb. Further, the approach "artificially excludes" potentially more effective regulatory mandates to achieve political consensus.

The savings default rate should have been set higher, but policy-makers "are afraid that might look too coercive,"

Pildes says in an interview. While more research is needed, the authors write, "it might be that automatic enrollment has so far exacerbated, rather than eased, the retirement savings problem."

Given the poor financial choices people sometimes make, the professors say in many cases the best policy could be to mandate certain actions.

Noting that the nudge approach has taken hold across a broad political spectrum, Bubb says, "My hope is that many people after reading our piece will start thinking much harder about choice-limiting policies that are arguably better able to correct the problems in many of these areas." □ *Larry Reibstein*

Nudge tools like default settings only preserve "an illusion of choice that few people exercise rather than give consumers meaningful choice."

RYAN BUBB

Correcting Corrections

With her expertise in both administrative and criminal law, Rachel Barkow has a unique perspective on the criminal justice system. She has used an administrative law lens to analyze sentencing commissions (she currently sits on the US Sentencing Commission), prosecutor's offices, and, most recently, clemency.

In her inaugural Segal Family Professorship of Regulatory Law and Policy lecture last November, Barkow examined the utility of her framework, arguing that while the criminal justice system is a regulatory one, it does not incorporate the same checks on its power as other regulatory systems—to criminal justice's detriment. "The idea would be to start using data to make decisions, as opposed to just people's gut instinct," says Barkow in an interview. "That could apply across a range of criminal justice decision-making points, from prosecution to sentencing to policing to clemency."

Barkow pointed to an absolutism in the regulation of criminal behavior that sets it apart from other regulatory realms. "It's essentially zero tolerance for any risk," she said in her lecture. "One story, and politicians are willing to take an entire program down without considering whether the program, on net, brings more benefits than it has costs and whether it reduces risks overall.... We don't approach any other area of government regulation this way," she said, drawing contrasts with, for instance, vaccines, environmental policy, and financial regulation.

Willie Horton, a convicted murderer in Massachusetts who escaped while on weekend furlough to rape a Maryland woman and beat her spouse, is an example of how one awful story can derail a government program without closer analysis of whether the risks of the program are outweighed by the benefits it brings. George H. W. Bush successfully invoked Horton during the 1988 presidential campaign to attack Massachusetts Governor Michael Dukakis as being soft on crime. Since then, programs have not been rationally assessed in terms of costs and benefits but are discarded if they pose any risk to politicians for Horton-like stories.

The focus on harsher criminal punishments in recent decades originated in concern over rising violent crime rates in the 1960s and 1970s. Barkow argues, however, that even as those numbers stabilized, the crackdown expanded to a wider range of crimes and criminals: "The question is, do long sentences make sense for nonviolent offenders?"

With an administrative law scholar's attention to the structure and creation of an agency, Barkow thinks about how to design a criminal justice agency



to avoid conflicts of interest and cognitive biases, while also considering everyone affected. For example, crime victims are critical stakeholders, Barkow says, but asserts that "the way we usually address their needs is to pass some symbolic legislation that actually doesn't help them at all." Enhancing safety to create as few victims as possible is the best first step, she says, along with bolstering resources to help victims restore their own lives. For instance, when New Mexico abolished its death penalty, it redirected the savings to a victim restitution fund.

Different kinds of criminal justice reforms could call for different solutions, she adds. In the case of clemency, an advisory agency in the Office of the White House Counsel or somewhere in the Office of the President, rather than in the Department of Justice, would help avoid the conflict-of-interest issues inherent in having the DOJ both prosecute individuals and later weigh in on their pardons, as is now the case.

Barkow notes growing bipartisan support for less draconian, more data-based criminal justice approaches, including the Fair Sentencing Act in 2010, which reduced the disparity in sentencing for possession of crack versus powder cocaine, and a greater emphasis on cost-benefit analysis like that performed by the Washington State Institute for Public Policy.

"At the end of the day," says Barkow, "government is supposed to keep people safe and solve problems. Some of these things backfire and don't promote public safety, and they're expensive to boot." She says she is not coddling criminals, but instead asking a more practical question: How do you promote public safety in the most efficient, data-supported way? "That is a political debate that can be had without costing people elections," Barkow says. "In fact, it can win people elections." □ *Atticus Gannaway*



Mikhail Segal is the chairman and founder of LS Power Group, a privately held power generation and transmission firm involved in the development of fossil-fired and renewable power plants, as well as major transmission projects in the United States.

Workplace IDs

Kenji Yoshino uncovers the cost of conformity at the office.

With a diversity and inclusion officer posted at most major companies, bias in the workplace would seem a thing of the past. And yet, only one percent of *Fortune* 500 CEOs are black. Less than five percent are women. None are openly gay. Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, is examining why.

Last September, the Deloitte University Leadership Center for Inclusion—an initiative of Deloitte University in Westlake, Texas—released a white paper co-authored by Yoshino and their managing principal Christie Smith, entitled “Uncovering Talent: A New Model for Inclusion.” Yoshino and Smith hypothesized that the pressure to “cover” prevents members of minority groups—as well as some straight white men—from bringing their authentic selves to work, and that this affects job satisfaction.

“Underrepresented groups pay a tax, which we call covering, in which they are asked to downplay their identity in order to fit into the mainstream,” Yoshino said at the 14th annual Korematsu Lecture last April, at which he presented the data produced through this initiative.

Yoshino credits Erving Goffman with naming this phenomenon in his 1963 book *Stigma: Notes on the Management of Spoiled Identity*. Goffman used Franklin D. Roosevelt as an example: To take attention away from his disability, the president would “cover” by having himself seated behind a desk prior to meeting with advisers.

Yoshino has long had an interest in this topic. His 2006 book *Covering: The Hidden Assault on Our Civil Rights* was praised in the *New Yorker*: “Exploring the history of civil-rights litigation in the United States, Yoshino concludes that courts have too often focused on individuals’ capacity to assimilate, rather than on the legitimacy of the demand that they do so.” Five colleges have assigned this award-winning book as a first-year read for all incoming students.

Yoshino and Deloitte’s survey asked respondents whether they covered along four axes: appearance, affiliation, advocacy, and association. One respondent shared a memory of affiliation-based covering: “Even though I am of Chinese descent, I would never correct people if they made jokes or comments about Asian stereotypes.”

The white paper’s results included 3,129 respondents from seven industries; a shorter version was published in March in the *Harvard Business Review*. The white paper corroborated what Yoshino had discussed in his book: A majority of employees surveyed—61 percent—felt pressure to cover some facet of their identities at work. Even 45 percent of the straight white men admitted to covering aspects like age and mental health issues. “The question was not whether they were included, but on what terms they felt their inclusion rested,” Yoshino and Smith wrote in the white paper. “These individuals felt they had to work their identities alongside their jobs.”

Yoshino and Smith say change must come from the top. While half of survey respondents said they felt pressured to cover by both company leadership and company culture, the real damage happened when leadership emphasized covering. Of the 53 percent who said they felt pressured to cover by leadership, a whopping 50 percent of them said it undermined their dedication to the organization. “Individuals leave managers, not organizations,” Yoshino observed.

As a result, the co-authors have proposed the Uncovering Talent model, a series of steps that organizations can follow to reevaluate what they communicate to employees about covering. For example, an organization

can legitimately ask employees to engage in appearance-based covering like requiring business attire, but may also decide that employees should not have to cover their family responsibilities, such as needing to leave the office to attend a parent-teacher meeting.

The next step, Yoshino and Smith emphasized, is for management to change their own behavior at work. As one survey respondent put it, “Leaders have to uncover first. If they don’t, we won’t.”

When employees can bring their real selves to work, the results are promising. The white paper reported that 21 percent of respondents had “uncovered”—with positive results. “Once I decided to bring my whole self to work,” one said, “it was liberating and I became a lot more productive and successful.” □

Gina Rodriguez

GOOD READS:

A Sampling of Faculty Books

Kwame Anthony Appiah
Lines of Descent: W. E. B. Du Bois and the Emergence of Identity, Harvard University Press, 2014

Jennifer Arlen (Editor)
Research Handbook on the Economics of Torts, Edward Elgar Publishing, 2014 (with chapters by NYU Law faculty members Arlen, Richard Epstein, Mark Geistfeld, Lewis Kornhauser, Geoffrey Miller, and Catherine Sharkey)

Gráinne de Búrca (Editor)
Europe’s Justice Deficit? Hart Publishing, 2014

Rochelle Dreyfuss (Editor)
Intellectual Property at the Edge: The Contested Contours of IP, Cambridge University Press, 2014

Rochelle Dreyfuss
Balancing Wealth and Health: The Battle over Intellectual Property and Access to Medicines in Latin America, Oxford University Press, 2014

Continued on page 62



Across Borders, Whose Law Applies?

GOOD READS

Continued

Franco Ferreri (Editor)
Rome I Regulation: Pocket Commentary, Sellier European Law Publishers, 2014

Harry First
The Microsoft Antitrust Cases: Competition Policy for the Twenty-First Century, MIT Press, 2014

Robert Howse
Leo Strauss: Man of Peace, Cambridge University Press, 2014

James Jacobs
The Eternal Criminal Record, Harvard University Press, 2015

Liam Murphy
What Makes Law: An Introduction to the Philosophy of Law, Cambridge University Press, 2014

Daniel Shaviro
Fixing US International Taxation, Oxford University Press, 2014

Kenji Yoshino
Speak Now: Marriage Equality on Trial, Crown Publishing Group, 2015

For a full bibliography of faculty publications, see law.nyu.edu/faculty/scholarship

AT THE INTERSECTION of private international law and legal and political philosophy is the question of how courts can legitimately apply a foreign law domestically. If two Canadian citizens were married in Canada, then came before a New York court as residents in a marital dispute, would New York or Canadian law apply? “It’s such a fundamental part of our legal system that happens in these really boring examples all the time, and yet it’s really under-studied from a theoretical point of view,” says Joanna Langille ’11. “It also raises a problem of prior accounts that political theory has tried to give for legal authority.”

Langille, who is pursuing this inquiry in her doctorate at the University of Toronto’s Faculty of Law, is one of 14 recipients of a 2014 Trudeau Foundation Scholarship, the most prestigious award of its kind in Canada. This marks the third Trudeau Scholarship

given to an NYU Law graduate in as many years; previous recipients include Lisa Kerr LLM ’09, JSD ’13 and Emily Kidd White LLM ’09, JSD ’15.



This scholarly undertaking allows Langille to combine her impressive background in philosophy, political science, international relations, and the law. Before receiving her JD from NYU Law, Langille studied philosophy and political science as an undergraduate at the University of Toronto and received an MPhil in international relations as a Commonwealth Scholar at the University of Oxford.

Langille will return to NYU Law in Fall 2014 as a Furman Academic Fellow. “Jo is an incredibly astute and hardworking person with broad intellectual interests,” says Barry Friedman, Jacob D. Fuchsberg Professor of Law and faculty director of the Furman Fellows program. “I’m thrilled to welcome her back to NYU next year as a Furman Fellow.” □

The Second Amendment is One Sentence:

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

“ For 218 years, judges overwhelmingly concluded that the amendment authorized states to form militias, what we now call the National Guard. As late as 1992, Chief Justice Warren Burger—a rock-ribbed conservative appointed by Richard Nixon—articulated the Court’s consensus when he called the idea of individual gun rights in the Constitution a preposterous “fraud.” Then, in 2008, the US Supreme Court upended two centuries of precedent. In the case of *District of Columbia v. Heller*, an opinion written



by Justice Antonin Scalia declared that the Constitution confers a right to own a gun for self-defense in the home. That’s right: the Supreme Court found there to be an individual right to gun ownership just a few years ago.

How did this happen? One thread, of course, is the rise of the National Rifle Association. The group brags of its ballot box victories. Starting in the 1970s, the NRA quietly—but emphatically—backed a jurisprudential campaign to enshrine gun rights in the Constitution. Its legal allies insisted that for two centuries judges simply got it wrong. They managed to persuade

a substantial part of the public, and after that the courts. The road to *Heller* was paved by one of history’s most effective, if misleading, campaigns for constitutional change.

Today, spasms of violence like the massacre in Newtown, CT, spur calls for new laws. But now, when we debate gun control we do so in the context of a Supreme Court ruling that has given new strength to Second Amendment fundamentalism. It limits what we can do, though we don’t yet know how much. Will new doctrine deflect new laws? Will we all have the right to carry a weapon and stand our ground?

Increasingly the debate over guns resembles less a contest over crime policy, and more a culture war over core values. By exploring the history of the Second Amendment, we see most strikingly, to what extent our view of this amendment is set, at each stage, not by a pristine constitutional text, but by the push-and-pull, the rough-and-tumble of political advocacy and public agitation.

—Adapted from *The Second Amendment: A Biography*, by Michael Waldman ’87, with permission of Simon & Schuster, Inc. All Rights Reserved.

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Presidential Practice

In this year's State of the Union address, President Barack Obama declared, "Wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do." His message to Congress: Work with me, or I will work without you. This incensed his political rivals and prompted many to ask: What are the limits of presidential power?

Dean Trevor Morrison has written extensively on this topic throughout his career. Drawing on that scholarship in his inaugural lecture in May for the Eric M. and Laurie B. Roth Professorship of Law, Morrison argued that practice-based law, emerging from historical tradition, sets important—if sometimes informal—boundaries on presidential power. As Morrison put it, privileging historical practice in discerning the boundaries of presidential power can help protect against the notion that the president's actions are somehow beyond the law's reach—or, as former President Nixon claimed, "When the president does it, it means it's not illegal."

Morrison cited a number of examples in his lecture, including President Obama's January 2012 "recess appointment" of several individuals to executive branch positions. The Constitution's Recess Appointments Clause gives the president the power to "fill up all vacancies that may happen during the recess of the Senate," without waiting for the "advice and consent" of the Senate that is typically required for senior executive branch appointments. As Morrison explained, historical practice has played a significant role in how this power has been understood over time. For decades, presidents have invoked the power to fill vacancies during not just intersession recesses of the Senate (that is, recesses between official sessions of Congress) but also some intrasession recesses (that is, breaks in the middle of a session of Congress). For just as long, executive branch legal offices like the Justice Department's Office of Legal Counsel (OLC) have advised presidents that intrasession recess appointments are within their power, provided the recesses are of a sufficient length (generally, at least 10 days). And the Senate, for its part, has not voiced any collective objection to the legality of intrasession appointments.

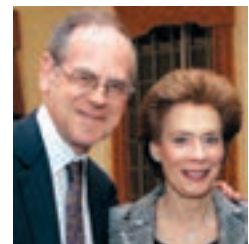
In a case challenging the legality of President Obama's 2012 recess appointments, the US Court of Appeals for the DC Circuit rejected the historical practice-based understanding of the recess appointment power, preferring instead a narrower understanding that, it said, was dictated by the text of the Recess Appointments Clause. On that narrower view, the recess appointment power extended only to intersession recesses.



Morrison noted that if the Supreme Court were to accept the DC Circuit's understanding, it would upset decades of presidential practice. He also explained that the Supreme Court could accept the historical practice-based understanding and still strike down President Obama's 2012 appointments, on the grounds that they went beyond the circumstances covered by historical practice. In June, the Court reached precisely that conclusion. The decision illustrates Morrison's point that, when applied carefully, a historical practice-based approach can accommodate traditional arrangements for how government has long been conducted while still imposing constraints on the president.

Constraining the president is more difficult when his actions are unlikely to face judicial review, as is often the case in matters relating to war and foreign affairs. Morrison, however, challenged the notion that in the absence of a court, no executive branch legal office can ever realistically constrain the president. Executive offices like OLC are not immune from political pressure, but they have adapted a number of practices and norms that give them a certain degree of independence and credibility. And it is in the interest of the president, Morrison stressed, for offices like OLC to preserve their independence: When OLC issues an opinion defending the legality of a given presidential action, its relative independence is what makes its opinion so valuable.

The key point underlying all of this, Morrison explained, is that seeming to act unlawfully carries tremendous political cost for the president. Presidents thereby have an incentive to be able to defend their actions as lawful—not simply sensible or desirable from a policy or moral perspective. Indeed, the fact that presidents invariably seek to justify their actions in legal terms illustrates the influence of law. And that influence, Morrison insisted, can operate as a constraint—as long as the press, Congress, the legal profession, and civil society pay attention to how the president defends his actions, and call him to account when those defenses fall short. □



Trustee Eric Roth '77 is a partner at Wachtell, Lipton, Rosen & Katz. Among his landmark cases is representing Silverstein Properties in the World Trade Center insurance coverage litigation. Laurie Roth earned a PhD in social psychology and was a researcher of human resource management.

Legal Shelter from the Storm

AFTER HURRICANE SANDY devastated significant areas of New York, New Jersey, and Connecticut in October 2012, many homeowners were unable to repair or sell and faced considerable hardship. Despite that predicament, the typical reaction of many New Yorkers was to rebuild.

In a paper inspired by discussions with Professor Katrina Wyman, Nicholas Williams '13 argues that as sea levels rise and weather disasters grow more frequent, policymakers should consider ways that coastal cities can encourage strategic retreat from low-lying shores in order to minimize future property losses. Williams zeroes in on transferable development rights (TDRs) as a means for

municipalities to restrict development without falling prey to regulatory takings liability.

TDR programs, which allow owners to separate the development potential of a land parcel from that land and transfer that potential to another nearby parcel, have been used in New York City to preserve historic buildings and areas without takings liability coming into force. Such a strategy has been little used in coastal areas, Williams says, perhaps due to resistance to accepting the reality of rising ocean levels and because a consensus on whether TDRs are vulnerable to takings liability claims has not yet been reached.

To make TDRs work, Williams says, coastal cities will need to balance incentives creatively to entice owners and developers away from the shore, making flexibility and a clearly articulated public purpose key factors. And to help tip the takings liability question in favor of this strategy, Williams, now a second-year associate at Greenberg Traurig, argues that TDR programs should strive to establish as clearly as possible that the TDRs in question facilitate economically valuable use of land.

"Where retreat is the optimal strategy," Williams concludes, "a coastal TDR program can be used to restrict coastal development at minimal public cost, accomplishing the goal of preserving open beaches and wetlands while providing incentives or restrictions to limit rebuilding in vulnerable areas after damaging storms." □



AWARD WINNER

"Coastal TDRs and Takings in a Changing Climate" by Nicholas Williams won the \$2,500 first prize in the 2013 Smith-Babcock-Williams Writing Competition, sponsored by the American Planning Association's Planning and Law Division. It was published in the *Urban Lawyer*, the journal of the American Bar Association's Section of State and Local Government Law.

Leading Questions

THE TRANSFORMATION OF THE INTERNET into a market of user-generated content has had some unintended consequences. In a February 2014 *Atlantic* article, "Our Best Weapon Against Revenge Porn: Copyright Law?" Amanda Levendowski '14 explored the phenomenon of revenge porn and a strategy to combat it. She also worked with Professor Christopher Sprigman to create a *Wikipedia* definition of revenge porn (left) that was cited by the Criminal Court of the City of New York in a 2014 case.

Why haven't others used copyright law against revenge porn? It seems counterintuitive that when you're thinking of trying to incentivize creation and deal with "artists" that these kinds of images would fit squarely within copyright law. But when you look at what copyright protects, whom it protects—the authors who create the image, the people who took the photograph—and the kinds of remedies it provides, it makes perfect sense.

Would victims have to hire lawyers to take action? If the victims took the photos themselves, they can use the takedown provisions of the Digital Millennium Copyright Act to ask search engines like Google and Yahoo to de-index websites with their photos and the porn sites to remove the photos, all without having to hire a lawyer.

Why would a revenge porn website comply with victims' requests to remove the images?

The DMCA has a safe harbor provision: If a website satisfies certain conditions, it's protected from liability. If it doesn't, it's not.



REVENGE PORN

"noun"
Sexually explicit pictures, video, or other media that is publicly shared online without the consent of the pictured individual... typically uploaded by ex-partners or hackers.... Many of the images are selfies [and]...are often accompanied by personal information, including the pictured individual's full name...and addresses.



What's the (Fair) Use?

The latest incarnation of the Internet—Web 2.0—is the phenomenon of user-generated content. Pop culture consumers three decades ago watched professionally produced videos on MTV; the same people today sit in front of their screens, taking clips of music or videos and making their own works (or parodies) to share with the world. To Barton Beebe, viral puppy videos and Ryan Gosling memes underscore how far behind the times copyright law is in examining the concept of aesthetic progress.

In late January, Beebe expounded on his views in “Intellectual Property Law and the Problem of Aesthetic Progress,” his inaugural lecture as the John M. Desmarais Professor of Intellectual Property Law.

Aesthetic progress is an admittedly murky concept. In both statutes and case law, the stated purpose of intellectual property law is to promote progress in the arts and sciences. For scientific and technological knowledge, progress means improving on the last thing, making something more efficient, or building something that replaces something new. Progress in the arts, however, doesn’t mean that the works of Picasso are better than cave drawings, Beebe said. Instead, the art is often something totally new and different, and part of the reason the artist creates it is for the joy of doing so. That creative process, however, has no value under current law.

The Intellectual Property Clause empowers Congress “to promote the Progress of Science and useful Arts” through the provision of copyright and patent rights. But strangely missing from this constitutional language is any reference to the fine arts, which qualify neither as “science” nor as “useful Arts” (technology). Why, Beebe wonders, might the framers have taken pains to exclude the fine arts in this context?

The early 20th century “would have been an especially appropriate time for intellectual property law

to consider the relation between the aesthetic and progress,” Beebe said in his lecture. But the opportunity was missed. In 1903, the Supreme Court held in *Bleistein v. Donaldson Lithographing Co.* that circus advertisements could receive copyright protection even if they were not fine art. Rather than opening the door to further discussion of aesthetic progress, however, the opinion turned out to be a “conversation-stopper” on the topic, said Beebe.

“For two centuries, we have viewed copyright law essentially as industrial policy with long-term accumulation as its goal,” Beebe said. And while he conceded that that’s a good thing, he added: “We also need to view it as cultural policy with short-term, even immediate, aesthetic experience as its competing goal.”

That doesn’t mean that judges should engage in “aesthetic discrimination,” nor does copyright law need to be turned on its head, said Beebe. “But I am suggesting that we have every right ourselves, as the crowd, to promulgate a form of copyright law” that might be more lenient in consideration of how works are treated now, he said. For example, Beebe suggested, it might be time to revisit enforcement of the reproduction right that gives copyright holders the sole right to reproduce their work and might prevent, say, the cute-cat video maker from using images and clips of others’ work to include in his own.

Opening up the conversation about aesthetic progress and what it means could lead to tweaks to copyright law that are more in line with today’s hands-on approach to cultural commentary, Beebe said. In other words, in the age of Web 2.0, it’s high time to reassess the impact of a more-than-century-old precedent. □
Erin Geiger Smith



A widely admired trial and IP strategist, John Desmarais ’88 is the founding partner of Desmarais LLP, an IP trial boutique, and the founder and owner of Round Rock Research, a patent licensing company.

Part of the reason the artist creates is for the joy of doing so. That creative process, however, has no value under current copyright law.

Keeping Close



Words on Wisdom

Maimonides: Life and Thought by Gruss Professor of Law Moshe Halbertal won the 2013 National Jewish Book Award in Scholarship and was critically acclaimed as “an extraordinary book” by *Foreign Affairs*. At the NYU Law book launch party last November, Noah Feldman, Felix Frankfurter Professor of Law at Harvard Law School, discussed the book with its author.

Q: You describe a transformational figure with tremendous ambition, but whose project was not received the way he would have liked it to be received.

A: Maimonides wanted to be the last word on this organism, the Talmud. But his codification work was a colossal failure because his great literary act ended up adding more material for Talmudists to interpret. What survives is an alternative voice. It’s a brave attempt that didn’t succeed in transforming the tradition, but it succeeded in adding to it a rare powerful voice.

“ My grandmother was the daughter of people who were enslaved in Caroline County, Virginia. She was born in the 1880s, her parents in the 1840s. Her father talked to her all the time about growing up in slavery and how he learned to read and write but kept it a secret. He hid the things he knew—until Emancipation. The legacy of slavery very much shaped my grandmother and the way she raised her nine children. It influenced the way she talked to me, the way she constantly told me to ‘Keep close.’

When I visited her, she would hug me so tightly I could barely breathe. After a little while, she would ask me, ‘Bryan, do you still feel me hugging you?’ If I said yes, she’d let me be; if I said no, she would assault me again. I said no a lot because it made me happy to be wrapped in her formidable arms. She never tired of pulling me to her.

‘You can’t understand most of the important things from a distance, Bryan. You have to get close,’ she told me all the time.

The distance I experienced in my first year of law school made me feel lost. Proximity to the condemned, to people unfairly judged; that was what guided me back to something that felt like home.

This book is about getting closer to mass incarceration and extreme punishment in America. It is about how easily we condemn people in this country and the injustice we create when we allow fear, anger, and distance to shape the way we treat the most vulnerable among us. It’s also about a dramatic period in our recent history, a period that indelibly marked the lives of millions of Americans—of all races, ages, and sexes—and the American psyche as a whole.

We are all implicated when we allow other people to be mistreated. An absence of compassion can corrupt the decency of a community, a state, a nation. Fear and anger can make us vindictive and abusive, unjust and unfair, until we all suffer from the absence of mercy and condemn ourselves as much as we victimize others. The closer we get to mass incarceration and extreme levels of punishment, the more I appreciate that we all need mercy, we all need justice and—perhaps—we all need some measure of unmerited grace. ”

—From *Just Mercy* by Bryan Stevenson. Reprinted by arrangement with Spiegel & Grau, an imprint of Random House.



An Ingenious Way to Own the News?

JONATHAN SILBERSTEIN-LOEB LL.M. ’14 managed to intertwine several scholarly passions into one book. *The International Distribution of News: The Associated Press, Press Association, and Reuters, 1848–1947*, published in February, combines history, journalism, and law. An article developed from the book, “Exclusivity and Cooperation in the Supply of News: The Example of the Associated Press, 1893–1945,” won the 2014 Ellis Hawley Prize from the *Journal of Policy History*.

“It’s a history book in the sense that it looks at the past, but the analysis is always largely—and in some places exclusively—legal,” Silberstein-Loeb says. “It’s about property told through the lens of business history.”

Making use of the AP’s newly opened institutional archives, Silberstein-Loeb investigated

whether the development of news agencies such as the Associated Press, Britain’s Press Association, and Reuters stemmed from the need to exert proprietary control over news reports in the absence of any intellectual property rights that could be exerted over journalistic output.

The trick for the AP, the author explains, was to balance the competing objectives of exclusivity and cooperation while avoiding accusations of monopoly and the resulting regulation.

In the end, he concludes that newspapers’ cooperative attempts were probably more helpful than harmful. “It’s a relevant argument for the news industry now,” says Silberstein-Loeb. “A lot of discussion about the Internet and the problems associated with maintaining property online—music,

publishing, news—has people moving away from property rights, copyright, things like that, and suggesting that contracts and licenses may be a better way in which to control these rights.” □



The Consigliere of Mafia Prosecutions

The catalogue of James B. Jacobs's organized crime books is infused with a subtle sense of aggravated wonder about the criminal achievements of the Mafia. But his aggravation springs not so much from laws broken as from the fact that the Mob managed to maintain its illicit economic grip in so many cities for so long.

"This book is no exposé," Jacobs, Chief Justice Warren E. Burger Professor of Constitutional Law and the Courts, pointedly writes in *Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime* (1999). It is no secret that the Mob's corrupting hand has been deep in the pockets of big cities coast to coast since the 1920s, he says. Yet complicit or indifferent functionaries and politicians allowed the Mob to become intractable for generations before a series of relatively recent prosecutions in New York. "The same organized crime families have engaged in the same type of exploitation for much of the 20th century," Jacobs notes in *Mobsters, Unions, and Feds: The Mafia and the American Labor Movement* (2006).

Jacobs sees some of the same indifference toward organized crime from his fellow scholars. Filling that void, he has crafted an unequaled scholarly corpus and essential historical record of modern Mob prosecutions. His five organized crime books—some co-authored with NYU Law students—feature lucid analysis of litigation and brisk histories of how the

Mob flourished in such traditional strongholds as labor, trucking, construction, the garment industry, and waste hauling. In *Gotham Unbound*, he gently prods his peers: "We hope that this book will make it more difficult for urban scholars, whatever their discipline, to ignore the importance of organized crime in the 20th-century lives of American cities."



Most popular Mafia books use the familiar narrative template of a colorful mobster taken down by a shrewd cop or a tenacious prosecutor. Jacobs does not write that sort of personalized history. Instead, he stacks one sturdy fact atop another, building a founda-

tional record with extensive footnotes and references that will serve future scholars. He begins his treatment of each crime racket with a terse account of how and why organized crime had managed to thrive in a particular industry. In *Gotham Unbound*, for example, he describes how the Mafia's corrupting grip on the Fulton Fish Market on the lower Manhattan waterfront was leveraged on two Mafia pillars: unions and transportation:

"The Fulton Fish Market has been a revenue source and a power base for Cosa Nostra since the early 20th century. The Genovese crime family has influenced every facet of the market's operations since the 1920s. This influence flowed from control of Local 359 of the United Seafood

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THE GANG OF FIVE

Breaking the Devil's Pact: The Battle to Free the Teamsters from the Mob (2011; with Kerry T. Cooperman)

Mobsters, Unions, and Feds: The Mafia and the American Labor Movement (2006)

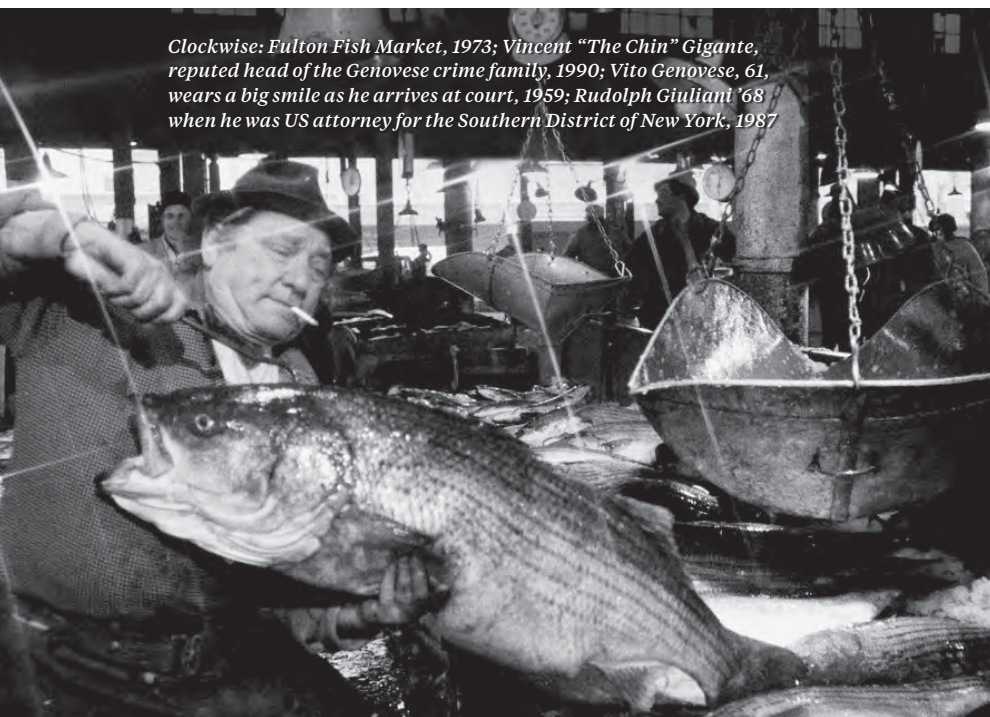
Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime (1999; with Coleen Friel '97 and Robert Radick '97)

Busting the Mob: United States v. Cosa Nostra (1994; with Christopher Panarella '94 and Jay Worthington '01)

Corruption and Racketeering in the New York City Construction Industry (1991; with Ronald Goldstock, Martin Marcus, Thomas D. Thacher II)

FULTON FISH MARKET: © BETTMANN/CORBIS; GIGANTE: © BETTMANN/CORBIS / AP IMAGES; GENOVESE: © BETTMANN/CORBIS / AP IMAGES; GIULIANI: © OWEN FRANKEN/CORBIS

Clockwise: Fulton Fish Market, 1973; Vincent "The Chin" Gigante, reputed head of the Genovese crime family, 1990; Vito Genovese, 61, wears a big smile as he arrives at court, 1959; Rudolph Giuliani '68 when he was US attorney for the Southern District of New York, 1987



Workers, Smoked Fish and Cannery Union.... The Genovese crime family created loading and unloading cartels, maintained interests in some wholesaling companies, operated 'security services,' and organized and charged for parking.... As with the other mobbed-up industries examined in this book, Cosa Nostra functioned as a kind of legislature, court, and police force for the market. The rules covered competition, prices, labor relations, payoffs, and respect."

Following an organizational template he uses in many of his books, Jacobs returns to the fish market later in *Gotham Unbound* to examine how organized crime was crowbarred out—in this case, with a combination of a federal racketeering prosecution and a new local law that added government oversight to the market's operation. (Rudolph Giuliani '68 was US attorney during the prosecution, and the law passed after he was elected mayor.) Jacobs is "a diligent and thorough researcher who tackles very complicated subjects and writes clear and engaging analyses," says a former research assistant, Lauryn Gouldin '00, assistant professor at Syracuse University College of Law.

Legal scholars agree that Jacobs has created an essential archive of key Mob prosecutions. "For two decades, he has produced detailed and careful case studies which are individually quite valuable and cumulatively provide a history of instrumental law enforcement of great importance," Franklin Zimring of the University of California, Berkeley, School of Law says of Jacobs. "You can't study this history

without bumping into this cumulative bibliography around every new corner you turn."

Jacobs began studying crime at the University of Chicago Law School, where he was a research assistant to Norval Morris, influential co-author of *The Honest Politician's Guide to Crime Control*. Shortly after joining NYU Law in 1982, Jacobs was put in charge of analytics in an investigation of the mobbed-up New York construction industry by the NYS Organized Crime Task Force. That experience "redefined my career," he says. "It put me on a set of issues about organized crime that I have stayed with."

"No one had ever really had the academic entrepreneurial idea to record the accurate details of these organized crime investigations," says a former student, C. Alexander Hortis '99, a litigator with Venable in Baltimore. Jacobs contributed an introduction to Hortis's 2014 book, *The Mob and the City: The Hidden History of How the Mafia Captured New York*.

Prolific and eclectic in his interests, Jacobs has written books on prisons, drunk driving, corruption, hate crime, and gun control. In 2012, Jacobs received a Guggenheim Foundation fellowship to work on a forthcoming book, *The Eternal Criminal Record*.

Jacobs says he feels compelled to return soon to his familiar themes, with possible projects on ethnic organized crime and more recent Mob prosecutions. The pool of material seems bottomless and, to Jacobs, the importance of his work is clear: "These [Mafia prosecutions] will be lost to history unless someone puts them on the record." □ David Krajicek

A PICTURE IS WORTH A THOUSAND WORDS

“ In recent decades, in countries around the world, rulers have built courts as the markers of their identity even as they have expanded their prisons, limited their postal services, and fortified their borders. Yet the uses to which courthouses will be put remain unclear. As we closed the pages of this book, the United States Supreme Court closed its front steps. Rather than being greeted by the words ‘Equal Justice Under Law,’ entrants are routed to the side to enter ‘a secure, reinforced area to screen for weapons, explosives, and chemical and biological hazards.’ One can still walk out from the court down the steps, with the words to one’s back.

The forms in which governments represent themselves provide windows into their aspirations. Courts—in democracies—can be a venue that enables discursive public exchanges through procedures aiming for participatory parity. Our hope is that this volume serves as a reminder that law’s institutional forms should be structured to teach members of polities to make claims on justice as well as to seek justice—so as to have the capacity to contest and to understand what law can and should do. ”

—Excerpted from *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*, by Judith Resnik '75 and Dennis Curtis. *Representing Justice* received the 2014 Order of the Coif Book Award; 2012 Scribes Book Award from the American Society of Legal Writers; and 2011 PROSE awards from the Association of American Publishers in the fields of social sciences and also law and legal studies.





The Importance of the Afterlife. Seriously.

Samuel Scheffler ruminates about finding purpose and value in our lives.

believe in life after death.

No, I don't think that I will live on as a conscious being after my earthly demise. I'm firmly convinced that death marks the unqualified and irreversible end of our lives.

My belief in life after death is more mundane. What I believe is that other people will continue to live after I myself have died. You probably make the same assumption in your own case. Although we know that humanity won't exist forever, most of us take it for granted that the human race will survive, at least for a while, after we ourselves are gone.

Because we take this belief for granted, we don't think much about its significance. Yet I think that this belief plays an extremely important role in our lives, quietly but critically shaping our values, commitments and sense of what is worth doing. Astonishing though it may seem, there are ways in which the continuing existence of other people after our deaths—even that of complete strangers—matters more to us than does our own survival and that of our loved ones.

Consider a hypothetical scenario. Suppose you knew that although you yourself would live a long life and die peacefully in your sleep, the earth and all its inhabitants would be destroyed 30 days after your death in a collision with a giant asteroid. How would this knowledge affect you?

If you are like me, and like most people with whom I have discussed the question, you would find this doomsday knowledge profoundly disturbing. And it might greatly affect your decisions about how to live. If you were a cancer researcher, you might be

less motivated to continue your work. (It would be unlikely, after all, that a cure would be found in your lifetime, and even if it were, how much good would it do in the time remaining?) Likewise if you were an engineer working to improve the seismic safety of bridges, or an activist trying to reform our political or social institutions or a carpenter who cared about building things to last. What difference would these endeavors make, if the destruction of the human race was imminent?

If you were a novelist or playwright or composer, you might see little point in continuing to write or compose, since these creative activities are often undertaken with an imagined future audience or legacy in mind. And faced with the knowledge that humanity would cease to exist soon after your death, would you still be motivated to have children? Maybe not.

Notice that people do not typically react with such a loss of purpose to the prospect of their own deaths. Of course, many people are terrified of dying. But even people who fear death (and even those who do not believe in a personal afterlife) remain confident of the value of their activities despite knowing that they will die someday. Thus there is a way in which the survival of other people after our deaths matters more to us than our own survival.

Suppose you knew that although you yourself would live a long life and die peacefully in your sleep, the earth and all its inhabitants would be destroyed 30 days after your death in a collision with a giant asteroid. How would this knowledge affect you?

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The explanation for this may seem simple: if the earth will be destroyed 30 days after we die, then everyone we care about who is alive at that time will meet a sudden, violent end. Spouses and partners, children and grandchildren, friends and lovers: all would be doomed. Perhaps it is our concern for our loved ones that explains our horror at the prospect of a post-mortem catastrophe.

But I don't think this is the full story. Consider another hypothetical scenario, drawn from P. D. James's novel *The Children of Men*. In Ms. James's novel, humanity has become infertile, with no recorded birth having occurred in over 25 years. Imagine that you found yourself living in such circumstances. Nobody now alive is younger than 25, and the disappearance of the human race is imminent as an aging population inexorably fades away. How would you react?

As in the case of the asteroidal collision, many activities would begin to seem pointless under these conditions: cancer research, seismic safety efforts, social and political activism, and so on. Beyond that, as Ms. James's novel vividly suggests, the onset of irreversible global infertility would be likely to produce widespread depression, anxiety, and despair.

Some people would seek consolation in religious faith, and some would find it. Others would take what pleasure they could in activities that seemed intrinsically rewarding: listening to music, exploring the natural world, spending time with family and friends, and enjoying the pleasures of food and drink. But even these activities might seem less fulfilling, and be tinged with sadness and pain, when set against the background of a dying humanity.

Notice that in this scenario, unlike that of the asteroidal collision, nobody would die prematurely. So what is dismaying about the prospect of living



depends on what we expect to happen to others after our deaths. Even the egotistic tycoon who is devoted to his own glory might discover that his ambitions seemed pointless if humanity's disappearance was imminent. Although some people can afford not

to depend on the kindness of strangers, virtually everyone depends on the future existence of strangers.

Similarly, I think that familiar assumptions about human individualism are oversimplified. Even though we as individuals have diverse values and goals, and even though it is up to each of us to judge what we consider to

be a good or worthy life, most of us pursue our goals and seek to realize our values within a framework of belief that assumes an ongoing humanity. Remove that framework of belief, and our confidence in our values and purposes begins to erode.

There is also a lesson here for those who think that unless there is a personal afterlife, their lives lack any meaning or purpose. What is necessary to underwrite the perceived significance of what we do, it seems, is not a belief in the afterlife but rather a belief that humanity will survive, at least for a good long time.

But will humanity survive for a good long time? Although we normally assume that others will live on after we ourselves have died, we also know that there are serious threats to humanity's survival. Not all of these threats are human-made, but some of the most pressing certainly are, like those posed by climate change and nuclear proliferation. People who worry about these problems often urge us to remember our obligations to future generations, whose fate depends so heavily on what we do today. We are obligated, they stress, not to make the earth uninhabitable or to degrade the environment in which our descendants will live.

I agree. But there is also another side to the story. Yes, our descendants depend on us to make possible their existence and well-being. But we also depend on them and their existence if we are to lead flourishing lives ourselves. And so our reasons to overcome the threats to humanity's survival do not derive solely from our obligations to our descendants. We have another reason to try to ensure a flourishing future for those who come after us: it is simply that, to an extent that we rarely recognize or acknowledge, they already matter so much to us. □

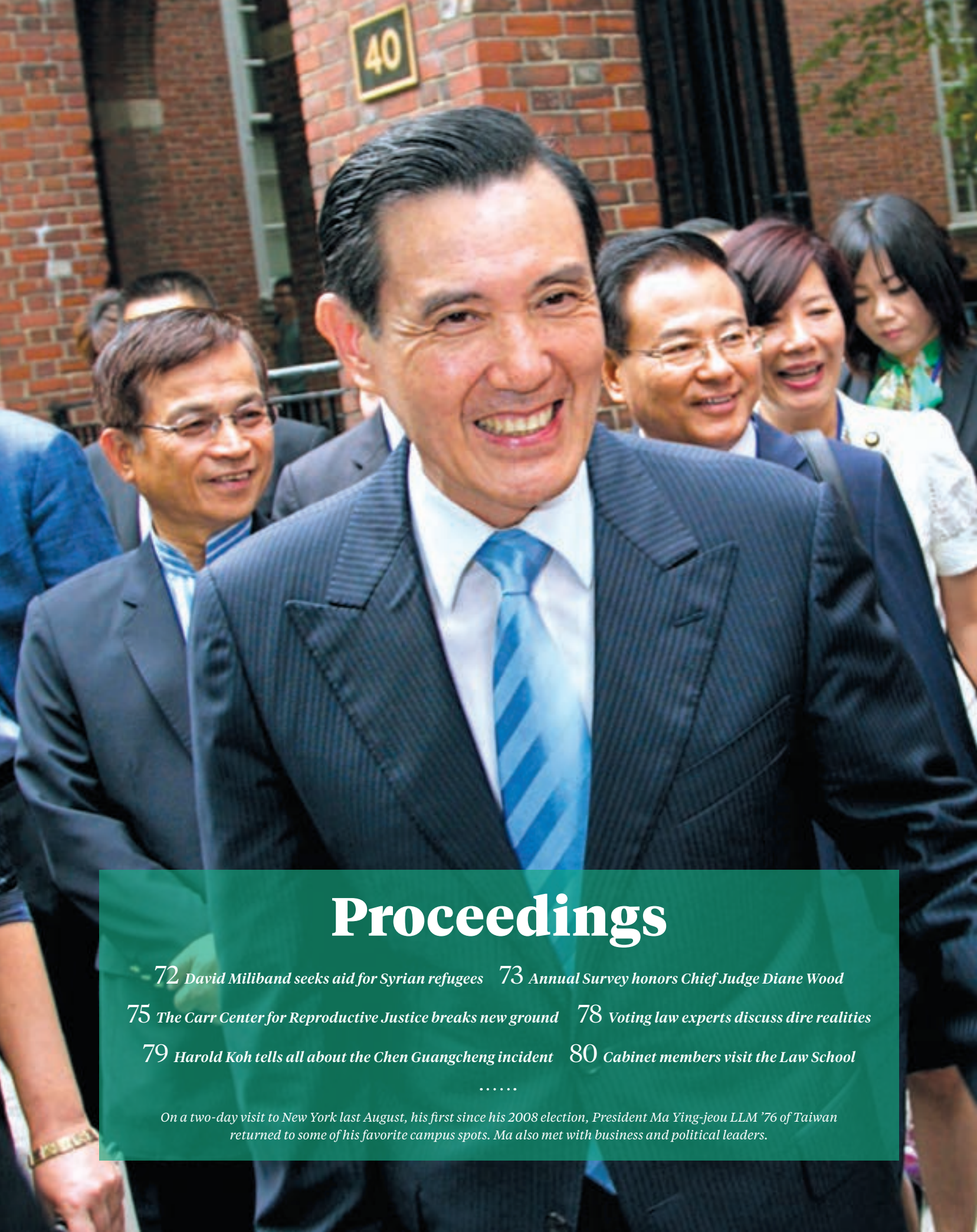
However self-interested or narcissistic we may be, our capacity to find purpose and value in our lives depends on what we expect to happen to others after our deaths.

in an infertile world cannot be that we are horrified by the demise of our loved ones. (They would die eventually, of course, but that is no different from our actual situation.) What is dismaying is simply that no new people would come into existence.

This should give us pause. The knowledge that we and everyone we know and love will someday die does not cause most of us to lose confidence in the value of our daily activities. But the knowledge that no new people would come into existence would make many of those things seem pointless.

I think this shows that some widespread assumptions about human egoism are oversimplified at best. However self-interested or narcissistic we may be, our capacity to find purpose and value in our lives

*Samuel Scheffler is University Professor and Professor of Philosophy and Law at NYU. His recent book, *Death and the Afterlife*, based on the Berkeley Tanner Lectures he gave in 2012, inspired this essay. The essay first appeared in the New York Times on September 21, 2013. In May, Scheffler delivered the H.L.A. Hart Memorial Lecture at the University of Oxford.*



Proceedings

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On a two-day visit to New York last August, his first since his 2008 election, President Ma Ying-jeou LLM '76 of Taiwan returned to some of his favorite campus spots. Ma also met with business and political leaders.

A Strong Voice for Syria

David Miliband, one of the UK's most prominent political figures, has focused his efforts on spotlighting one of the gravest humanitarian nightmares in the world today.

As president and CEO of the International Rescue Committee (IRC), which brings lifesaving resources to the world's worst humanitarian crises, David Miliband is sounding the alarm about the escalating situation in Syria, the subject of a keynote speech at the Hauser Global Law School's 19th annual dinner last March.

refugees fleeing to other countries, it has the potential to become far worse. He recalled previous crises—such as those in Bosnia and Rwanda—in which international powers did not help: “The failure to meet humanitarian need with appropriate humanitarian action is the collective failure of this decade.”

The thrust of Miliband's speech, however, was not simply that Syria needs aid. What is happening there, he said, threatens the laws governing the conduct of war. While these laws are meant to protect civilians, the Syrian government's failure to acknowledge the existence of “non-belligerents” means that the situation is becoming a “war without law.”

Miliband proposed seven steps for changing the situation in Syria, among them the appointment of a full-time humanitarian envoy by each member of the United Nations Security Council, and

concentrated efforts to increase access to besieged areas and resettle the neediest into third countries.

Law School alumna Rita Hauser, co-founder of the program with her husband Gustave Hauser LL.M. '57 and a member of the President's Foreign Intelligence Advisory Board from 2001 to 2004, remarked that the Syrian crisis illustrates the difficulties of implementing the law—“international humanitarian law, human rights law, international criminal law, and the laws of war”—studied at the Law School. “This is a very practical and sad commentary on their application, or lack of.” Accordingly, Miliband concluded his remarks with a call to engagement: “I hope that, in any way you can, you will join us.” □ *Gina Rodriguez*



Rita Hauser, Miliband, Gustav Hauser LL.M. '57



Miliband

The IRC has provided nearly 900,000 people in Syria with medical and emergency supplies, Miliband said, adding that this fiscal year the Syria program will become the largest one the organization runs. “Without question, lives have been saved and improved. But equally, I have to put to you that there is a growing gap between what we and other humanitarian organizations are doing in Syria and the scale of the need that is there.”

Before taking charge of the IRC in September 2013, Miliband was a member of the UK Parliament and the nation's youngest foreign secretary in three decades. He emphasized that, as serious as the situation in Syria is now, with hundreds of thousands of

Inglis Lessons

A daylong conference hosted by NYU Law's Center on Law and Security last November gathered national security practitioners, policymakers, judges, and other experts to discuss “Law and Strategy in an Era of Evolving Threats,” with panels on the role of the courts in intelligence and national security, law and strategy in the executive branch, and national security law and the press. The event featured keynote addresses by Lisa Monaco, assistant to the president for homeland security and counterterrorism, and John (Chris) Inglis (left), deputy director of the National Security Agency. Inglis focused on NSA surveillance and intelligence-gathering methods that have dominated the news. “We always have to err in favor of the law,” Inglis said, emphasizing his operating principle: “If it's not written down that I can do it, I cannot.” Inglis also stressed that, although the NSA has made errors, “we protect the privacy of innocent foreigners as much as we protect that of innocent Americans.”





Honoring Her Honor

When Chief Judge Diane Wood of the US Court of Appeals for the Seventh Circuit was honored last February as the dedicatee of the latest volume of the *Annual Survey of American Law*, she received an extraordinary compliment from Oscar Chase, Russell D. Niles Professor of Law.

Wood is “the Learned Hand of our generation,” said Chase, referring to the Second Circuit’s chief judge from the 1920s to the early ’60s, whose brilliance and eloquence often propelled his name onto the Supreme Court shortlist. Appointed to the Seventh Circuit in 1995 by Bill Clinton, Wood was twice considered for the nation’s highest court by Barack Obama, an idea Chase heartily endorsed.

“Judge Wood is known for tactfully dealing with others in sometimes prickly circumstances,” said Dean Trevor Morrison, “not through grandstanding or combativeness, but by sheer intellectual force.”

That force, said Yael Tzipori ’14, editor-in-chief of the *Annual Survey*, shows law students that “it is possible to resolutely and articulately hold your position, even when you’re in the minority.”

Wood’s dissents often prevail in the end, notably in the 2008 matter of *Bloch v. Frischolz*, in which a Jewish family had affixed a mezuzah to their doorpost—only to have it repeatedly removed by a condominium association per building rules.

A three-member panel of the Seventh Circuit, including Wood, declined to hear *Bloch*. Wood’s dissent, based on the right to free expression, prompted the court to rehear the case en banc. Both her panel colleagues—Judges Richard Posner and Frank Easterbrook—eventually reversed themselves, joining the full court’s unanimous decision.

Eleanor Fox ’61, Walter J. Derenberg Professor of Trade Regulation at NYU Law, is a 30-year friend of Wood and a fellow practitioner in antitrust law and international procedure. She said of Wood’s decisions: “They read like stories about people, which of course is what they are.” □

“Judge Wood is known for tactfully dealing with others in sometimes prickly circumstances, not through grandstanding or combativeness, but by sheer intellectual force.”

TREVOR MORRISON



Marzouki Muses

As the first country to experience one of a string of popular uprisings known as the Arab Spring, Tunisia has seen its politics intensely scrutinized since the ouster of its authoritarian regime in January 2011. When its president, Mohamed Moncef Marzouki, visited NYU Law last fall for a

Center for Constitutional Transitions event, he discussed the future of this budding democracy post-Arab Spring.

Before his election in late 2011, Marzouki spent years in political exile. He acknowledged the drastic change in perceptions of the revolution that had led to his presidency.

“Gloomy predictions about the failure of the Arab Spring, now relabeled the Islamist Winter, and lamentation about the current chaos in the whole region seem to have replaced nuanced analysis,” said Marzouki, who then added, “You have to wait sometimes decades before having the right to say a revolution has failed.”

A Full Agenda



Moral Hazard

The 2008 financial crisis continues to cast a long shadow. At the sixth annual Comfort Global Economic Policy Forum last November, William Dudley, president and chief executive officer of the Federal Reserve Bank of New York, gave a keynote address in which he made a powerful argument for tackling the “too big to fail” problem: “The firm, by being too big to fail, gains an implicit guarantee at the taxpayers’ expense that it does not have to pay for.... Since the government does not charge for this implicit guarantee, this reduces the firm’s cost of funds and incents the firm to take more risk than would be the case if there were no prospect of rescue and funding costs were higher.”

In a sign of his typical doggedness, Eric Schneiderman, the attorney general of New York State, delivered the annual Attorney General Robert Abrams Public Service Lecture to a full house at NYU Law last September despite having lost his voice.

Schneiderman, who served six terms as a state senator before running for attorney general in 2010, has addressed a broad swath of problems during his career, including the environment, human and civil rights, marriage equality, financial sector abuses, Medicaid fraud, and consumer issues. His background is equally wide ranging: he studied Chinese, music, and biology in college before spending two years as a deputy sheriff in Pittsfield, Massachusetts.

The latter experience steered Schneiderman toward a legal education: “It focused me on the real challenges we face if we want to live up to our national commitment of equal justice under law.”

Schneiderman had three goals when he became attorney general: to have the best public law firm in the country, to ensure New York State’s competitiveness in the global economy, and to work affirmatively toward equal justice under the law. Schneiderman



has defended state agencies and laws, such as New York’s gun and same-sex marriage laws, and stepped up the work of dozens of affirmative litigation bureaus, including ones dedicated to consumer fraud, labor, civil rights, investor protection, antitrust action, and health care.

The attorney general, who represented financial services firms in his private practice, wants them to remain strong and vibrant, but within legal bounds. “I do not come to this set of issues from the point of view of wanting to put people out of business in the financial sector,” he said. “I want to restore public confidence in the financial services sector, and you can only do that when people understand that bad actors will be held accountable for their actions.”

Deeming his position “the best lawyer job in the United States,” Schneiderman made a distinction between pragmatic transactional work and transformational work that, over time, changes the framing of how people think about a particular problem.

“What are you doing to change the way people see an issue and think about an issue that opens us up to new possibilities?” he said. “All of us should commit ourselves to the transformational work of making our legal system better, of making our country more true to the idea of equal justice under law.” □

Thirst for Success

A DISCUSSION BETWEEN LARRY THOMPSON, executive vice president of government affairs, general counsel, and corporate secretary of PepsiCo, and NYU Law Trustee Sara Moss ’74, executive vice president and general counsel of the Estée Lauder Companies, kicked off the 2013–14 Jacobson Leadership Series in Law and Business last September with a wide-ranging conversation about the road to leadership success.

Thompson began his career as an in-house attorney at Monsanto. He later became US attorney for the Northern District of Georgia, then deputy attorney general in the Department of Justice—grappling with 9/11 and its aftermath—before joining PepsiCo in 2004. He retired in 2011, but returned to PepsiCo the following year at the request of CEO Indra Nooyi.

“Larry has gone back and forth between government and the private sector,” said Moss, “always successfully, always with a wider breadth of responsibility and knowledge.” □



Moss, Thompson

Reproductive Justice

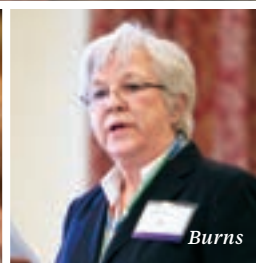
A new center at the Law School helps illuminate a complicated and controversial area of the law while allowing more room for the viewpoints of women.

Launched last October, NYU Law's Carr Center for Reproductive Justice aims to bring greater attention and resources to an area of the law that had been marginalized, perhaps because of its multidisciplinary complexity. The motivating force Beth Nash, an investment professional recently pursuing legal interests, teamed up with the Law School to make the center happen.

Professor Sarah Burns, faculty director of the Carr Center, is a longtime civil rights scholar and practitioner. She also teaches the new Reproductive Justice Clinic, whose students work with the center. "Reproductive justice requires a willingness to address the social, economic, and political conditions that make it impossible for so many people to attain reproductive health and exercise individual reproductive rights," says Burns. "The direct assault on fundamental rights most often occurs at the intersections of race, socioeconomic status, and gender. As a result, we will have close engagement with the diverse communities directly affected as we strengthen and ultimately go beyond prevailing strategies to build a body of law that ensures reproductive justice for all."

Both center and clinic have already collaborated with the ACLU Reproductive Freedom Project, the Center for Reproductive Rights, and National Advocates for Pregnant Women to help shape policy on projects relating to reproductive health care policy, medical ethics, family law, and criminal law and procedure in a frame of federal and state constitutional law.

In April, the Carr Center's first annual conference featured discussion of topics such as women's rights



regarding health care, women of color and reproductive justice, and the relation of reproductive rights to constitutional personhood. "I'm thrilled that the Carr Center will allow a group of faculty, students, and fellows to give intense focus to this developing area of the law," says Dean Trevor Morrison, "and I look forward to following their work." □

In her keynote address at the Carr Center's inaugural conference, University Professor Carol Gilligan, a member of the center's advisory board, examined the longstanding absence of many women's voices in the reproductive justice debate.

“ I am suggesting that the inattention to ‘woman’ in her rich diversity and the dismissal of her experiences as inconsequential to reproductive rights law are not simply an oversight or an instance of misogyny. They are vital to maintaining a view of the world that denies interdependence. Because women live intimately with men, whether as mothers or sisters or daughters or lovers, women’s silence is also essential to preserving an image of manhood that hides vulnerability. The pregnancy dilemma was revealing precisely because it illuminated interdependence and vulnerability—and this, I suspect, is what we don’t want to talk about.

I don’t think it’s possible to achieve reproductive justice or to hear the voices of women without changing the terms of the public conversation. I am not a legal scholar, but to bring the humanity and humane experiences that women centrally represent in our struggles over reproduction and its regulation into the law means creating a framework in which concerns about responsibility and relationships and a recognition of what caring entails can be heard as germane to reproductive rights and freedom.

Gender is at the heart of our battles over reproductive rights, and it is my impression that gender remains a difficult subject for us to talk about. More difficult now, perhaps, given that the advances of the past half-century have brought the contradictions between patriarchy and democracy out into the open. I suspect that when we fight over regulating reproduction, this is what we are really fighting about.

”

Progress Report

In 1969, Diane Abrams taught the very first Women and the Law course at NYU Law. It may have been the first course of its kind at any law school in the nation. She returned 45 years later to lead a discussion at Law Women’s 2014 Summit, “Transforming the Academy: Developing Early Strategies for Women’s Success in the Law.” In her luncheon speech, Abrams celebrated progress by remembering incidents from the 1970s that would seem surprising today, such as judges saying “gentlemen” when calling a group of mixed-gender counsel to the bench. But she also acknowledged there was more progress to be made, noting the summit included an interactive session with Rachel Godsil of Seton Hall University School of Law on how to recognize and overcome implicit bias and stereotype threat.





Helping to Heal

At NYU Law's Annual Alumni Luncheon last January, Sheila Birnbaum '65, a partner at Quinn Emanuel Urquhart & Sullivan whose iconic stature in products liability and mass torts litigation has earned her the nickname "Queen of Torts," spoke about her experiences as the current special master of the September 11th Victim Compensation Fund, created by Congress in 9/11's aftermath. The original iteration of the fund was administered by special master Kenneth Feinberg '70. In 2011, the fund was reopened with an expanded scope. Describing the raw emotion of one claimant, Birnbaum said, "Though for us it's 13 years since 9/11, for people that were there...it's as real today as it was then."

Beyond Slavery

WILLIAM CARTER JR., dean of the University of Pittsburgh School of Law, focused on the 13th Amendment and its unexplored potential in the 18th annual Derrick Bell Lecture on Race in American Society last November.

The Supreme Court, Carter said, has historically swung between two poles in its reading of the 13th Amendment—either it refers solely to chattel slavery, or it can be defined more broadly. Carter argued that the framers of the 13th Amendment did not intend to simply outlaw chattel slavery. They meant to dispense with the "surrounding infrastructure of customs, practices, and the systemic entrenched forms of subordination that supported an ideology of white supremacy and enabled the system of slavery."

Carter illustrated the potential broadening of the 13th Amendment with a Second Circuit case. *Nelson v. United States* arose from the killing of a Jewish man by an African American during the 1991 Crown Heights riots. The defense argued that a federal hate



crimes law was meant only to protect blacks, not to prosecute them. But the court rejected that claim.

Carter explained that the targeting of a Jewish victim because of his background was "closely associated with the slave system," and that this case showed that the 13th Amendment could be extended to protect not just African Americans but everyone. □

Publicly Arguing Privacy



The final round of the NYU Law Moot Court Board's 42nd annual Orison S. Marden Moot Court Competition gave four finalists a chance to argue last April before a bench that included (L-R) Tenth Circuit Judge Neil Gorsuch, Sixth Circuit Chief Judge Alice Batchelder, and Second Circuit Judge Dennis Jacobs '73. The case centered on privacy issues involving the border search and seizure of a laptop when the defendant was returning from abroad. William Freeland '15 and Peter Dubrowski '14 (L, R) represented the respondent in *Salvatore Assante v. United States of America*, with Theresa Troupson '14 and Julie Simeone '14 (L, R) for the petitioner. The judicial panel named Simeone best oralist.

Wall of Honor

CAHILL GORDON & REINDEL LLP
CRAVATH, SWAINE & MOORE LLP
DEBEVOISE & PLIMPTON LLP
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
STROOCK & STROOCK & LAVAN LLP
SULLIVAN & CROMWELL LLP
WACHTELL, LIPTON, ROSEN & KATZ
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WILLKIE FARR & GALLAGHER LLP

Find out how your firm's contributions can be recognized. Please contact Nick Vagelatos at 212.998.6007 or nick.vagelatos@nyu.edu.

Chief Judge and Catalyst

New York Chief Judge Jonathan Lippman '68 has advocated passionately for civil legal services and equal access to justice since becoming the head of the state judiciary in 2009. He has pushed for publicly funded civil legal services for the poor, a pro bono scholars program allowing law students to spend their final semester doing public service full time, mandatory reporting of pro bono service, and a rethinking of the current legal curriculum, among other initiatives.

Lippman agreed to discuss his motivations and drive for change with Senior Staff Writer Atticus Ganaway shortly before he delivered the 20th Justice William J. Brennan Jr. Lecture on State Courts and Social Justice, titled "The Judiciary as the Leader of the Access to Justice Revolution," last March. Below is a brief excerpt from a longer Q&A.

You went full speed ahead in advocating for access to justice shortly after becoming chief judge. How did your passion for this set of issues originate? When I became the chief judge, I had things in my mind from a 40-year career in the courts. The access to justice issue was first in

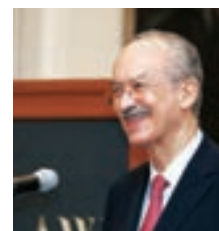


my priorities as something I immediately wanted to pounce on. On top of all that, I came into office shortly after the economic crisis, which so widened what we call the justice gap.

What do you see as the endgame in your advocacy for civil legal services and pro bono participation? What I am trying to do is make this abstract concept of justice real, concrete. All of us must have our day in court, no matter what resources we have. Equal justice is the endgame, and we are pursuing that goal with all of our energy. That is what all of us should be doing every day—pursuing justice. □

Tax Notes from All Over

Francisco Gil Díaz, president of Telefónica Mexico and former Mexican secretary of finance, presented the 18th annual David R. Tillinghast Lecture on International Taxation last fall on "How Mexico's Federal Taxation Has Encroached on the Empowerment of Municipal and State Administrations."



Bold Financial Statements

Last January, the *NYU Journal of Law & Business's* annual symposium featured a keynote in the form of a fireside chat between James "Jes" Staley, managing partner of BlueMountain Capital, and Kenneth Raisler '76, a partner at Sullivan & Cromwell and a Law School trustee. Before joining BlueMountain in 2013, Staley spent 34 years at JPMorgan Chase and its predecessors, running the bank's equity capital markets group, its private bank, its asset management business, and, lastly, its investment banking division.

Raisler began by asking Staley what he thought were the primary causes of the financial crisis, prompting a refreshing admission: "Before I answer that, let me say that the financial community has a lot to atone for given the financial crisis and the damage it left in its wake." Staley then offered three specific and detailed causes that have rarely topped more popular lists of culprits: a handful of collective mistakes by bankers, academics, regulators, and investors, including widespread agreement that any securities rated AAA were effectively risk-free and the idea that any country in the newly formed Eurozone posed the same credit risk as any other; regulatory oversight's failure to keep up with the evolution of financial markets; and Wall Street's conduct, particularly stemming from perverted incentives and compensation structures.

Staley went on to defend modern financial techniques and the size of financial players such as JPMorgan Chase. "Cars today don't pollute nearly as much and their fuel efficiency is vastly superior, but we no longer have any idea how they work. That's the price of complexity.... JPMorgan Chase is not large just because it wants to be. It is large because its clients want it to be large."



Raisler, Staley

Righting Voting Wrongs

An eclectic group of electoral experts convening for the Alumni Association's Annual Fall Conference had strong prescriptions for how to fix the current system.

Despite their differences, the voting law experts who gathered last November for the NYU Law Alumni Association's Annual Fall Conference all seemed to agree that the electoral system is in a state of disarray.

Moderator Richard Pildes, Sudler Family Professor of Constitutional Law, laid out two broad sets of issues: "the constant embarrassment we seem to have with respect to our voting systems in elections" and the consequences of the Supreme Court's opinion in *Shelby County v. Holder*, which effectively defanged the section of the Voting Rights Act requiring municipalities with a history of electoral discrimination

"Post hoc remedies don't work very well in our world. In the world of elections, once an election happens, it's over. No one cares."

JULIE FERNANDES

to obtain federal preclearance for any changes to voting laws or procedures.

Robert Bauer, distinguished scholar in residence and senior lecturer at NYU Law as well as co-chair of the Presidential Commission on Election Administration, explained that identifying current electoral problems is more straightforward than solving them. Bauer, who is also general counsel to the Democratic National Committee and former White House counsel, said that the obvious problem of long lines—a notorious emblem of the 2012 election that prompted Barack Obama to say in his victory speech, "We've got to fix that"—could stem from multiple causes, including polling place mismanagement, long and complicated ballots, and dysfunctional machinery, showing how unexpectedly complex reform can be.

Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, described a conflicted bipartisan environment that is much more complicated than the Democratic Jim Crow South had been, and suggested that the courts were working to construct a new constitutional doctrine protecting voting integrity and the electoral process against insiders' manipulation.

Adjunct Professor Myrna Pérez, deputy director of the Democracy Program at NYU Law's Brennan Center for Justice, described legislative trends regarding voting rights in states around the country. While 2012 was a banner year for attempts to restrict the franchise, she said, 2013 had seen far fewer such bills introduced. "We need to continue the effort to make restricting the right to vote toxic," she said, adding that the effective dismantling of Section 5 of the Voting Rights Act translated into more resources being expended on litigation.

Speaking directly to that sea change in litigation was Dale Ho, director of the ACLU's Voting Rights Project. Rather than cutting off potentially discriminatory voting laws before their implementation, he said, victims of such laws can now mount challenges only after the fact. Ho predicted worse problems in more places now that the burden of proof is on plaintiffs. "We have an uphill battle ahead of us, but at least it's exciting," he said wryly.

In a spirited speech, Julie Fernandes, a senior policy analyst at the Open Society Foundations, also pondered the end of preclearance. "Post hoc remedies don't work very well in our world," she said. "In the world of elections, once an election happens, it's over. No one cares." □ Atticus Gannaway



Issacharoff; Fernandes; Bauer; Pildes; Benjamin Ginsberg, co-chair of the Presidential Commission on Election Administration; Pérez; Professor Spencer Overton of the George Washington University Law School; Ho

An Incident Report

The Bernstein China Symposium, hosted last April at NYU Law by the US-Asia Law Institute and Human Rights in China, culminated in a closing keynote by Harold Koh, Sterling Professor of International Law at Yale Law School, a dean emeritus of that school, and the State Department's former legal adviser. Koh focused on his latter role in his talk, which was the first time he had ever told the whole story of what he called "the Chen Guangcheng incident" (which also involved Professor Jerome Cohen).

The example of US efforts on behalf of Chen Guangcheng, the blind, self-taught Chinese civil rights lawyer who sparked international attention—and tension—when he escaped from house arrest and sought refuge within the US embassy in Beijing in April 2012, offers "broader lessons for human rights advocacy and what it illustrates about smart power in action," said Koh.

The important take-aways, Koh said, involve the role of precedent in previous human rights incidents in China, lawyering in negotiations, and human rights strategies. "It's an example of smart power, engagement," he said. "We engage with the Chinese government. Translation—adapting law to a modern reality and then leveraging it as a tool of smart power. That seems to be a broad approach that works, and I think it should be how this case is remembered."

Koh will be a distinguished scholar in residence at NYU Law during the 2014–15 academic year.



The Good Work Continues



For over half a century, the Hays Program has nurtured law students pursuing public interest careers by providing them with a stipend and academic support. A celebration last October of the program's 55th anniversary included a critical discussion of Supreme Court cases by former Hays Fellows; the announcement of a new fellowship named after Sylvia Law '68, Elizabeth K. Dollard Professor of Law, Medicine, and Psychiatry and co-director of the Hays Program; and a keynote speech by Susan Herman '74, the president of the American Civil Liberties Union.

In the opening panel, Hays alumni considered "Which Recent Case Lost in the Supreme Court Can Civil Libertarians Best Live With (and May Even Have Been Right)?" The panelists included David Rudovsky '67, founding partner of Kairys, Rudovsky, Messing & Feinberg; Madeline deLone '94, executive director of the Innocence Project; Rachel Meeropol '02, senior staff attorney at the Center

for Constitutional Rights; and Rachel Goodman '10, staff attorney at the ACLU Racial Justice Program. In posing the initial question, Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law and co-director of the Hays Program, had asked these former fellows to work hard—to reframe cases that might otherwise simply be dismissed as "bad decisions" by a conservative Court.

Before discussing his case, Rudovsky shared a poignant story. Having graduated in 1967, he could recall a time when this panel's question would not have been so relevant. "Civil libertarians were winning not all cases, but many. We were about to launch our legal careers, my fellow Hays Fellows and others, thinking the future looks bright." But soon after his graduation, the Court ruled that burning a draft card was not protected by the First Amendment. Rudovsky added with rueful humor, "And so now we have 45 years since then of bad law."

And yet, he said, he and his colleagues still move forward. In *Rumsfeld v. FAIR* (2006), law schools that objected to the "Don't Ask, Don't Tell" policy unsuccessfully argued for a First Amendment right to bar military recruiters from their campuses. Although the other side prevailed, that loss yielded discussion and protest. "[The students] were much more energized by that process—the protest process—than arguments in court," Rudovsky said. The reaction informed a larger conversation about LGBT rights, culminating in the repeal of "Don't Ask, Don't Tell" in 2010. This case, he concluded, affirmed "the power of reengineering our thoughts, reconsidering, and using some other methods to reach the same result." □

Going
Once...
Going
20 Times....



This year NYU Law's Public Service Auction, the annual student-organized evening that helps the Public Interest Law Center support summer public interest work for 1Ls and 2Ls, marked its 20th anniversary. Posters and slideshows featured the stories of alumni's summer work experiences as stepping stones to their legal careers. The 2014 auction raised \$63,000 to help fund more than 400 students.

The Cup Run is Over

Columbia Law's victory over NYU Law in the 14th annual Deans' Cup, a basketball game that raises public interest funds for both schools, ended the Law School's five-year winning streak. While Columbia prevailed 74-56, NYU still leads the series rivalry 9-4. This year's Deans' Cup raised \$21,000, giving both sides ample reason to celebrate.



Donovan

Full Speed A-HUD

IN AN APPEARANCE AT THE LAW SCHOOL in August 2013, Housing and Urban Development Secretary Shaun Donovan detailed his illuminating experiences chairing the president's Hurricane Sandy Rebuilding Task Force. Donovan, a former fellow at the Furman Center on Real Estate and Urban Policy, spoke about the work of the task force, focusing on how New York City can rebuild to withstand storms like Sandy and describing the ways that the federal government had responded to the disaster. He also discussed the need for the federal government to align its funding with local rebuilding efforts. □

A Good Review

HOWARD SHELANSKI, the administrator of the Office of Information and Regulatory Affairs (OIRA), gave the keynote last October at the fifth annual Cost-Benefit Analysis and Issue Advocacy Workshop, held by NYU Law's Institute for Policy Integrity. The event celebrated the 20th anniversary of Executive Order 12,866, signed by President Clinton in 1993 to establish principles that government agencies must follow when developing regulations, including cost-benefit analysis, risk assessment, and performance-based standards. OIRA operates under that order.

In his first public address outside Washington, DC, as OIRA administrator, Shelanski outlined his priorities for OIRA, discussed the progress his office has made, and examined elements of cost-benefit analysis. Although OIRA has other duties, such as ensuring that the government's collection of information is not an undue burden, its biggest job is reviewing regulations. Shelanski's current priorities include making the review process more predictable through greater timeliness and transparency, while still engaging in appropriately rigorous analysis.

"Unnecessary delays in review," said Shelanski, "are harmful to everyone: to those who lose the benefits of regulation, to those who wish to comment on proposed rules and influence policy, and to those who must plan for any changes the regulations require of them." □

A Transportation Secretary's Journey

In the Frank J. Guarini Government Lecture last March, US Transportation Secretary Anthony Foxx '96 described the choices he made in his public service career and offered advice to those who would like to follow his path. Foxx's humble origins make his career successes all the more impressive. The first of his fifth-generation North Carolinian family to attend an integrated school, Foxx went on to a Root-Tilden Scholarship at NYU Law. He served in every federal government branch, practiced privately, and ran for Charlotte city council. After serving two terms on the council, Foxx became, at 38, the youngest mayor in the city's history. As transportation secretary he has tackled daunting issues, such as the near-insolvency of the highway trust fund, by reaching across the aisle. "You're never going to get the type of results that you would get if you were the sole decision maker," he said. "But within ranges of possibility, you can get an awful lot done."





Relevant Parties

82 Convocation speaker Sherrilyn Ifill '87 addresses the Class of 2014

84 Graduates reflect on their law school experiences 86 Hooding photo album

90 NYU@NUS: The finale—with cake!

91 Reunion 2014 in photos 92 Scholars and donors meet

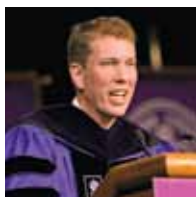
93 Paul Berger '57 honored at Weinfeld Gala



"Whatever our motivations, we are among the fortunate for whom the doors of higher education have opened."
STEPHANIE CHU



"Can you imagine if we were as bold in the real world as we have been here?"
DAVID LEAPHEART



"Leadership is a choice. It's about how you choose to act and what you choose to do."
DEAN TREVOR MORRISON



“Engage in the Work of Perfecting This Democracy”

Reflecting on the significant anniversaries of major civil rights victories, Sherrilyn Ifill '87 gave a stirring convocation speech exhorting graduating JD and LLM students to join her in “perfecting this democracy.” Ifill, president and director-counsel of the NAACP Legal Defense and Educational Fund, capped a festive celebration of academic achievement that included bagpipes and speeches by Dean Trevor Morrison, Board Chairman Anthony Walters '77, NYU President John Sexton, and graduands David Leapheart '14 and Stephanie Chu LLM '14.

Ifill, the keynote and final speaker, urged every lawyer to find a way to be a civil rights lawyer no matter their chosen career path.

She noted that 2014 marks the 50th anniversary of the Civil Rights Act, the 50th anniversary of Freedom Summer, and the 60th anniversary of *Brown v. Board of Education*. “What that means for us sitting here today, in all of our diversity, in all of our cosmopolitan sophistication, what that means is that this country as you and I have been privileged to know it is less than 60 years old,” Ifill said.

America is still “relatively new at this thing called equality,” she added, saying there is immense ground to cover in terms of improving civil rights, from securing voting rights to addressing mass incarceration to closing the ever-increasing income gap. Therefore, Ifill told the graduating class, “I cannot

release you from your obligation to engage in the work of perfecting this democracy.”

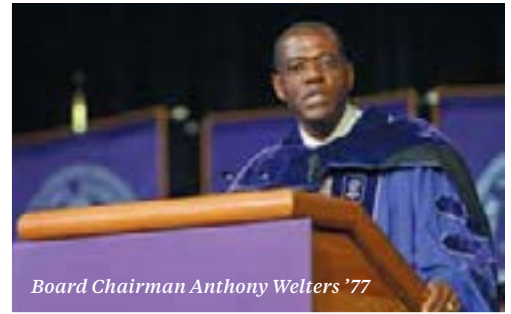
“You are called to be a civil rights lawyer because civil rights work is the work of democracy maintenance. It is not work to be done only by black lawyers or women lawyers or gay lawyers or even those of us who have committed ourselves to this practice full-time,” she said. “It is every lawyer’s obligation to engage in the hard, but necessary, work of democracy maintenance.”

For the women graduating, Ifill also had a particular message: “Women, I shouldn’t have to address special remarks to you, but I feel compelled to do so.... I advise against listening to advice on how to ‘do’ womanhood, whether that advice is to ‘lean in,’ ‘thrive,’ ‘be confident,’ or any number of other imperatives directed toward women. Just do you. You’re a woman.

You’re going to be criticized no matter what course you take.”

Ifill returned to her original theme in her closing: “My hope for all of you today is that you will become my partners, my colleagues in civil rights work. That you will infuse your practice, in whatever field it might be, with the ethics of equality and of opportunity. That you will join that overflowing roster of NYU Law graduates who are recognized for their innovation, commitment, and leadership in making this great, but flawed, democracy better.” □





Board Chairman Anthony Walters '77



MAY 22, 2014

Convocation 2014



NYU President John Sexton



Reflections



▲ **David Glasgow LLM**

Legal Intern, LGBT Rights Clinic

“My work focused on helping LGBT immigrants and asylum seekers. I’ve taken affidavits, appeared in court, and represented a client in an asylum interview—really impactful work that has enabled me to understand more about how the US system operates.”



Paul Mertenskoetter
Co-President, International Law Society



Nina Xue
Executive Editor, *NYU Environmental Law Journal*



Ikemefuna Stephen Nwoye LLM
International Finance and Development Fellow at the World Bank



Siobhan Atkins
2L summer: Ford Foundation Law School Fellow, Vera Institute of Justice



▲ **Shoyeb Siddique**
Co-President, International Arbitration Association

“I took classes offered in the Jacobson Leadership Program in Law and Business that were cross-registered with MBA students at Stern. It helped me understand what someone at the junior level is learning on their side, and it gave me a solid foundation for when I start doing corporate transactions work.”



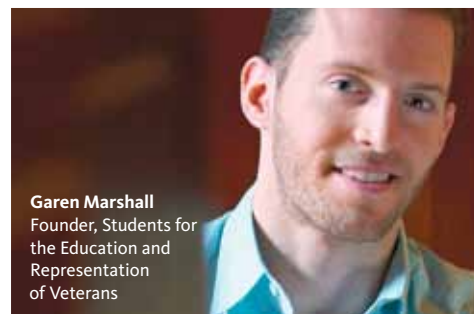
Brittany Francis
2L summer: Ford Foundation Law School Fellow, Equal Justice Initiative



David Holmberg
2L Internship: Office of Chief Counsel, IRS



Dana Peterson LLM
Graduate Editor, *Tax Law Review*



Garen Marshall
Founder, Students for the Education and Representation of Veterans

“During orientation week as a 1L, I was inspired by an event with a dean for global programs, so I emailed her. She was thinking about setting up studies overseas and invited me to be on the steering committee. As a 3L, I absolutely wanted to participate in the semesters abroad we had developed. It was a life changing experience.”

Annemarie Hillman ►

Semester abroad: NYU Law in Buenos Aires



Cheng Jean Liang LLM
International Finance
Corporation Fellow



Anisha Mehta
Semester abroad: NYU Law in Shanghai

Graduates look back at their accomplishments and experiences as Class of 2014 students



Lauren Pignataro
AnBryce Scholar,
William Randolph Hearst Scholar



Michael Goon
Semester abroad: NYU Law in Paris



Kimberly Chow
Clinic: Legislative and Regulatory
Process (in Washington, DC)



Jeffrey Silberman
Senior Advocate,
Suspension Representation Project



Grant Tse
Co-Chair, Internet and Information Law
Committee, Intellectual Property and
Entertainment Law Society



“When the government is using all its resources to prosecute a child, I want to do everything possible to make sure they do not succeed. Children need someone in their corner when there are people using everything in their legal arsenal against them.”

◀ **Dana Williamson**

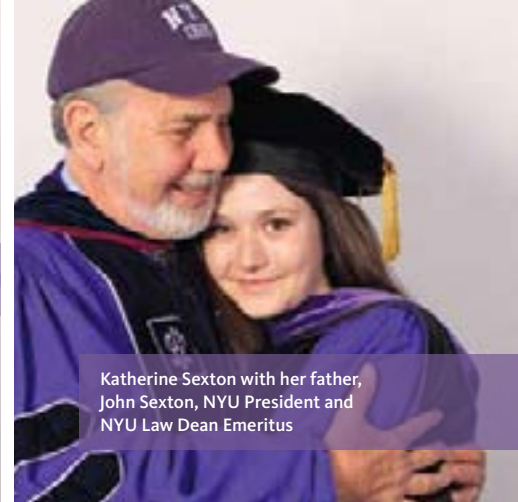
Clinic: Juvenile Defender
1L Internship: Louisiana Center
for Children's Rights



Mary Grace White with her father, John White LLM '86



Samantha Steinfeld with her mother and father, Donna Steinfeld '82 and Robert Steinfeld LLM '81



Katherine Sexton with her father, John Sexton, NYU President and NYU Law Dean Emeritus



David Babbott-Klein with his father-in-law and brother-in-law, Trustee Chuck Klein '63 and Andrew Klein '07

The Class of 2014



Isaac Raisner with his brother-in-law and sister, Robert Fisher '12 and Sara Raisner '09



Stewart Gilson with his grandfather, Trustee Stewart Glasson Pollock '57



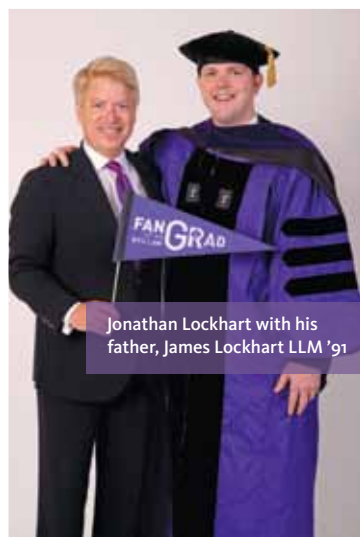
Tzu-Hsuan Chen with her husband, Yen-An Cho LLM '11



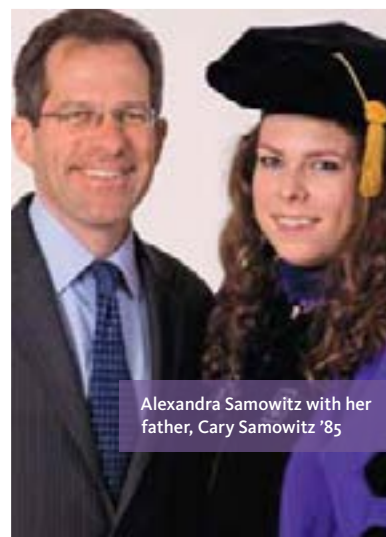
Nicholas Bernstein with his uncle, William Bernstein '82



Rebecca Francus with her father, Michael Francus LLM '85



Jonathan Lockhart with his father, James Lockhart LLM '91



Alexandra Samowitz with her father, Cary Samowitz '85



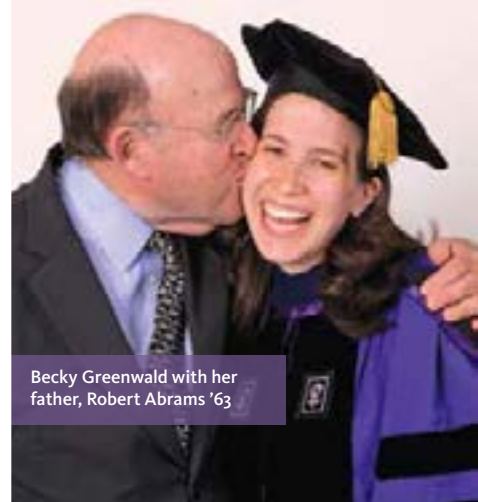
Scott Bulua with his father, Stanley Bulua '79, LLM '84



Jack Zarin-Rosenfeld with his parents,
Professor Gerald Rosenfeld and Dr. Judith Zarin



Sheila Baynes with her aunt,
Trustee Florence Davis '79



Becky Greenwald with her
father, Robert Abrams '63

Legacy Families



Jonah Peppiatt with his stepfather,
Malcolm Spector '94



Max Tierman with his father,
Robert Tierman '79



Aryeh Roskies with his
mother, Shana Novick '81



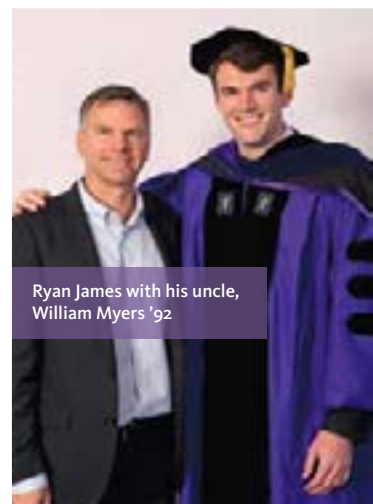
Enrique Urdaneta Cordido-
Freytes with his father,
Enrique Urdaneta MCJ '76



Samuel Zeitlin with his grandfather,
George Zeitlin LLM '61



Alexander Levy with his mother,
Judith Halpern, standing in for Alexander's
grandfather, the late Joseph Halpern '42



Ryan James with his uncle,
William Myers '92



Matthew Weprin with his father and mother,
Barry Weprin '78 and Patricia Langer '79



Gregg Marmaro with his uncle and father,
Marc Marmaro '72 and Richard Marmaro '75



Julianne Marley with then-fiancé
and now husband Julian Arato '11,
LLM '12



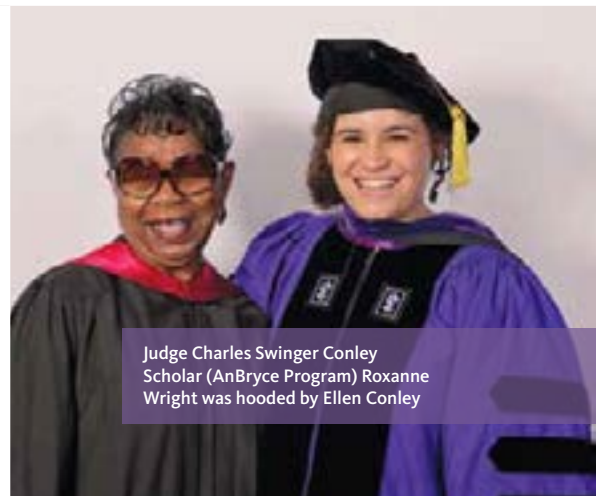
Jacob Marley Foundation in memory of Christopher Quackenbush '82 Scholar (AnBryce Program) Arin Smith was hooded by Dr. Gail Quackenbush



John J. Creedon Scholars Sarah Sullivan and M. Corey Connolly were hooded by Trustee John J. Creedon '55, LLM '62



Anthony Walters '77, chairman of the Law School's Board of Trustees, hooded AnBryce Program Scholars (back row, from left) Lauren Pignataro (William Randolph Hearst Scholar), Michael Canencia (Clifford Chance Scholar), Joel Todoroff (Carroll and Milton Petrie Foundation Scholar), Arin Smith (Jacob Marley Foundation in memory of Christopher Quackenbush '82 Scholar), (front row) Roxanne Wright (Judge Charles Swinger Conley Scholar), Kadeem Cooper (Kenneth and Kathryn Chenuault Scholar), and Ariel Love (Julie and Marc E. Platt Scholar)



Judge Charles Swinger Conley Scholar (AnBryce Program) Roxanne Wright was hooded by Ellen Conley



Mark Brisman Memorial Scholar Julian Ginos was hooded by Juliette Brisman-Zuckerman



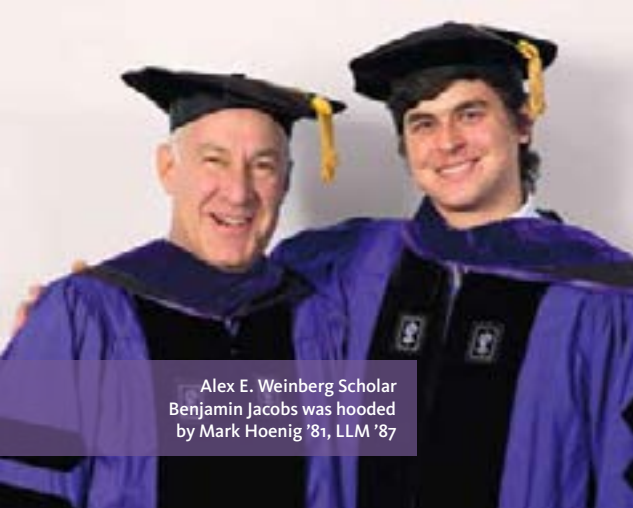
Furman Academic Scholars Julian Ginos, Daniel Nowicki, Ankur Mandhania, Maria Ponomarenko, Cynthia Benin, and Sheila Baynes were hooded by Trustee Jay Furman '71



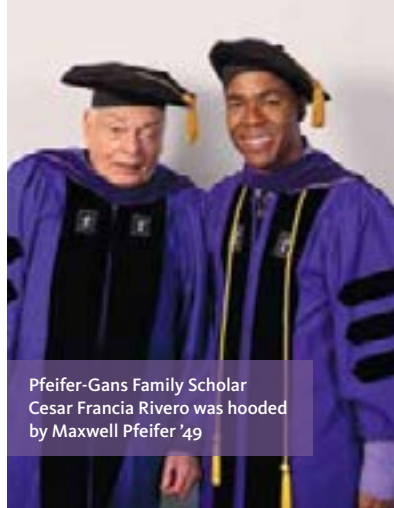
Trustee Florence Davis '79 hooded Starr Foundation Scholars (back row, from left) Sonja Sreckovic (Global Law School Scholar), Santiago Bejarano (Global Law School Scholar), Olena Sharvan (Global Law School Scholar), (front row) Hannah Menda (C.V. Starr Scholar), and Elizabeth DeGori (Root-Tilden-Kern Program Starr Foundation Scholar)



WilmerHale Scholar (Root-Tilden-Kern Program) Sara Maeder was hooded by Erin Sloane '03



Alex E. Weinberg Scholar
Benjamin Jacobs was hooded
by Mark Hoenig '81, LLM '87



Pfeifer-Gans Family Scholar
Cesar Francia Rivero was hooded
by Maxwell Pfeifer '49



Bickel & Brewer Latino Institute for Human Rights Scholars
(Root-Tilden-Kern Program) Amy Pont and Christine
LaRochelle were hooded by William Brewer III LLM '78

Scholars and Donors



M. Carr Ferguson Scholar
Krista Hartwell was hooded by
Trustee M. Carr Ferguson LLM '60



Sinsheimer Service Scholars (Root-Tilden-
Kern Program) Jesse Rockoff and Rachel
Hoerger were hooded by Warren Sinsheimer



Thomas Heftler Scholar
Luis Fernandez de la Vara
was hooded by Lois Weinroth



Derrick Bell Scholars for Public Service (BLAPA)
Leila Sukjoo Kang and Cesar Francia Rivero were
hooded by Janet Dewart Bell



Frank J. Guarini
Government Scholars
(back row, from left)
Paul Mertenskoetter,
Nicholas Melvoin,
Stewart Gilson, Varun
Jain, David Leapheart,
(front row) Julia Pilcer,
Sheila Baynes, and
Wendy Liu were hooded
by the Honorable Frank
J. Guarini '50, LLM '55

A Bittersweet Convocation



"The professors, including those visiting from all around the world, were fascinating."

MONA BOUGHABA,
SWITZERLAND



"The opportunity to have gotten to know the musician, the wonderful mother, the bride-to-be, the food-blogger, the bookworm, the ninja, the party-promoter, the loving husband, the vegetarian, the Bollywood fan, the good guy, is what I feel most grateful for."

EDUARDO ROSENBERG
PAIZ, GUATEMALA

The seventh class of the Dual Master's Program for Global Business Lawyers—a partnership between NYU School of Law and the National University of Singapore (NUS)—gathered at the Raffles Singapore hotel on March 3 to celebrate the program's very last convocation. Professor Eng Chye Tan, deputy president for academic affairs and provost of NUS, addressed the final graduates, a close-knit class of 21 people from 15 countries.

Tan described the day's ceremony as a "special yet bittersweet one," marking both the end of an era and a chance for NYU and NUS to find new ways to work together.

Founded in 2007, NYU@NUS graduated 237 men and women during its first six years. This year, to toast the program's accomplishments, all alumni were welcomed back. They flew in from all corners of the globe, with the largest turnout from the very first cohort, the Class of 2008.

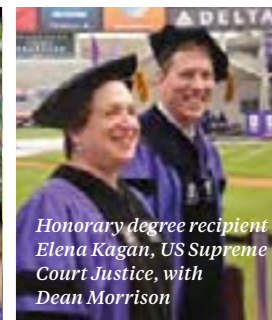
Student speaker Eduardo Rosenberg Paiz LLM '14 of Guatemala expressed how day-to-day life in Singapore had inspired him. The low crime rate contrasted sharply with that

of his home country; it gave him peace-of-mind to attend class knowing his wife was safe. "The fact that this dream became a reality in less than a lifetime," he said, "will feed my every instinct to leave whatever I encounter in a better way than how I found it."

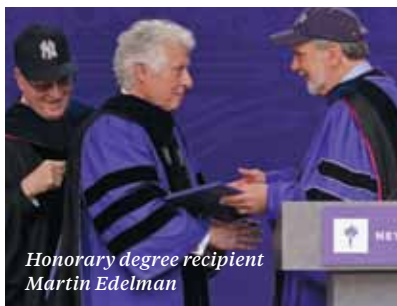
Mona Boughaba LLM '14 of Switzerland, the other student speaker, was grateful for the close ties shared by the 2014 class—the "legacy year, as we liked to call ourselves." While the previous months had included an array of challenges, ranging from routine stressors like demanding classes to disasters like the typhoon in the Philippines, the high points stood out. Among them, she said with a laugh: "After so many years, the surprise organized for Professor Alan Tan's birthday was finally a real surprise for him!"

During the celebratory dinner, Alan Tan, director of NYU@NUS, and Simon Chesterman, founding director of NYU@NUS

and now dean of the NUS Faculty of Law, cut a custom-made cake: two three-tier confections joined by a bridge adorned with both schools' logos. It represented the partnership that had made those seven academic years so sweet. □



Honorary degree recipient
Elena Kagan, US Supreme
Court Justice, with
Dean Morrison



Honorary degree recipient
Martin Edelman

MAY 21, 2014 | YANKEE STADIUM

Commencement 2014





APRIL 25-26, 2014

Reunion 2014



THE WASHINGTON SQUARE CAMPUS took on a decidedly Potomac flair as three alumni who currently hold elected office in the US House of Representatives—Diana DeGette '82, Hakeem Jeffries '97, and Scott Peters '84 (below)—weighed in on partisanship in politics for a panel moderated by Visiting Professor Sally Katzen. The Root-Tilden-Kern Program celebrated the 60th anniversary of its first class with a reception and cake (top right). Four members of reunion classes (right) received honors at the Annual Awards Luncheon. Stephanie Abramson '69, director of Law and Business Experiential Courses and adjunct professor of clinical law in the Business Law Transactions Clinic at NYU Law, received the Alumni Achievement Award; Laurel Weinstein Eisner '84, former executive director of Sanctuary for Families, received the Public Service Award; Margaret Satterthwaite '99, a professor of clinical law at NYU Law, received the Legal Teaching Award (see story on page 46); and David Pressman '04, counselor of the US Mission to the United Nations, received the Recent Graduate Award, but was unable to attend the ceremony.



Honorees



Partisanship panel





Scholar and Donor Reception

1 Justin Steil, the Jonathan L. Mechanic/Fried, Frank, Harris, Shriver & Jacobson Fellow, with Janet Dewart Bell, benefactor of the Derrick Bell Scholarship for Public Service (BLAPA); Jonathan Mechanic '77, keynote speaker and trustee; and Wendy Mechanic.

2 Mario DiNatale Scholar Zachary Lanier '16 (center right) with Gail Stone '80, Jean DiNatale, Matthew DiNatale, Laura DiNatale, and Matthew Fishbein '79.

3 Paul D. Kaufman Scholar Hannah Marek '16 (center) with Leonard Mansky, Elizabeth Mansky, Laura Mansky-Miller, and Russell Miller.

4 Natalie and Steven Maksin Scholar Thomas Dollar '15 with Steven Maksin LLM '02.

5 William J. Toppeta Scholar Agustin Arancet LLM '14 with William Toppeta '73, LLM '77.

6 Norman Ostrow Memorial Scholars Christopher Murray '16, Amandeep Singh '14, and Keli Young '15 with Charles Stillman '62.

7 Student speaker Cesar Francia Rivero '14, Pfeifer-Gans Family Scholar, Derrick Bell Scholar for Public Service (BLAPA), and Harriet E. Gair Scholar.

8 Doris C. and Alan J. Freedman Scholars within the Root-Tilden-Kern Program Dian Yu '16 and Jehan Laner '15 with Trustee Karen Freedman '80.

9 Fay Zarin/Shirley Rosenfeld Scholar within the AnBryce Program Korey Inglin '16 with Professor Gerald Rosenfeld.

10 Root-Tilden-Kern Scholars Seth Silverman '15, Steven Marcus '16, Anne Carney '16, Jesse Rockoff '14, Diane Johnston '15, Matthew Tysdal '16, Candace Mitchell '14, Kendal Nystedt '14, Meghna Philip '16, Pooja Shethji '16, Aimee Carlisle '16, Amelia Marritz '16, Dian Yu '16, Julia McCarthy '15, Alexis Piazza '16, Rebecca Hufstader '15, Juan Caballero '16, Adrienne Warrell '15, Ariel Werner '14, and Sara Maeder '14 with Trustee Jerome Kern '60 and Trustee Karen Freedman '80.

The Weinfeld Gala

OCTOBER 1, 2013



Temples & Traditions

THE METROPOLITAN MUSEUM OF ART'S Temple of Dendur in the Sackler Wing provided a colorful and dramatic backdrop for last October's Weinfeld Gala, which recognizes donors who make significant annual contributions. The Law School presented Life Trustee Paul Berger '57, a retired senior partner of Arnold & Porter in Washington, DC, with its Judge Edward Weinfeld Award. The award recognizes alumni of professional distinction who graduated from the Law School 50 years ago or more. Berger has represented a wide variety of foreign and domestic governments, corporations and other business entities, labor organizations, and tax-exempt organizations in a variety of corporate, legislative, and regulatory matters.



Fall Ball

OCTOBER 31, 2013



They don't make careers like Gerald Rosenfeld's anymore. One of Wall Street's top mergers-and-acquisitions advisers for more than three decades, he got his start at McKinsey, then began a long run as a dealmaker at Salomon Brothers, Bankers Trust, and Lazard Frères. He was CEO of Rothschild

North America for nearly a decade before returning in 2011 as an adviser to the CEO and a vice chairman of US investment banking at Lazard Ltd. The faculty director of NYU Law's Institute for Executive Education—which is slated to launch this fall—Rosenfeld sat down with writer Duff MacDonald to talk law and business.

Investment bankers and lawyers do a lot of work together, but they don't really mix, do they?

Exactly. Many fresh young MBAs have never worked with a lawyer before. There's no reason we should be keeping law and business students apart during their education. We should be getting them to

learn how to work with one another before they start their jobs. That's what we try to do in the Jacobson program.



Gerald Rosenfeld is a distinguished scholar in residence and senior lecturer at NYU Law. He is also co-director of the Jacobson Leadership Program in Law and Business. For more about the new Institute for Executive Education, see page 4.

the navigation of regulation and legal frameworks becoming more and more a part of a senior manager's job, we said to ourselves, "Why couldn't a law school, using its knowledge and its very special set of skills, create executive education for those people?"

Is there an argument to be made that a smart law school graduate with a taste and feel for deal-making would make a better banker than most MBAs? Over the last few years, the smart professional service firms have figured out how to better recruit at law schools. Not surprisingly, McKinsey figured it out first, then Goldman Sachs and Morgan Stanley. There's nothing wrong with working at a law firm, but these students are equipped to do anything in the world, having gone through the rigorous education we provide them. For example, both the general counsel of McKinsey and the chief of staff to Morgan Stanley CEO James Gorman are NYU Law graduates.

Should business schools bear any responsibility for the financial crisis? Or law schools? Have we been teaching our students the wrong things?

In the 1980s and 1990s, the academic side of business seemed to have completely bought into the shareholder-centric model of the corporation espoused by many academics. We began teaching people that only value creation mattered. It all comes down to how you feel about the purpose of the corporation. Is it only to make money for shareholders? What about professional responsibilities? Then we ended up with Enron and WorldCom, and we realized that we were teaching people to be profit-seekers at the cost of everything else.

In a recent paper you co-authored about the causes of the financial crisis, you suggested a compelling reform: Shine a brighter light on complex financial structures by requiring greater disclosure, including discussions from management as to why they were used. Isn't that heresy from a banker, to suggest reducing complexity? When somebody tells me about a new financial product or structure and justifies it by saying that it aids liquidity and price discovery in the market, I say run the other way. Because if there's nothing to justify it other than someone being able to scrape a few extra pennies off of a transaction in the name of liquidity, it doesn't provide enough value to justify the added complexity. Without wading too far into what is a controversial debate, I'd suggest that there is questionable value added to the markets as a result of high-frequency trading.

Can you provide an example of a deal where lawyers and bankers worked together creatively to accomplish something? Back in the '80s, when I was at Salomon Brothers, we were representing General Motors as they were trying to acquire Ross Perot's EDS. During the negotiations Perot and Roger Smith, GM's CEO, came to us and said, "Ross wants to have some kind of public market security that will reflect the value of EDS." At first, we said it would be impossible, because Roger wanted *all* of EDS. But then the bankers and lawyers got together and ended up inventing what came to be known as the tracking stock. The concept got invented to solve a particular business problem, with the intimate cooperation of lawyers and bankers, because the deal wasn't going to happen without it. □

This Q&A was edited and condensed.

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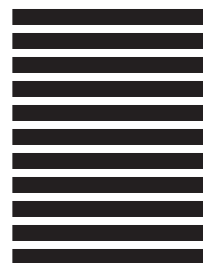
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- ☐ Alumnus/alumna. Class year: _____ ☐ Practitioner
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2. How do you get your news and information about NYU Law? Check all that apply.

3. How important are each of these sources? Rank from 1 to 6, with 1 being most important.

	Question 2 (check all that apply)	Question 3 (rank 1-6)
Weekly Briefs e-mails (upcoming alumni events)	<input type="checkbox"/>	_____
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4. Please indicate how you feel about each of the following sections of NYU Law Magazine.

Select one response in each row.

	Usually ignore	Nice to have	A must-read
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7. How often do you visit the NYU Law website?

- ☐ Daily ☐ Weekly ☐ Occasionally ☐ Never

8. Please share any additional comments about Law School communications:

9. Please provide your e-mail address to stay informed: _____

You may also send your e-mail address directly to law.magazine@nyu.edu.

NYU Law Magazine

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We are looking for ways to improve our communications with you. Please share your feedback with us by answering the questions at left.

Tear at the perforation, fold, tape shut, and mail back to us; the postage is prepaid. The survey is also available online at bit.do/nyulaw2014survey.

Please respond by Sunday, October 19.





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