

2015 • PROS IN CON • GOING GLOBAL • A HEAD WITH HEART • REDRAWING THE OUTLINES

NYU LAW

MAGAZINE



Justice for All

As head of the nation's third-largest district attorney's office, Kenneth Thompson '92 is on a mission to safeguard Brooklyn and ensure the public trust.



SAVE THE DATE

Reunion!

APRIL 8-10, 2016



Classes of 1956, 1961, 1966, 1971, 1976,
1981, 1986, 1991, 1996, 2001, 2006, 2011

RETURN, RECONNECT, AND REMINISCE!

www.law.nyu.edu/reunion2016



The Morrison Memo

Of the many defining traits of NYU School of Law—and there are indeed many—one I return to often is the sheer energy of the place. Our faculty, students, and alumni are always in motion. Whether conjuring new solutions to seemingly intractable legal, social, and economic problems; identifying shifts in law, business, and policy trends; or posing provocative questions that challenge assumptions underlying the status quo, the members of our community shape discourse, drive innovation, and inspire others with their leadership and ingenuity.

In this year's magazine, you'll learn about some of the outstanding thought leadership shown by our faculty, students, and alumni. In "Pros in Con," we highlight the myriad ways our faculty in constitutional law and related areas are influencing that evolving field. For example, Richard Pildes, Sudler Family Professor of Constitutional Law, is reshaping voting rights in theory and practice. This year, he argued a groundbreaking case before the US Supreme Court, earning the first win for African Americans in a racial gerrymandering case in over 55 years. Meanwhile, Rachel Barkow, Segal Family Professor of Regulatory Law and Policy and faculty director of the Center on the Administration of Criminal Law, is rethinking the president's constitutional clemency power and urging fundamental changes to its application.

We also celebrate NYU Law's long history of innovation in global legal education. Two decades ago, the Law School launched the first truly international program for the study of law—the Hauser Global Law School Program. The Hauser program has brought leading thinkers and practitioners from around the world to teach here, including former judges of the Constitutional Court of South Africa and the Federal Constitutional Court of Germany. It has sponsored scores of fellowships for academics, attorneys, and public servants from abroad, and now includes 10 to 20 scholarships per year for foreign-trained lawyers pursuing LL.M.s here at NYU. The Law School has extended its leadership in global legal studies with the recent establishment of study-abroad programs in Buenos Aires, Paris, and Shanghai, among other initiatives. NYU Law continues to bring a cutting-edge approach to the study of law in our globalized era.

In addition, we highlight in the magazine alumni and students who are transforming their

chosen fields. Brooklyn District Attorney Kenneth Thompson '92 is pursuing justice through his district's beefed-up Conviction Review Unit, which already has freed more than a dozen wrongfully convicted people. As head of the US Justice Department's Civil Rights Division, Vanita Gupta '01 is working to address tensions between police and the communities they serve. Second-year students—and identical twins—Raymond and Richard Diggs are charting paths that will enable them to effect change in their hometown of Detroit. Alma Asay '05 is changing legal practice through the software she developed as founder of Allegory Law. And Steve Ross LL.M.'66, the trailblazing developer behind New York's Hudson Yards project, is breaking ground again, having pledged \$20 million to the Law School—the largest individual gift in the school's history. These are just a few examples of how the leadership and creativity of NYU Law faculty, alumni, and students are reshaping the world.

This past year, the Law School lost two dedicated leaders. Jack Slain '55, professor of law emeritus, was instrumental in building our law and business programs and pedagogy. He was a brilliant corporate attorney and beloved teacher whose commitment to his students was legendary. Jay Furman '71 was one of the Law School's most generous, engaged, and visionary supporters. A longtime member of our Board of Trustees, Jay pursued remarkable philanthropy that enabled, among other things, the construction of Furman Hall, the creation of the Furman Center for Real Estate and Urban Policy, and the establishment of the Furman Academic and Public Policy scholarship programs. Jack and Jay each left indelible marks on this place. I am deeply grateful to have known them.

I would be remiss if I ended without noting two people whose leadership has profoundly reshaped the Law School: NYU President John Sexton and chair of the NYU Board of Trustees Martin Lipton '55, both of whom are stepping down this year. Since 1988, when John was appointed dean of the Law School and Marty was elected the chair of its Board of Trustees, they have worked together to raise the Law School's profile, expand its resources, deepen and extend its excellence, and chart a pioneering course for its future. NYU Law is infinitely better for their commitment and vision.

I hope you enjoy this year's magazine. As always, I welcome your thoughts at deanmorrison@nyu.edu.

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2015 • VOLUME XXV

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NYU LAW

MAGAZINE

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Inez Milholland (1912) for the new 10-dollar bill?; Stephen Ross LLM '66 pledges \$20 million; the New York Civil Liberties Clinic wins a historic settlement for reforming the state's public defense system; NYU Law launches projects on policing and civil jury trials

25 The People



University Professor Jerome Bruner at age 100; Vanita Gupta '01 takes the top civil rights position in the US; Etienne Chénier-Lafleche LLM '15 testifies on the right of access to information in Haiti; Margaret Middleton '07 leads the Connecticut Veterans Legal Center



39 NEW FACULTY
The Law School welcomes two new faculty members: Deborah Burand and Scott Hemphill

41 Arguments & Opinions



Margaret Satterthwaite '99 explores how data visualization can tell human rights stories; Kenji Yoshino celebrates the importance of *Hollingsworth v. Perry*; Florencia Marotta-Wurgler '01 produces an empirical foundation for the legal discussion of consumer contracts; Richard Pildes sways the Supreme Court in a racial gerrymandering case

55 Proceedings



EU competition commissioner Margrethe Vestager speaks on the implications of globalization; Thomas Piketty responds to questions about *Capital in the Twenty-First Century*; the *NYU Annual Survey of American Law* is dedicated to Judge Jack Weinstein; Stephen Ross LLM '66, Harold Koh, and Kenneth Feinberg '70 are among this year's Milbank Tweed Forum speakers

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US Attorney Preet Bharara and University Professor Anthony Appiah speak at Convocation; graduates reflect; hooding album; former Chief Judge Judith Kaye '62 receives 2014 Weinfeld Award; Reunion 2015; scholarship reception

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Bryan Stevenson publishes his first book, wins exoneration of a death row client, and releases an unflinching report on America's history of lynching, sparking a year-long national dialogue

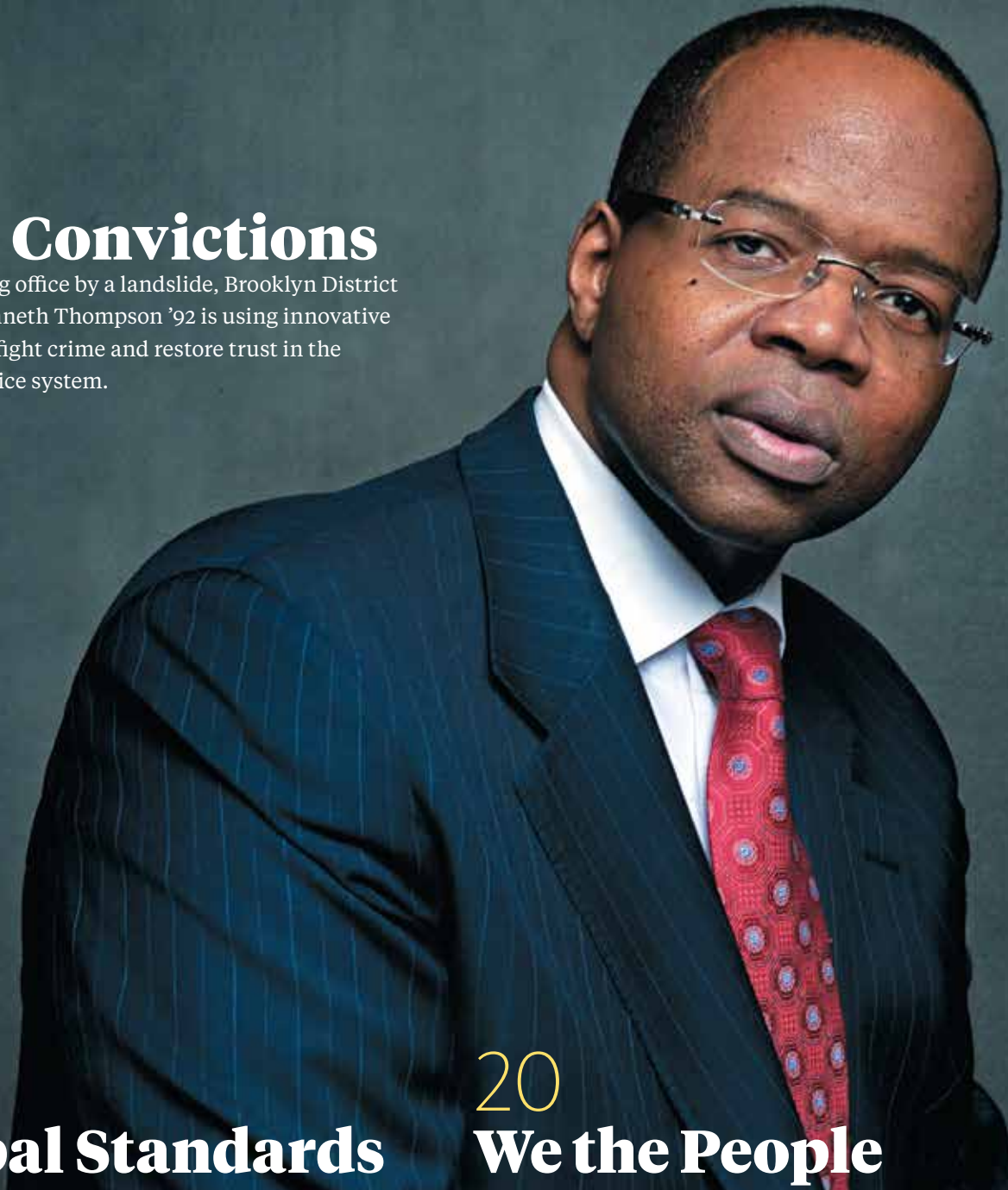


Located throughout the magazine, these icons indicate where video, photo galleries, and other multi-media content can be found online to complement our stories. View the entire digital magazine here: law.nyu.edu/magazine

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Just Convictions

After winning office by a landslide, Brooklyn District Attorney Kenneth Thompson '92 is using innovative strategies to fight crime and restore trust in the criminal justice system.



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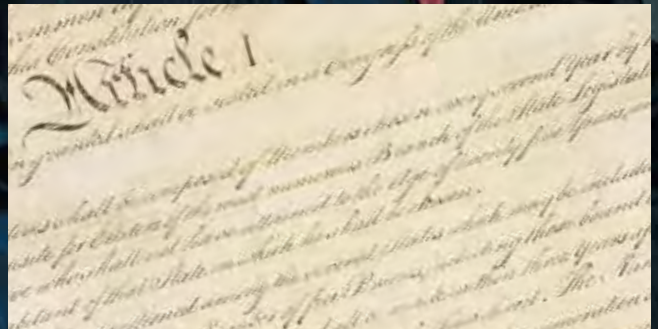


For two decades, NYU School of Law has been forging a community of legal scholars without borders that has changed how US-trained lawyers view the world—and vice versa.

THOMPSON: JESSE DITTMAR

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We the People



Shaping the evolving field of constitutional law, NYU's con law faculty is asking rigorous questions about how to live today within a 228-year-old framework for our laws and democracy.

Value Added

In the nearly 50 years since Stephen Ross LLM '66 earned his Master of Laws in Taxation at the Law School, he has built

of professional sports as owner of the Miami Dolphins. He is also a committed philanthropist, as evidenced by



Ross's legal adviser Martin Edelman, Ross, Morrison

a truly impressive career. After developing a successful tax practice, Ross transitioned to the business world and became a global leader in real estate as founder and chairman of Related Companies, then entered the world

a recent major gift to NYU School of Law.

Ross's \$20 million gift—most of it in the form of a bequest—is the largest single gift ever received by the Law School. It will provide crucial support for top

priorities, including scholarships and other financial aid.

Ross's engagement with the Law School takes many forms, from collaborating with students and faculty to tackle racism and bullying in sports to speaking before hundreds of students to share lessons of leadership drawn from his career.

"Steve is a wonderful friend to the Law School, and I am thrilled and grateful to have his extraordinary support," said Dean Trevor Morrison. "Steve speaks powerfully about the value of his NYU legal education to his career success. By giving back in this way, he ensures opportunities for future NYU Law students to make their own marks on the world."



Center Stage

This June, the US Senate unanimously confirmed Eileen Decker '90 as US attorney for the Central District of California (CDCA). The CDCA encompasses seven counties including Los Angeles, serving the largest population of any district in the United States. Decker served as Los Angeles deputy mayor for homeland security and public safety since 2009, and previously worked for 15 years as a federal prosecutor specializing in national security issues.

"Simply put, Eileen Decker's qualifications are impeccable," said California Senator Dianne Feinstein in a statement on her confirmation. "The breadth of experience Ms. Decker will bring to the position is impressive, and she has earned the respect of the legal community and law enforcement alike."

Art Imitating Art

In the final show at the Madison Avenue location of the Whitney Museum of American Art, Amy Adler scored a first: she was featured on the audio guide for the blockbuster Jeff Koons retrospective. In the guide, Adler, Emily Kempin Professor of Law, was heard

discussing a 1992 copyright infringement case Koons lost over appropriating a photograph, *Puppies*, by Art Rogers. She asserts that had the suit been filed after *Campbell v. Acuff-Rose Music, Inc.* (1994), Koons would have won on the grounds that his sculpture was "transformative."



STRING OF PUPPIES, 1988. POLYCHROMED WOOD, 42 X 62 X 37 INCHES, 106.7 X 157.5 X 94 CM. © JEFF KOONS

Of Law and Order

Unlike most other government agencies, policing agencies from the local police department all the way up to the National Security Agency act with little explicit legislative authorization, and generally lack a process for public rulemaking. In short, they are not authorized democratically the same way that the rest of government is. A police chief who wishes to deploy a drone, for instance, can do so without needing to follow written procedures, justifying the decision, or seeking responses from the public.

“When things go awry, we blame the police,” says Barry Friedman, Jacob D.

Fuchsberg Professor of Law. Friedman is writing a book on policing and the Constitution, serves as the reporter for the American Law Institute’s new *Principles of the Law: Police Investigations*, and has published extensively on police regulation and constitutional law. “The truth is, the fault is ours. For the most part, we authorize police to enforce the law in the broadest terms, and then we cross our fingers and hope that each of the roughly 15,000 policing agencies across the country strikes the optimal balance between the various interests at stake.”

Friedman proposes a fundamental change: move

policing agencies toward principles of democratic authorization.

To help ensure that policing occurs within democratic norms and that it is minimally intrusive on civil rights, Friedman has founded the Policing Project at NYU Law. The project will focus initially on practices that implicate Fourth Amendment rights: surveillance, seizure of persons or property, and use of force.

Ultimately the project will also move toward promoting legislative authorization of police tactics, police utilization of public rulemaking, and data-driven policing that meets the criteria of cost-benefit analysis. Under Friedman’s direction, the project will work to achieve its goals



through legislative testimony, developing policing best practices, data gathering and analysis, and, where appropriate, legislation.

“Policing simply will not be on a firm footing until it has more of a democratic pedigree,” says Friedman. “Our goal is to collaborate with a variety of partners—including, importantly, the police themselves—to help make this a reality.”

“I’ve tried today to emphasize that regulations are an important and valuable force in our society, and are the reason that the air we breathe and the water we drink is clean, our food and medicine is safe, our workplaces are secure, our markets operate as advertised, and our values are embodied in our public and our private institutions.”

Professor of Practice **Sally Katzen**
Senate Committee on Homeland Security and Governmental Affairs
“Toward a 21st-Century Regulatory System”
February 25, 2015



Tolentino’s 1976 swearing-in, conducted by Judge Harry Hazelwood and witnessed by Ernest Tolentino and Mayor Paul Jordan.

A Judge Who Delivered

Jersey City, New Jersey, posthumously honored native daughter Judge Shirley Tolentino LLM ’82 last December, when the Bergen South Post Office was renamed for her.

Tolentino, the only African American woman in her class at Seton Hall University School of Law, was a deputy attorney general of the State of New Jersey before becoming the first African American woman on the Jersey City Municipal Court in 1976 and, subsequently, that court’s first African American female presiding judge.

In 1984, Tolentino, who had been a community activist since early in her legal career, became the first African American woman appointed to the New Jersey Superior Court. She remained on that bench until her death in 2010. In House discussion of the renaming, US Representative Blake Farenthold called Tolentino “a pillar of her community and a strong role model for women and men of all ages.”

Grumpy Court

University of Virginia Law Professor Michael Livermore ’06 and two Dartmouth College computer scientists have published an article in the 2015 *Washington University Law Review* asserting that over time Supreme Court opinions have become longer, more layperson-friendly, and increasingly grumpy.

Using computer analysis of negative and positive language in Supreme Court opinions from 1791 to 2008, the authors gave 107 justices a “friendliness score” and determined that five current justices are among the 10 most cross: Samuel Alito, Stephen Breyer, Anthony Kennedy, Antonin Scalia, and Clarence Thomas.



Under Pressure

On January 16, Matthew Ahn '14 entered the *Guinness World Records* by breaking the speed record for traveling to every single stop in the New York City subway system. By the numbers, Ahn traveled:



21
HOURS

49
MINUTES

35
SECONDS TO

468
STATIONS COVERING

230
ROUTE MILES

It was Ahn's fourth attempt, and notably, he accomplished it solo. In the spring, a team of two from England attempted to break Ahn's record, but were thwarted by a problem every New Yorker can relate to: unexpected service changes.

Gideon's Reprise

In *Hurrell-Harring v. New York*, the Law School's New York Civil Liberties Clinic made key contributions to a seven-year-long class action lawsuit that culminated in a historic settlement for reforming New York State's public defense system.

The New York Civil Liberties Union, law firm Schulte Roth & Zabel, and students from the clinic demonstrated that the state's public defense system violated the Constitution's right to counsel—affirmed in 1963 by the US Supreme Court in *Gideon v. Wainwright*—by not providing poor defendants with adequate legal representation. The students were able to show that poor defendants were routinely arraigned without attorneys, burdened by high bail, and imprisoned



for long periods of time for petty crimes. The class action has wide ramifications and has drawn the attention of other states as well as the US Department of Justice, which filed a statement of interest in September 2014.

In the settlement, New York State agreed to a series of major reforms, including ensuring that poor defendants have lawyers at their first court appearances and

substantially limiting the number of cases carried by public defense lawyers.

"Marshaling the legal resources needed to do a case like this on behalf of poor people is an enormous challenge, and we couldn't have done it without the students," says Corey Stoughton, NYCLU's lead attorney on this suit and an NYU Law adjunct professor who co-teaches the clinic with Clinical Professor of Law Claudia Angelos.

The clinic was victorious in another suit against the city this year: New York City announced in July that for the first time it would allow visits from family members and maintain records of the impoverished and unclaimed dead buried at Hart Island, the nation's largest potter's field.

Change for a \$10

When *Rolling Stone* entered the debate about putting a woman on the \$10 bill by offering a list of 10 worthy female candidates, number two on their roster was Inez Milholland (Class of 1912). Milholland made an indelible impression leading the Woman Suffrage Parade of 1913 in Washington, DC. She wore a crown and a long white cape while riding a white horse down Pennsylvania Avenue. A legendary activist for numerous causes,

Milholland died at age 30 after collapsing in the middle of a speech promoting women's suffrage, and became a martyr of the movement. Her last public words, just before her collapse, were, "Mr. President, how long must women wait for liberty?"



Foundational Knowledge

Before law school, William McCracken '00 had never set foot in New York, yet today he is an expert on the city's most basic elements—cornerstones. For almost seven years, McCracken, a partner at Ganfer & Shore, has been pounding the pavement in search of these building blocks to photograph. His Flickr page, "Cornerstones of NY," sorts more than 1,100 of his Manhattan discoveries into albums by year and will challenge the most street-savvy New Yorker. Can you pinpoint this marker's location? (The answer is in the margin.)



ILLUSTRATION: HARRY CAMPBELL | MILHOLLAND INSET: LIBRARY OF CONGRESS

SPRING STREET AND 6TH AVENUE, MANHATTAN: © WILLIAM MCCRACKEN

“The Clean Power Plan is not, as its opponents argue, an unprecedented approach that risks economic calamity; instead, it is just another example of the Environmental Protection Agency doing its job to ensure that polluters account for the cost of their pollution in a manner that will result in substantial net economic benefits to the public.”

Richard Revesz
House Energy and Commerce Committee
“EPA’s Proposed 111(d) Rule for Existing Power Plants: Legal and Cost Issues”
March 17, 2015

No Trial by Jury

A new undertaking at the Law School will focus on a venerable yet disappearing feature of the American legal system: the civil jury trial. Why are so few civil cases resolved by juries? What are the consequences? Are there reforms that might stop or slow the jury trial’s demise? The just-launched Civil Jury Project (CJP) will tackle these questions.

The founder of Susman Godfrey, Stephen Susman, has provided funding for the project. He serves as CJP’s executive director and, as an adjunct professor, is also teaching the fall course How to Try a Jury Case Intel- ligently. Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, and Catherine Sharkey, Crystal Eastman Professor of Law, serve as the project’s faculty directors.

“This is a critical moment in American history for the jury,” says Susman. “The Seventh Amendment guaran- tees citizens the right of trial

by jury in common-law civil cases. The aim of this project is to gather and assess empirical data on the down- trending, and to examine the theoretical and practical cri- tiques of jury tri- als and ways to improve them.”

While only recently formed, CJP has already enlisted as advis- ers a roster of distinguished judges, academ- ics, and jury consultants, including fed- eral and state court judges who have agreed to use their

courtrooms as “laborato- ries” for the implementation of certain reforms in appro- priate cases. Says Sharkey: “NYU’s Civil Jury Project, having brought together all relevant players—judges, lawyers, academics, and jury consultants—is uniquely poised to pursue a method- ologically sound, policy- driven research agenda that will produce powerful data about the function, and future, of the civil jury.”

In 1962,
juries resolved
5.5%
of federal
civil cases.

Since 2005,
the rate has been
<1%.

Area of Agreement

With a foreword by Bill Clinton and acknowledgments of the Koch Brothers and the Heritage Foundation, *Solutions: American Leaders Speak Out on Criminal Justice* explores bipartisan opposition to mass incarceration. Brennan Center for Justice President Michael Waldman ’87 and Justice Program Director Inimai Chettiar asked elected officials, advocates, and presidential candidates such as Joe Biden, Hillary Clinton, Ted Cruz, Kamala Harris, Martin O’Malley, Rand Paul, Marco Rubio, Bryan Stevenson, and Scott Walker to contribute essays proposing solutions to over-incarceration. “In this time of increased political polarization,” former president Clinton wrote in the foreword, “there is one area where we have a genuine chance at bipartisan cooperation: the over-imprisonment of people who did not commit serious crimes.”



A Worthy Dozen

Selected by 24 judges from nearly 300 nominations of lawyers ages 40 years and younger, 12 NYU Law alumni were named among *New York Law Journal’s* 50 Rising Stars of 2015:

Daniel Bitton LLM ’04

Partner, Axinn, Veltrop & Harkrider

Lauren Burke ’09

Executive Director, Atlas: DIY

Ross Hirsch ’00

Partner, Herrick, Feinstein

Nilda Isidro ’07

Partner, Goodwin Procter

Chi-Yu Liang LLM ’09

Partner, Withers Bergman

David Livshitz ’05, LLM ’06

Senior Associate, Freshfields Bruckhaus Deringer

Joseph Loy ’04

Partner, Kirkland & Ellis

Renato Matos LLM ’14

Partner, Capell Barnett Matalon & Schoenfeld

Sateesh Nori ’01

Attorney-in-Charge of the Queens Neighborhood Office, Legal Aid Society

Kevin Orsini ’03

Partner, Cravath, Swaine & Moore

Farrah Pepper ’01

Executive Counsel for Discovery, General Electric

Benjamin Rajotte LLM ’07

Assistant Professor of Law, Touro College Jacob D. Fuchsberg Law Center



Celestial Reasoning

In the 21 years that Barbara Walters has anointed the Most Fascinating People of the Year, the top spot has gone to luminaries such as Nelson Mandela, J.K. Rowling, and Steve Jobs. The 2014 title went to Amal Clooney LLM '01, who, among her many accomplishments:

Was a senior adviser to Kofi Annan, the joint special envoy of the UN and the Arab League on Syria;

Served as counsel to the inquiry on the use of armed drones led by the UN special rapporteur on counter-terrorism and human rights;

Was a legal adviser to the UN commission investigating the assassination of former Lebanese Prime Minister Hariri;

Represented clients before the International Criminal Court, International Court of Justice, and European Court of Human Rights;

Married George Clooney—"really one of the greatest achievements in human history," Walters said.

In Good Company

New faculty members of the American Academy of Arts and Sciences:

DAVID GARLAND
LEWIS KORNHAUSER

New faculty and alumni members of the American Law Institute:

THERESA AMATO '89
ANTHEA ROBERTS LLM '03
JOHN GLEESON
JILL MANNY
FLORENCIA MAROTTA-WURGLER '01
TROY MCKENZIE '00

A-Paper Confessions

Professor David Richards's spring seminar Free Speech, Ethical Transformation, and Social Change: Race, Gender, and Sexual Orientation explored the role free speech played in resistance, such as Gandhi's in India and the US feminist and antiwar movements in the 1960s and '70s. For his final law school project, David Billingsley '15 recorded an album, *Confessions*, with his band Mary's Roommate that explored themes in the course. Giving him an A, Richards praised Billingsley for his candor: "[*Confessions*] reflected beautifully his own personal struggles with the issues of the seminar, in particular, overcoming the patriarchal voices in his psyche."

Billingsley found turning his ideas into songs made the topic more accessible: "Music allows people to react to the message more directly and sincerely through feeling"



Country Miles and Decades

In *Around the World in 50 Years*, Albert Podell '76 writes a charming, engaging, and sometimes harrowing chronicle of:

102
TRIPS
in
50
YEARS
to
203
COUNTRIES,
7
OF WHICH NO LONGER EXIST.

The journey began in 1965 when Podell and his friend Harold Stephens set out to circumnavigate the globe by car, which they achieved and wrote about in their book, *Who Needs a Road?*



Moral Support

Since May, professors Anthony Appiah and Kenji Yoshino have comprised two of the three *New York Times Magazine* Ethicists, who respond every Sunday to readers' quandaries over right and wrong. The philosopher and the constitutional scholar, respectively, have wrestled with recent queries such as:

What should I do about a nanny who drinks?

Can I change my name to avoid job discrimination?

Do another woman's marriage vows bind me?

Should I respond to my mechanic's racist poster?

Directorial Deficit

Although women fill most movie theater seats, behind the scenes they are scarce—comprising only seven percent of directors of top-grossing 2014 films. Melissa Goodman '03 of the ACLU of Southern California has asked state and federal agencies to investigate discriminatory hiring practices at major studios. “Hollywood doesn’t get this free pass,” she told the *New York Times*.

New Frontiers

The Center on Law and Security selected Joshua Fattal '18 and Kevin Kirby '17 as scholars for ASPIRE (A Scholarship for Service Partnership for Interdisciplinary Research and Education), a program funded by the National Science Foundation and run in conjunction with NYU's Polytechnic School of Engineering with the goal of training cybersecurity specialists. ASPIRE provides a full-tuition scholarship, a stipend, and a wide range of interdisciplinary academic opportunities with students and faculty from other NYU schools. Fattal, a Phi Beta Kappa graduate of Columbia University, will examine the implications of cybersecurity for balance between privacy and national security. Kirby has an interest in national security law, renewable energy, and computer programming. He previously served five years as an army engineer and graduated from the United States Military Academy at West Point. The two join Brian Eschels '16, who was named an inaugural ASPIRE scholar last year.



Fattal



Kirby



Eschels



Boies, Scouts

Law School Trustee David Boies LLM '67, already a powerful legal advocate for same-sex marriage, successfully represented the first openly gay Boy Scout leader challenging a controversial policy banning gay adults from participating in the 105-year-old organization. His client, 18-year-old summer camp leader Pascal Tessier, had the support of his local New York City council, including board member Ricky Mason '87, who told the *New York Times*, “He’s highly qualified. We said yes to him irrespective of his sexual orientation.”

Corps Values

Antonia House '15 and Annie Mathews '14 have been named 2015 Justice Fellows by the Immigrant Justice Corps, founded by Chief Judge Robert Katzmann of the US Court of Appeals for the Second Circuit, an adjunct professor. The IJC awards fellowships for recent graduates to work with legal services providers in New York City to provide critical counsel and support for poor immigrants.



House



Mathews

House, an Institute for International Law and Justice Scholar who was a student in the Immigrant Rights Clinic and has worked at Catholic Charities-New York and the Center for Constitutional Rights, is at Make the Road New York (MRNY).

Mathews, a Root-Tilden-Kern Scholar, has been a legal fellow with the ACLU and has interned at Bronx Defenders, MRNY, and the Legal Aid Society; her fellowship is with Neighborhood Defender Service of Harlem.

The Ambassadors



For 29 diplomats from 17 nations, an NYU Law classroom offered a chance to learn about the internal law of the United Nations. José Alvarez, Herbert and Rose Rubin Professor of International Law, addressed a range of complex issues in Law and Practice of the UN, the inaugural course of the Institute for Executive Education (IEE).

The IEE, launched this past January, offers



non-degree programs for professionals. The UN course was customized and developed with the United Arab Emirates for young diplomats of all nations.

Although the students were advanced professionals, not all had legal training. The course therefore provided a compressed, high-level version of the kinds of discussions that might occur in Alvarez's three-credit course



International Organizations. “My goal is not to solve the problem, just to frame it for you,” Alvarez told the class.

“Sometimes diplomats lack legal knowledge, and sometimes lawyers lack diplomacy skills,” says Damira Zhana-tova, from the Kazakhstan Mission to the UN, “so the synergy in the course of law, diplomacy, business, and political issues together is really useful.”

Straddling the Thin Blue Line

Amid a national uproar over police conduct, Brooklyn District Attorney Kenneth Thompson '92 is working both to fight crime and to restore public trust.

BY AISHA LABI

As a prosecutor in the US Attorney's Office for the Eastern District of New York in 1999, Kenneth Thompson '92 was working on one of the most widely publicized cases of that time. A group of white New York City police officers had been charged in connection with the brutal beating and torture of a handcuffed black Haitian immigrant, Abner Louima, in a precinct bathroom. While Thompson was the most junior member of the trial team, senior prosecutors Alan Vinegrad '84 (now a partner at Covington & Burling) and Loretta Lynch (now US attorney general) selected him to give the opening statement. "He had worked on [the case] since the beginning," says Vinegrad. "Loretta and I thought that he deserved it and that he'd do a great job."

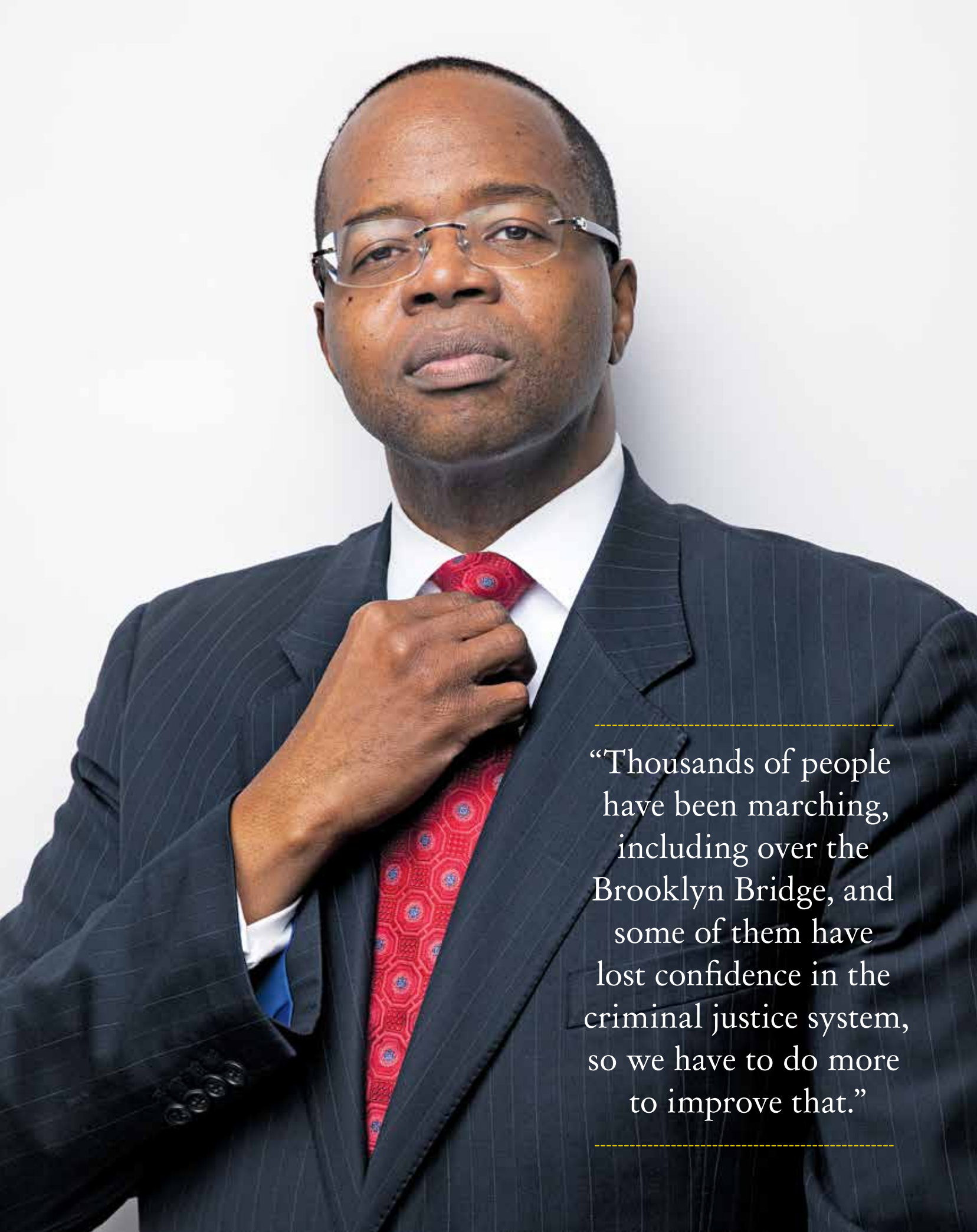
The evidence offered plenty of material for Thompson to deliver an incendiary statement. Instead, the transcript shows a powerful but restrained presentation, in which his most dramatic declaration was, "Abner Louima was tortured in that bathroom, and his torture was cruel and it was simply inhumane." In an era before cell phone technology made images of police brutality readily available, Thompson presented an unvarnished description of the violent assault. As the evidence mounted against the lead defendant, Justin Volpe, he changed his plea to guilty midway through the trial. He is serving a 30-year sentence in federal prison.

Today, Thompson is the Brooklyn district attorney, leading the third-largest DA's office in the nation after those in the cities of Los Angeles and Chicago.

While Louima's assault occurred nearly two decades ago, the case still encapsulates a complex reality that Thompson faces as a law enforcer, shaped by both personal and professional experience. The son of a police officer and graduate of John Jay College of Criminal Justice, Thompson has dedicated much of his career to crime fighting. As many initiatives of his current office demonstrate, his core mission is the same as that of the cop on the beat: getting the bad guys.

But through the Louima case and in other roles—including his current position—Thompson has also investigated ways in which law enforcers themselves may misstep, sometimes egregiously, and it has at times been his job to call them to account. It speaks to Thompson's view of justice that he has made correcting past miscarriages of it—wrongful convictions—one of the top priorities for his office.

The charged mixture of race and police brutality in the Louima case also resonates today, as a series of police killings of African Americans has made headlines and provoked public outrage. Against this backdrop, Thompson's dual role is cast in sharp relief. From Ferguson to Baltimore to New York, there is an urgent need



“Thousands of people have been marching, including over the Brooklyn Bridge, and some of them have lost confidence in the criminal justice system, so we have to do more to improve that.”



KEY MOMENTS: 1. NYU Law graduation, 1992; 2. NYU Law Picturebook, 1989–90; 3. as a child, circa 1972; 4. Officer Clara Thompson at the precinct, circa 1985; 5. With Ronald Noble, 1992; 6. Courtroom sketch of Thompson as assistant US attorney in 1999, directing Patrick Antoine on the stand, with defendant Justin Volpe in the foreground and Judge Eugene Nickerson of the US District Court for the Eastern District of New York presiding; and 7. at Bronx Supreme Court in 2012, announcing a settlement between his client Nafissatou Diallo and Dominique Strauss-Kahn.

for effective policing in minority communities heavily affected by crime. Every day, more than 500 prosecutors in Thompson’s office work hand in glove with New York City police officers to pursue the broad array of crimes that are the bread and butter of any prosecutor’s office in a major urban area. But in these same communities, some law enforcement tactics have severely eroded trust among the people the police are sworn to protect, and community members might see a DA’s office as both part of the problem and part of a potential solution.

“We have to do better in terms of the partnership that law enforcement has to have with the community,” Thompson says. “Thousands of people have been marching, including over the Brooklyn Bridge, and some of them have lost confidence in the criminal justice system, so we have to do more to improve that.”

Prosecutors and police chiefs around the country face the same challenge. As Brooklyn’s first African American DA, Thompson may face even greater pressure to restore trust between minority communities and the police. When asked about it, Thompson says that he “gets” the question, but deflects, saying he is the district attorney for all of racially diverse Brooklyn: “It is important for people in all communities to feel that law enforcement is there for them, not there to target them.”

Sitting in his office just blocks from the Brooklyn Bridge, Thompson exudes self-assurance. Tall and broad-shouldered, he dominates the expansive 19th-floor room from behind his desk. More than his physical presence, however, it is his baritone voice that draws the listener in. He speaks deliberately, with the thoughtful cadence of someone accustomed to choosing his words carefully. While he has the polish of a veteran politician, he has been in his first elected office for less than two years.

His journey to his current position began in a public housing apartment in East Harlem. The portrait of a young Thompson that friends, family, and colleagues paint is one of a serious person and an introvert who eschewed sports and hanging out in his neighborhood, preferring to read. His mother, says Thompson, was “the most important person who had influence on me.” One of the city’s first women to serve as a patrol officer, Clara Thompson had determination and a will to “always try to do something better,” as she puts it, qualities that transformed her family’s life.

Clara had worked as a nurse’s aide and in the post office when she took the newly gender-neutral civil service exam in the 1970s. She was assigned to a beat in the Bronx when Thompson was seven, and his memories of the era are vivid. She would put on her uniform at home, because female officers were such a novelty that there were no facilities for them at the precinct. Heading out to work each morning from the Senator Robert F. Wagner Houses in a police uniform was not for the faint of heart. “I don’t think people understand the weight of her decision, in ’73, to become a police officer,” Thompson says. “A black woman, living in the projects with three kids by herself; it was extraordinary.” She believed in herself, and her son was inspired. “If you want to trace what motivated me to go into law enforcement,” says Thompson, “it was my mother.”

Clara's new career gave him a level of comfort with law enforcement alien to many other African American boys from the projects. "I grew up in the precinct," says Thompson. Clara's job also elevated the family's finances. In 1974, she moved her family to the middle-class development of Co-op City in the northern reaches of the Bronx.

Thompson became the *Daily News* paperboy for his 26-story building and got to know many of his neighbors. He speaks fondly about growing up there. "It was a beautiful community for us," Thompson says. The radical change in environment fostered the development of the studious and serious boy. "When all the other kids would be hanging out behind the building, he was never one of those kids," recalls his mother. "He was always doing his homework, being by himself."

Planning to follow his mother's path, Thompson took the police entrance exam when he was 18. He scored 97 percent, in the top tier of thousands of applicants, but, since he wouldn't be eligible to join the force until he turned 20, he began looking for other ways to pursue law enforcement. In 1985, he enrolled at John Jay College of Criminal Justice, a part of the City University of New York, and after graduating magna cum laude, he entered NYU School of Law in 1989.

During his third year of law school, he found the path he was seeking. An active member of the Black Allied Law Students Association, Thompson recalls that the arrival of Ronald Noble created a stir, particularly among the law students of color. Noble, who would go on to serve three terms as secretary general of Interpol—the first American to hold that position—

was then a high-profile federal prosecutor who had been the president of his class at Stanford Law. Thompson signed up for Noble's Evidence class, where he says he was "mesmerized" as Noble peppered his lectures with examples from his days as an assistant US attorney in Philadelphia. "He was so impressive and his work was so amazing; I knew from that point that I wanted to be a prosecutor," Thompson says. "I wanted to be like him."

In turn, Thompson made an impression on his professor, who recalls a focused and mature young man whose formal demeanor set him apart. Noble once asked Thompson whether he had a job to go to after class, because he was the only student who came to his class in a dress shirt, dress slacks, and a jacket. Thompson's earnest answer was that he dressed to convey how seriously he took the job of being a law student.

The two got to know each other better when Thompson was selected to be one of two students on the admissions committee, on which Noble also served. It was during this time, Thompson recalls, that he told Noble of his intention to become a prosecutor and asked for advice about courses, internships, and jobs.

Through Noble, Thompson landed his first full-time job focused on criminal justice. Notably, it involved investigating a law enforcement operation that had gone awry. In 1993, the Clinton administration tapped Noble to review the siege of and assault on the Branch Davidian compound by federal agents in Waco,

Texas, earlier that year. The operation had ended disastrously with the deaths of scores of people, including several federal agents. Noble—then assistant secretary of the US Treasury with oversight of agencies including the Bureau of Alcohol, Tobacco, and Firearms—reached out to his young protégé, and Thompson obtained permission for an early conclusion of his clerkship with Federal District Judge Benjamin Gibson in Michigan to join the investigative team in Washington as Noble's special assistant. "Ken was the youngest guy on the team and the least experienced, but he established himself by being the hardest worker, with no task too small or beneath him," says Noble. Thompson became the go-to fact expert. "You could ask him anything about agent X or Y, what he did, or document X or Y, and he would know it," Noble recalls. The investigative report, delivered in 1993, was sharply critical of many aspects of the Waco operation.

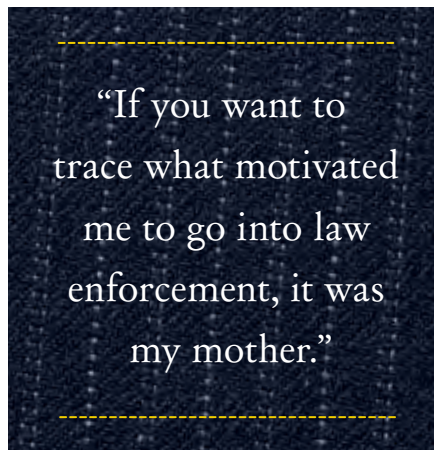
Thompson then spent five years as an assistant US attorney in Brooklyn, working on an array of investigations and prosecutions of bank robbery, murder-for-hire, bribery, embezzlement,

kidnapping, and other offenses, in addition to the Louima case. That was followed by 14 years in private practice, most of it at a firm that he and Douglas Wigdor formed to represent individuals in discrimination and civil rights cases. Here, too, Thompson handled cases that drew a media spotlight. One of their firm's first cases was a 2003 lawsuit against Macy's, alleging that those operating its private policing system engaged in racial profiling of suspected shoplifters. The suit claimed that Macy's security personnel singled out Sharon Simmons-Thomas because she was black and detained her in a holding cell, where

she was handcuffed and pressured to make a false confession, even though she had receipts for the items she bought. While the case settled for an undisclosed amount, it led to an investigation by Eliot Spitzer, then New York's attorney general. Macy's settled a complaint filed by the state for \$600,000 and agreed to reform its in-store security practices.

No case drew Thompson more attention—and criticism—than his 2011 representation of hotel maid Nafissatou Diallo in her civil suit growing out of accusations of sexual assault by the then-head of the International Monetary Fund, Dominique Strauss-Kahn. Thompson stoked media interest in the case in ways that, critics said, ultimately undermined the Manhattan DA's efforts to hold Strauss-Kahn accountable. Diallo settled her suit, and Thompson makes no apologies for how he handled the case, although he acknowledges that he might have done some things differently. "I had a woman who was in desperate need of a lawyer to protect her interests and who was going against one of the most powerful men in the world at the time," he says. "She needed justice, and I fought to get her justice."

Thompson had first introduced Diallo to the media at a highly orchestrated press conference at the Christian Cultural Center, a Brooklyn megachurch where Thompson has worshiped for the past two decades. Accompanying him were local politicians as well as the church's pastor, Reverend A.R. Bernard, something



of a political kingmaker (the pastor's endorsement, reported the *New York Times*, was the first that Michael Bloomberg announced in his bid for a third term as New York City mayor). In that spectacle, some saw the beginnings of a campaign.

Thompson laughs at the idea that someone would take such a difficult case to set up a run for Brooklyn DA. His wife, Lu-Shawn, whom he met when they were both students at John Jay, says he had over the years occasionally talked about seeking the office. She would brush off the idea, worried that because he is "sensitive," he would find the intense media coverage too grueling. But the crucible of the Diallo case, she says, changed her views. "They were attacking him pretty bad and it worked out."

In his first-ever run for office, Thompson took on Charles Hynes, a 23-year incumbent as the Brooklyn DA. Hynes had seen his chances dwindle amid allegations of prosecutorial misconduct, abuse of power, and corruption. Thompson, meanwhile, attracted key backers, such as Brooklyn congressman and fellow NYU Law grad Hakeem Jeffries '97, whom he had gotten to know when Jeffries interned in the US Attorney's Office. They had bonded over shared backgrounds and priorities. "We both grew up in rough-and-tumble neighborhoods, and I think that has helped shape our experience and sense of social justice," says Jeffries. Thompson's campaign also drew on widespread popular support, including from many of the 37,000 congregants of Bernard's church and from members of the powerful health care workers union.

Several attorneys who had opposed Thompson in court, including Willis Goldsmith '72, also got behind him. Goldsmith, a partner at Jones Day in New York, remembers Thompson as the "voice of reason" throughout a contentious 2007 race discrimination case in which Thompson represented a black-owned business contractor against Goldsmith's client, Verizon. Goldsmith, who won that case, later became friends with Thompson. He not only supported Thompson's campaign, but also served on his transition committee. Thompson won the November 2013 election with 72 percent of the vote.

When he took office in January 2014, Thompson quickly established a shift in tone and priorities. He beefed up resources and support for crime prevention and investigation, including by setting up Brooklyn's first Crime Strategies Unit to curb high levels of gun violence in troubled neighborhoods. Staffed by senior prosecutors, the unit aims to

identify people Thompson calls "the drivers of crime" and keep them off the streets. Unlike the NYPD's controversial stop-and-frisk policy, the crime strategies approach targets known individuals—often gang members—believed to commit most shootings. "Whenever any of these guys gets arrested anywhere in New York," says Thompson, "we get an e-mail and our criminal strategies folks spring into action to prepare the folks in intake in terms of what's the appropriate crime to charge them with."

The DA's office is also keeping an eye on the supply side. In an effort to stop the flow of illegal guns into Brooklyn, Thompson and NYPD Commissioner William Bratton announced in April 2014 that, after a seven-month joint investigation, they were bringing a 558-count indictment against six firearms traffickers who were operating an "iron pipeline" from Georgia to Brooklyn.

Thompson also took long overdue steps, such as establishing a Forensic Science Unit. "How do we convict rapists and avoid convicting innocent people if we don't have a dedicated forensic science unit?" Thompson asks. Another new unit—developed to tackle fraud against immigrants—had its genesis in the regular lunches he has with former Manhattan District Attorney Robert Morgenthau, who had created a similar unit in his borough. Thompson also gave four-percent raises to many of his prosecutors, some of whom were making less than \$60,000 after five years as assistant DAs.

Even as he has moved to strengthen the crime-fighting capabilities of his office, Thompson has worked in tandem to check practices that he sees as undermining effective law enforcement, especially in minority communities, and to correct previous injustices. Three months into his term, for example, he alerted the NYPD that his office would no longer prosecute

most low-level marijuana possession cases, noting that judges end up dismissing about two-thirds of such cases, and that he could not ignore the racial disparity in these arrests. Mayor Bill de Blasio later announced that the policy would be followed citywide.

During Father's Day weekend this June, Thompson held the first of several planned Begin Again days, in which those with outstanding arrest warrants for minor infractions, such as drinking in public or being in a park after dark, can clear them through a pop-up legal advocacy and courtroom system in a neighborhood church. According to Thompson's office, there are about 250,000 such open warrants in Brooklyn that are taxing an overburdened court system. More than 1,000 people arrived at the Emmanuel Baptist Church in Clinton Hill that day, and 670 warrants were cleared.

But the initiative that has brought national attention to Thompson's commitment to the integrity of the criminal justice

"The wrongful conviction work is very, very important to what I stand for as a district attorney. I'm not interested in freeing murderers into the community, but we cannot allow innocent men, or men who were wrongfully convicted, to be in prisons for murders and other crimes that they did not commit."

system, and not just the pursuit of lawbreakers, is his office's devotion of enormous resources to the review of suspected wrongful murder convictions. He had campaigned on the issue, promising to rectify past injustices if elected.

Thompson brought in Ronald Sullivan Jr., faculty director of Harvard Law School's Criminal Justice Institute, to co-lead a renamed and reconceived Conviction Review Unit (CRU), and provided it with a dedicated staff of 10 full-time prosecutors and three investigators. Of the more than 100 cases the unit has identified for review, 37 had been completed as of July 2015, and 13 of those defendants were found to have been wrongfully convicted, some after serving decades in prison. In recent months, Thompson has expanded the original scope of the review beyond murder convictions to include other miscarriages of justice, such as the case of Michael Waithe. Falsely accused and then convicted of burglary nearly 30 years ago, Waithe served 18 months in jail and faced deportation as a result of his conviction when he returned from his eldest daughter's Barbados wedding in 2011. "That caused me to feel strongly that I can't limit myself to homicide cases," Thompson says.

All prosecutors have a duty to investigate claims of innocence or wrongful conviction, but in the vast majority of jurisdictions, that responsibility rests on the original prosecutor. The reviews often take a long time and the prosecutors, with full dockets of ongoing cases, don't have a mandate to prioritize them, says Deborah Gramiccioni, executive director of the NYU Law Center on the Administration of Criminal Law and a former prosecutor. In Thompson's office, however, the CRU makes recommendations to an independent panel. "Making a dedicated CRU shows that review is a priority of the office and therefore these investigations happen more quickly," says Gramiccioni.

This streamlined process has been criticized by some involved in the original prosecutions who say they have not been given chances to respond. Such reactions are inevitable, says Samuel Gross, a University of Michigan Law School professor and the editor of the National Registry of Exonerations, a comprehensive online database: "It's in the nature of this sort of review that some people will get rubbed the wrong way." The process Thompson has established, says Gross, "is remarkable for the level of openness with which the work has been done."

For Thompson, the unit's achievements represent justice at its most fundamental. "The wrongful conviction work is very, very important to what I stand for as a district attorney," he says. "I'm not interested in freeing murderers into the community, but we cannot allow innocent men, or men who were wrongfully convicted, to be in prisons for murders and other crimes that they did not commit."

Among the police shootings drawing major headlines during the past year, one was on Thompson's turf. Akai Gurley, a young African American man, was killed by an officer's ricocheting bullet in the dark stairwell of an East New York public housing development last November. While a number of other recent high-profile police killings of black men did not lead to indictments, this one did: Thompson's office has



THE THOMPSONS IN 2013: Kenny, Lu-Shawn, Kenneth, and Kennedy.

charged Peter Liang with manslaughter. The move was hailed by many as an overdue demonstration that "black lives matter"—a phrase that has gained currency around the country following incidents of police violence.

The public uproar over police use of force—and how to respond when it crosses the line—continues to bring added pressures to Thompson's job. But even as he grapples with these issues, Lu-Shawn says, her husband remains fundamentally the same person she met years ago, down to the long hours he puts in at work and the music that blares out of his headphones. "That's how he relaxes," she says. Thompson acknowledges that he can be "too serious," but close friends speak of his quick sense of humor and enjoyment of family time. And it is clear that the seriousness with which he has approached each chapter of his life has led him to exactly where he wants to be. From time to time, when Thompson has had a particularly hard day, Lu-Shawn asks him, "Do you like this job?"

The answer, she notes, never changes: "He always says he loves his job." □

Aisha Labi is a freelance writer in New York City.



AMY ADLER
Emily Kempin
Professor of Law



RACHEL BARKOW
Segal Family Professor of
Regulatory Law and Policy



SARAH BURNS
Professor of
Clinical Law



ADAM COX
Robert A. Kindler
Professor of Law



PEGGY COOPER DAVIS
John S. R. Shad Professor
of Lawyering and Ethics



NORMAN DORSEN
Frederick I. and Grace A.
Stokes Professor of Law



RICHARD EPSTEIN
Laurence A. Tisch
Professor of Law



SAMUEL ESTREICHER
Dwight D. Opperman
Professor of Law



JOHN FEREJOHN
Samuel Tilden
Professor of Law



BARRY FRIEDMAN
Jacob D. Fuchsberg
Professor of Law



DAVID GOLOVE
Hiller Family Foundation
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Herbert M. and Svetlana
Wachtell Professor of
Constitutional Law and
Civil Liberties



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William T. Comfort, III
Professor of Law



STEPHEN HOLMES
Walter E. Meyer
Professor of Law



DANIEL HULSEBOSCH
Charles Seligson
Professor of Law



SAMUEL ISSACHAROFF
Bonnie and Richard Reiss
Professor of
Constitutional Law



MATTIAS KUMM
Inge Rennert
Professor of Law



SYLVIA LAW '68
Elizabeth K. Dollard
Professor of Law,
Medicine and Psychiatry



DARYL LEVINSON
Vice Dean, David Boies
Professor of Law



DEBORAH MALAMUD
AnBryce
Professor of Law



TREVOR MORRISON
Dean, Eric M. and
Laurie B. Roth
Professor of Law



BURT NEUBORNE
Norman Dorsen
Professor of Civil Liberties



RICHARD PILDES
Sudler Family
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Constitutional Law



SAMUEL RASCOFF
Professor of Law



DAVID RICHARDS
Edwin D. Webb
Professor of Law



ADAM SAMAHA
Professor of Law



STEPHEN SCHULHOFER
Robert B. McKay
Professor of Law



BRYAN STEVENSON
Professor of
Clinical Law



JEREMY WALDRON
University Professor



KENJI YOSHINO
Chief Justice
Earl Warren Professor
of Constitutional Law

Pros in Con

We all know what constitutional law is, or think we do. But while remaining tethered to the founding document of the United States, constitutional law takes on new dimensions as it adapts to modern life and society. Shaping this evolving field, NYU's con law faculty is asking rigorous questions about how to live today within a 228-year-old framework for our laws and democracy.

Constitutional law grapples with some of our most difficult—and consequential—legal, political, and social questions. The range and scope of these questions are extraordinary: individual rights; federalism and separation of powers; the limits of popular sovereignty; race and class; wartime exigencies; and voting, among others.

These questions sweep broadly and intersect with other substantive legal subjects. Indeed, the traditional law school curriculum incorporates analysis of constitutional doctrine into a number of its core subjects. Property law explores the Takings Clause; administrative law studies constitutional due process obligations; and criminal procedure applies con law—focusing just on the Fourth, Fifth, and Sixth Amendments—to the criminal justice system. Once you look closely, says Professor Samuel Rascoff, you see that “there’s con law lurking everywhere.”

In recent years, the doctrinal and methodological boundaries of con law scholarship have expanded. Today’s scholars examine constitutional issues by way of traditional doctrinal methods of analysis as well as novel interdisciplinary ones that frequently employ methods of analysis from related fields such as political science, economics, history, and philosophy. “At NYU, we come at constitutional questions from a remarkably diverse range of perspectives,” says Barry Friedman, Jacob D. Fuchsberg Professor of Law. (See list on page 24.)

Con law scholarship now accounts for more than a dozen distinct legal specialties at NYU. (See diagram on page 23.) Some of these topics are completely new, while others would be familiar to a law student who matriculated decades ago—although contemporary research has pushed even the traditional fields in new directions.

Take, for example, property rights. Traditionally, scholars analyzed case law and related materials to determine whether a particular action constituted a taking or implicated a regulatory state issue. Contemporary scholarship goes further. In addition to analyzing doctrine, scholars today may incorporate economic and social science analysis to study “the incentive effects of government takings on property owners and investment” and how it might affect “the behavior and decision-making of government officials,” says Daryl Levinson, vice dean and David Boies Professor of Law. Similarly, the study of the separation of powers between the president and Congress now incorporates tools from political science. Rather than relying solely on traditional doctrine—the text of the Constitution and relevant

precedent—scholars in this field now also understand that the checks and balances between these two branches are profoundly affected by political parties, in particular when one party controls both branches. Modern scholarship in con law, explains Levinson, considers “the problems that arise in the real world.”

The fact that President Obama had granted fewer pardons in his first term than any president since John Adams did not pass unnoticed by Rachel Barkow, Segal Family Professor of Regulatory Law and Policy (though she applauds his more robust clemency record in his second term). While clemency is enshrined in Article II of the Constitution as a core executive power, it is generally underused and applied arbitrarily. Barkow is bringing some discipline to the process by reimagining it as a constitutional authority to oversee federal prosecutors and correct disparities among them in how they charge cases. “There are no individual remedies available for disparities among federal prosecutors, and oftentimes clemency is the only corrective for mandatory sentencing laws that are overbroad,” says Barkow. “Clemency is a needed corrective on the criminal justice system.”

A critical problem with clemency, says Barkow, an expert in administrative and criminal law, lies in the institutional design of the process. The Department of Justice, as the agency that both prosecutes a case and then receives a request for clemency in the same case, has an inherent conflict of interest, she says: “Every request for clemency is at some level a criticism of the DOJ’s decision to prosecute in the first place.” Barkow, who serves on the US Sentencing Commission, advocates establishing a bipartisan commission independent of the DOJ that would make pardon recommendations to the president.

Not all con law specialties track traditional legal subjects. Events within the past 20 years have prompted scholars to develop new areas of inquiry. Three such areas stand out at NYU Law.

The law of democracy studies “the process of organizing democratic elections” and “the structures of democratic governance,” says Richard Pildes, Sudler Family Professor of Constitutional Law. Pildes co-founded the field in the mid-’90s with Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, and Stanford Law Professor Pamela Karlan; the trio co-authored the first *Law of Democracy* casebook in 1998. They were motivated, in part, by then-current events, both foreign and domestic. Internationally, more new democracies were formed in the 1990s than in any comparable period,

BY CRAIG WINTERS '07

Enumerations

Take a glance at what the NYU constitutional law faculty are researching, what they have contributed to the academy, and the impact they've had, both on scholarship and in practice.

CONTRIBUTIONS

170

BOOKS PUBLISHED
(Source: WorldCat)

1,430

ARTICLES PUBLISHED
(Source: HeinOnline Law Journal Library)

SCHOLARLY IMPACT

63

CITATIONS BY THE
US SUPREME COURT
(Sources: Lexis and Westlaw)

38,556

CITATIONS IN LAW REVIEWS

The three most-cited con law articles:

680

"The Myth of Parity"

Burt Neuborne, 1977 *Harvard Law Review*

624

"Rethinking Sex and the Constitution"
Sylvia Law, 1984 *University of
Pennsylvania Law Review*

348

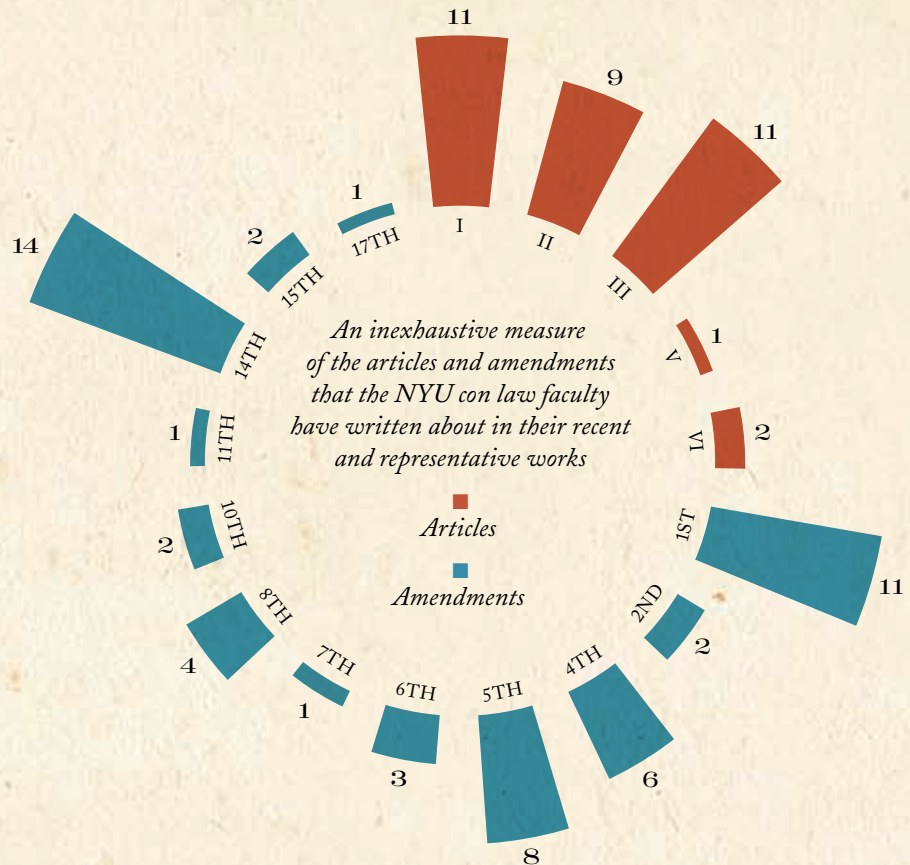
"Dialogue and Judicial Review"
Barry Friedman, 1993 *Michigan Law Review*
(Source: HeinOnline Law Journal Library)

PRACTICE

333

SUPREME COURT CASES LITIGATED
(Sources: Lexis and Westlaw)

WHEEL OF RIGHTS



REAL-WORLD CREDENTIALS

Some of the non-academic jobs formerly held by the con law faculty:

PRESIDENT

American Civil Liberties Union

NATIONAL LEGAL DIRECTOR

American Civil Liberties Union

SUPREME COURT CLERKS

for Justices
Ruth Bader Ginsburg,
Thurgood Marshall,
Antonin Scalia,
and six others

JUDGE

Family Court of the
State of New York

ASSOCIATE COUNSEL

Office of the
White House Counsel

DIRECTOR OF INTELLIGENCE ANALYSIS

City of New York
Police Department

SPECIAL ASSISTANT
Coalition Provisional Authority
in Iraq

LEGAL DIRECTOR
NOW Legal Defense and
Education Fund

and at home the Supreme Court decided an important series of cases dealing with democracy-related questions about redistricting, term limits, and campaign finance.

These issues “emanated from the same foundational set of questions,” Pildes says, and the law of democracy “brought these issues together to examine them in a systemic way.” The field’s roots in real-life concerns kept it focused on how the institutions of governance actually functioned; scholars employed empirical tools from political science “to bring realism and the understanding of consequences to laws that regulate government processes and actors,” Pildes explains.

The brand-new specialty of global constitutionalism “would have been unthinkable prior to the ’90s,” says Mattias Kumm, Inge Rennert Professor of Law. It was during the ’90s that scholars first developed the precursor field of comparative con law—which compared and contrasted national constitutions—and from that scholarship emerged a new idea: “There were so many similar structural starting points” across “a range of constitutions governing liberal democracies” that, Kumm says, he and others began to “think of the shared principles” of human rights, democracy, and rule of law as part of a “mutually supportive and complementary” transnational enterprise.

As political philosophies go, this was quite radical: Orthodox con law theory states that public laws are constitutionally legitimate if enacted by democratic systems operating through the sovereign state. The global constitutionalist idea Kumm helped refine held that national laws that span the national-international divide (for instance, climate change policy) cannot be legitimated by a single national polity. Rather, the constitutional legitimacy of such laws requires the integration of national and international legal systems—a topic scholars continue to explore.

The US government’s implementation of counterterrorism policy in the years following the 9/11 attacks transformed national security law. A new wave of scholars shaped by experiences operationalizing counterterror strategies, including Dean Trevor Morrison (former associate White House counsel) and Samuel Rascoff (former director of the NYPD’s intelligence analysis unit), brought a pragmatic, policy-oriented focus to the field. Their analyses of frontier security issues drew on established legal frameworks and scholarly approaches from related disciplines; Rascoff describes his most recent article, concerning presidential oversight of the intelligence state, as “20-year-old political science and administrative law insight as applied to five-minute-old and into-the-future problems.” It is these kinds of inventive scholarly mash-ups that are key to bringing conceptual clarity to a field, Rascoff says, “dominated by a very-short-term focus on managing disaster and scandal, and its aftermath.”

Even the traditional is being studied in untraditional ways. Amy Adler, Emily Kempin Professor of Law, has looked to biblical times to explain why she thinks the First Amendment offers

greater protection to words than to images (textual over pictorial pornography, for example). Her scholarship finds this preference rooted in ancient prohibitions on graven images and historical iconoclasm, and she concludes that jurisprudential assumptions about visuality have biblical rather than constitutional roots. Increasingly, Adler notes, this approach is in tension with con-

temporary culture, in which the image is emerging as the dominant mode of expression. “We—and particularly our students—live in an Instagram/Snapchat world,” she says, “one that First Amendment law has little to say about and is ill-prepared to address. My scholarship seeks to better equip scholars and jurists to address this new reality.”

Then there is the specialty of constitutional history, which has its own interesting history. Established in the late 19th century, the subject was out of favor for much of the next hundred years. But in the 1980s, high-profile legal conservatives started to discuss the “original intent” of the nation’s founders and proposed that the Supreme Court adopt “originalism” when interpreting the Constitution. Since then, a generation of historians—most of whom hold both law degrees and PhDs in history—have sought deeper, more nuanced, and more rigorous answers to questions of historical constitutional meaning.

Constitutional history first makes clear that “the constitutional project isn’t static,” says Daniel Hulsebosch, Charles Seligson Professor of Law. The story of the original Constitution and its modification—from the founding to adoption of the amendments through more recent changes to informal but important government practices—exposes “the gap between the simple framework of the Constitution and the complicated state we have now,” notes Hulsebosch. Contemporary constitutional historians scrutinize key Supreme Court opinions and the historical claims made by the justices in those decisions. The court’s opinions are often written in such a way as to make it appear that the justices are “restating received conventional wisdom,” explains Hulsebosch. In many cases, he adds, the justices are actually “making an argument about...what the Constitution should mean.”

Whether one adheres to the living Constitution or the originalist interpretation of it, the field of constitutional law is inarguably alive and growing. “NYU has a group of imaginative, innovative con law scholars working on some of the most vexing issues of the day,” says Larry Kramer, president of the William and Flora Hewlett Foundation and former dean of Stanford Law School. Kramer, a renowned con law scholar who is a former associate dean for research and academics at NYU Law, believes the Law School’s scholars will continue to be a force in the field: “They have already helped shape how we all think about con law in a variety of areas and ways, and I expect them to continue to do so.” □

Craig Winters ’07 is the author of *The Big Timers*, a forthcoming book about the mutual fund scandal of 2003.

DIVERSE PERSPECTIVES

Undergraduate areas of focus and the number of faculty who bring that training to con law:

1
Chemistry
Law
Mathematics
Mechanical and Aerospace Engineering
Near Eastern Languages and Civilizations

2
Psychology
Religion
Government
Sociology

3
Political Science

4
English

7
Philosophy

10
History

GOING GLOBAL

FOR TWO DECADES, NYU SCHOOL OF LAW HAS BEEN FORGING A COMMUNITY OF LEGAL SCHOLARS WITHOUT BORDERS THAT HAS CHANGED HOW US-TRAINED LAWYERS VIEW THE WORLD—AND VICE VERSA.

By Thomas Adcock

The year was 1993. Outgoing President George H.W. Bush and Russian Federation President Boris Yeltsin signed a nuclear disarmament treaty. A new US president, Bill Clinton, forged the North American Free Trade Agreement. The European Union and something called the World Wide Web were born—heralds of international cooperation in commerce, science, transportation, finance, communications, and human rights. Economists and government leaders began using a new term to describe a nascent world of interdependent nations: “globalization.”

At the same time, a radical mission expansion at New York University School of Law was about to occur. In the summer of '93, John Sexton, then dean of the Law School, began discussions with colleagues about an idea both brash and logical, namely, bringing the whole world of jurisprudence to Washington Square.

The result is today's Hauser Global Law School Program, launched in the fall of 1995 as something completely different. Rather than the study of international law, NYU Law would have an international program for the study of law. “The creation of the Hauser Global Law School Program made a statement that the community of legal scholars ought to be truly global in scope, and without simultaneously setting out any sort of imperialistic agenda,” says Kevin Davis, Beller Family Professor of Business Law and since 2012 vice dean for global affairs.

The dean of NYU Law, Trevor Morrison, who arrived in 2013, concurs: “NYU Law embarked on this ambitious path to become a global law school following a bold and well-conceived plan. What

distinguishes this school and enables its success time and again is the capacity of our faculty and students to embrace and incorporate new ideas. Here, it was nothing less than reconceiving how a US-based law school could execute a truly global agenda.”

The program, says Sexton, “lets us think of law in an ecumenical way by bringing together scholars from all over, by creating a world network. If there weren't such a program, the forces of nativism could overwhelm us.”

Sexton's nascent ambition to transform the Law School was encouraged by alumna Rita Hauser and Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law.

“I thought American law students were extremely parochial at that time,” says Hauser, former ambassador to the United Nations Commission on Human Rights who served both George W. Bush and Barack Obama as a member of the President's Intelligence Advisory Board. “For them, American law was the be all and end all. Law schools were shortchanging their students. We had to think of a different approach.”

Sexton and Hauser approached Dorsen to take charge of the idea. Although Dorsen is known for his scholarship in US constitutional law and civil rights, he had international experience as a lecturer and had participated in human rights missions to Egypt, Northern Ireland, and the Philippines. Sexton remembers telling Dorsen, “Norman, you're a world figure of great stature. The whole purpose here is that there are no boundaries. This is a good concept, and you should be its leader.”

Dorsen accepted the challenge, which he defined as, “How do you find a faculty to become part of a program they never heard of?”



Established with an initial \$6 million donation from Rita and Gustave Hauser LLM '57, the program, then called the Global Law School Program, brought foreign faculty, postdoctoral scholars, and post-graduate law students to NYU each year to co-teach and research with their American counterparts—with cross-cultural benefits for all.

Dorsen, who served the Global Law School Program as its founding director until 2002, now says, “We plotted out this whole thing. And what happened?

It worked.” The first class of eight global faculty recruited by Dorsen included Sir John Baker, then-dean of faculty at the University of Cambridge and an English legal historian; Justice Menachem Elon of the Israeli Supreme Court; and Ambassador Hisashi Owada, Japan’s then-permanent representative to the United Nations. Over the last three decades, the global faculty has comprised Giuliano Amato, former prime minister of Italy; Catherine O’Regan, former justice of the Constitutional Court of South Africa; Dieter Grimm, former judge of the Federal Constitutional Court of Germany; and Dorit Beinisch, former president of the Supreme Court of Israel. Several current full-time members of the faculty began as global faculty as well: Philip Alston, John Norton Pomeroy Professor of Law; Professor Franco Ferrari, director of the Center for Transnational Litigation, Arbitration, and Commercial Law; David Garland, Arthur T. Vanderbilt Professor of Law; Moshe Halbertal, Gruss Professor of Law; and Gráinne de Búrca,

Florence Ellinwood Allen Professor of Law, who is the current faculty director of the Hauser Global Law School Program.

The program encompasses more than faculty: it also includes 10 to 20 scholarships for foreign lawyers to pursue their LLM degrees; fellowships for academics, government officers, and lawyers from abroad; and a distinguished global fellows rotation of two-week visits to NYU Law.



Sexton



Hauser



Dorsen

★★★ In 2002, the Hausers made an additional \$5 million donation and the program was renamed the Hauser Global Law School Program. University Professor Joseph Weiler, Joseph Straus Professor of Law, and University Professor Richard Stewart, John Edward Sexton Professor of Law,

took the Hauser program into its second decade.

Weiler, an expert on international law and the European Union who is currently on leave to serve as president of the European University Institute in Florence, Italy, focused his efforts on orienting the program more prominently toward scholarship and the nurturing of young international scholars. He launched the Global Working Paper Series, beefed up the LLM program for overseas students, and achieved full funding for a JSD program.

When he became faculty director of the Hauser program in 2007, Stewart, now faculty director of the Frank J. Guarini Center

ONE FOR ALL: THE HAUSER 20TH ANNIVERSARY

The celebration of the Hauser Global Law School Program's two decades featured two high-profile keynote speakers and a reunion of global faculty, fellows, and students. At the New York Historical Society, Koen Lenaerts, vice president of the Court of Justice of the European Union, spoke about the EU as a rights-based legal order.

Lenaerts emphasized that “the *raison d'être* of the EU is inherently linked to the protection of individual rights.” He drew parallels between the legal orders on both sides of the Atlantic, such as the 2014 judgment of his court in *Digital Rights Ireland*, which invalidated the EU data retention directive, with the US District Court for the District of Columbia's ruling in *Klayman v. Obama*, which criticized the bulk collection of phone and Internet metadata by the NSA as “almost Orwellian” and incompatible with the Fourth Amendment.

In Vanderbilt Hall, Mohamed ElBaradei LLM '71, JSD '74, LLD '04, Nobel Peace Prize winner, former director general of the International Atomic Energy Agency, and a former vice president of Egypt, gave a passionate speech decrying the “blinkered mindset” hampering international affairs.

ElBaradei reflected on the current complexities of global relations. The United Nations and other international organizations have failed to avert conflict and violence, ElBaradei said, and he did not mince words in calling the world to account. “The global response remains shamefully erratic and subjective, predominantly depending on geopolitical interests,” he said. “In Congo, Rwanda, Darfur, and recently Syria, despite colossal death tolls, the international community did little more than wring its hands.” He contrasted these examples with the swift reactions to events in Afghanistan and Libya.

ElBaradei's prescription included understanding the consequences of ignoring suffering and launching wars, appreciating the connection between inequality and insecurity, prioritizing nuclear disarmament, reforming dysfunctional international organizations, and shifting paradigms from international rivalry to cooperation.

“At the end of the day,” he said, “it really depends who is dying and where. Is it not telling that we always know exactly how many

Westerners have lost their lives in any of these conflicts, but no one bothers to keep more than the vaguest tally of local victims? Are we shocked, then, when we see growing anger, distrust, and extremism?”

See related photo gallery at law.nyu.edu/media2015



Stewart



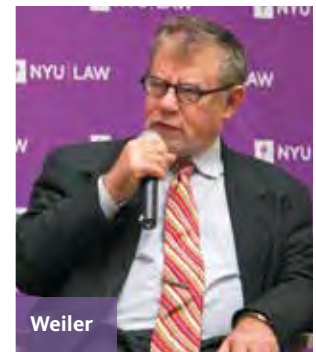
Hauser



ElBaradei



Dorsen



Weiler



Lenaerts



de Búrca



Davis

on Environmental, Energy, and Land Use Law, focused on creating a bridge between developed and developing nations by forging partnerships with universities predominantly in the Southern Hemisphere. Stewart and Benedict Kingsbury, Murry and Ida Becker Professor of Law, are credited with defining the field of global administrative law and, through this, developed a large network of legal scholars and practitioners to tap from across the globe.

De Búrca became director of the Hauser program in 2013. A graduate of King's Inns and University College Dublin and an expert in European Union law, she was one of the youngest fellows appointed to Oxford University and one of the first female law professors at the European University Institute. In 2005, she was appointed a Hauser Global Visiting Professor; six years later she joined NYU Law's permanent faculty.

"We increase our network year by year," says de Búrca. "It's a flow, an interchange. We're creating lifelong associations in a way that no other US law school does."

Going forward, she adds, she will forge relationships in places where the program hasn't yet reached, such as parts of Africa.

★★★ A lot has changed in the world since 1993. Then, Harvard's law school had an elective international curriculum that was fading through faculty attrition, says Rita Hauser, who began her legal education there, but ultimately received her LLB from NYU Law. "But when NYU got going with a global program, it was an inspiration to Harvard," she adds. "Now they require international studies. And now every law school of consequence has a program of comparative, global, international law."

Looking at law from a global perspective, says Vice Dean Davis, transcends the notion of studying "international law," with its traditional focus on regulating state behavior, such as in the laws of war or the law of the sea. It goes beyond comparing US domestic law with foreign regimes as well. "In my own work on anticorruption law," says Davis, "I mix it all up—international, comparative, domestic. It's become artificial to separate them."

The global initiative at NYU Law has expanded its dimensions beyond the Hauser program. After two decades of the program's inviting global faculty, fellows, and students to Washington Square, NYU Law is completing the circle. The new phase of the global initiative, says Davis, is "taking NYU Law faculty and students to the world."

Two years ago, the Law School established NYU Law Abroad, under which NYU Law students study and work in Buenos Aires, Paris, and Shanghai. "This does not involve just sending students to other schools," says Davis. "What we've actually done is hired our own faculty abroad and developed our own approach." In Spring 2015, 50 students in their last semester participated, many of them supported by the Public Interest Law Center.

Taking stock of the Law School's global initiatives now, Davis says this: "With a substantial proportion of our faculty and students hailing from overseas, a steady stream of faculty and scholars visiting from other countries, as well as students and alumni studying and working around the world, our teaching, perspectives, and outlook are becoming truly global." □

Thomas Adcock is a freelance writer in New York City.

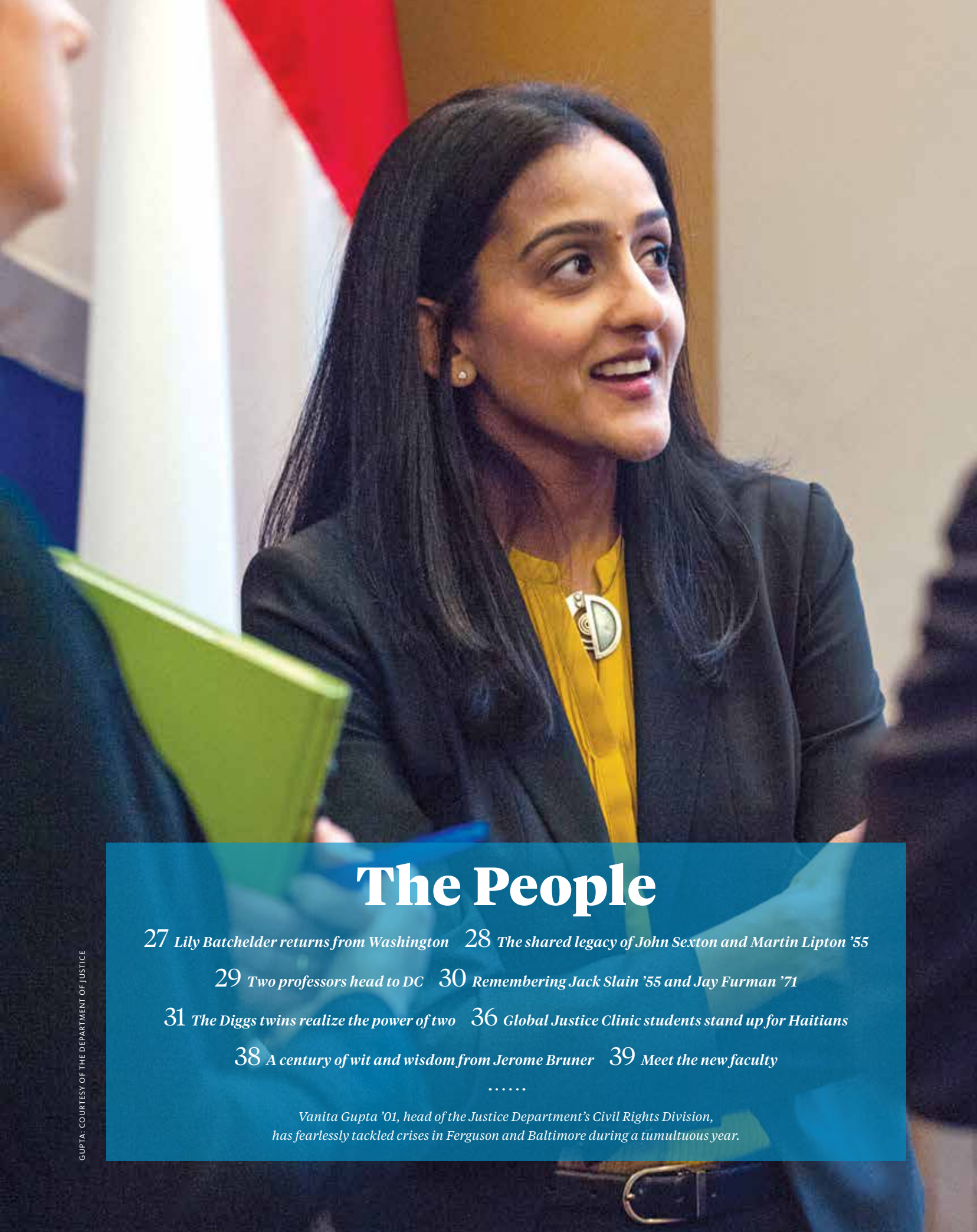
INAUGURAL CONFERENCE OF THE BERNSTEIN INSTITUTE FOCUSES ON INEQUALITY AND DISCRIMINATION

NYU School of Law's global initiative has always included a number of centers and institutes that bring students and faculty together with leaders in a variety of legal fields. In January 2015, the Law School launched the Robert L. Bernstein Institute for Human Rights with the ambitious mission of training the next generation of human rights leaders.

The Bernstein Institute, a research center promoting scholarship, education, and advocacy on human rights issues in the United States and abroad, is named after the founding chair emeritus of Human Rights Watch, who was also director and chair emeritus of Human Rights in China and founder and chairman of Advancing Human Rights. Bernstein serves as an advisory board member and donor to the Bernstein Institute. Professor of Clinical Law Margaret Satterthwaite '99, who is a faculty director of the Center for Human Rights and Global Justice, was tapped to be the faculty director of the institute.

The institute's inaugural conference in April focused on inequality and discrimination. The topics ranged from gender and disability discrimination in China to racial and ethnic inequalities around the world. Speakers included journalist and filmmaker Jocelyn Ford; Sharon Hom '80, executive director of Human Rights in China; Strive Masiyiwa, founder and chairman of Econet Wireless International; Professor Jerome Cohen, faculty director of the US-Asia Law Institute; and Vince Warren, executive director of the Center for Constitutional Rights.





The People

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Vanita Gupta '01, head of the Justice Department's Civil Rights Division, has fearlessly tackled crises in Ferguson and Baltimore during a tumultuous year.

A Head with Heart

Pragmatic, politically sensitive, and known for finding common ground, Vanita Gupta '01 has taken the nation's top civil rights post in a time of turmoil.

Vanita Gupta '01 was appointed acting head of the US Department of Justice Civil Rights Division just two months after the fatal police shooting of Michael Brown in Ferguson, Missouri. Heated arguments and protests were raging across the nation about race, policing, and the criminal justice system, and DOJ investigations of the shooting and Ferguson's police practices were already underway.

Gupta had to hit the ground running. The Civil Rights Division had been without a chief for more than a year before she was tapped. Having worked for eight years at the American Civil Liberties Union, where most recently she led the Center for Justice,

that Brown had been killed with his hands up in surrender. The second revealed an egregious pattern of civil rights abuses on the part of the police and the justice system, fueled by an emphasis on generating revenue that targeted black residents and sowed deep distrust of law enforcement. "What was unique about our report," says Gupta, "was that we were connecting the dots between the court system and the police department in a way we hadn't had the opportunity to do before with as much depth, and the ways in which race and racial bias interact with both systems."

Inevitably, there was a backlash. Some refused to believe that "hands up, don't shoot" was false, and others loudly dismissed the report about the police. Unfazed, Gupta approaches charged situations like these as openings. "People are recognizing we have a real problem in this country," she says. "We have an unprecedented opportunity to have a productive conversation about these issues across party lines. Law enforcement and the communities they serve have to be co-creators of public safety, and there is momentum now to really think about transforming our criminal justice system to make sure it operates fairly and legitimately for all."

Gupta's ability to focus on the big picture is no surprise to her former boss Anthony Romero, executive director of the ACLU: "Vanita knows where true north is, how to navigate choppy water, and keeps her hands firmly on the tiller." He points to an incident when Gupta's decision to engage with the conservative American Legislative Exchange Council (ALEC) drew heavy fire from elements on the left, who lobbied the ACLU to cancel the meeting. "Vanita smiled and listened and said, 'I understand your concerns,' but never wavered," he says. She capitalized on ALEC's interest in cost-cutting to get the group to sign on to an effort to reduce prison populations, which also served the left.

Romero says Gupta "has the ability to see what's possible long before the rest of us do." He credits her with pioneering the ACLU's National Campaign to End Mass Incarceration: "She started talking about the need for the campaign in 2009 before it was on the radar." In 2013, Holder announced that the US would commit to reducing the prison population.

Much was made of the positive response to Gupta's appointment from conservatives like former NRA president David Keene. Chinh Q. Le, legal director of the Legal Aid Society of the District of Columbia and Gupta's husband, considers her ability



Gupta came armed with an impressive civil rights track record. Although Ferguson was but one of many items on the division's agenda, it remained the focus of national attention. The investigation would telegraph the tone of Gupta's potential leadership of the division that then-Attorney General Eric Holder called "the crown jewel" of the DOJ.

Released five months after Gupta's appointment, the reports on Ferguson painted stark portraits. The first detailed why no charges were being filed against the officer who shot Brown and debunked the claim

to engage disparate parties among her most impressive qualities: “Vanita’s really passionate and strong about the values she holds while also being able to collaborate in a way that feels non-adversarial.”

Formative childhood experiences also influence Gupta’s work. The American-born daughter of Indian immigrants, she still remembers being menaced in London by skinheads shouting, “Pakis go home,” when she was four. “I was always aware whenever we went out if we were the only people of color,” she says. Her father urged her “to be aware, to ask questions, to read the news.” As a result, Gupta is mindful of the social, economic, and historic factors that affect the issues she deeply cares about.

When Gupta was a teenager, her paternal grandmother was murdered in India. In a 2013 *New York Times* op-ed, she wrote that the anguish from the unsolved killing will “never go away” but nonetheless

asserted “our criminal justice system has too often focused on vengeance and punishment.” Instead, she says now, criminal justice should be framed “around public safety and the need to keep individuals and community safe.”

When Baltimore erupted in April over the death of Freddie Gray while in police custody, it amplified core issues regarding race, policing, and loss of community trust that the Ferguson reports addressed. Gupta was in Baltimore the next day, meeting with law enforcement, elected officials, and community leaders to quell the violence. Fired by a sense of “sadness and increasing urgency to address the issues and long-standing conditions within these communities,” Gupta says we are at “a tipping point.” She will continue to push reforms that she believes are good for the nation. As her father, Rajiv, succinctly says, “This isn’t a career; it’s her life’s work.” □

Building Bridges



At this year’s annual spring dinner, the Black, Latino, Asian Pacific American Law Alumni Association honored Ramsey Homsany ’00, general counsel of Dropbox, and Linda Gadsby ’92, vice president and deputy general counsel of Scholastic. “Encouraging lawyers with diverse backgrounds really matters,” said Homsany in accepting his award. “In my second year of law school, two brave women invited me to join them in starting up the Middle Eastern Law Student Association. And we did it. And this community was so supportive. I am so thankful for that. It taught me to build bridges. It reminded me how I could make a difference.”

Professor of Tax Returns

In his 2015 State of the Union speech, President Barack Obama addressed the need for “a tax code that truly helps working Americans trying to get a leg up in the new economy.” Creating a tax plan to meet that need was exactly what Lily Batchelder had been working toward in her past year as deputy assistant to the president and deputy director at the National Economic Council (NEC), and before then, as chief tax counsel for the Senate Finance Committee. In May, Batchelder, professor of law and public policy, returned to the Law School after nearly five years of government service.



“The president encouraged us to think big about how to address the challenges facing the middle class and create a more level playing field,” says Batchelder. “So we were able to put out some pretty bold proposals to help working families, whether it was through more tax-based and direct spending on child care or through a new tax credit for second earners.” These were some of the proposals that ultimately made their way into the president’s budget and State of the Union address.

While at NEC, Batchelder also worked on a regulatory project to address the harms to consumers from conflicts of interest in retirement investment advice, estimated at \$17 billion per year. In 2010, the Department of Labor had proposed a regulation that met with sharp opposition, particularly from

the financial services industry, and was withdrawn. Shortly before Batchelder left the NEC, they were able to announce a new proposal.

Before joining the NEC, Batchelder spent almost four years with the Senate Finance Committee, where she worked on tax legislation that addressed the expiration of the Bush tax cuts, the need to fund infrastructure programs, and the headline-making fiscal cliff battles. She also led the committee’s work on tax reform, culminating in several sweeping proposals totaling thousands of pages to overhaul the business tax system.

Batchelder notes that although they did not succeed in passing everything she would have liked, whether tax reform or ending the 2012 sequester, they were able to lay the foundation for future legislation and prevent worse possibilities from happening. “That’s a lot of what working in government is,” Batchelder says. “People often say more than half of your job is preventing bad policy from happening, rather than getting new policies passed.”

This year, Batchelder is teaching Tax and Social Policy and Income Taxation. In addition to working with students again, Batchelder is excited to delve back into her academic work. “Working in government is pretty frenetic, and your days are heavily scheduled,” Batchelder says. “I’m really excited to be able to think more deeply and with fewer interruptions.” □

Faculty Briefs

Alberto Alemanno, who teaches at NYU Law Abroad in Paris, was selected as a 2015 Young Global Leader by the World Economic Forum.

Philip Alston was appointed by the UN secretary-general to serve on the Central African Republic Commission of Inquiry to Investigate Events Since January 1, 2013.

The Clinical Legal Education Association gave **Claudia Angelos** the 2015 award for Outstanding Advocate for Clinical Teachers.

Anthony Appiah joined the New York Public Library's Board of Trustees.

In a *Washington Post* op-ed, **Rachel Barkow** and a co-author called on President Obama to fix the federal clemency process.

Stephen Gillers '68 received the Fellows of the American Bar Foundation's 2015 Outstanding Scholar Award.



A Duo for Decades

Steering first the Law School and then the University for 30 years

More than any others, Martin Lipton '55 and John Sexton have guided the ascent of NYU School of Law as a top-tier law school and led NYU's transformation into a global research university. Theirs is a partnership that has endured for nearly three decades, from 1988—when Lipton was elected chairman of the Law School Board of Trustees and Sexton dean of NYU Law—to the 2015–16 academic year, as they conclude their final year as chairman and president of the University, respectively.

Addressing graduates and parents in Yankee Stadium at the University's 2015 Commencement ceremonies in May, Lipton praised the "unique, symbiotic relationship" that he and Sexton have had. "Together during these past 27 years we have accomplished greatness for our Law School and for our University," said Lipton, who steps down from his role in October. "Our Law School today continues as one of the world's leading law schools, and our University today is a true global university, one of the world's leading universities—a far cry from the struggling regional school it was in 1975, when I joined the board."

"My relationship with Marty is grounded in a deep respect that we have for each other and a deep love for NYU—first the Law School, later the University," said Sexton in a video played at a tribute dinner for Lipton in June. "And both of us believed deeply that there was an exceptional character to NYU." Sexton, who is also Benjamin F. Butler Professor of Law, is ending his tenure as president at the close of 2015 and will return to teach at the Law School.

Lipton, a founder of Wachtell, Lipton, Rosen & Katz and one of the leading lawyers of his generation, is known as the creator of the "poison pill," used by corporations to defend against unwanted takeover attempts. Lipton's experience as a Root-Tilden Scholar, a professor, and a trustee has given him "a special capacity to understand the University and the Law School within the University that perhaps no one else has," Sexton noted, "because he has been the eyewitness and in some cases the progenitor of most of the critical events over the last 60 years."

As dean of NYU Law for 14 years, Sexton recruited a number of high-profile faculty and pioneered the Global Law School model for teaching international law. In 2002, Sexton became president of NYU and commenced building what would become the hallmark of his ambitious presidency: NYU's unrivaled global presence. The University opened two degree-granting campuses: NYU Abu Dhabi welcomed its inaugural class of students in 2010, and NYU Shanghai did the same in 2013; today NYU operates academic centers across the globe, from Accra to Prague. Along the way, Sexton tripled the University's endowment and oversaw a merger with Polytechnic University.

In his parting words at Yankee Stadium, Lipton reflected on the University's place in his heart: "I would like you to know that it has been one of the singular honors of my life, and I know John's, to have been able to serve the University and to play leading roles in its great changes and successes. I thank you, the NYU community, for the opportunity to serve and for your fellowship and trust." □ *Michelle Tsai*

Anything but Standard Procedure

New York University gave Helen Hershkoff, Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties, its 2014–15 Distinguished Teaching Award for “exceptional teaching inside and outside of the classroom setting.”

A co-author of *Civil Procedure: Cases and Materials*, Hershkoff teaches Procedure to first-year law students as well as Federal Courts and the Federal System, courses noted for their challenging material. She also serves as co-director of the Arthur Garfield Hays Civil Liberties Program and as faculty adviser to the *NYU Journal of Legislation and Public Policy*. Prior to coming to NYU Law almost two decades ago, she worked as a staff attorney with the Legal Aid Society of New York and as an associate legal director of the American Civil Liberties Union.

In glowing letters to the selection committee, current and former students applauded Hershkoff’s manner in the classroom. Alessandra Baniel-Stark JD/MA ’16, a Procedure student, wrote, “Professor Hershkoff has figured out ways to ensure that while her students still learn the material and feel some of the heat of the Socratic system, they have a fair opportunity to excel at every turn.”



Others commended Hershkoff’s compassion and support outside the classroom—during office hours, over lunches, and by e-mail—be it providing practical career advice or checking in on a sick student. A group of current and recent Hays Fellows described Hershkoff’s regular end-of-semester invitation to eat out in Greenwich Village: “She helps to create a safe space where we can further explore our legal quandaries, express our concerns about our future careers, and even confess our doubts about the possibility of effecting change through the law.” Like many others, Vinay Harpalani ’09, now an associate professor of law at Savannah Law School, relied on Hershkoff’s support beyond school. During his tenure-track application process, he wrote, Hershkoff went “above and beyond the call of duty.”

Hershkoff and five other awardees were honored on April 23. In her acceptance, Hershkoff reflected on her students: “Whether they work in government or in legal services, at a private firm or in industry, whether they teach or run companies, my students are using the law in creative and important ways.” She added, “They are trying to make the world more joyful, and they know that with shared hard work, we can use law to make the world a better place.” □

Continued from page 28

In a *Washington Post* op-ed, **Ryan Goodman** and two co-authors listed five principles Congress should follow when authorizing use of force.

Samuel Issacharoff was awarded the inaugural Appellate Advocacy Award by the Pound Civil Justice Institute.

Arthur Miller was named associate dean and director of the Tisch Institute for Sports Management, Media, and Business and received the 2015 Brandeis Medal from the Louis D. Brandeis School of Law.

Richard Pildes is scholarly co-chair of the National Constitution Center’s three-year project Coalition of Freedom, which aims to raise awareness of constitutional rights.

In a *New York Times* op-ed, **Richard Revesz** and Jack Lienke ’11 praise President Obama’s Clean Power Plan for correcting a major error in the Clean Air Act.

Catherine Sharkey was named a member of the Administrative Conference of the United States.

Anthony Thompson was appointed to Governor Cuomo’s new Council on Community Re-Entry and Reintegration.

Capital News



Goodman

The Law School’s already robust presence in Washington, DC, grows even stronger this year as two Law School professors are taking leaves to serve in national government: Ryan Goodman, Anne and Joel Ehrenkrantz Professor of Law, has been appointed special counsel to the general counsel of the US Department of Defense, while Professor Troy McKenzie ’00 has joined the Department of Justice Office of Legal Counsel as a deputy assistant attorney general.

In his new role, Goodman will focus primarily on national security law and the law of armed conflict. Goodman co-founded *Just Security*, a blog for the rigorous analysis of law, rights, and national security, in 2013. He previously served at the US Department of State, the International Criminal Tribunal for the former Yugoslavia, and nongovernmental organizations in India, South Africa, Switzerland, Thailand, and the United States. Goodman clerked for Judge Stephen Reinhardt of the US Court of Appeals for the Ninth Circuit.

McKenzie, whose role at the Department of Justice began this past spring, is a scholar of bankruptcy, civil procedure, complex litigation, and the federal courts. In February, he was elected to the prestigious American Law Institute. Last year, McKenzie became co-faculty director of the Law School’s Center on Civil Justice, which is dedicated to the study of the US civil justice system.

Before joining the Law School, McKenzie was a litigation associate in the New York office of Debevoise & Plimpton. He clerked for Judge Pierre Leval of the US Court of Appeals for the Second Circuit and Justice John Paul Stevens of the US Supreme Court.



McKenzie

John Slain, 1927–2014

John “Jack” Slain ’55, professor of law emeritus, passed away on September 27, 2014, at age 87. Slain played a foundational role in building NYU Law’s law and business pedagogy. He regularly taught Corporations, Accounting for Lawyers, and Survey of Securities Regulation, all among the Law School’s most popular classes for many years. Despite retiring in 2002, Slain continued to teach through Fall 2013.

After graduating from Providence College and NYU Law, Slain worked as an associate at Cravath, Swaine & Moore, and later as vice president and general counsel of AIM Companies. Before joining the NYU Law faculty in 1977, he taught at Indiana University School of Law–Indianapolis and Ohio State University College of Law. Throughout his career, Slain mentored scores of corporate lawyers, many of whom went on to become partners at major Wall Street firms.

Slain and Associate Dean for Career Services Irene Dorzback bonded over their mutual concern for

students’ employment. “What emerged through his storytelling was how much he knew about the careers of so many students and alumni,” says Dorzback.

“It was very clear that he had maintained relationships with many of them over a long time.”

Pauline Newman Professor of Law Rochelle Dreyfuss recalls striking up a conversation on a Metro-North train with a Law School alumnus who asked if Slain was still on the faculty. “I said yes, and he told me that Jack was far and away his favorite profes-

sor, and the one from whom he learned the most.” To Dreyfuss’s surprise, the man in front of them then turned around to praise Slain similarly—followed by yet another man across the aisle.

“Around 20 minutes later,” continues Dreyfuss, “as the train pulled into my station and I walked to the door, someone in a seat fairly far from where I’d been sitting stopped me. He needed to tell me that Jack was *his* very favorite teacher, too, and he too thought Jack was the kindest person he ever knew.” □



Jay Furman, 1942–2015



NYU Law Trustee Jay Furman ’71 passed away on January 4 at the age of 72. An unflinching supporter of the Law School, Furman left a legacy that is deep and wide: He enabled the construction of Furman Hall, endowed two scholarship programs, and created the Furman Center for Real Estate and Urban Policy.

“Jay’s transformative philanthropic support of the Law School was matched by his love for its intellectual life,” said Dean Trevor Morrison in a Law School statement. “I am profoundly grateful for the opportunity to know and work with Jay, to call him my friend, and to take inspiration from his unquenchable thirst for learning.”

After graduating from the Law School, Furman earned an MPhil in economics at Columbia, then taught at Cardozo School of Law for two years before dedicating his career to real estate. As president of RD Management, founded by his father, he led affiliate operations that ranged over three dozen states.

“Only a few people are lucky enough, determined enough, talented enough, to have one big idea that significantly changes the world for the better. Jay had many,” said Vicki Been ’83, former director of the Furman Center and now commissioner of housing preservation and development for New York City, in her eulogy. “His curiosity, sense of adventure, and constant desire to make things better, combined with his ability to just do it, come what may, has left us with a richer, more interesting world.” □

Lives in Parallel

The Diggs brothers' determination drove them from inner-city Detroit to Greenwich Village.

As elementary students in Detroit, identical twins Raymond and Richard Diggs were reminded annually that half their classmates would never graduate from high school, and just one student in each classroom would complete college. Their mother was having none of that. She taught them to imagine big and never to be limited by societal expectations.

Now, after graduating with honors from Wayne State University and two years' service for Teach for America (TFA), Raymond and Richard have completed their first year as AnBryce Scholars. The first in their family to pursue a graduate degree—a scholarship requirement—“both are independent self-starters with strong records and compelling life stories,” says Troy McKenzie '00, who served as the AnBryce faculty director during their 1L year. “But they also support each other and are incredibly resourceful.”

Indeed, for each twin, having the other to rely on as they journeyed toward professional careers was critical. “Our childhood was very rough, to be frank,” says Raymond. Their mother, Faydra, though chronically ill with diabetes, single-handedly raised five sons, including another set of twins, and insisted they work hard. Voracious readers, they admired Andrew Carnegie, Richard Wright, Bobby Kennedy, Bill Clinton, and George W. Bush alike.

One day in high school, Raymond overheard a teacher discussing a Detroit Metropolitan Bar Association essay contest. Wanting the laptop prize, the brothers entered. Placing first and second, they were invited to tour Detroit law firms. This was “our segue into a new world,” reports Richard. They decided then, at age 16, that they would become lawyers and “made a strategic decision to stick together,” says Raymond. “Coming from our background, we understood it was important to have some type of support system and, for each other, we were that support system.”

Their first step was college, where they majored in political science and were star students, according to Wayne State Professor Brad Roth. Then, as Teach for America fellows, they taught history and economics in Detroit public high schools. In a recent TEDx Talk at Wayne State, Richard explained: “The number one thing I tried to do as a teacher was to help my students understand they have the potential

to achieve all their goals, no matter the challenges that they face in their everyday lives.”

Now that the brothers are students again themselves, their 28 fellow AnBryce Scholars serve a similar purpose for them. “Having never been to New York, or to a private school, you're a little worried coming in; AnBryce made that transition a lot easier,” Richard says. This year, he is a teaching assistant in Professor Helen Scott's Corporations class.

Despite the demands of the 1L workload, Raymond and Richard continue to mentor their TFA students through phone calls and Skype. They take study breaks to participate in the Black Allied Law Students Association and intramural flag football.



Raymond Diggs, Richard Diggs

As 2Ls, the twins are growing independent. They increasingly find themselves with distinct friends and diverging interests. Raymond, on the *Journal of Law & Business* staff and fascinated by transactional law and social enterprise, aims to enter corporate practice. Richard, on the *NYU Law Review*, is exploring the relationship between government and business, pursuing a judicial clerkship, and hoping to eventually serve in government. No longer making plans together, says Raymond, “we're really just looking forward to seeing what life has to offer.”

Without coordinating, however, they somehow both ended up as Kirkland and Ellis summer associates.

Together or apart, the twins agree that giving back to Detroit is in their futures. “A lot of wonderful things are happening in Detroit right now, but poverty is still a huge issue and the educational system is still struggling,” says Raymond. In the coming years, the brothers hope to understand how investment can spark business activity, private industry, and the health of cities. When they figure it out, they will be bringing those lessons home to Detroit. □ *Jane Sujen Bock '85*

“We understood it was important to have some type of support system and, for each other, we were that support system.”

Case Closer

After the Honeymoon



At the annual OUTLaw reception, OUTLaw Alumnus of the Year Jeffrey Trachtman '84 spoke about addressing current and future issues involving the LGBT community beyond the legalization of same-sex marriage. "The real test for our community is to bring the same level of energy and focus and funding and passion to tackle issues that don't, by and large, affect each of us directly," said Trachtman, an active LGBT pro bono legal advocate, continuing, "problems of homeless youth, low-income elderly, transgender people."

An employment litigator with a long list of successful trial wins on behalf of employers, Victor Schachter '67, a partner and co-chair of employment practices at Fenwick & West, has applied his expertise in alternative dispute resolution (ADR) to help overwhelmed judicial systems in India, Kosovo, Turkey, and other countries through the Foundation for Sustainable Rule of Law Initiatives (FSRI) that he launched in 2012.

Because of its frequent use in labor law, mediation became a part of Schachter's professional DNA. When a delegation of Malaysian judges toured the federal courts in San Francisco in 2002 seeking case management techniques, Schachter filled in for a colleague and gave a talk. His rapport with the foreign judges led to an invitation to Brazil. He loved the experience so much he continued to volunteer.

One of FSRI's biggest host countries is India. In 2005, the chief justice there enlisted Schachter to help reform a system with 32 million backlogged cases. To Schachter, this wasn't just a crisis of case-management but rather a denial of the human rights of those who might wait decades for their property disputes or divorces to be processed and settled.

Starting with one of the largest courthouses in Asia, Tis Hazari in New Delhi, Schachter, who has a black belt in karate and prides himself on his focus and discipline, began training mediators and judges to form a court-annexed mediation program.

His efforts paid off. Since his first visit, Schachter and FSRI have assisted more than 20 centers in India that have processed more than 200,000 cases and boast a nearly 65 percent settlement rate.

"You go back to Delhi, and Bangalore, there are operating mediation centers that would not be there but for his work," says Judge Richard Seeborg of the US District Court for the Northern District of California, an FSRI board member. "They're literally resolving thousands of cases. I've watched it."

Under Schachter's guidance, FSRI's 16 volunteers—attorneys, mediators, and judges—are facilitating timely conflict resolution in eight countries on



Justice K.L. Manjunath of the High Court of Karnataka, India presenting a gift to Schachter in 2013.

three continents. Schachter visits all the centers he's helped build to meet with mediators, review cases, assess the operations, and recommend improvements. "There are many who go and train people to do ADR work around the world," Seeborg says. "But Vic is really motivated to build structures that are going to last in countries where they need this assistance desperately." □ *Graham Reed*

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Good Counsel on Conflict

Law Women honored Trustee Virginia Molino '76, general counsel of McKinsey & Company, as its 2015 Alumna of the Year. In accepting her award last March, Molino spoke to the gathered law students about dealing with conflict in the workplace, in particular while navigating gender expectations.

After graduating from NYU Law, Molino wanted to be a labor law specialist. "I knew from day one I wanted to be involved in collective bargaining agreements," she said. She started out in the legal department of Suburban Propane Gas.

One of her first assignments was to meet with a local Teamsters union in what she called "a dimly lit, smoky hotel room, somewhere in New Jersey, late at night." Molino was the only woman there. As she was about to present employment data and analytics, the head of the Teamsters asked her to serve coffee.

Knowing that management would need him to be reasonable in negotiations, and that she might

have to deal with him again, she did not want to insult him. But, she said, "I needed him to come away knowing he could not unnerve me." She decided to treat his request as a joke and move on.



Molino noted that the open hostility toward women that she encountered in her early career is rare today, but there nevertheless remain unconscious biases and implicit gender expectations in the workplace. She emphasized three major tools for dealing with workplace conflict: giving people the benefit of the doubt, the value of optimism and positive thinking, and

the importance of working to find common ground.

These tools served Molino well in her career; she was eventually elected general counsel of the Suburban Propane Gas Corp. before joining McKinsey & Company to serve as its first general counsel. Now, with more than 30 years of experience as a general counsel, Molino oversees a staff of approximately 40 lawyers and 25 contract professionals and paralegals located in 15 offices around the world. □



On Passion and Integrity

At their annual gala, the Black Allied Law Students Association honored Debo Adegbile '94 and Suzette Malveaux '94.

Adegbile, an NAACP Legal Defense and Educational Fund attorney for more than a decade, is a partner at WilmerHale. Malveaux is a professor at the Catholic University of America Columbus School of Law who worked on the largest employment discrimination class action in US history, *Wal-Mart Stores v. Dukes* (2011).

In their remarks, the honorees discussed challenges in the 50 years since the Civil Rights Act passed. "What I know is that in every fight in which I've been engaged, I have been committed to maintaining my integrity and defining success by standing for something," said Adegbile. Malveaux advised the audience to "lead with your heart, not just your head."

Making Software for Hard Cases

Alma Asay '05, founder and CEO of Allegory Law, says that her entry into the field of legal technology entrepreneurship came entirely by accident. As a litigator at Gibson Dunn for six years, Asay focused on large-scale commercial litigation that often required thousands of discovery documents. In order to manage such complex cases, Asay and her Gibson Dunn team would create Excel spreadsheets tracking all relevant information for every document being used.

Recognizing a need for better software to organize litigation data, Asay began collaborating on the side with a team of programmers to build a product that would help litigators categorize and cross-reference case information. Before she knew it, Asay had a project on her hands that demanded much of her attention. "I just started working with these guys and mapping out what I would want my dream software to look



like as a litigator," Asay says. Next thing she knew, "I just woke up and realized that I was an entrepreneur, with a startup in legal technology."

"It doesn't surprise me that she would have recognized the need to organize and manage data—because she was really very good at it," Diane Zimmerman, Samuel Tilden Professor of Law Emerita, says of Asay, her former student and research assistant. "She was also always really gutsy," says Zimmerman. "I remember she took a semester to study at the Sorbonne during law school and took classes in French. I asked her, before she went, 'Is your French really that good?' And she said, 'Well, it's going to get a lot better.' It must have been an incredible amount of work, but she wasn't daunted at all."

Helming a startup is not without its challenges, from finding investors to courting clients. She wakes up every day not knowing what's going to happen. But Asay, a travel enthusiast who has been to every continent, says that this element of surprise in her daily life and work now is "the closest thing I've found to traveling at home." □

Alumni Briefs

Neil Barofsky '95, a partner at Jenner & Block, was tapped to monitor Credit Suisse Group AG after the bank pleaded guilty to helping Americans evade taxes.

Lauren Burke '09, co-founder of Atlas: DIY, and **Michael Lwin '09**, co-founder and managing director of Koe Koe Tech, received Echoing Green's 2014 Global Fellowships, which support emerging social entrepreneurs.

Lawrence Byrne '84 was appointed as the NYPD's deputy commissioner for legal matters.

Yan Cao '13 and **Geoffrey Wertime '14** were named 2015 Skadden Fellows.

Evan Chesler '75 was named chairman of the Board of Trustees of the New York Public Library.

Jury Selections

When Norman Goodman '50 took the position of New York County clerk in 1969, he had "not the faintest idea" that running this office would become his life's work. Goodman stepped down from his job of 45 years this past December, on the day of his 91st birthday. In a conversation with Dean Trevor Morrison at this year's Law Alumni Association Luncheon, Goodman regaled the audience with anecdotes from his time in the county's courts.

Over the course of his many years as commissioner of jurors, Goodman called every manner of New Yorker to jury service, including celebrities and politicians such as film director Woody Allen and Rudy Giuliani '68 while he was in the office of the mayor. Allen, Goodman noted, refused to sit down in the hall where jurors were waiting to be called, choosing to stand instead, and, predictably, causing a ruckus. Giuliani, on the other hand, served on a jury—and invited his fellow jurors to dine afterward at Gracie Mansion.

Goodman also made sure to participate in the process—"I called myself," he said. Although he was sure to do his civic duty, Goodman said that his inside knowledge of the jury system came with its advantages. In one instance, he and other members of the jury found



the defendant guilty unanimously, resolving the vote at 11:45 a.m. He suggested to the other members of the jury, however, that they delay announcing the verdict. "I told them, if we wait another 15 minutes, we'll get lunch," he said.

In addition to calling jurors, Goodman worked with then-Chief Judge Judith Kaye '62 to reform the jury system, and oversaw the digitization of New York County's court records. The court is also home to historical documents reaching back to the days of Dutch colonial times and the American Revolution, which Goodman has worked to preserve with the help of two archivists.

Although retired, Goodman is not entirely done with the office of New York County clerk. His plans for taking it easy include working on a book about the history of the county clerk's office. □

See related photo gallery at law.nyu.edu/media2015

Margarite Quiñones, 33L



Whether at Admitted Students Days, Orientation, or Feast for Finals, where she would break out in dance while serving scrambled eggs to stressed-out students, it was hard to miss the feisty woman with short white hair and fashionable glasses. But after three decades, Margarite Quiñones retired last January as associate director for academic services.

Quiñones arrived in 1981 and quickly rose from a secretary to assistant director of financial aid. Though in that job for only three years, she says she learned so much: "Financial information is very personal. I had to find a way of explaining policy while at the same time letting them know I didn't create it."

In 1985, Quiñones became administrative director of the Graduate Division, a job she held for 21 years. She attended events hosted by student organizations and, like a proud parent, kept a "wall of fame" in her office that included Judge Jenny Rivera '85 of the New York State Court of Appeals and Sherrilyn Ifill '87, president and director-counsel of the NAACP Legal Defense and Educational Fund. From 1998 to 2001, one of the students literally was her son; Yumari Martinez '01 now serves as an assistant commissioner in the NYC Administration for Children's Services.

Despite her retirement, Quiñones volunteered this spring, as usual, to assist the photographer who captures every student receiving a diploma at Convocation. She plans to continue to attend Law School events. "They think I'm kidding when I say, 'I'm going to see you at graduation,'" she says with a laugh. "I'm not. I'm going to see everybody at graduation. I'm going to hug 'em and shake their hand."

A Legal Prescription for Health

Although the US Department of Veterans Affairs (VA) provides health care and other aid to veterans, it does not provide legal assistance. Margaret Middleton '07 finds that helping veterans with their legal issues can actually be a key element to improving their mental health. She is executive director and co-founder of the Connecticut Veterans Legal Center (CVLC), which aims to help veterans in need.

In 2014, CVLC received a grant from the Bristol-Myers Squibb Foundation to evaluate the effect of legal aid on veterans' mental health and well-being. "The value of what we provide isn't just in whether you have a great legal outcome; it's also that you might be less likely to use the emergency room, or to have an extended hospital stay," says Middleton. She hopes that this study will provide further evidence for the efficacy of integrating legal, mental, and medical aid. "Ultimately, we would love the VA nationally to recognize the value of this model and adopt it as part of the spectrum of services that they provide veterans," she says.

Middleton did not plan for her career to follow this particular path. A Root-Tilden-Kern D'Agostino Scholar at NYU Law, Middleton credits her experience as a student in the Family Defense Clinic taught by Fiorello LaGuardia Professor of Clinical Law Martin Guggenheim '71 with igniting her passion for representing communities in need. "The clinic helped open my mind in terms of what a vulnerable community is," Middleton says. "Veterans, historically, haven't been embraced as a population of high need by the legal services community. In part because of my experience in that clinic, I was open to a broader conception of who lawyers can help."

Guggenheim, who remembers his former student as "an outstanding member of the community, a very vibrant person," says that one's choice to fight a social injustice may look random to others but naturally follows when a person realizes "not enough people are troubled by what's going on in that particular area, and that's exactly what happened to Margaret."

After law school, Middleton worked as a Thomas Emerson Fellow at David Rosen & Associates, a New Haven law firm that focuses on human rights and public interest law. Moved by stories that she had heard on the radio about veterans with insufficient access to mental health care, Middleton volunteered



at the Errera Community Care Center, which is part of the Connecticut VA. There, she met fellow volunteer Howard Udell '65, who had retired as the chief legal officer of Purdue Pharma. "When they found out that he was a lawyer, the veterans would just pop in and say, 'Hey, I have a quick question about a legal issue,'" Middleton says. "By the time I met him, Howard had taken on 30 clients that way, totally incidentally."

Middleton and Udell both recognized that veterans needed greater access to legal services, so together they founded CVLC with a grant from the Initiative for Public Interest Law at Yale. When the center launched in 2009, Middleton was the only full-time employee; Udell was a volunteer adviser. Now the center has seven full-time staffers and has recruited more than 600 Connecticut lawyer volunteers.

"Meeting and working with Howard was one of the greatest strokes of luck in my life," Middleton says of her co-founder, who passed away in August 2013. "It's rare that you get to meet someone who is as kind and brilliant and funny as Howard was, and it was an incredible gift to have a partner in doing something like this, so that we both equally owned the joy of doing the work and the stress of trying to make it happen." □ Rachel Burns

Continued from page 34

Martin Lipton '55 received a Lifetime Achievement Award in the *New York Law Journal's* Lawyers Who Lead by Example 2014 Awards.

Amy Marshak '11 and **Matthew Shahabian '11** will clerk for Justice Ruth Bader Ginsburg and Justice Sonia Sotomayor, respectively, in the 2015–16 term.

Wendy Scott '80 began her tenure as the Mississippi College School of Law's first African American dean.

Jonathan Wolfson '00, CEO of Solazyme, was honored with the Biotechnology Industry Organization's 2015 George Washington Carver Award.

Jenny Yang '96 was named chair of the US Equal Employment Opportunity Commission.

Student Briefs

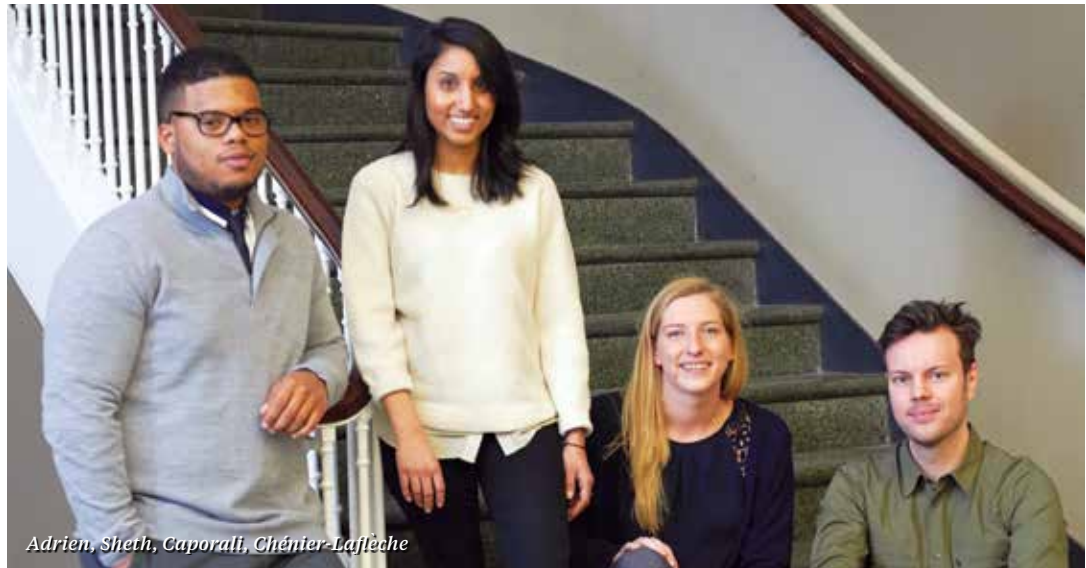
Max Bernstein '15, Ijeoma Eke '16, Rahul Hari '16, and Neil Thakore '15 took first place at the White Collar Crime Invitational, hosted by the Georgetown University Law Center Barristers' Council.

Rahul Hari '16 also won Baylor Law School's 2015 Top Gun National Mock Trial Competition with a 6-0 record.

Amanda Russo '15 won Best Direct Examination at the National Trial Advocacy Competition Region 2, sponsored by the New York State Bar Association Trial Lawyers Section.

Jeremy Schiffres '16 and William Simoneaux '16, led by coach **Sarah Dowd '15,** won the Evan A. Evans Constitutional Law Moot Court Competition.

Dian Yu '16 was awarded the 2014 Dennis R. Washington Achievement Graduate Scholarship from the Horatio Alger Association of Distinguished Americans.



Adrien, Sheth, Caporali, Chénier-Lafèche

Keeping Haitians Informed

The Global Justice Clinic (GJC) joined two Haitian civil society coalitions to testify on the right of access to information in Haiti before the Inter-American Commission on Human Rights (IACHR) in Washington, DC, on March 17.

Testifying for the Law School's clinic, Etienne Chénier-Lafèche LLM '15, along with representatives from the Justice in Mining Collective and the Mega Projects Observatory, urged the Haitian state to adopt legislation to implement the right to access information. The advocates also called on the government to inform affected communities about tourism and mining development projects, and recommended that it not enact proposed mining legislation that would undermine transparency.

Chénier-Lafèche reported that at the hearing the special rapporteur for freedom of expression said he was concerned about a confidentiality clause in a mining law under consideration by the Haitian government. "This is a very positive outcome," said Chénier-Lafèche. The confidentiality clause had been the focus of a significant part of Chénier-Lafèche's testimony as well as the clinic's accompanying brief.

The GJC's director, Professor of Clinical Law Margaret Satterthwaite '99, praised the LLM students' spirit of solidarity and collegiality with the clinic's Haitian partners. "What's special is that the clinic's effort has been completely student-led, with Etienne in particular playing a unique and inspiring role," she says.

Astrid Caporali LLM '15 and Jean-Luc Adrien '17 also traveled to Washington for the IACHR hearing. Caporali had worked on the brief with Chénier-Lafèche and helped the partner organizations prepare for the hearing, while Adrien, who is Haitian American, translated from Kreyol to French and English, provided research support, and helped coordinate the organizations' visit to the US capital.

Interest in an IACHR hearing initially grew in Fall 2014 out of discussions between the Justice in Mining Collective and the clinic, notably Chénier-Lafèche, who had previously worked at the IACHR. He first designed and helped lead a training and strategy session on the Inter-American system of

human rights law for the clinic's partner organizations in Port-au-Prince in November 2014. At this gathering—co-led by Chénier-Lafèche; Nina Sheth '16; Nikki Reisch '12, legal director of the Center for Human Rights and Global Justice; and GJC's Haitian partners—participants decided to raise the issue of right of access to information with the IACHR.

In January, Chénier-Lafèche, working with partner organizations, drafted a request for an IACHR hearing and, once the hearing was granted, led the effort to write the brief with recommendations for the state of Haiti. "It's been impressive to watch the students create this relationship with our partner, author the request, write the brief, and prepare for the presentation," says Satterthwaite. "Etienne did the heavy lifting on this, but everyone came together on the team." □ *Michelle Tsai*

"What's special is that the clinic's effort has been completely student-led, with Etienne in particular playing a unique and inspiring role."

MARGARET
SATTERTHWAITE

Courting Innovations

Having won a conviction against Gambino family boss John Gotti in 1992, Judge John Gleeson brought a wealth of raw-knuckle legal experience to the bench. Appointed a judge of the US District Court for the Eastern District of New York by Bill Clinton in 1994, Gleeson says that his role as adjunct professor at NYU School of Law since 1995 has also had an invaluable impact on his work.

In recent years Gleeson has made a name for himself as a leader in sentencing reform and a fierce critic of mandatory minimum sentences. While he presides over cases each weekday, he finds some distance from the courtroom helpful for deeper reflections on these complex subjects. “There’s no doubt in my mind that a lot of the work that I’ve been doing on the bench grows out of my teaching,” says Gleeson, who each fall leads a class on Complex Federal Investigations, and each spring, a Sentencing seminar. “It’s very easy to lose sight of everything but your docket, but the teaching has forced me to get my head up out of the weeds.”

For the Sentencing seminar, Gleeson assigns hypothetical sentencing problems and readings that range from current policy documents to proposed bills. Defense attorneys, prosecutors, and federal judges make regular guest appearances. And the class visits the federal prison in Danbury to speak with inmates, an eye-opening experience that, Gleeson says, never fails to move his students.

It was in his seminar that Gleeson first began looking closely at “problem-solving” courts such as drug courts, which provide drug addicts who are low-level offenders the option to avoid prison by entering treatment for substance abuse. Slowly the judge realized that drug courts, which had been

a success at the state level but had not been widely adopted at the federal level, were a viable alternative to incarceration for his own court.

“I remember vividly telling my class that I thought drug courts might not be a great idea. What do judges know about drug treatment and the behavior modification efforts those courts are built around? We’re not trained to be drug treatment specialists. One of my students raised her hand and very respectfully said, ‘You’re not trained to be judges either, and that doesn’t seem to be much of an impediment.’”

Gleeson launched a drug court for the Eastern District in 2012. Then-US Attorney General Eric Holder recently praised both that program and a youthful offender program Gleeson helped launch in 2013. Holder described them as “emblematic” of the alternative to incarceration programs that are needed to address the over-incarceration problem in the federal criminal justice system.

Alexander Levy ’14 was a 3L in Gleeson’s Sentencing seminar. He recalls how the class felt like a call to action to address how inequitable the current criminal justice policies are. “The most important lesson I learned from Judge Gleeson: Never be afraid to challenge the conventional wisdom. Even when you have tremendous stature and a large role in an institution as an insider, you shouldn’t be afraid when you see injustice to speak out,” says Levy.

As for Gleeson, he says that teaching bright and inquisitive students keeps him sharp, ultimately elevating his ability to do a good job in the courtroom.

“A lot of people think there’s a gigantic gap between the academy and the trenches where I live,” says Gleeson. “I’m not sure how wide that gap is, actually, but part of my job as a teacher at NYU Law is to bridge it.” □ *Michelle Tsai*

Change Agent



When Leslie Spencer ’98, a patent litigation partner at Ropes & Gray, received the Women of Color Collective’s annual Woman of Distinction Award last March, her speech focused on engaging in social change. Noting her lifelong love of science and technology that led to her joining the 10 percent of the MIT student population that was female, she said, “I was just doing what makes sense for me, and that’s part of being an effective change-maker.”



His First Century

In Jerome Bruner's 100th year, he whispers the lines of T.S. Eliot, revisits the loss of his father in childhood, and talks about the sources of human happiness and misery. And then he weaves these strands of thought together as if they were one.

In an afternoon chat, Bruner, one of the most influential psychologists of the 20th century, is every bit the acrobatic meta-connector of ideas that most anyone who has ever known him suggests.

"My lawyer friends say to me, 'You're always asking these goddamned impossible questions,'" says Bruner, his hands flying as he sits amidst his three desks and thousands of books in his Mercer Street home. "And they are pretty much impossible. But the search for the impossible is part of what intelligence is about."

His lawyer friends, along with his education friends and psychology friends—15 colleagues from institutions around the world—are marking his momentous October 1 birthday with a collection of essays, *Bruner Beyond 100: Cultivating Possibilities*. They call him a "Pied Piper of interdisciplinary wonder."

Bruner was born blind but had his sight restored at age two. His father died when he was 12, a hurt that endures. Before he died, the watchmaker father sold his company to Bulova, leaving his son a "rich kid," a fact which he tried to hide. A Duke undergraduate and Harvard PhD in psychology, Bruner co-founded the Harvard Center for Cognitive Studies, which favored the study of the human mind over pure behavior. When offered a chaired position at Oxford, Bruner sailed his boat across the Atlantic to get there. He was the brains behind Head Start, the federal preschool program, and scholars have called his influence on the ways of learning "epochal." He has written 15 books.

Nearly all of that occurred before Bruner arrived at NYU Law in the 1980s. That was around the time Peggy Cooper Davis, now John S.R. Shad Professor of Lawyering and Ethics, heard Bruner give a talk. She was struck by how Bruner's musings across many disciplines could enrich the teaching of law. She sought out University Professor Anthony Amsterdam.

Amsterdam had started the Lawyering Program to help first-year students role-play as lawyers and advance their critical thinking. He had grown

interested in storytelling. Bruner, he learned, was well versed in literary theory, culture, and linguistics.

Bruner, meanwhile, was ready for change. "I find a great many psychologists to be rather dull," says the psychologist, who leans forward for emphasis. "They want to turn mysteries into the obvious."

And psychology failed to look at how societies create social norms. The law, on the other hand, takes human passions, such as vengeance, and tries to codify them into rules about crime and punishment, often harshly. That intrigued Bruner.

In 1991, Bruner was appointed a visiting professor, and seven years later, University Professor.

Co-teaching with Amsterdam, Davis, and Russell D. Niles Professor of Law Oscar Chase, Bruner drew on cognitive theory, literary criticism, and cultural anthropology, helping colleagues and students examine the humanistic in legal practice.

In the classroom, the law professors employed everything from Greek tragedy to modern-day murder mysteries, leading to transformative teaching. "It was more fun to see them together than it was to see a Broadway show," says Philip Meyer, a law professor at Vermont Law School who coordinated the Lawyering Program in 1987-88 and wrote

a 2014 book, *Storytelling for Lawyers*, that devotes a chapter to his colleagues. "They played against one another in this delicate, intellectual, cosmic play." Amsterdam drilled "into and through things," while Bruner "built these marvelous transitional bridges with complete eloquence."

Based on their teachings, Bruner and Amsterdam collaborated on a groundbreaking 2001 book, *Minding the Law*, a study of the law as a reflection of storytelling, culture, language, and thinking. For Amsterdam, the highlight was simply talking with his dazzling friend over sandwiches before the seminars they co-taught for more than 20 years, ending in 2010: "The high point of my intellectual life."

Hearing this, Bruner turns almost bashful: "That kind of brings a tear to my eye." He returns to Eliot. "I grow old...I grow old," he recites, then stops. "You know, all through my career, the literary was never absent. It's what joins us as human beings."

□ Candy J. Cooper



A TEACHING MOMENT

From 2009 to 2010, Jerome Bruner and Anthony Amsterdam co-taught the Lawyering Theory Seminar: Crime, Punishment, Vengeance, and Forgiveness, in which they used literature and writing exercises to encourage students' critical thinking.

In one assignment, students were asked to write dialogue for the moment in the Hebrew Bible when Abraham holds a knife over his son Isaac, ready to kill. "Hey, Dad," one group's drama began, in the words of Isaac, "does Mom know you're doing this?"

"All of a sudden," recalls Amsterdam, "for the very first time we realized there were no women in the story."

New Faculty

DEBORAH BURAND

Assistant Professor of Clinical Law

Paris beckoned. There was a quaint atelier on the Île de la Cité where she could write her Great American Novel, like Ernest Hemingway, Gertrude Stein, and others before her. But it was not in the cards for Deborah Burand.

After leaving the law firm Shearman & Sterling in 1998, Burand booked a flight to Paris. Waiting for a cab to the airport, she received a call from a former colleague: Would she take a job at the US Department of the Treasury? She flew to Paris but cut her trip short. A similar scenario played out in 2008, landing her at the University of Michigan. “I didn’t get to live in Paris yet again. That’s the story of my life,” says Burand, laughing.

A clinical professor with a wealth of experience in the private, government, and nonprofit sectors, Burand is sought after for her expertise in impact investing and social enterprise, and also her sociability. “She’s brilliant and brought new ideas to the field of microfinance, yet she is also a magnet for people,” says Patricia Kelly, a communications consultant who has worked with Burand at Conservation International and Grameen Foundation.

Discovering a lively restaurant while at a conference in Europe, she threw an impromptu party for participants. She has brought high-profile speakers to conferences she has hosted—“They were drawn to Deb because she is a thought leader,” says Jan Piercy, a co-founder with Burand and others of Women Advancing Microfinance International—and attracted a robust clientele to the clinic she co-founded at Michigan.

Burand has now brought her legendary networking skills to NYU Law, launching the International Transactions Clinic, which assigns students to clients that are conducting cross-border transactions to address some of the world’s most pressing problems.

Burand’s clinical work informs her scholarship and vice versa. She helps clients structure innovative financing to support high-impact social programs. In “Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees Can Scale Development” (2013), in the *NYU Journal of Law & Business*, she explores how to use social impact bonds in emerging markets.

Burand spent much of her childhood in the Midwest. She attended DePauw University and studied international relations in Switzerland and

Washington, DC. Graduating from Georgetown University in 1985 with a joint law and master’s degree from the School of Foreign Service, she joined Shearman & Sterling. There she worked on the world’s first debt-for-nature swap in Bolivia, canceling foreign debt in exchange for local currency to be used in environmental conservation projects. Says Burand: “That’s when I first realized that Wall Street-like deal structures could be used to do good in the world.”

In 1989, she was recruited to the Federal Reserve Board, and four years later was named an International Affairs Fellow of the Council on Foreign Relations. “The early ’90s was a heady time,” she recalls, as she worked closely with the International



Monetary Fund and the newly established European Bank for Reconstruction and Development to create post-Cold War economies in Eastern Europe and the former Soviet Union.

During her years at the Treasury Department, she transferred from the legal department to a senior policy position in the Office of International Affairs, in which she advised Timothy Geithner and Edwin Truman, then under-secretary and assistant secretary, respectively, on international financial matters. She also worked as the general counsel of the Overseas Private Investment Corporation (in the first term of the Obama administration), FINCA International, and Grameen Foundation.

Although she has had many jobs, Burand has worked for some bosses more than once. “I followed people I respect and admire,” she says.

Burand still dreams of writing that novel. In the meantime, she has moved from Chelsea, Michigan, to the Chelsea neighborhood of Manhattan. Her shift into academia feels right. “NYU Law combines a world-class legal education with a globally focused student body. Add to that its long tradition of advancing social justice in the world. I cannot imagine a better community for a person with my interests and passions.” □ *Jennifer Frey*

C. SCOTT HEMPHILL

Professor of Law

Had Scott Hemphill set up a Google Alert for his name, his devices would have been buzzing on May 7, 2015. The *New York Times* had quoted him in an article about the possible implications of Google's foray into the wireless market. And a California Supreme Court opinion cited three of Hemphill's articles in deciding an important antitrust case about agreements that create or perpetuate monopolies in the pharmaceutical industry.

"It was a big day, a very welcome surprise. I think of it as a big win for legal scholarship," says Hemphill, who teaches and writes about antitrust, intellectual property, and industry regulation. After a visiting professorship last spring, Hemphill left Columbia Law School, where he had taught since 2006, to join NYU Law.

Hemphill is often credited with coining the term "pay for delay" in referring to reverse payment agreements, the subject of the California case. He has testified before congressional committees on the legality of such agreements and laid the groundwork for the US Supreme Court's 2013 decision in *FTC v. Actavis*. "His work strongly influenced the debate and ultimately the Supreme Court, which decided the case in the way Scott had suggested," says Columbia's Tim Wu, who teaches copyright and antitrust and has served as a senior adviser at the Federal Trade Commission.

In works such as "Paying for Delay: Pharmaceutical Patent Settlement as a Regulatory Design Problem" (*NYU Law Review*, 2006), Hemphill attacks the agreements, in which pharmaceutical companies pay generic drugmakers to settle patent disputes and delay a generic drug's entry into the market. He believes that these agreements violate antitrust law, hurt consumers, and encourage makers to tweak existing drugs rather than develop new ones.

Two weeks after the California decision, the Second Circuit affirmed a preliminary injunction in a "product hopping" case that he advised the New York Attorney General's Office to bring, one also involving a drugmaker's attempt to prevent generic competition.

It was, he says, a big win for consumers. "His work in this area is making an impact," says Stanford Law's Mark Lemley, who co-authored a 2011 antitrust article with Hemphill.

Colleagues say Hemphill is a rigorously accurate academic—"a chef whose every ingredient is exactly right," says Wu—with a contagious joie de vivre. "He applies his powerful, analytic mind not only to antitrust questions, but to what kind of grill he should buy or the best way to cook something," says Jeannie Suk of Harvard. "He's a dream co-author, a real stickler for getting things right. He won't ever let you make mistakes." Hemphill and Suk have co-authored several articles about the weak IP protection in the fashion industry.

Hemphill grew up in Johnson City, Tennessee, in the foothills of Appalachia, the oldest of three siblings. A teacher and school board member, "Mom knew everyone in the town," he says. "Dad was the doctor." To say he was a good student is an understatement. Described by friends as a "Doogie Howser type," he skipped sixth and seventh grades, then extended high school by a year in order to enter Harvard at 16 instead of 15.

He wanted to be a chemist. "But I was an atrocious lab partner," he says, "a danger to myself and others." Graduating in 1994, Hemphill went to work for the management consulting firm William Kent International, which fueled his interest in economics and law. He earned his master's degree from the London School of Economics and Political Science in 1997, his law degree from Stanford Law School in 2001, and his doctorate in economics from Stanford University in 2010. During the same period, from 2002 to 2004, he clerked for Judge Richard Posner of the US Court of Appeals for the Seventh Circuit and US Supreme Court Justice Antonin Scalia.

Adamant about keeping his foot in "the real world," he says, he took a year's sabbatical in 2011 to become chief of the Antitrust Bureau for the New York State Attorney General. He also writes for mainstream outlets including *Slate*, the *Wall Street Journal*, and *Science*.

Hemphill is enthusiastic about heading downtown for this new chapter in his life. "NYU has experts across the full range of IP and innovation. It's really exciting to be part of this team," he says. Once he gets outside the confines of Vanderbilt Hall, he likes to walk the High Line and dine on his communal terrace with his wife, Laura, a novelist, and their toddler, Mia. Their apartment has picture windows looking out onto the often-noisy street below, but Mia likes it, and that's enough for her doting dad. "She can see taxis, buses, and sometimes even cement mixers, just like her favorite book, *Goodnight, Goodnight, Construction Site*," says Hemphill, ever the optimist. □ *Jennifer Frey*





Arguments & Opinions

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The Truth in the Transcript

In his book *Speak Now*, Kenji Yoshino celebrates *Hollingsworth v. Perry*.

On June 26, 2013, the Supreme Court decided *United States v. Windsor*, striking down a provision of the Defense of Marriage Act that barred the federal government from recognizing same-sex marriages. The decision triggered a sea change. Post-*Windsor*, courts swept away same-sex marriage bans in 22 states. Within the next two years a majority—36 states and the District of Columbia—recognized same-sex marriage.

On the second anniversary of *Windsor*, the Supreme Court held in *Obergefell v. Hodges* that same-sex couples have a constitutional right to marry.

Windsor's far-reaching impact notwithstanding, Kenji Yoshino, Chief Justice Earl Warren Professor of Constitutional Law, maintains that another case, decided on that same summer

day—*Hollingsworth v. Perry*—deserves to have as strong a legacy. In his book *Speak Now: Marriage Equality on Trial*, Yoshino argues that the *Perry* trial was “the most rigorous, comprehensive, and thoughtful conversation we’ve ever had in any forum on same-sex marriage in the country.” Because the trial was able to strip away half-truths to get at the facts of same-sex marriage, he says, the “next great legal controversy” should be tried in the courtroom, not hashed out by politicians or even decided via any other legal process without trial.

Yoshino came to the trial record shortly after August 4, 2010, when Vaughn Walker, the now-retired chief judge of the US District Court for the Northern District of California, ruled that California’s Proposition 8, which amended the state constitution to define marriage as between a man and a woman, violated the equal protection and due process clauses of the 14th Amendment to the US Constitution.

Intrigued by the judge’s “unusually thorough opinion,” Yoshino had a librarian pull all 13 volumes of the trial record. After blasting through the 3,000-page transcript, he says, “it struck me that this was a shining civil rights document that needed to be brought to the public.”

The Supreme Court ultimately disposed of *Perry* on procedural grounds, dodging the substantive constitutional issue while letting same-sex marriage proceed in California. Yoshino’s book revisits not only the arguments but also the human dramas that animated them throughout the 12-day trial. (In the book he also intersperses personal reflections on his own life; between the filing of the case and the Supreme Court’s decision, Yoshino married Ron Stoneham, and the couple welcomed two children.)

Yoshino draws a sharp contrast between the rigorous trial proceedings and what he deems the misleading ad campaigns that convinced 52 percent of voters to say “yes” to Proposition 8. “I want to drive a wedge between the question of where the most democratically legitimate conversation happens, which I think is open to debate, and where the best conversation happens, which I don’t think is open for debate,” Yoshino says.

“In media debates, or even academic debates, a smart person can always run out the clock or pivot away from the question and not really have to answer it,” he adds. “Whereas if you’re on the stand, under oath, under penalty of perjury, and you’re being cross-examined for open-ended periods of time, you simply have to answer the question.”

Yoshino claims that, faced with such scrutiny, the Proposition 8 proponents’ arguments against same-sex marriage withered, and, under cross-examination, so did their experts. For example, proponents argued that same-sex marriage would lead to the “deinstitutionalization” of marriage by robbing it of public regard and commitment. But during cross-examination by plaintiffs’ lawyer David Boies LL.M. ’67, one of the proponents’ expert witnesses admitted that marriage has already been deinstitutionalized.

Given our justice system today, the odds were against *Perry* ever seeing the inside of a courtroom; less than two percent of civil cases filed in federal court make it to trial, according to the American Bar Association. *Speak Now*, then, serves a dual purpose: It is a paean to the dying civil trial and a vehicle to convey the *Perry* arguments, in a digestible form, to readers.

Five years after *Perry*, Yoshino stands by his commitment to the power of the trial record: “Something happened in those 12 days in that tiny courtroom in San Francisco that deserves to have a life.” □

Gina Rodriguez



MSNBC host Rachel Maddow joined Kenji Yoshino on April 29 to analyze oral arguments held the previous day in the same-sex marriage cases at the US Supreme Court.



Redrawing the Outlines

Richard Pildes, Sudler Family Professor of Constitutional Law, has thought deeply about the constitutionally appropriate role of race in redistricting for more than 20 years. His analytically rigorous scholarship, cited by the Supreme Court in 10 voting rights cases between 1995 and 2009, has frequently incorporated empirical data to advance a larger theme—namely, that the Court’s doctrine on the use of race under the Voting Rights Act of 1965 (VRA) should be adapted to reflect changing racial realities. In November 2014, Pildes put his scholarship to the test to make his winning Supreme Court oral argument in *Alabama Legislative Black Caucus v. Alabama*.

In 2012, Alabama’s newly ascendant Republican legislative majority enacted a redistricting plan. A census two years earlier had revealed that each of Alabama’s 35 black-majority districts was underpopulated. Alabama sought to address the issue by redrawing its district boundaries so that the percentage of black residents in black-majority districts either stayed level or increased. Black lawmakers and black voting rights organizations protested the results, however: under the plan, nearly 20 percent of the black residents living in white-majority districts were moved into super-concentrated black districts, while nine of the 13 districts boasting interracial political coalitions were eliminated. The effect was to segregate voters even further by race and to hinder the formation of coalitions across racial lines.

When black leaders filed suit, the Alabama State Legislature asserted that Section 5 of the VRA prohibited it from adopting district lines that significantly decreased black population percentages in black-majority districts. After a district panel ruled in favor of the state, the Alabama Legislative Black Caucus, Alabama Democratic Conference (ADC), and other plaintiffs appealed. Pildes, leading the ADC legal team, was invited to brief and argue the case.

Pildes had predicted what it would take to win a case such as this. In the wake of the Court’s 2013 decision in *Shelby County v. Holder* to strike down the VRA’s nearly 40-year-old formula for determining the jurisdictions that need federal preclearance of voting law changes, Pildes wrote on the popular *SCOTUSblog* that “the essential question at stake” to “the Court’s pivotal actor, Justice [Anthony] Kennedy,” is “whether our political system is frozen in



place on issues concerning race. Do our political institutions and culture have the capacity to recognize that dramatic changes at the intersection of race and voting have taken place over recent decades?” Alabama’s redistricting plan, which imported district racial characteristics from one decade to the next, he asserted, did not reflect that progress.

Pildes’s winning arguments drew upon prior Supreme Court decisions like *Miller v. Johnson* in 1995 and *Bush v. Vera* in 1996 that expressed reservations with the formulaic application of racial targets.

“Alabama employed rigid racial quotas,” Pildes said in oral argument. “Racial quotas in the context of districting are a dangerous business.” *Miller*, *Bush*, and other recent decisions employed a notion to explain the constitutional injury suffered by victims of racial gerrymandering first conceived by Pildes and Richard Niemi of the University

of Rochester in a 1993 *Michigan Law Review* article. An “expressive harm,” they wrote in “Expressive Harms, ‘Bizarre Districts,’ and Voting Rights,” is one that “results from the idea or attitudes expressed through a governmental action, rather than from the more tangible or material consequences the action brings about.”

Furthermore, Alabama’s redistricting policy required “a legitimate or reasoned justification,” Pildes wrote in his brief to the Court. “Compliance with the imagined requirements” of Section 5 “cannot provide that justification.” Pildes argues Section 5 requires a detailed projection of how election districts are likely to perform in the new plan—the opposite of Alabama’s “fixed demographic” approach. In “Is Voting-Rights Law Now at War with Itself?” (*North Carolina Law Review*, 2002) Pildes called for a “highly specific, functional analysis” and proposed flexibility in satisfying Section 5 if evidence suggested that replacing safe black districts with “crossover” districts (with nonblack

Pildes won the first Supreme Court racial gerrymandering case on behalf of African American voters in 55 years and prevented the misuse of legal protections for minority communities.

CONTINUED ON PAGE 44



Listening Closely

Burt Neuborne examines the structure of the Bill of Rights and its implications for the First Amendment.

US Supreme Court Justice Sonia Sotomayor joined Neuborne in March to analyze the arguments in his book.

The genius of the First Amendment, says Burt Neuborne, Norman Dorsen Professor of Civil Liberties, is that the order of its 45 words is like an expertly arranged musical composition. In his 2015 book *Madison's Music: On Reading the First Amendment*, Neuborne describes the structural brilliance of the First Amendment and argues that it must be read holistically, striking a blow against originalist interpretation.

Neuborne maintains that the six textual ideas in the First Amendment—no establishment of religion, free exercise of religion, free speech, free press, free assembly, and freedom to petition for redress—describe “the odyssey of a democratic idea: how a democratic idea is born in the conscience of a free citizen, articulated freely, mass-disseminated freely, collectively supported freely, and then presented to the legislature. When you

think about it that way, the six ideas couldn't be in any other order. They are a blueprint for a functioning democracy.”

It's not that any of Madison's six textual ideas in the First Amendment were unique, Neuborne adds; they were all present in one or another of our previous rights-bearing texts. Madison's greatest accomplishment, he says, was in knowing what ideas to include and, most important, arranging them in a chronological narrative of democracy in action.

Neuborne acknowledges that the country's founders were as divided as we are now: “There wasn't some huge consensus about what the First Amendment meant. It turns out that as to anything that's important—the First Amendment, the Fourth Amendment, the Fifth Amendment—the language can bear multiple meanings.” Thus, in Neuborne's version of constitutional interpretation,

“OUTLINES” CONTINUED FROM PAGE 43

majorities) might also result in electing black voters' candidates of choice.

The Court explicitly endorsed Pildes's position in *Georgia v. Ashcroft* in 2003, ruling in favor of Georgia's majority-Democratic legislature, which passed a redistricting plan modestly unpacking black voters from black-majority districts in order to create a larger number of competitive Democratic districts. Importantly, even the four-justice dissent agreed with the majority that “mere reductions in [black population percentages] are not in themselves” prohibited by Section 5—a holding clearly at odds with Alabama's stated rationale for its 2012 district plan.

On March 25, 2015, Pildes won a 5-to-4 decision, with Kennedy plus justices Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan, and Sonia Sotomayor agreeing that the VRA does not require separating voters by race when current conditions no longer make that necessary to ensure an equal opportunity to participate in the political process. The Court remanded the case so that the lower courts could

apply this to all of Alabama's election districts.

The win was a personal triumph for Pildes for another reason, notes Nathaniel Persily of Stanford Law School. “Pildes also achieved the unique distinction of not only winning over the majority, but also having his work cited by one of the dissenters [Justice Clarence Thomas]. It is a testament to his influence, and the trust the justices, of different political and jurisprudential persuasions, place in him.”

This case “might have been the harbinger of the end of the VRA as we know it,” says Justin Levitt of Loyola Law School, former counsel at the Brennan Center for Justice. “Instead, the Court unmistakably supported the contextual and nuanced assessment of race and politics that justice demands, and vigorously affirmed the place of the VRA in that assessment. Pildes won the first Supreme Court racial gerrymandering case on behalf of African American voters in 55 years, and in so doing, ensured that jurisdictions could not misuse legal protections for minority communities for their own political ends.” □

Craig Winters '07

the overall order and organization of the Bill of Rights—Madison’s “music”—become crucial.

“What’s the best way of reading the text?” Neuborne asks. “Is it tearing a word out and pretending that the word gives you a command, or is it looking at the entire text holistically? What story does the text tell me? When you look at the way it’s organized, does the text tell me something that helps me, as a judge, honestly read the text the best way I can? This is in some sense my effort to respond to Justice [Antonin] Scalia by saying, ‘I’ll see your isolated text and I’ll raise you now on how you read the text.’ It can’t be that you pull isolated words out. It can’t be that you look backward in time to isolated words.”

Neuborne is troubled by a series of Supreme Court decisions between 2010 and 2012. *United States v. Stevens* found that a film producer could sell gruesome videos of dogfighting; *Snyder v. Phelps* gave Fred Phelps and his notorious Westboro Baptist Church a green light to picket military funerals in an inflammatory manner; *Brown v. Entertainment Merchants Association* overturned a ban on selling violent video games to children; and *United States v. Alvarez* voided a federal law criminalizing false claims of winning military medals.

“What you wind up with is a collection of four speakers: a liar; a corporation selling violent video games to children; people making, essentially, animal

porn movies; and these homophobic racists who are picketing the funeral,” Neuborne explains. “They’re the ‘aristocrats,’ and we’re protecting their speech, and the question is why. I don’t give up on the First Amendment easily. But I also don’t think that it’s an automatic reflex idea. And somebody’s got to think about whether there’s an imbalance now between a speaker who gets to do and say anything they want and hearers who have to listen to it.”

The essential issue, he says, is that the Court concentrates on the three clauses of the First Amendment protecting speakers while ignoring the three that protect the rights of hearers. Two major cases in point—*Citizens United v. Federal Election Commission* and *McCutcheon v. Federal Election Commission*—Neuborne and others believe, have tipped the political scales dramatically favor of well-heeled special interests at the expense of ordinary citizens.

Madison’s Music, Neuborne says, is intended to speak to those ordinary Americans. In fact, the book evolved from an ambitious 10-part public lecture series on the Bill of Rights that Neuborne delivered at Cooper Union in 2012. He insists that what really matters is the general public’s understanding of constitutional rights. “The lawyers and judges follow the social consensus,” he asserts. “They don’t create it. They like to think they’re leading the parade, but in fact they’re the guys sweeping up afterward.” □
Atticus Gannaway



Neuborne (left) with Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law, on the occasion of Neuborne’s inaugural lecture as Norman Dorsen Professor of Civil Liberties last February.

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What Fledgling Democracies Need

In a new book, Samuel Issacharoff looks at the critical role that constitutional courts play.

GOOD READS

A Sampling of Recent and Forthcoming Faculty Books

Philip Alston (Co-Editor)

The Transformation of Human Rights Fact-Finding, Oxford University Press, 2015

Barton Beebe

(Co-Editor)
The Luxury Economy and Intellectual Property, Oxford University Press, 2015

Jennifer Arlen (Editor)

Research Handbook on Corporate Crime and Financial Misdealing, Edward Elgar Publishing, 2016

Sally Engle Merry, Kevin Davis, and Benedict Kingsbury (Editors)

The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law, Cambridge University Press, 2015

Gráinne de Búrca (Co-Editor)

Europe's Justice Deficit?, Hart Publishing, 2015

Erin Murphy

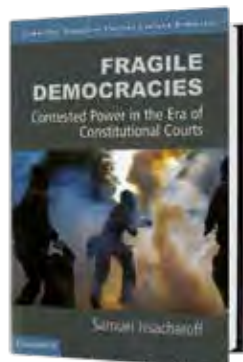
Inside the Cell: The Dark Side of Forensic DNA, Nation Books, 2015

The past 25 years have witnessed the attempted flowering of democracy in Russia, South Africa, Egypt, and numerous other countries. In some, it has flourished, with fair elections and peaceful transfers of power; in others, it has withered or been crushed. In *Fragile Democracies: Contested Power in the Era of Constitutional Courts*, Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, examines the range of outcomes and concludes that the most significant bulwark against a return of repression is the presence of strong constitutional courts.

"In country after country," he writes, "the transition to democracy is eased by the creation of a court system specifically tasked with constitutional vigilance over the exercise of political power."

These courts, Issacharoff says, serve two primary roles. First, during the political bargaining that establishes a new order, they can be critical actors, in part by assuring protections against majoritarian excess. Such was the case in South Africa, where the court was given—and exercised—oversight of the terms of the constitution before it was adopted in 1996, not merely judicial review once it was already in place. Second, in the name of self-preservation, fledgling democracies may limit participation by groups whose ultimate aim is the subversion of democracy—several former Soviet republics, for example, ban local communist parties from seeking office—and constitutional courts can provide oversight of such restrictions.

Perpetuating a democratic order depends on many factors and institutions, Issacharoff acknowledges. But, he writes, the reliance on constitutional courts "highlight[s] an important institutional shift in the structuring of new democracies...that has received insufficient attention to date."



A renowned scholar in civil procedure, constitutional law, and the law of democracy (a field he helped pioneer), Issacharoff has written extensively

about the US political system, in particular efforts to regulate political spending. But two events in the US actually led him to shift his gaze away from American democracy: the intervention of the Supreme Court in the contested Bush-Gore presidential election of 2000, and the national security concerns that emerged in the wake of 9/11. "Each represented a significant challenge to the structure and integrity of American democracy, each exposing a characteristic vulnerability of democracy either to process failure from within or to external enemies," Issacharoff writes in his book preface. "In the aftermath of these events, I began to wonder more systematically about how other democracies deal with such challenges."



While Issacharoff focuses his inquiry abroad, America's constitutional experience looms large. He recounts the observation of Albie Sachs, who served as a justice on South Africa's constitutional court from 1994 to 2009, that it is difficult for any new democracy to resist the gravitational pull of US constitutional law. This is due to "not simply the longevity of American democracy and the US Constitution, but the commanding language and arguments honed by the US Supreme Court over centuries of constitutional debate," Issacharoff writes. But he also cautions readers that "it is vital to understand the limits of the parallels between the threats that democracy faces in the United States and in other countries." His book, after all, is about fragile democracies—places with little or no democratic tradition, and often suffering the ravages of ethnic or religious strife. The fairly absolute protections for expression and political participation provided by the First Amendment in the US, for example, might not be appropriate in such settings.

When Issacharoff began working on the book a decade ago, he found himself chronicling an unfolding story. The Arab Spring, for instance, began in Tunisia just five years ago. "This book was a nightmare to write, because I was chasing a moving target at all times," he says. Inserted near the end of the book, he adds, is a discussion of the January 2015 election in Sri Lanka, "which occurred, to my editors' chagrin, just as I was supposed to be turning in the final galleys." □ *Michael Orey*



Punishment That Doesn't Fit the Crime?

And the Winner Is...

At the red-hot intersection of immigration and crime, the Secure Communities program, launched by US Immigration and Customs Enforcement (ICE) in 2008, permits federal authorities to check the immigration status of every person arrested by local police. The government has touted it as a way to reduce crime by targeting immigrant offenders for deportation. But Adam Cox, Robert A. Kindler Professor of Law, and University of Chicago Law School Professor Thomas Miles have shown that the program fails to accomplish its stated aim.

Readers of "Does Immigration Enforcement Reduce Crime? Evidence from 'Secure Communities,'" published in the November 2014 issue of the *Journal of Law and Economics*, might not expect an article authored by two law professors to contain lines like this: " $\partial\beta/\partial S = a_i\partial\beta_i/\partial S + (\beta_i - \beta_n)\partial a_i/\partial S$." But Cox, who has an undergraduate engineering degree, and Miles, who is a PhD economist, both bring a strong empirical bent to their legal scholarship. For this study, they employed state-of-the-art econometric

techniques to analyze an enormous data set of information on local crime rates, as well as extensive data they obtained through Freedom of Information Act requests from ICE. "These data allow us to identify precisely the counties and dates in which Secure Communities produced the largest numbers of detentions and deportations," Miles says.

Cox, who taught at Chicago before joining the NYU Law faculty in 2011, has collaborated with Miles before. Both of them, Cox notes, are interested in areas of intersection between what the law is and what people such as enforcement officials

and judges do to administer it. In their 2008 *Columbia Law Review* article "Judging the Voting Rights Act," they examined voting rights cases (an area of scholarly focus for Cox) and judicial behavior (of particular interest to Miles) and identified racial peer effects on courts. What they found is that race has a powerful effect on outcome; having a black judge on a three-judge panel, for example, increases the likelihood that the two white judges will rule that there has been a voting rights violation.

With Secure Communities, immigration law and criminal law have been intertwined in an on-the-ground enforcement program. Cox read news reports about it as it was getting launched, and something caught his eye: the program would have a phased geographic rollout over a series of years. The staggered introduction across roughly 3,000 US counties, he explains, provided both the large number of study subjects and the randomization that statisticians

look for in an experiment. "It was just like this light bulb went off in my head," Cox says, "and I was like, holy cow, from the perspective of a social scientist, that's awesome—it gives you this really unique ability to study a federal policy that you otherwise wouldn't have the ability to study very well."

A preliminary analysis published by Cox and Miles in the 2013 *University of Chicago Law Review* noted that the government initially activated Secure Communities in heavily Hispanic counties, suggesting that the aim may have been immigration enforcement more than the stated goal of crime reduction.

In their November 2014 article, the two conclude that Secure Communities—which has resulted in the detention of roughly 250,000 people, the vast majority of whom have been or will be deported—has had "no observable effect on the overall crime rate," including violent crimes such as murder, rape, arson, and aggravated assault.

The implications of their findings, Cox says, depend on what you think the government's priorities should be: "Our research will be successful if it moves the debate about immigration policy onto the right terms." □ *Michael Orey*

Secure Communities has had "no observable effect on the overall crime rate."

ADAM COX AND THOMAS MILES

AWARD-WINNING 2014-15 SCHOLARSHIP BY FACULTY AND STUDENTS

Danielle DeBold '14

"The Decriminalization of Rape on America's College Campuses: How Federal Sex Discrimination Policy Has Diminished the Role of the Criminal Justice System in Combatting Sexual Violence"
Winner, 2014 Selma Moidel Smith Law Student Writing Award (National Association of Women Lawyers)

Eleanor Fox '61

"When the State Harms Competition—The Role for Competition Law"
Best Academic General Antitrust Article, 2015 Antitrust Writing Awards (Concurrences and the George Washington University Law School Competition Law Center)

Russell Gold, Associate Director, Lawyering Program

"Beyond the Judicial Fourth Amendment: The Prosecutor's Role"
2015 Fred C. Zacharias Memorial Prize for Scholarship in Professional Responsibility (Association of American Law Schools)



Rules of Disclosure

Adam Samaha examines “must ask, don’t tell” and other combinations.

AWARD-WINNING
2014–15 SCHOLARSHIP
continued

Alexander Levy '14

“Believing in Life After Loving: IRS Regulation of Tax Preparers”
First Prize, 2014
Tannenwald Writing Competition
(Theodore Tannenwald Jr. Foundation for Excellence in Tax Scholarship and the American College of Tax Counsel)

Daniel Rubinfeld

“Is there a Market for Organic Search Engine Results and Can Their Manipulation Give Rise to Antitrust Liability?”
Best Academic Dominance/Monopolization Article, 2015 Antitrust Writing Awards
(Concurrences and the George Washington University Law School Competition Law Center)

Eileen Woo '16

“The Doctrine of Unexpected Results Following the Federal Circuit’s Decision in *BMS v. Teva*”
Winner, Patent, Trademark & Copyright, 2015 Bloomberg Law Write On Competition
(Bloomberg BNA)

Professor Adam Samaha recently asked some visiting family members: “Did you take my keys?” His inquiry was an experiment in something he has been thinking about a lot lately: the rules of asking and telling, and in particular issues that arise when those rules operate in tandem. Although there has been scholarly attention to asking (police interrogation, for example) and to telling (disclosure rules for consumer contracts), Samaha and his former colleague Lior Strahilevitz at the University of Chicago Law School found that combinations of rules for asking and telling lacked systematic treatment.

For many Americans, the now-repealed “don’t ask, don’t tell” policy regarding gays in the military offered a glimpse into the complexities that can result from one such combination. But laws and social norms have created many others that come into play in widely varying contexts. In “Don’t Ask, Must Tell—And Other Combinations,” forthcoming in the *California Law Review*, Samaha and Strahilevitz present a matrix of these combinations and explore how they operate in an integrated fashion. The professors focus on what they call “the extreme corner cases” of the matrix:

MUST ASK, MUST TELL: *Laws requiring merchants to verify that purchasers of alcohol are of legal drinking age.*

MUST ASK, DON’T TELL: *Certain interactions between journalists and politicians—for instance, when a reporter asks an undeclared candidate, “Do you plan to run for president?”*

DON’T ASK, MUST TELL: *One view of the best rules for discussing marital infidelity and other transgressions in personal relationships.*

DON’T ASK, DON’T TELL: *Despite being scrapped by the military, it exists in other contexts, such as rules governing inadmissible evidence during a trial.*

Why are a couple of law professors delving into the nuances of asking and telling about a person’s age or marital fidelity? Law, Samaha points out, is frequently used to try to facilitate or restrict the spread of information, and he and Strahilevitz have both done work in the area of “information flows.” But law does not act in isolation. “Often in my scholarship,” Samaha says, “I try to identify some social phenomenon, try



to figure out how it works outside of law, and then almost all the time we can find it within legal institutions as well.”

Nowhere is this more true than in the employment arena. Both law and social norms, for example, generally prevent an employer from inquiring about a job applicant’s disabilities, and applicants often won’t mention them.

Religion is another sensitive area, as evidenced by *EEOC v. Abercrombie & Fitch Stores*, in which the Supreme Court recently sided with a rejected applicant who wore a hijab at her job interview. The woman might have been entitled to an accommodation for her hijab despite Abercrombie’s dress code, but neither side raised the topic during her interview, Samaha notes. “Silence is the enemy of accommodation,” he says. “People are struggling to find constructive ways of discussing awkward topics like religion and disability. Employers are still guessing about their legal duties and liability risks. Hopefully a project like ours will help stimulate productive thinking.”

While the bulk of their article deals with dynamics between two parties, A and B, Samaha and Strahilevitz found they also needed to consider a third scenario: A asks for information about B from C, with C being big data. “The United States is in the midst of a ‘Reputation Revolution,’” they write, “where it is becoming easier for firms, governments, and ordinary people to learn a great many facts about any citizen, without ever asking that person a direct question.” They then discuss the implications of the rapidly expanding “Ask C” options for social norms and legal regimes.

And what of Samaha’s keys? They really were missing, but, absent his research interests, he would not normally have asked family members so bluntly if they had taken them, with an accusation embedded in the inquiry. As Samaha saw it, he was venturing into the same “don’t ask, must tell” territory of marital infidelity, where a presumption of trust requires A not to ask B if there has been a transgression and B to disclose one if it occurs. While nobody seemed to take offense, Samaha says, “it didn’t feel right with me to be asking the question that way; I felt like I was acting against the norm.” But, he notes, his inquiry did produce the keys—it turned out that someone had taken them and forgotten.

“It was a good reminder,” says Samaha, “that sometimes breaking norms that restrict information flows can be the best way out of an awkward situation.” □ Michael Orey

Focusing on the Fine Print

Florencia Marotta-Wurgler's groundbreaking research on consumer contracts.

The vast majority of contracts these days are standard-form contracts, drafted by one party and offered to the other “as is.” Consumers encounter them every day when doing things like renting cars, purchasing cell-phone service, buying movie tickets online, or downloading software.

Until recently, discussion of standard-form contracts has largely been shaped by scholars’ conflicting theoretical views and anecdotal evidence. Should the law mandate certain types of disclosure? Do sellers take advantage, assuming most people don’t read the boilerplate? But now, pioneering research by Professor of Law Florencia Marotta-Wurgler ’01 has begun to transform the debate. From collecting and analyzing data on thousands of software purchases—each requiring the consumer to agree to an end-user licensing agreement—Marotta-Wurgler has produced a new empirical foundation for legal and policy discussion.

In December, the Hebrew University of Jerusalem organized a conference devoted to Marotta-Wurgler’s scholarship, focusing on nine papers that she and NYU Law student co-authors published between 2005 and 2014. In a forthcoming article in the *Jerusalem Review of Legal Studies*, Eyal Zamir and Yuval Farkash of the Hebrew University call her work “arguably the most important contribution to contract law theory in the past decade.”

After the conference, Michael Orey, director of public affairs, asked Marotta-Wurgler about her work.

How would you describe the papers that were the focus of the conference? The papers take different looks at some commonly held beliefs about mechanisms internalizing buyers’ preferences that might or might not be at work in the standard-form contract setting. Standard-form contracts are a unique type of creature, and they pose a lot of challenges—because if you start thinking about what a contract is, it’s based on the idea that people voluntarily enter into mutually beneficial agreements. Usually when there’s haggling and negotiating, because you’re actually negotiating the terms of the deal, it becomes more likely that you know what it is you are getting into and that you are entering deals that you find beneficial. But standard-form contracts are offered in a take-it-or-leave-it fashion, so this idea of becoming informed while negotiating goes away. This can create a number of problems. My research examines whether some of the mechanisms

believed to alleviate the problems stemming from lack of information are working.

Isn’t that where we look to disclosure, to make sure the consumer understands the terms of the bargain? Yes, but then there’s this wrinkle of “What if nobody reads the fine print?” Disclosure is great in theory because, unlike direct regulation of terms, it preserves consumer choice. In two papers, I sought to examine disclosure’s effectiveness in practice. In looking at the shopping behavior of almost



50,000 potential buyers of software online, I found that making contracts more prominently available did not increase readership in any significant way. The conclusion is that, at least in this context, disclosure is great in theory but a complete failure in practice. Maybe it’s time to move on to something else.

Does anyone read the fine print? When you read court opinions and sometimes when you read academic articles, there’s always this hope that there’s a critical mass of consumers that will read. I wanted to test it in the market that I knew about: software. And what we found was that only one in 1,000 consumers access the license agreement—which is almost no one—and that most of those who do access it read no more than a small portion.

Why software contracts? Software contracts were really pushing the envelope when it came to ways of presenting forms to consumers. Many of them were shrink-wrap contracts that you don’t even get to see until after you’ve paid for the product and opened the package—so that created a huge uproar,

CONTINUED ON PAGE 50

“THE FINE PRINT” CONTINUED FROM PAGE 49

because how can we have an informed minority of buyers policing the market when we have to buy the product in order to access the terms? A widely held concern that sellers would take advantage and include more onerous terms in these hidden contracts stalled several attempts to create model rules to govern transactions involving information goods. I decided to test empirically whether this was indeed the case. Using a sample of over 500 software contracts, I found that contracts available post-purchase were no worse than those that were made available pre-purchase. The implication is that, to the extent that there are inefficiencies associated with standard-form contracts, they are not made worse by delayed disclosure.

So your research doesn’t support the “informed minority” argument? It doesn’t appear to hold

water—not in this market. The existence of the informed minority has generally been given as an important reason to avoid regulation of many consumer contracts. My paper “Does Anyone Read the Fine Print?” in the *Journal of Legal Studies* calls for more nuanced analysis of its existence in other contexts, as that might affect the quality of terms that consumers are offered.

In the course of doing this research, was there anything that surprised you? Many times as academics and as lawyers we have the sense that the sellers or some parties are out to get each other all the time. And what I found is that’s usually not the way many people think, particularly small businesses. Sometimes you forget that there are human beings involved who actually have some pride in what they do, and they’re not out there to get the absolute last thing they can squeeze out of their contracts. □

Used Bytes for Sale

ONE OF THE MOST IMPORTANT principles in the Copyright Act of 1976 is the first-sale doctrine, also known as the exhaustion doctrine, which limits the control the copyright owner has on his or her printed work once it is sold. The buyer of a book, for instance, can resell, lend, donate, and even destroy it, and the owner of the copyright has no right to interfere. Buyers of digital media do not have a regulated way to resell or lend the e-books or songs they own.

Professor of Clinical Law Jason Schultz advocates for applying exhaustion limits to digital media. He sat with staffer Christine Perez to discuss the complex implications of his ideas.



In “Legislating Digital Exhaustion” [co-authored with Aaron Perzanowski, *Berkeley Technology Law Journal*, 2015], you suggest a transfer of ownership of digital media purchases that would require the seller to delete all of his or her copies. Why? And how could this be enforced? The idea is that there shouldn’t be two copies, there should only be one. If I want to enjoy it again, I have to buy it again.

Let’s make this very practical: I buy a song on iTunes. I want to resell this song and somebody says, “Sure, I’d love to buy that for 79 cents versus 99 cents on iTunes.” We do the transaction and I securely transfer the copies to just this person, and then I delete all of mine. But then a record company decides to sue me. My defense could be, “I no longer have any copies. All I did was transfer this copy for the purpose of effectuating a first sale, or essentially exhaustion.” End of story. So the way it gets enforced, in a sense, is only if you get sued.

Does the current copyright language complicate the issue? The current language of the Copyright Act says, “The owner of the particular copy...” The word “particular” is the problem. But if you say that it’s the owner of a “distinct” copy or an “original” copy or a “single” copy, depending on how you want to phrase it, that basically gets to the point.

It seems consumers should already be able to sell or lend digital media. They should, but the traditional media industries and critics of our proposal are opposed because they worry that digital exhaustion would allow everyone to cheat the system. The reality is, people are already cheating the system. The average teenager can crack a DVD and have thousands of copies made in a day. This happens on college campuses, in corporate workplaces, and among neighbors and friends. People copy media all the time, and there is no enforcement. So we already live in a “free-for-all” world; our proposal offers a legal and legitimate way forward that balances rewards for copyright owners with reasonable consumer rights.

Interviews with Marotta-Wurgler and Schultz were edited and condensed.

A Virtual Life Sentence

James Jacobs looks at the vast information infrastructure of Americans' criminal records.



The 1993 Brady Handgun Violence Prevention Act mandated creation of an instant criminal background check system. To make that system a reality, Congress allocated hundreds of millions of dollars to upgrade police and court records to facilitate instant background checks. Because the passage of the Brady Law coincided with the Internet revolution of the 1990s, criminal records that had resided in practical obscurity were suddenly made accessible to everyone for any purpose. Indeed, a whole industry of private-information vendors emerged to conduct criminal background searches for public and private employers, landlords, volunteer organizations, and private individuals.

What impact has this had on the more than 60 million Americans who have criminal records of some kind? In his 2015 book, *The Eternal Criminal Record*, James Jacobs, Chief Justice Warren E. Burger Professor of Constitutional Law and the Courts, documents the reach and longevity of criminal records, as well as how they are used, rightly or wrongly, throughout society. “You could view this book as a case study of the impact of information technology on the criminal justice system,” Jacobs says.

The public accessibility of criminal records in this country today is unique in the world, he says: “It has almost reached the point where criminal records are entirely public, whereas in Europe, criminal records are treated as confidential.” *The Eternal Criminal Record*, while primarily US-focused, draws on this comparative research, conducted in part with Elena Larrauri, professor of law at Pompeii

Fabra University in Barcelona, and Dimitra Blitsa LLM '07 of Athens.

In Europe, criminal convictions are considered personal data. The European Court of Human Rights ruled last May that there is a “right to be forgotten,” meaning that individuals can ask search engines to remove links to personal information. By contrast, in the United States, even if a criminal record is formally expunged, there is nothing preventing the continued documentation of the existence of the record in unofficial databases.

In reaction to all this easy access, some civil rights groups have backed the Ban the Box movement, which advocates delaying the disclosure of one's criminal history from an initial

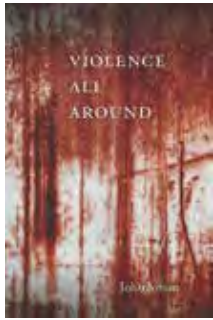
job application to a point later in the hiring process. But Jacobs objects to treating convicts as a protected class. “I believe in the right of private employers to make their own decisions about whom to employ, except that those decisions should not be made on the basis of race, gender, or religion, which is completely irrational and unfair and immoral,” he says. “But making the decision based upon a person's past conduct is not irrational. Private employers should be able to have that information and to act on it.” □ *Rachel Burns*

The European Court of Human Rights ruled that there is a “right to be forgotten,” allowing individuals to ask search engines to remove links to personal information.



What Makes Us Equal?

A philosopher explores one of democracy's most basic questions.



Eyewitness Testimony

“Violence is all around us, not only in the horrors of war and terrorism but in the basic social structures of police, courts, and security guards; yet this pervasiveness often goes unacknowledged. A key point of this book is that violence is something more than an event in time, something more than a cause or an effect, something more than a set of physical events. Violence—in all its dimensions—reveals deeper truths about the workings of human history and the physical world, and about cause and effect itself.”

—From *Violence All Around* by John Sifton '00, now Asia advocacy director at Human Rights Watch. This 2015 book, his first, is a documentation and exploration of the abuses he reported on before and after the 9/11 attacks. Excerpted with permission from Harvard University Press.

University Professor Jeremy Waldron, who has delivered virtually all of the highest-wattage philosophy lectures across the globe, added another to his list when he delivered the six-part Gifford Lecture Series at the University of Edinburgh last January and February. The Gifford Lectures, first given in 1888, showcase the preeminent thinkers in the field of natural theology. Waldron's predecessors include Hannah Arendt, Noam Chomsky, Richard Dawkins, Iris Murdoch, and Carl Sagan.

Waldron's theme, “One Another's Equals: The Basis of Human Equality,” concerned the meaning and roots of human equality. The first lecture examined the theory of human inequality proffered in Hastings Rashdall's seminal 1907 work *The Theory of Good and Evil*, while the second lecture distinguished basic equality from normative positions that are founded upon it. Waldron also looked at the respective approaches of Thomas Hobbes, Immanuel Kant, and John Rawls; considered the work that basic equality must perform; and analyzed the role played by a higher power, culminating in a final lecture exploring the impact of various life stages and profound disabilities on the idea of human equality.

The following excerpt is from the end of the first lecture.

These lectures are focused on basic equality—on our being one another's equals, of equal worth, equal dignity. I said this was something distinct from questions about surface-level equality and inequality. You may think this emphasis is misplaced, given the extent and significance of real economic inequality in the world—record inequality, explosively increasing inequality, especially in the United States—as analyzed and discussed, for example, by Thomas Piketty in his 2013 book *Capital in the Twenty-First Century*. Certainly the trends that Piketty discusses deserve great attention. We must never forget that, as my colleague Thomas Nagel puts it, we live “in a world of spiritually sickening economic and social inequality.”

One aspect of that attention is the possibility that economic inequality may compromise or undermine equal basic dignity. I don't just mean that the extent of inequality that Piketty and others have revealed is beyond anything that basic equality could possibly justify or permit (though that is certainly true). I mean that the drift towards radical economic inequality might well seep into the realm of basic equality and undermine it. In part great economic inequality, great poverty, is often associated with the view or can become associated with the view that the poor are not fully human, or that it is only the prosperous who are living fully human lives. Nobody owns up to this at the moment, but the question is: are we weakening the basis of people's disinclination to say anything like that?

You see, as class becomes caste, as birth becomes destiny, as economic mobility begins to shrivel, as differences of opportunity start disclosing different kinds of life, there is a danger that status

distinctions among humans may begin to reestablish themselves. I said earlier that modern societies pride themselves on being “single-status societies,” that we have rejected the old idea that differences of race, gender, and class determine different types of legal personality. But that may be a fragile and reversible achievement.

Think of how it might work with race, for example. In the United States we have massive levels of incarceration of African American men; we have a situation in which felony convictions make it impossible for those affected to resume any sort of normal economic or political life even after they have been released

from prison. In many states someone with a felony conviction cannot vote ever again; it is a lifetime disqualification, applying now to hundreds of thousands of people. This is a massive degradation of status. And as a matter of brute reality it is often very difficult for an ex-felon to find work or participate normally in the social life of the community. There is a terrifying correlation between economic inequality and severe racial disadvantage, with massive implications for structures of opportunity and incentive.

It remains true that those who impose, support, or tolerate these disadvantages do not say that there are differences of basic worth or basic dignity between those who suffer from them and those who lead what are regarded as “normal human lives.” They still accept the thesis that all humans are basically one another's equals. But when does that start becoming lip service? When does the willingness to tolerate and defend these massive surface-level inequalities begin to subvert or belie people's commitment to elementary equality at the most basic level? □



A Voice for the Poor

Philip Alston describes his goals as an advocate for the rights of the most impoverished.

Do people have a right to a minimum level of economic welfare? Philip Alston, John Norton Pomeroy Professor of Law, certainly thinks so. He is making it a central issue in his role as UN special rapporteur on extreme poverty and human rights, a three-year appointment that will allow him to investigate and report back on initiatives to protect the rights of people living in extreme poverty across the globe.

This is not Alston's first time serving as a UN special rapporteur; from 2004 to 2010, the international law professor was the rapporteur on extrajudicial, summary, or arbitrary executions. But his new position comes with a different set of challenges. "At one level," says Alston, "looking at unlawful killings is much easier, because you can generally count bodies. You can identify specific victims, and you can identify specific perpetrators."

By contrast, poverty is often perceived as unsolvable. Extreme poverty is not caused by one factor alone; in addition to failures of governmental policy, causes of poverty can include social discrimination, violent conflict, and environmental conditions such as hurricanes, earthquakes, or climate change. That also means that governments can deflect responsibility and blame extreme poverty on factors out of their control. Says Alston: "The challenge for me is to make sure that what I say identifies tangible challenges that can be met and helps to mobilize broader public opinion to actually do something about the issues."

One of the reasons NGOs and human rights organizations have tended to stay away from the intersection of economics and human rights, Alston says, is that human rights activists are wary of veering into economic policy debates and are particularly hesitant to advocate for any kind of redistribution of resources. "My view is that without forms of redistribution, which is what progressive taxation is all about, you can achieve only a very limited subset of human rights," Alston says. "All human rights involve some form of redistribution of resources. And to identify this as a line that can't be crossed is a big mistake."

Although conditions of extreme poverty are often more widespread in developing countries, Alston argues that it is important to hold nations accountable according to their resources. "There's no doubt in the United States that the close to 50 million



people who are living in poverty by our own estimates could be lifted out of that poverty with appropriate public policies," Alston says. That statistic is unacceptable in a country as wealthy as the United States, he argues, and it indicates that as a society, "we don't consider that there is a right to live in dignity, and with

access to the minimum essential economic and social goods that are required."

Alston has already joined two other UN rapporteurs in condemning the disconnection of water services in Detroit homes where residents cannot pay their bills. That action "constitutes a violation of the human right to water and other international



human rights," they said in a statement. Within days, the Detroit authorities announced that they would revise the policies they had previously insisted were non-negotiable.

As Alston sees it, he must be an effective voice advocating on behalf of the impoverished because circumstances hinder their ability to advocate for themselves. Facing conditions in which access to basic rights such as food, water, and shelter is limited, the extremely poor often cannot exercise their civil and political rights. "They can't get out to vote, they don't have the energy, they don't have the time, they don't have the transport, they don't have anything," Alston says. "So the right to vote is often quite meaningless to them—they're engaged in a daily struggle for existence." *□ Rachel Burns*

In March 2015, Alston made a country visit to Chile, where he reported that troubling rates of extreme poverty persist despite great strides in social and economic development.



How Best to Tell a Story

As policymakers, news media, and research communities increasingly rely on big data, the ability to create good visual representations has become key to conveying complicated ideas to a more general audience. But human rights organizations that regularly use empirical analyses in their research have nevertheless been slow to use data visualizations. Professor of Clinical Law Margaret Satterthwaite '99 and NYU Polytechnic School of Engineering's Enrico Bertini and Oded Nov received a grant in June to further their research exploring how advocacy organizations can effectively employ information graphics to tell human rights stories.

Satterthwaite, Bertini, and Nov have already completed two initial user-based studies that investigate how readers respond to visual presentations of data. One study verifies that data visualization is a more effective tool than text in conveying statistics to the reader. In another study focusing on deceptive visualization, Satterthwaite and her collaborators show how it is possible to deceive readers by using correct data but changing the expected visualization. Inverting the axis on a line graph, for example, can lead a reader to believe that an increasing trend is, in fact, decreasing.

"It was quite disturbing how easy and how intense was the effect of deceptive visualization," Satterthwaite says. Understanding how readers comprehend and react to information graphics is key to helping researchers avoid accidentally overstating or understating their findings. Satterthwaite also notes that it is important to recognize the dangers of deceptive data visualization, which, out of the zeal to convince, could be used to mislead the audience.

Now, with the grant from the John D. and Catherine T. MacArthur Foundation, Satterthwaite says the next phase of research will be to work with various human rights organizations to implement these findings. "The hope," she says, "is for it not to be just an academic study but a collaboration with real-world impact on

how human rights organizations employ data visualization in ongoing research and advocacy."

Satterthwaite's work on data visualization is part of a series of interdisciplinary collaborations in which she hopes to encourage innovation in the ways that human rights workers document and demonstrate violations. In a chapter she is contributing to *The Transformation of Human Rights Fact-Finding* (co-edited by Philip Alston, 2015), Satterthwaite joins Princeton researcher Justin Simeone in looking at whether, as researchers incorporate quantitative methods into human rights research, they can or should follow the same disciplinary standards that guide social science researchers.

Traditionally, human rights advocacy has been based on testimonial evidence, a methodology that grew from practices of law and journalism. People respond emotionally to stories, and the goal of human rights research, after all, is to persuade policymakers and the public to take action to prevent or stop violations. "One of the great strengths of the human rights

movement is our ability to tell the story of the victim, of the survivor, and compel people to act," says Satterthwaite, who co-edited the 2008 book *Human Rights Advocacy Stories*. "That is an ethical duty that we have, and we should not abandon it."

The incorporation of social science methods into human rights research has the potential to amplify the power of storytelling. "Somebody might be really compelled by one story of a person getting killed," Satterthwaite says. "But if you tell them there are 10,000 of those people being killed, their empathy suddenly shuts down." Demonstrating the right to equal access to drinking water, however, is best shown visually through statistics such as the proportion of a population that lives within a kilometer of safe water and the prevalence of diseases caused by unsafe water.

Satterthwaite hopes the trio's work will guide researchers to make the best choices in employing the methods at their disposal. "It may simply be a question of what kind of evidence you need," she says, "depending on your audience and your purpose." □ Rachel Burns

"Somebody might be really compelled by one story of a person getting killed. But if you tell them there are 10,000 of those people being killed, their empathy suddenly shuts down."





Proceedings

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Thomas Piketty, French economist and author of a bestselling 2013 book about economic inequality, offered a response at a symposium that examined his 700-page tome from economic, legal, historical, political science, and philosophical perspectives.

Zeitguests

In the past year the Law School's regular Wednesday platform for ideas has focused on leadership, antiterrorism, racial injustice, and other urgent issues.

Best Swishes



NYU Law defeated Columbia Law School 85–80 in the 14th annual Deans' Cup last March. The NYU Law faculty also prevailed in the half-time game, 13–11. This year's Deans' Cup raised \$22,000 from law firm donations to support public interest programs at both law schools.

 See related photo gallery at law.nyu.edu/media2015

The Milbank Tweed Forum, the weekly lunchtime panel that brings heavy-hitting intellectuals to NYU Law to discuss current issues intersecting with the legal field, continued to attract marquee names in its sixth year, hosting an NFL franchise owner, the country's highest-profile special master, and a top death row defense attorney, among others.

Last October, Stephen Ross LLM '66, founder of the global real estate development firm the Related Companies and majority owner of the Miami Dolphins, dropped by with friend and legal advisor Martin Edelman to share his views on leadership with students and the moderator, Dean Trevor Morrison. (See related story on page 4.)

Ross, who practiced law briefly before starting his own company in 1971, stressed the importance of following one's passions, which, he said, increased the likelihood of success. He also explained how his legal training has been valuable, despite his non-traditional path after law school.

"A legal education really opens your mind to thinking in a certain organized way," said Ross, adding, "Being able to think a certain way and understand everything that's going on around you puts you in a better position to succeed."

Harold Koh, former State Department legal adviser in the Obama administration and a distinguished scholar in residence at NYU Law during the last academic year, made an appearance in February to consider how to end the "forever war" against terrorism and fight the extremist organization ISIL.

Pointing out that the post-9/11 armed conflict with al Qaeda, the Taliban, and associated forces is now

the longest-running such offensive in US history, Koh discussed the difficulties in dealing with the open-ended authorization for the use of military force that has governed such matters since 2001. In particular, he analyzed the precarious position of President Obama as he tries to end preexisting Middle Eastern conflicts while still protecting national security.

Putting a personal spin on the quandaries of anti-terrorism, Koh explained that many senior al Qaeda operatives were the same age as the students in the room, and that he discovered one of the operatives was born the same day as his daughter. "I could actually track in his history what he was doing on particular days when my daughter was doing particular things," said Koh. "This gives you a great sense of horror about the disparities of opportunity for people, and why some people become so desperate that they think that their life should be spent flying planes into buildings and cutting people's heads off."

Kenneth Feinberg '70, accustomed to dealing with the aftermath of horror, visited in March to describe his experiences as special master of victim compensation funds such as those for 9/11, the Virginia Tech shootings, and the Boston Marathon bombing.

In these highly charged situations, Feinberg—whom the Treasury Department appointed last June to oversee reductions in multiemployer pension plans—likens his role to that of a chaplain or psychologist who also has the benefit of a lawyer's skills. "You're dealing with individual, very emotional people. It's not about law. The law degree helps you design the program and set it up with rules and protocols. It's human nature you're dealing



Brooklyn Borough President Eric Adams, Debevoise & Plimpton Partner James Johnson, DOJ Deputy Chief Christy Lopez, Professor Erin Murphy, Camden County Police Chief Scott Thomson, and Professor Kim Taylor-Thompson

with. Individual victims and their families. Angry, frustrated, disappointed, saddened.”

Those strong emotions certainly applied to the context of the subsequent forum, which looked at potential police reform in the aftermath of the Michael Brown case in Ferguson, Missouri, and similar incidents around the country. The event followed on the heels of a Justice Department report condemning racial bias and unconstitutional practices in the Ferguson Police Department.

Christy Lopez, deputy chief of the Special Litigation Section of the DOJ’s Civil Rights Division, oversaw the “pattern and practice” probe in Ferguson, which uncovered what she described as a willful blindness to the department’s problems, as well as thinking that dehumanized the population. The town of 20,000 people, for instance, had more than 30,000 outstanding arrest warrants. “It was seen as less harmful if black people went to jail,” she said.

One of the major strategies for reform involves encouraging officers to trade in a warrior mentality for that of a guardian, said J. Scott Thomson, chief of the Camden County Police Department in New Jersey. Thomson has put more officers on walking beats, pushing them to meet community members in their daily lives and not just in crisis. Leveraging the power of community members to prevent crime is essential, he argued, adding, “What you’ll find is that in the most challenging neighborhoods, you have far more good people than bad people.”

Perhaps no one knows the repercussions of bad policing better than Professor of Clinical Law Bryan Stevenson, who has pursued justice for indigent death row defendants and others for decades.



Stevenson didn’t pull any punches in describing the American criminal justice system. In the United States in 1973, there were 300,000 people in jail or prison, he said. Four decades later, that number has mushroomed to 2.3 million. (See related story on page 80.)

“I work in a broken system of justice,” Stevenson said. Nonetheless, by sharing stories taken from his career defending clients on death row, Stevenson compellingly illustrated the critical need for compassion: “Being a lawyer who can make a difference in the lives of people who need it means that you’re going to have to be the person who stands when everybody else is sitting. You’re going to have to be the person who speaks when everybody else is quiet.” □ *Atticus Gannaway and Gina Rodriguez*

Wise White House Counsel



Last March, the Frank J. Guarini Government Lecture provided a rare opportunity to hear firsthand from not just one, but two former White House counsel about one of the country’s most high-profile legal jobs. Robert Bauer, professor of practice and distinguished scholar in residence at NYU Law, and Kathryn Ruemmler, a partner at Latham & Watkins, discussed the difficulties of determining precisely who the client is (the president as candidate or private citizen, or in his official capacity?) and of striking the right balance between legal limitations and political and policy factors.

Brass Tacks on Tax Reform

Tax Repairer



“Is the US international tax system *really* broken?” Mark Mazur, the Treasury Department’s assistant secretary for tax policy, addressed that question in the 15th annual NYU/KPMG Lecture on Current Issues in Taxation. “The business tax system today is inefficient, overly complex, and too riddled with loopholes,” said Mazur, proposing a series of tax reforms that, he argued, would result in broad benefits throughout the economy, including for the middle class.

Minutes before Jason Furman, chairman of the White House Council of Economic Advisors, took the lectern at NYU Law last fall, the Treasury Department unveiled new efforts to curb so-called tax inversions. The announcement highlighted an increasingly common—and increasingly controversial—process by which an American company merges with a foreign corporation in order to move its domicile overseas and reduce the tax bill it owes Uncle Sam.

“The timing is merely a coincidence,” Furman told the assembled crowd of law students, professors, tax practitioners, and journalists. Those hoping Furman would reveal details of the much-anticipated Treasury regulations left disappointed. Those hoping to hear the man the *Washington Post* called “the wonkiest wonk in the White House” deliver a thoughtful and thorough speech on the challenges and opportunities of business tax reform, however, found much to appreciate.

Furman began by situating business tax reform within the broader context of economic growth. Revenue-neutral business tax reform may not increase the *quantity* of investment in the economy, he explained, but it can enhance the *quality* of investment, which is more important. Quality of investment, as defined by what economists call “total factor productivity,” is the “real source of variations in growth rates over longer periods,” Furman argued.



Though Furman is not a lawyer by training—he earned a doctorate in economics from Harvard—he’s no stranger to the NYU Law community. Nearly a decade ago, he co-taught the Tax Policy Colloquium with Wayne Perry Professor of Taxation Daniel Shaviro, and his late father, Jay Furman ’71, was a trustee and donor. The driving force behind the event, however, was Professor David Kamin ’09. Kamin twice worked for Furman, first at the Center on Budget and Policy Priorities, a progressive think tank, and later at the White House National Economic Council.

Furman focused on the President’s Framework for Business Tax Reform, which was released in 2012 and “reflects dozens of meetings with the president.” The framework calls for lowering the corporate tax rate to 28 percent by closing loopholes and making structural reforms to accelerated depreciation, the deductibility of interest, and the taxation of pass-through entities like partnerships. Furman methodically addressed the main objections to the framework’s approach, including the argument that we should abolish the corporate tax entirely, and highlighted the framework’s benefits, both practically and politically. Properly realized, business tax reform could move our tax system toward the overarching goal of tax neutrality. As Furman put it, “Business decisions should be made for business reasons and not for tax reasons.” □



Global Tax Sense and Sensibility

How should multinationals be taxed? Are they being taxed enough? At the 19th annual David R. Tillinghast Lecture on International Taxation last October, Manal Corwin, head of international corporate services and principal-in-charge of international tax policy at KPMG, illuminated two approaches to the questions. She contrasted the measured and longstanding policy debate about the adequacy of current international tax rules and standards to protect the tax base of taxing jurisdictions and the highly politicized mainstream public debate of more recent vintage focused on tax morality and whether multinationals are paying their fair share.

A High-Quality Discussion of Inequality

Intense curiosity imbued the fourth annual NYU/UCLA Tax Policy Symposium, held at NYU Law last October. Thomas Piketty, author of *Capital in the Twenty-First Century*, was the guest of honor, and the daylong event featured five presentations by academics analyzing the book from economic, legal, historical, political science, and philosophical perspectives as well as responses from Piketty himself. The amiable French economist had become a runaway international celebrity since the publication of his wonky 700-page book. As Deborah Schenk LL.M. '76, editor-in-chief of the *Tax Law Review*, put it in her welcoming remarks, "While not everyone agrees with Piketty's arguments, or his prescription for reform, or even his data, everyone does agree that he has brought the conversation about economic inequality to the fore."

That so many disciplines could be represented in discussing Piketty's work was a testament to one of its great triumphs, regardless of debate over his findings: he has succeeded in tearing down the barriers between specialties, and has brought an unprecedented level of collaborative focus to issues of inequality in academic and policy circles.

Columbia economist Wojciech Kopczuk opened the day with a discussion illuminating one of the vexing issues at the heart of Piketty's work that might best be put this way: Not all inequality is created equal. In other words, some forms of inequality we should welcome, such as those that provide the incentives so crucial to the entrepreneurial ethos at the heart of Western capitalism. Take away the prize at the end of a high-risk entrepreneurial gambit through redistributive high marginal tax rates, he offered as an example, and you might snuff out the flame of entrepreneurialism itself.

Stanford's Joseph Bankman and NYU Law's Daniel Shaviro were the day's oxymoron: a comedic duo of welfarist tax scholars. But they were serious about their topic, praising Piketty's critique of the undue moralizing of "ability" as an explanation for high-end wealth concentration and exploring the constitutionality of a national wealth tax in the United States. Some have argued that such a tax

would require a constitutional amendment. (Piketty's response to that: "Constitutions have been changed throughout history. That shouldn't be the end of the discussion.")

Economic historian Gregory Clark of the University of California, Davis presented findings that seemingly contradicted one of Piketty's main arguments: When the return on capital exceeds economic



growth rates, inequality increases. In a study of English families with rare surnames, Clark found no inherent tendency for capital to accumulate faster than income, in large part because inherited capital tended to be consumed rather than accumulated. Where family wealth has persisted over time, he found, the reason tends to be because new wealth was created, not

because of the forces of inheritance. (In yet another comic interlude, Clark shared his findings on how much the loss of family wealth through daughters who marry was mitigated by wealth gained via new daughters-in-law. The not-so-surprising conclusion: "Rich people marry rich people.") Piketty responded that there is not yet a convincing case that Clark's findings can be generalized into statements about national wealth accumulation and consumption trends in France, Britain, or elsewhere.

Cornell political scientist Suzanne Mettler followed Clark with a discussion of how the US political system has promoted equality and inequality over time, concluding somewhat depressingly that, while the American political system presents many obstacles to addressing the needs of the majority, it is more easily permeated by and responsive to powerful vested interests. But it was a presentation leavened by the possibility of change, charting numerous historical examples in which the political system did indeed work to mitigate inequality.

NYU Law legal philosopher Liam Murphy, the final presenter, mused on the moral questions underlying our views on inequality, from the nearly universally agreed-upon right of social equality to the much more debatable questions of economic inequality, and when society should have reason to be concerned with it—particularly when it interferes with democracy. □ *Duff McDonald*

Three-Pillar Cure

During his first US trip since his appointment, Swedish Prime Minister Stefan Löfven visited NYU Law to discuss the Nordic model of democracy: economic competitiveness, open-mindedness, and a high standard of living. Löfven laid out the model's three mutually supporting pillars: an economic policy focused on full employment, a universal and generous welfare system, and an organized labor market. Despite setbacks that included race riots in 2013, Löfven remains confident in the system: "We have to adapt it to a new situation, constantly, constantly, to make sure that it will not only survive but will develop."



Taking a Good Look at Bad Companies

What's on the Line Online

Last year, hackers compromised 40 million Target customers' credit card details, forcing the CEO's resignation and making cybersecurity a C-suite corporate concern. US companies spend an average of \$12.7 million annually on cybersecurity. Last December, the Center on Law and Security convened "Cyber Ethics: Emerging Issues & Evolving Laws," with experts including Patrick Fitzgerald, former US attorney for the Northern District of Illinois, and Robert Mueller III, former director of the Federal Bureau of Investigation. Participants discussed company disclosure of breaches, information sharing between the private and public sectors, employee monitoring, and defense measures.



The Program on Corporate Compliance and Enforcement's Conference on Corporate Crime and Financial Misdealing last April featured interdisciplinary discussion among law, business, sociology, economics, and psychology scholars. Keynote speakers Leslie Caldwell, assistant attorney general for the US Department of Justice's Criminal Division, and Judge Jed Rakoff of the US District Court for the Southern District of New York gave attendees an in-depth view of specific issues from their respective vantage points.

Caldwell, who oversees nearly 600 attorneys prosecuting federal criminal cases across the country, focused on one of her priorities: increasing transparency about charging decisions in corporate prosecutions. Such a move, she said, benefits

both the government and companies. "If companies know the benefits they are likely to receive from self-reporting or cooperating in the government's investigation, we believe they will be more likely to come in and disclose wrongdoing and cooperate," said Caldwell. "And on the flip side, companies can better evaluate the consequences they might face if they do not receive cooperation credit."

Rakoff zeroed in on hybrid statutes, which establish both criminal and civil penalties for the same behavior. Such statutes, examples of which include the Sherman Antitrust Act of 1890 and the Securities Exchange Act of 1934, are inherently problematic, he argued.

While at first glance it might seem logical to give prosecutors maximum opportunity to seek both criminal and civil justice, said Rakoff, "in practice, I suggest, it leads to material inconsistencies and strange results that both undercut its effectiveness and create major legal headaches. The fundamental reason for these problems is that the legal system has long prescribed totally different rules for the interpretation of civil and criminal statutes that often make it impossible for courts to interpret hybrid civil/criminal statutes in a coherent way." □

Fixing Fraud Sentencing

Chief Judge Patti Saris of the US District Court for the District of Massachusetts, chair of the US Sentencing Commission, delivered the closing keynote for the Center on the Administration of Criminal Law's seventh annual conference, "Drawing the Line Between Civil and Criminal Punishment: Regulatory and Criminal Offenses," last April.

The commission provides federal courts with advisory sentencing guidelines to ensure fairer and more consistent sentences for federal crimes. In her keynote, Saris detailed how the commission investigated and revised the economic fraud guideline in response to criticisms that it was "fundamentally broken."

Ultimately, the commissioners agreed that while the guideline was not broken per se, they would amend it to place greater emphasis on the "quality



of harm" done, not just the number of victims; the offender's intent to do harm; and whether the offender had been a minimal participant.

Saris framed this outcome as a triumph for the commission's design: "We believe that our feedback loop worked as intended here, where stakeholders identify real problems and the commission

researches, analyzes, and addresses them."

Appearing at one of two NYU Law events in April (see above), the DOJ's Leslie Caldwell presented another facet of managing punishment, discussing criminal law enforcement in cases that may also involve regulatory enforcement.

The conference marked the center's first major event under the executive directorship of Deborah Gramiccioni, most recently deputy executive director at the Port Authority of New York & New Jersey. □



Fairness in the Global Marketplace

Margrethe Vestager, the European Union's new competition commissioner, spoke at NYU Law last April just days after making headlines worldwide with the announcement that the EU was filing antitrust charges against Google. A subsequent profile in the *New York Times* referred to Vestager as "Google's steely foe in Europe."

In her remarks at the Law School, Vestager explored the implications of globalization for the work of competition-law enforcers. Over the past 25 years, she noted, the number of competition agencies in the world has increased from around 20 to approximately 130: "The global marketplace brings benefits, but also increases the need for a robust legal framework to ensure that markets stay competitive."

Key to establishing that framework, said Vestager, was "building a strong global antitrust community, both among enforcers and practitioners that share the same basic values and objectives." To foster

international cooperation on antitrust policy and enforcement, Eleanor Fox '61, Walter J. Derenberg Professor of Trade Regulation, helped found the International Competition Network 15 years ago. Vestager said the ICN is now "the main global forum of competition agencies." In recent years, Vestager noted, the European Commission has cooperated with non-EU agencies in 62 percent of its enforcement decisions.

During a lively and candid Q&A following her address, Fox noted that, while Vestager had spoken of convergence in antitrust enforcement, the EU's just-filed case against Google represents the opposite, since US monopoly regulators declined to pursue charges against the company. Vestager said that her office investigates what happens in Europe, and there may be "differences in the concrete market situation." Noting that she has respect for her US counterparts, she added, "there will be times of divergence." □

Patent Offensive

The Engelberg Center on Innovation Law & Policy invited Google Patent Counsel Laura Sheridan to kick off a new lecture series. She decried the dramatic uptick in low-quality patents over the last 15 years—particularly for software. The problem, she argued, is that presumption of issuance places the burden on the patent office to prove that a patent should *not* be issued. Sheridan proposed putting the burden on the applicant to clearly define the terms of a claim.

Fund Recollections

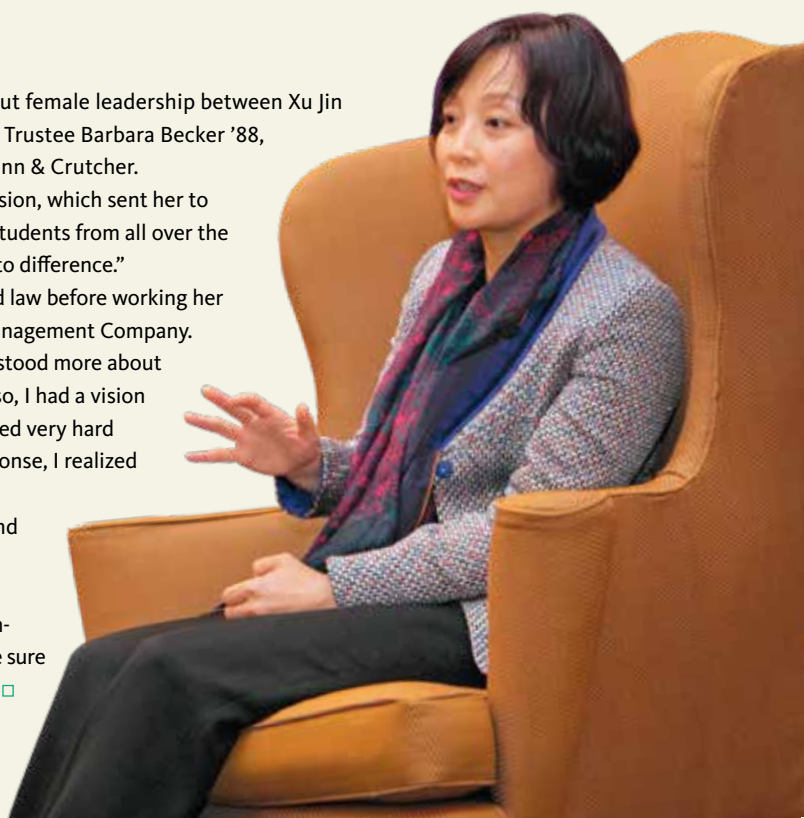
Last fall, the Leadership Series in Law and Business featured a talk about female leadership between Xu Jin MCJ '96, CEO of Guotai Asset Management in Shanghai, and NYU Law Trustee Barbara Becker '88, co-chair of the Mergers and Acquisitions Practice Group at Gibson, Dunn & Crutcher.

Jin began her legal career at the China Securities Regulatory Commission, which sent her to NYU Law. She credits the program with opening her mind: "Living with students from all over the world gave me different cultural influences and made me more tolerant to difference."

After returning to the commission, Jin helped draft the country's fund law before working her way through a few jobs to the position of deputy CEO at China Asset Management Company. Being second in command, however, soon grew uncomfortable. "I understood more about the employees, discovered their potential, and wanted to promote it. Also, I had a vision of the industry and how I wanted to develop the company," Jin said. "I tried very hard to convince the CEO about my ideas. Once I got a not-very-positive response, I realized that maybe it was time for me to move on."

At age 36, she took the helm of Guotai, with \$300 million in assets and 300 employees. Guotai employs a nearly 40 percent female workforce, while its competitors' employees are about two-thirds male, Jin said.

Aside from becoming chair of the board, teaching, and continuing her involvement with Guotai's charity program, Jin said, "For now, I want to make sure I'm a very good CEO and that I satisfy my shareholders, board, and clients." □





Not-So-Classy Actions

The Prices Were Right

The 21st annual Public Service Auction, which raised more than \$50,000 for students doing public interest summer work, featured not only an appearance by NYU Law's a cappella group Substantial Performance but also game show-inspired competitions between students and faculty. Continuing the game theme, a poker night with professors Cynthia Estlund, Samuel Issacharoff, and Jeremy Waldron was auctioned off for \$1,275.

When a consumer as prominent as Chief Judge Alex Kozinski of the US Court of Appeals for the Ninth Circuit is a member of a class action lawsuit, lawyers on both sides of the case should check their blind spots. For the Center on Civil Justice's fall conference, Kozinski sat down with University Professor Arthur Miller to recount his disappointment about *Klee et al. v. Nissan North America* as one of 18,000 estimated consumers in the class.

Kozinski conceded that class actions level the playing field when a consumer has a claim against a multimillion-dollar corporation. Nonetheless, he was of "mixed mind" about their utility.

In Kozinski's case, Nissan had mailed him an extended warranty to compensate for the poor battery performance of his all-electric Nissan Leaf.

Months later he learned that a consumer class action settlement was awarding him that very warranty.

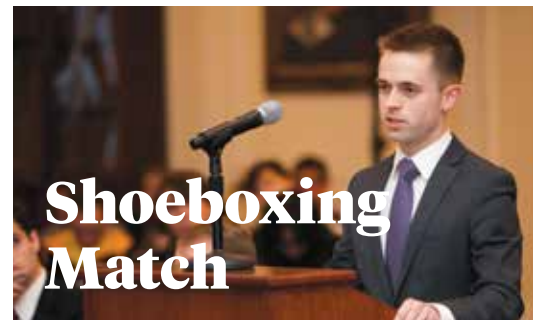
"Getting five dollars in the mail or getting a coupon for future purposes or getting preferential treatment in the future—those are not real benefits," he said. Here, the settlement did one worse: it seemed to be giving him something he already owned. Kozinski and his wife, Marcy Tiffany, responded with a blistering 36-page protest to the proposed settlement.

Kozinski suggested that Rule 23 of the Federal Rules of Civil Procedure, which authorizes class actions, may need to be rewritten from scratch. If the legal community can recognize that class actions rarely benefit the consumer, Kozinski offered, perhaps funds won via such cases should be distributed to other parties (and benefit all taxpayers). □

Free to Judge

Judge Anthony Scirica of the US Court of Appeals for the Third Circuit considered potential threats to judicial independence and the state of the judiciary's self-governing accountability system in the James Madison Lecture last October. Scirica, who had served in the Pennsylvania state legislature, spoke of the traditional balance of power between the judicial and

legislative branches, and described two proposed bills that would, he said, threaten both the judiciary's decisional independence and its institutional independence. One establishes an inspector general for the judiciary; the other would regulate judicial recusals. "For a very long time now, the coequal branches of the federal government have respected each branch's decisional independence.... These longstanding principles of comity confirm that there is no need to create constitutional tension." □



Shoeboxing Match

Does a police search violate the Fourth Amendment if it's unclear who can consent to a search of a shared living space? This question was at the core of the 43rd annual Orison S. Marden Moot Court Competition's final argument last April. Judge Dennis Jacobs '73 of the Second Circuit, Judge Brett Kavanaugh of the DC Circuit, and Judge Michelle Friedland of the Ninth Circuit presided as the four NYU Law student finalists tackled a moot problem involving an illicit substance found in a shoebox. While the Best Oralist honor went to Sean Stefanik '16 (above), each judge praised the entire group. "Very lucid, very knowledgeable, very on the ball, very strong oral advocacy by all four of you," said Kavanaugh. □

Longevity in the Law

Colleagues and friends help to dedicate the *Annual Survey to Judge Jack Weinstein*.

Although Judge Jack Weinstein took senior status more than two decades ago on the US District Court for the Eastern District of New York, at age 94 he still handles a full docket. In his 48 years—and counting—as an Eastern District adjudicator, including eight years as chief judge, Weinstein has made an unparalleled impact, particularly in the area of mass torts. Simultaneously, Weinstein has been a prolific legal author. Honoring his long career, the student staff of the *NYU Annual Survey of American Law* dedicated the journal's 72nd volume to Weinstein in a warm ceremony last February.

Dean Trevor Morrison described Weinstein's fame stemming from "the strength of his principles and his unflagging efforts to combat what he calls the unnecessary cruelty of the law." For example, Morrison explained, Weinstein has refused to handle drug cases because he opposes mandatory minimum sentences. Morrison also praised Weinstein's innovative contributions to the field of class-action and aggregate litigation while presiding over proceedings involving Agent Orange, asbestos, guns, and pharmaceuticals.

Adjunct Professor John Gleeson, also a judge on the Eastern District bench, first encountered Weinstein three decades ago when Gleeson was an assistant US attorney. Calling Weinstein "the single most influential judge of our time, even while occupying the lowest rung on the Article III ladder," Gleeson described Weinstein's iconoclastic approach to jurisprudence. Not only does Weinstein eschew robes for an everyday suit, but he also sits with litigants at the counsel table rather than on the bench, making the environment "much more like a book group than a courtroom," Gleeson said.

Weinstein was an adviser to the American Law Institute's *Principles of the Law of Aggregate Litigation* when Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, served as reporter. Weinstein insisted indefatigably that the project should look past working out how courts should deal with the cases before them to a more ambitious agenda of restoring the concept of equity

to aggregate litigation. Eventually, Issacharoff admitted, "I realized just how coherent his idea of equity in justice was."

Weinstein has had a similar impact on the Second Circuit, said Issacharoff. Despite the overturning of many of Weinstein's most progressive opinions, his rulings had an effect on that appellate court: "In each of these circumstances, Jack is way out ahead of the law, way out, and pushing the law.... But each time his ruling got overturned, the law moved. The Circuit didn't look like it did before."

Diane Zimmerman, Samuel Tilden Professor of Law Emerita and a former Weinstein clerk, expanded on this theme of Weinstein reaching beyond the established boundaries: "The judge opened my eyes to understanding the operation of the law in the social context rather than solely in a formalistic vacuum. He knew that ignoring the broader consequences of discrete legal decisions can be perilous, that society is poorer for every instance where law and justice diverge."

Kenneth Feinberg '70 has successfully carried out nearly impossible tasks as special master of victim compensation funds for mass tragedies such as 9/11, the Virginia Tech shootings, and the BP oil spill. He freely acknowledged that Weinstein had "invented" him, explaining that, when the judge called out of the blue to ask Feinberg to mediate the Agent Orange claims, Feinberg's career began an astonishing new trajectory: "Overnight, that one case changed my professional life."

When Weinstein's time at the lectern finally came, he accepted the *Annual Survey* honor on behalf of all federal district judges. "Trial judges are the eyes and ears of the judicial system, applying the law to the real world," he said. "Our grasp of the facts and societal changes is essential, not only in deciding individual cases but in providing the basis for needed changes in the law, both procedural and substantive.... When seeking truth, passivity is not a virtue. Justice requires us to be skeptical, to doubt, to question, to test, and to think outside the box. That we may be reversed on appeal must not inhibit us in the least, and does not." □ *Atticus Gannaway*



The Size of Justice

In the 21st annual Brennan Lecture on State Courts and Social Justice, Chief Justice Chase Rogers of the Connecticut Supreme Court named technological advances, a growing economic gap, and increasing self-representation as factors pointing to the need for change in the civil justice system. "We need to find a way to distinguish the straightforward case that comes into civil court from those that require more judicial involvement," said Rogers.



See related photo gallery at law.nyu.edu/mediaz015

Hard Conversations on Race

Border Disputes

At the 2014 Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium last November, Jorge Bustamante, former UN special rapporteur on the human rights of migrants, lamented the disjunction between the immigration dilemma, which by definition concerns two or more nations, and what he sees as Congress's too-narrow thinking about it: "A unilateral decision is not going to be able to solve the problems associated with a bilateral phenomenon, not only because of the empirical evidence about the internationality of the phenomenon of immigration, but also the territoriality of the law."

In the wake of high-profile deaths of often-unarmed black men and women in Ferguson, Missouri; Staten Island, New York; and elsewhere, University Professor Anna Deavere Smith; Pedro Noguera, Peter L.



Noguera



Smith



Holder

Agnew Professor of Education at NYU Steinhardt; and Deirdre von Dornum, assistant dean for public service, joined together last September to discuss racism, police violence, and community action.

"I felt that it was important for us not to begin this year at NYU without some sort of ceremonial acknowledgment of what just happened," said Smith, whose theater work has deeply explored race and politics in America.

Professor Paulette Caldwell, speaking from the audience, recalled the 2014 convocation speech given by Sherrilyn Ifill '87, president of the NAACP Legal Defense and Educational Fund. "The core of what [Ifill] said is that democracy maintenance is the most important thing that lawyers do," said Caldwell. "It's a part of professional responsibility."

Noguera noted that, though it is easy to feel despondent when confronted with events such as those in Ferguson, one remedy is to join efforts to

make change. "If you actually get involved, you realize there are other people trying to do things," Noguera said. "What we suffer from is [a feeling of] powerlessness."

Students in the audience were encouraged to speak openly. "What's happening in Ferguson isn't just a lot of people walking around and yelling," a 3L commented. "It's a very organized protest in response to what happened, and it's getting us talking about these issues. And that's a part of change."

That same month, then-US Attorney General Eric Holder delivered the keynote at a Brennan Center for Justice conference on mass incarceration. "For far too long," said Holder, "under well-intentioned policies designed to be 'tough' on criminals, our system has perpetuated a destructive cycle of poverty, criminality, and incarceration that has trapped countless people and weakened entire communities—particularly communities of color." □

North by West



Stephen Bosworth, Myung-Soo Lee, Charles Armstrong

Former US ambassadors to South Korea and China, NGO representatives, a North Korean defector, and scholars gathered last November for the US-Asia Law Institute's 20th annual Timothy A. Gelatt Dialogue to discuss human rights issues in the Democratic People's Republic of Korea (North Korea).

Hyeonsoo Lee, who escaped from North Korea in the 1990s, described the extreme difficulties faced by defectors living in China, who suffer from constant fear of arrest and repatriation to North Korea.

Stephen Bosworth, former US ambassador to South Korea, said North Korea's human rights issues should be viewed in conjunction with other pressing issues such as nuclear weapons. Certain "myths" about North Korea's supposedly irrational or unpredictable behavior needed to be debunked, he said. Donald Gregg, another former US ambassador to South Korea, offered that the US should cease demonizing the regime and become more engaged with its leaders so they can see ways to improve their choices.

Winston Lord, former US ambassador to China and former assistant secretary of state for East Asian and Pacific affairs, suggested that China was part of the problem and encouraged the US to use carrot and stick policies such as offering foreign cooperation in North Korea's economic development in exchange for ceasing its nuclear weapons program. "Of course, changing the regime would be dangerous. But I prefer such risks to the inevitability of North Korean nukes and missiles and the continuous squashing of the North Korean people." □

BOSWORTH, LEE, GREGG: CHRISTINE PEREZ



A Matter of Convictions

When Kenneth Thompson '92 took office as Brooklyn's district attorney in January 2014, he inherited what he describes as a "staggering number" of wrongful conviction claims. At the annual Law Alumni Association Fall Lecture last November, Thompson joined a panel of experts for an in-depth discussion of how the criminal justice system can address such miscarriages of justice. Moderated by Segal Family Professor of Regulatory Law and Policy Rachel Barkow, the panel also featured University of Texas Law Professor Jennifer Laurin, Innocence Project co-founders Peter Neufeld '75 and Barry Scheck, and Harvard Law Professor Ronald Sullivan Jr. (See cover story on page 10.)

To lead Brooklyn's new conviction review unit, Thompson tapped Sullivan, a former staff attorney for the District of Columbia Public Defender Service. Sullivan spoke to the importance of creating a non-adversarial atmosphere between the conviction review unit and the rest of the district attorney's office. "The people in the unit have to believe that the job of the prosecutor is about justice," Sullivan said. "Sometimes that means putting people in jail.

Sometimes that means getting people out of jail. But it's all about justice."

Scheck commended Thompson for bringing in a defense lawyer to help structure the conviction review unit. But Scheck also argued that in addition to overturning wrongful convictions, it's key that prosecutors do an extensive review of the failures in the system that have led to the incarceration of the innocent. "When bad things happen in a complex system, it's rarely a single slip-up," Scheck said.

Wrongful convictions often stem from a systemic pattern of errors, said Laurin, whose research focuses on the regulation of criminal justice institutions. These errors include faulty witness identification, false confessions, and poor conduct on the part of prosecutors, among others.

Neufeld brought up the "3,000-pound elephant sitting in the corner": the role of race in wrongful convictions. "It's not a coincidence that 70 percent of our exoneration—the DNA exonerations—involve people of color," he said. "Unlike other risk factors, we don't have a recommendation for a remedy, but we as a nation have to come up with one." □

Police Report



New York City Police Commissioner William Bratton, facing public outcry in the wake of citizens' deaths at the hands of local police, gave his own perspective in November as part of the Center on the Administration of Criminal Law's series on urban crime. He conceded that fear of police is an issue, particularly in minority communities: "In a city that has been made so much safer, how do we get back trust—if we ever had it?" Bratton also described changes in police practices such as curtailing the use of "stop-and-frisk" and reforming officer training. Bratton, who had served previously as commissioner in the mid-1990s, expressed confidence that the NYPD would improve relations with the community and keep crime rates low: "I wouldn't have come back into this position if I was not an optimist."

CARING FOR CAREGIVERS



Ai-jen Poo, director of the National Domestic Workers Alliance, made a call in the 21st annual Sheinberg Lecture for better wages and benefits for an often-ignored section of the workforce—home care workers.

According to Poo, a 2014 MacArthur Foundation "genius" grant recipient and author of *The Age of Dignity*, 90 percent of Americans would prefer aging at home to aging in a nursing facility. To accommodate our desires, she urges the US to support the home care worker.

The Caring Across Generations campaign, which Poo helped launch in 2011, aims to protect the work of caregivers. Long excluded from federal minimum wage and overtime protections, their skilled work written off as "companionship," home care workers earn less than nine dollars per hour. Thirty percent rely on public assistance for food security. "We can stay on this same dark path of unsustainable working conditions and wages, which reinforces an unsustainable overdependence on nursing homes that no one wants to live in," Poo said, "or we can seize upon this moment of demographic change...to create a whole new system to care for our families and care for the workers, too." □

Fall Ball

October 30, 2014



See related photo gallery at law.nyu.edu/media2015



Bonding over Books

On a Monday evening in March, a group of students sat around the dining table of Professor Daniel Shaviro's West Village home. They ate pizza, drank beer, and talked as Buddy and Seymour, two of Shaviro's four cats, darted underneath the table and at one point even made a play for a slice. The subject of the conversation? Thomas Piketty's *Capital in the Twenty-First Century* and his views of progressive taxation.

This was the final session of Shaviro's 1L Reading Group, one of 39 such groups that are part of a new non-credit program at the Law School. Designed to give students an opportunity to learn from professors in an environment free from grades and stress, the optional reading groups are based on shared reading of books or viewing of media. Jennifer Arlen's group on corporate crime and fraud read James Stewart's *The Tangled Web* and *Den of Thieves*. Frank Upham led *Cowboys, Gauchos, and Samurai*, which considered legal issues that arise in classic films of each genre.

The groups met two or three times per semester, often at the professors' homes. "It was a nice way to get to know a little bit about Dean Morrison's interests in literature, and really engage in free-ranging conversations about the law and books," says Russell Rennie '17 of Trevor Morrison's group, Law and Lawyers in Literature. The group discussed fictional legal clashes through the centuries, from a sister's defiance of the law in order to give her slain brother a proper burial in Sophocles' *Antigone* to

Atticus Finch's defense of Tom Robinson in *To Kill a Mockingbird*.

Rennie, who studied English as an undergraduate, says that he chose this particular group as a way to make sure he would carve out time for reading novels, even as casebooks began to take priority in his 1L schedule. He particularly enjoyed the discussion about *A Man for All Seasons*, a play about the historical events leading to the beheading of Sir Thomas More: "It was just a really interesting discussion about the role of conscience in being a lawyer."

"It was a total blast for me; it was really fun," says Jeanne Fromer of her *Silicon Valley* group, which looked at intellectual property issues in the HBO series. "It was very different from the usual classes, including seminars. The students were coming to the material from first instincts, just thinking through things without being influenced by readings of what scholars have said and different cases in the area, and so it just felt like a very fresh discussion."

In addition to getting a good laugh at the show's jokes—more off-color than the sort that might normally be voiced in a law classroom—the students discussed the legal issues in one episode surrounding the protection of trade secrets. "It was really interesting to kind of hang out with a professor outside an academic context," says Jeffrey Mudd '17, one of the students in Fromer's group. "Seeing the level of passion that Professor Fromer had about not only the show, which was hilarious, but her area of study—she really loves this stuff." □ Rachel Burns

Hasta Law Vista, Baby

This year's Law Revue, a musical spoof of the Arnold Schwarzenegger classic *Terminator 2: Judgment Day*, included time-traveling murderous citation robots and even deadlier legal puns. Among the reimaged songs in *The Firminator* was "To Cite," a tweaked version of Leonard Bernstein and Stephen Sondheim's "Tonight." One of the music videos featured in the production, a parody of Missy Elliott's "Work It" called "Clerkships," narrowly missed out on top honors in *Above the Law's* annual Law Revue Video Contest.



ILLUSTRATION: CHRISTOPHER THORNOCK



Relevant Parties

68 Convocation speakers Preet Bharara and Anthony Appiah address the Class of 2015

70 Sherrilyn Ifill '87 moves Yankee Stadium crowd at Commencement *71 Hooding photo album*

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77 Former Chief Judge Judith Kaye '62 honored at Weinfeld Gala *78 Reunion 2015*

“Speak Simply and Listen Intently”

At Convocation, US Attorney Preet Bharara and University Professor Anthony Appiah emphasize the humanity of the law.



Julienne Markel '15 presents Anthony Walters '77, chairman of the board of trustees, top, and Tyler Scott Robbins LLM '15 presents Trustee Rita Hauser with the Class of 2015 Graduation Gift in the morning and afternoon ceremonies, respectively. The total gift exceeded \$63,768, and represented the contributions of 203 students, including 24 new Weinfeld Fellows.

On the historic Beacon Theatre stage, awash in violet, NYU School of Law honored its graduating students in two ceremonies on May 21. The morning JD Convocation featured Preet Bharara, US attorney for the Southern District of New York, and Terron Ferguson '15. In the afternoon, University Professor Anthony Appiah and Gadi Ezra LLM '15 addressed LLM and JSD students. In broad terms, the speeches focused on humanity, bridge-building, and confronting injustice.

Bharara explored what it means to be a lawyer. Justice, he asserted, comes from the humanity that shapes the law. He quoted Clarence Darrow's defense summation in *People v. Henry Sweet*, which Bharara had memorized for a high school public speaking competition: “No matter what laws we pass, no matter what precautions we take, unless the people we meet are kindly and decent and human and liberty-loving, then there is no liberty.”

“To this day, no class, no professor, no law book has ever conveyed to me more powerfully and persuasively what it means to be a human being as a lawyer than those words I committed to memory 31 years ago as a pimply adolescent,” Bharara said. Years ago as a young prosecutor working on a difficult case, he received a late-night call of encouragement from a supervisor, he said. “It’s a small thing, but I am yet 15 years later remembering it.”

He then offered his audience plainspoken advice for conducting themselves. “Speak simply and listen intently. Those are the hallmarks of great leaders, not just great lawyers.”

He appealed to the young lawyers to practice with full hearts. In the end, Bharara said, “The law is merely an instrument, and without the involvement of human hands, the law is as lifeless and uninspiring as a violin kept in its case.”

Dean Trevor Morrison, who presided over both ceremonies, touched on a similar theme, noting that graduates have the power to influence national conversations on same-sex marriage, political corruption, surveillance, and corporate misconduct as they take on their profession's fundamental responsibility—ensuring the rule of law. “The law is inevitably an imperfect institution, and at any particular point, some laws may be unjust, unfair—even cruel,” he said. “Your legal training...has given you expertise

not only in discerning the law as it is, but also in advocating for the law as you think it should be.”

Ferguson, a native of inner-city Miami, drew laughter as he surveyed the Class of 2015's shared struggle through law school—three years to “figure out who we are, who we'd like to become, and we do it,” he said. “We self-determine.” He echoed his former professor Bryan Stevenson in his call to do the uncomfortable by actively challenging racial injustice and mass incarceration, to resounding applause.

The afternoon's speeches brought a global flavor to the theme. Ezra, an Israeli lawyer graduating from the International Legal Studies LLM program, remarked on the power of shared experience in bringing together students from more than 60 nations. “I'm not even thirty, yet I have already seen five wars in my lifetime. In some of them I served as a combat soldier. I've witnessed devastation, sorrow. But above all, I know how to recognize hope. And the LLM class of 2015 makes me feel hopeful,” Ezra said, to a standing ovation from his classmates.

Appiah drew on his family history to discuss the global and local responsibilities of lawyers. Though not himself a lawyer, Appiah has a long legal lineage: his father was president of the Ghana Bar Association; his grandfather, England's solicitor general; his great-grandfather served on the judicial committee of the Privy Council; and his great-great grandfather was a Queen's Counsel to Queen Victoria.

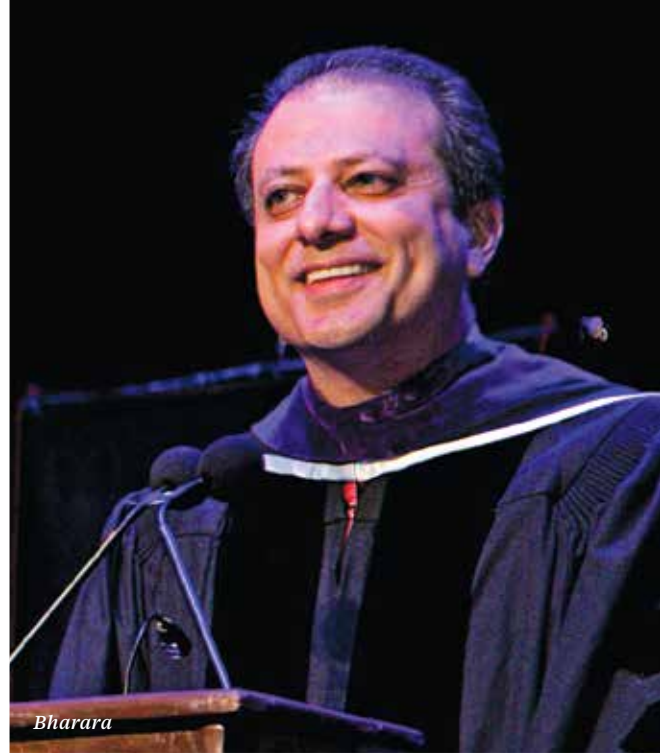
When Appiah's father was elected to the first independent parliament of Ghana, his political role led him into conflict with the president of the country. Imprisoned without trial for his political work, he became one of Amnesty International's first prisoners of conscience. “I learned early on from him that what the law promises to do can be different from what it actually does,” Appiah said.

Appiah also learned that the community of those who care about the rule of law is global, as an Englishman and a New Zealander were the first to protest his father's imprisonment. Appiah encouraged the graduating students to consider themselves part of the greater transnational community of the legal profession: “As my parents—a young man from the Gold Coast and a young woman from England—discovered, love and friendship, like law, can also bridge the nations.” □
Rachel Burns and Gina Rodriguez


See related photo gallery at law.nyu.edu/media2015



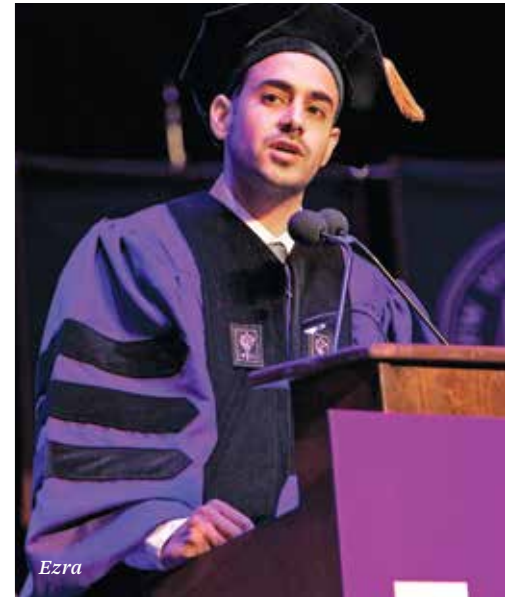
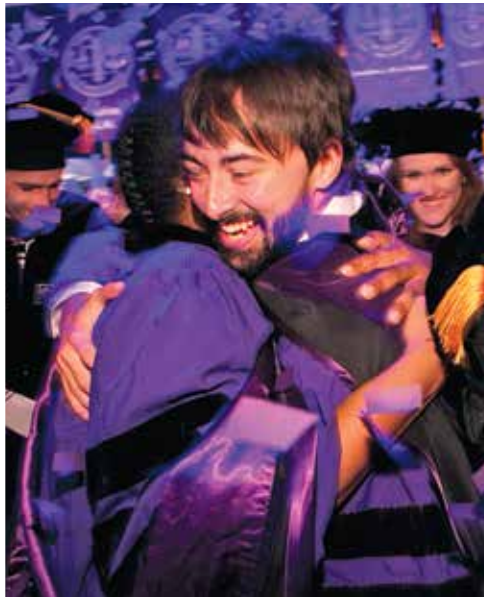
Ferguson



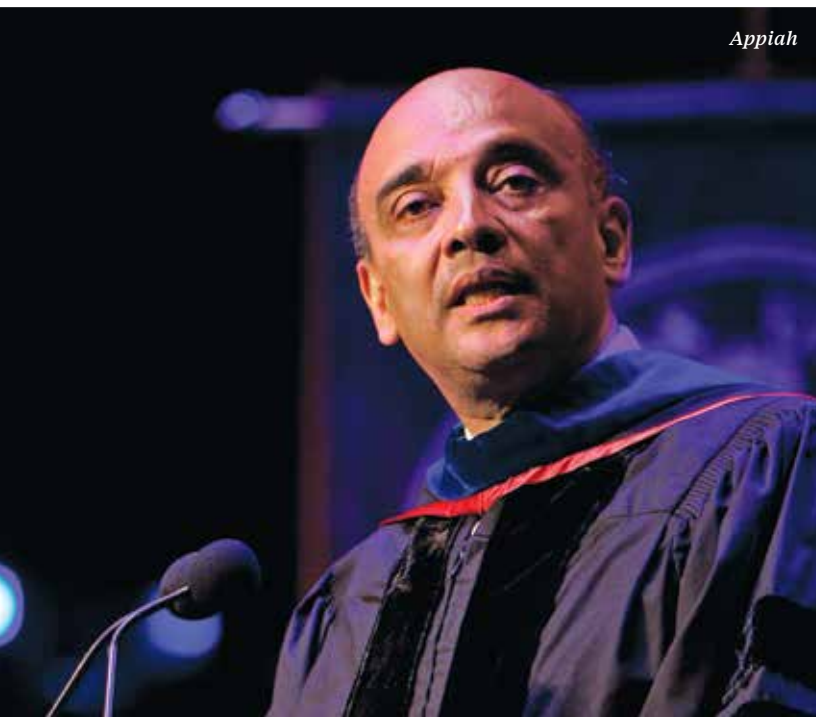
Bharara



Morrison



Ezra



Appiah



“I Encourage Your Discomfort”

University Commencement speaker Sherrilyn Ifill '87 invokes graduates' "bone-deep sense of obligation" to better their democracy.

The Law School was well represented at New York University's 183rd Commencement on May 20. The occasion marked the final graduation ceremony for both Martin Lipton '55, the outgoing chair of the University's board of trustees, and NYU President John Sexton, a dean emeritus of NYU Law, as well as the conferring of an honorary doctorate of laws on Sherrilyn Ifill '87,

unarmed black men at the hands of police in Ferguson, Missouri; Staten Island; and Baltimore, as well as the ambush killing of two police officers in Brooklyn—and recalled a phrase by Thomas Paine: “These are the times that try men’s souls.”

“These in fact are the times that try men’s and women’s souls,” said Ifill. “The past nine months have challenged the very soul of our nation, such that we cannot pretend, even as we are here filled with the excitement of this day, that there are not deep challenges awaiting us.” Ifill mentioned some of the challenges: finding a job; anti-LGBT discrimination; being stopped on the street or in a car for one’s appearance alone; worrying about parents with little or no savings; the cost of college for one’s children; and increasingly stringent voter ID laws.

Lingering a moment on the issue of a prison population that has reached “unsustainable and shameful proportions,” Ifill said, “You know that incarcerating two million people is a sign of American failure, not American success.”

There was nothing less, she said, than a “crisis of confidence in the rule of law and in our justice system,” and it required action. “I encourage your discomfort, that you must contribute, that you must make your voice heard. That is the essence of good citizenship, that bone-deep sense of obligation that you must work to improve our democracy, and to improve it especially for those who are most marginalized and most in need.”

At the end of her speech, Ifill shifted from the societal to the personal, revealing that she had been one of the passengers on the Amtrak train that had derailed in Philadelphia only eight days before.

Finding herself walking along the tracks in a daze away from the wreckage, Ifill turned to the “favorites” listed in her cell phone: her sister, husband, daughters, best friends. All of them rushed to her aid.

“I wish to not only call upon you to use this extraordinary education to exercise the highest form of citizenship, to fight for justice and peace and equality in our democracy, to be excellent,” she said, “but I also call upon you to just as passionately nurture, tend, and cherish your favorites, the ones who, when calamity happens, will find you and surround you with their love and lead you out of the fog.” □ *Atticus Gannaway*



Harry Orr Hobbs LLM '15 carries the banner leading the Law School procession into Yankee Stadium.

president and director-counsel of the NAACP Legal Defense and Educational Fund, who addressed the enthusiastic crowd at Yankee Stadium.

Reading from the University's citation, Life Trustee Ellen Schall '72, former dean of NYU's Robert F. Wagner Graduate School of Public Service, called Ifill “a leading voice in the national dialogue on equality and civil rights.” Sexton praised his former student as a “mentor to future generations of civil rights activists and lawyers. You reflect the core values of our university as the national conversation on race and the law takes on added urgency.”

Ifill, speaking to the entire University a year after addressing NYU Law's Class of 2014 at Convocation, invoked the many challenging racial incidents of the past year—such as the deaths of

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Alexander Boies with his father, Trustee David Boies LLM '67



Caroline Phillips with her father, Barnett Phillips IV LLM '77

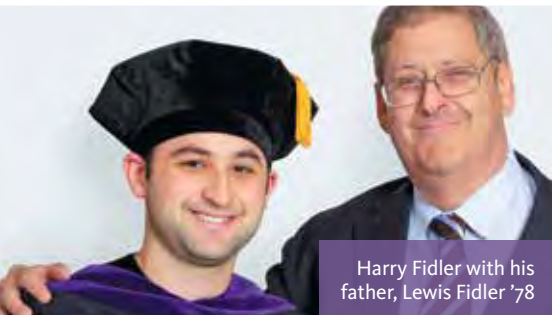


Sarah O'Brien with her mother, Trustee Florence Davis '79

The Class of 2015 Legacy Families



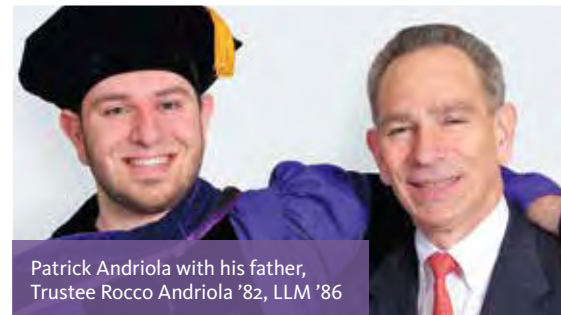
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Harry Fidler with his father, Lewis Fidler '78



Max Rodriguez with his stepfather, Trustee Kenneth Raisler '76



Patrick Andriola with his father, Trustee Rocco Andriola '82, LLM '86



Amanda Sabele with her father, Glenn Sabele LLM '85



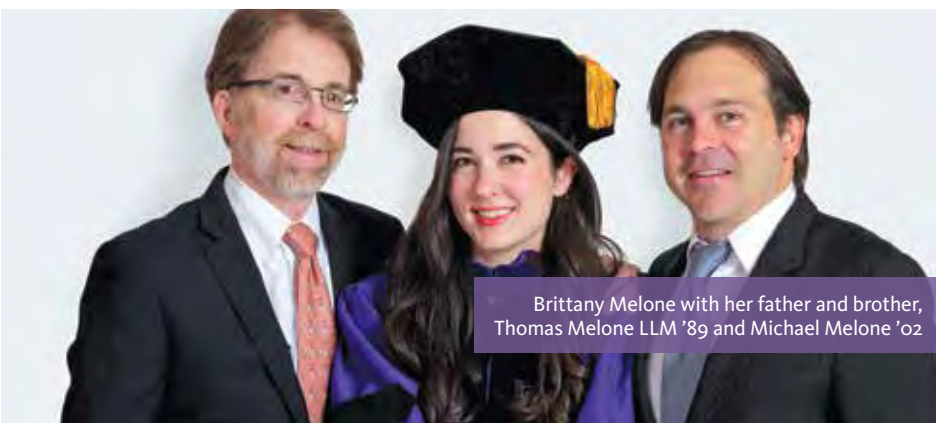
Adrienne Benson with her mother, Shari Loe '83



Jeanne Schwartz with her father, Jeffrey Schwartz '76



Zachary Klinger with his father and mother, Trustee Alan Klinger '81 and Susan Wagner '81



Brittany Melone with her father and brother, Thomas Melone LLM '89 and Michael Melone '02



Sarah Lee with her mother, Connie Zuckerman '85



Rochelle J. Buckstein Scholar Kylie Barbosa was hooded by Mark Buckstein '63 and Eric Martins '63



Nordlicht Family Scholar (Jacobson Leadership Program in Law and Business) Nnenne Okorafor was hooded by Ira Nordlicht '72 and Professor Helen Scott

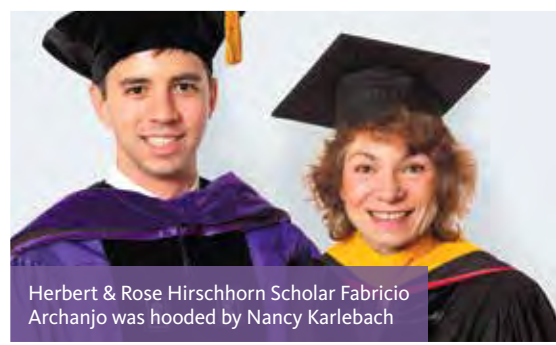


Terry Rose Saunders Scholar Xiaoye Wang was hooded by Terry Rose Saunders '73

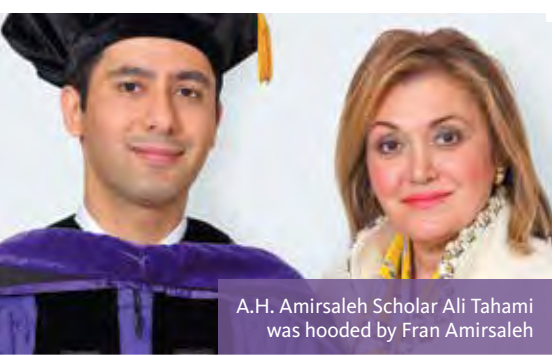
The Class of 2015 Scholars and Donors



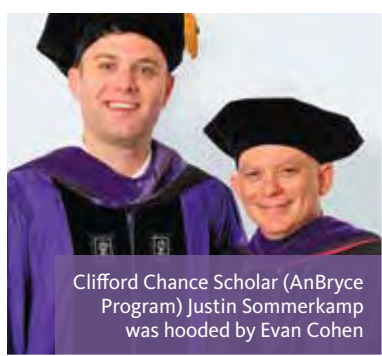
See related photo gallery at law.nyu.edu/media2015



Herbert & Rose Hirschhorn Scholar Fabricio Archanjo was hooded by Nancy Karlebach



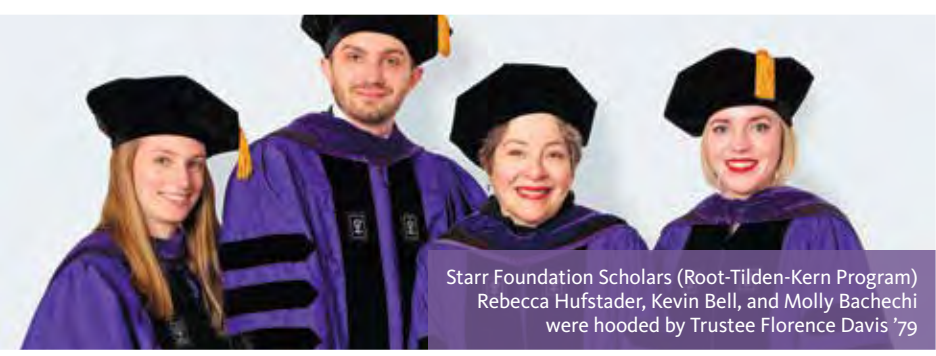
A.H. Amirsaleh Scholar Ali Tahami was hooded by Fran Amirsaleh



Clifford Chance Scholar (AnBryce Program) Justin Sommerkamp was hooded by Evan Cohen



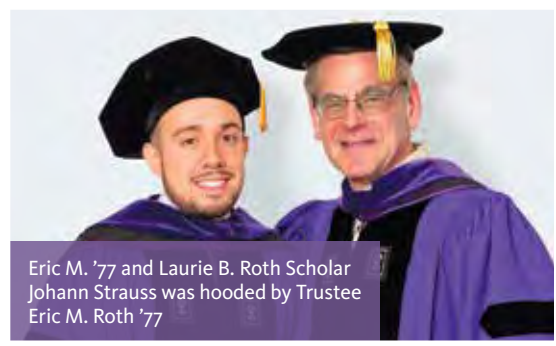
Sullivan & Cromwell Public Interest Scholar (Root-Tilden-Kern Program) Seth Silverman was hooded by Trustee Kenneth Raisler '76



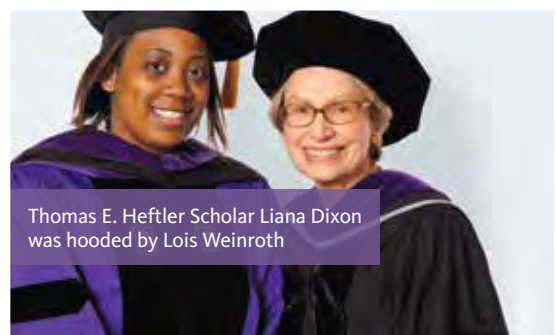
Starr Foundation Scholars (Root-Tilden-Kern Program) Rebecca Hufstader, Kevin Bell, and Molly Bachechi were hooded by Trustee Florence Davis '79



Mikayla Consalvo, Carroll and Milton Petrie Foundation Scholar (AnBryce Program), and Carroll and Milton Petrie Foundation Scholars Siyi Tian, Ryan Redway, and Matthew Mutino were hooded by Beth Lief '74



Eric M. '77 and Laurie B. Roth Scholar Johann Strauss was hooded by Trustee Eric M. Roth '77



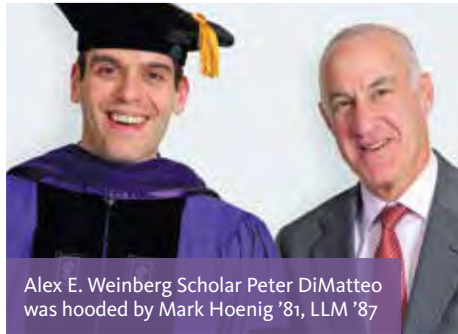
Thomas E. Heftler Scholar Liana Dixon was hooded by Lois Weinroth



Sinsheimer Service Scholar Diane Johnston was hooded by Life Trustee Warren Sinsheimer LLM '57



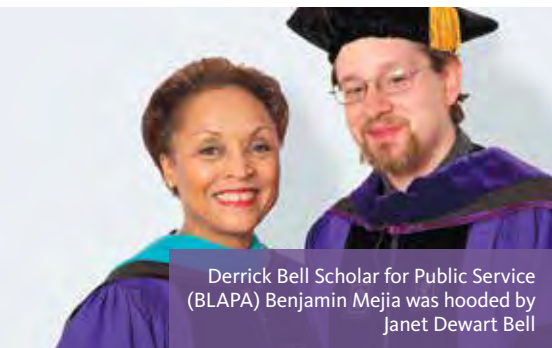
Furman Academic Scholars Virginia Wyllly, Thaddeus Eagles, and Luke Herrine were hooded by the Honorable Jesse Furman



Alex E. Weinberg Scholar Peter DiMatteo was hooded by Mark Hoenic '81, LLM '87



Adolph H. Siegel Scholar Yifei Zheng was hooded by William Siegel



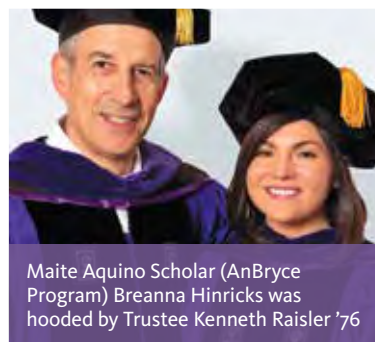
Derrick Bell Scholar for Public Service (BLAPA) Benjamin Mejia was hooded by Janet Dewart Bell



Jacob Marley Foundation Scholar in memory of Christopher Quackenbush '82 Danielle Arbogast was hooded by Dr. Gail Quackenbush



Kenneth and Kathryn Chenault Scholar (AnBryce Program) Derry Sandy was hooded by Life Trustee Kathryn Chenault '80



Maite Aquino Scholar (AnBryce Program) Breanna Hinricks was hooded by Trustee Kenneth Raisler '76



Judge Charles Swinger Conley Scholar (AnBryce Program) M. Gabrielle Apollon Richardson was hooded by Ellen Conley



Anthony Welters '77, chairman of the Law School's Board of Trustees, and his wife, Ambassador Beatrice Wilkinson Welters, with AnBryce Program Scholars (back row, from left) Derry Sandy (Kenneth and Kathryn Chenault Scholar), Joshua Espinosa (William Randolph Hearst Foundation Scholar), Kortni Hadley (John D. Grad Scholar), East Berhane (Brodsky Family Scholar), Justin Sommerkamp (Clifford Chance Scholar), Calisha Myers (John D. Grad Scholar), M. Gabrielle Apollon Richardson (Judge Charles Swinger Conley Scholar), Brence Pernel (Root-Tilden-Kern and AnBryce Scholar), Breanna Hinricks (Maite Aquino Scholar), Danielle Arbogast (Jacob Marley Foundation Scholar in memory of Christopher Quackenbush '82), Mikayla Consalvo (Carroll and Milton Petrie Foundation Scholar)

Reflections

“Immigration law is something I’ve always been interested in, but it is very difficult to become an immigration lawyer who’s helping low-income individuals. As a student in the Immigrant Rights Clinic, I got direct experience and could see other people working in it. This has really shown me a pathway I can go forward with.”

JEHAN LANER
FORD FOUNDATION FELLOW,
ASIAN AMERICANS ADVANCING JUSTICE-ASIAN LAW CAUCUS



SIYI LUO LLM
2016 LLM candidate,
International Economic Law,
Shanghai Jiao Tong University



STEVEN FEIT
Fellow, Center for
International Environmental Law



MARIETOU DJOUF
Associate, Gibson, Dunn & Crutcher



MIKAYLA CONSALVO
Associate, Cleary Gottlieb Steen & Hamilton



ADAM DALE
Associate, Winston & Strawn

“New York is the center of sports law, so we didn’t really have to twist arms to get speakers to come to the colloquium we co-organized. We had Tiki Barber from the NFL; Eugene Orza, former MLB Players Association COO; and attorneys representing all types of sports-related clients.”

< **ADAM DALE**, who co-chaired the NYU Sports Law Committee with Steven Couper



STEVEN COUPER
Associate, Jones Day

Members of the Class of 2015 share where they are going and what they are proud to have done.

See related photo gallery at law.nyu.edu/media2015



CALEB FOUNTAIN
Clerk, Judge Janet Hall
of the US District Court for
the District of Connecticut

“I traveled to DC as an NYU Law Salzberg Cutler Fellow to present work-in-progress and receive feedback from other international law scholars. In many ways, the constructive exchange of ideas represented my experience throughout the LLM year.”

EDEFE OJOMO >



EDEFE OJOMO LLM
2018 JSD candidate, NYU School of Law



CHARMAYNE PALOMBA
Clerk, Chief Justice Dana Fabe
of the Alaska Supreme Court



JULIA HEALD
Associate, Simpson,
Thacher & Bartlett



JOSHUA DAVID RIEGEL
Excelsior Service Fellow,
New York State Industrial Board of Appeals



“I was an intern for Judge Robert Patterson in the SDNY my 2L fall. Those 10 to 15 hours a week definitely made my semester. It was just wonderful to dig into material, and it’s probably what I’m going to be doing for the rest of my life, researching and writing.”

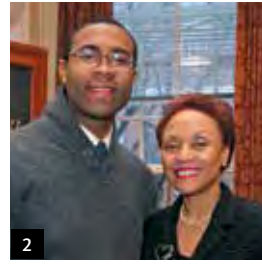
SARAH DOWD
ASSOCIATE, MILLER & CHEVALIER

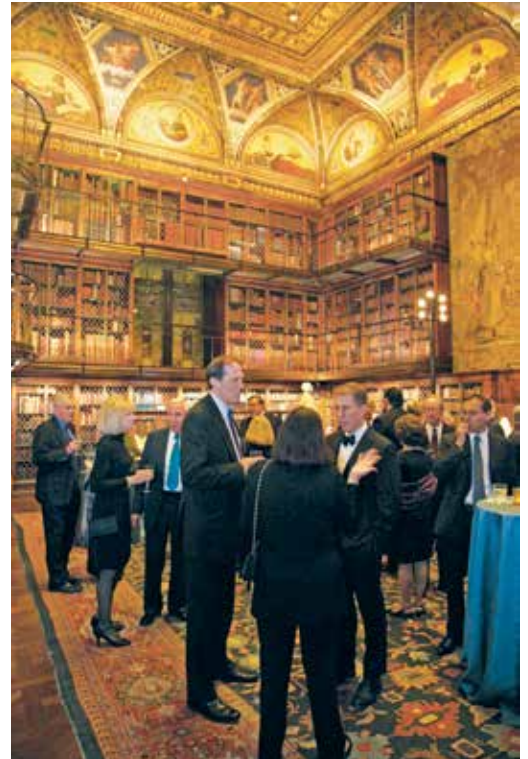
In Appreciation

Joshua Espinosa '15, William Randolph Hearst Foundation Scholar within the AnBryce Program, spoke for so many of his fellow scholars when he expressed his gratitude to the donors who made his NYU Law career a success. His achievements, Espinosa said, “were really three generations in the making” and began in Cuba, where his grandfather was born.

1. Ellen Conley with Judge Charles Swinger Conley Scholar within the AnBryce Program Evan Shepherd '17;
2. Janet Dewart Bell with Derrick Bell Scholar for Public Service (BLAPA) Evan Milligan '15;
3. Trustee John Desmarais '88 with Desmarais LLP Scholar Arthur Argall '17;
4. Chairman and Trustee Anthony Welters '77 and AnBryce Foundation President Thelma Duggin with AnBryce Scholars;
5. Penny Shane '88 with Sullivan & Cromwell Public Interest Scholars within the RTK Program Matthew Tysdal '16, Seth Silverman '15, and Kartik Madiraju '17;
6. Susanna Mancini MCJ '87 and Silverio Foresi with Susanna Mancini and Silverio Foresi Scholar José Palomar LLM '15;
7. Trustee Leonard Wilf LLM '77 with Wilf JD Merit Scholar Emily Graham '17, Wilf Family Scholar Nataly Laufer Cohenca '16, and Wilf Tax Scholars Joshua Savey LLM '15, Daniel Janovitz LLM '15, and Stephen Grace LLM '15;
8. Florence and Life Trustee Warren Sinsheimer LLM '57 with Sinsheimer Service Scholars Diane Johnston '15, Anne Carney '16, and Jean-Luc Adrien '17;
9. Julianna Manzi '13 with Julianna B. Manzi Scholar Ellen Campbell '17;
10. Fran and Mahyar Amirsaleh with A.H. Amirsaleh Scholars Ali Tahami LLM '15, Babak Ghafarzade '16, and Maliheh Zare JSD '18;
11. Life Trustee Karen Freedman '80 and Professor Nancy Morawetz '81 with Root-Tilden-Kern Scholars;
12. Joshua Espinosa with his mother, Millie; Chairman Welters; and Dean Trevor Morrison.

See related photo gallery at law.nyu.edu/media2015





Honoring a Noble Judge with the 2014 Weinfeld Award

Former Chief Judge of New York Judith Kaye '62, now of counsel at Skadden, Arps, Slate, Meagher & Flom, received the Judge Edward Weinfeld Award at the 2014 Weinfeld Gala last October. Held at the Morgan Library & Museum, the annual gala celebrates donors who give at the \$5,000 level and higher annually, or \$1,000 or more during each of their first 10 years as alumni.

Dean Trevor Morrison presented the award, which recognizes the professional accomplishments of alumni who graduated 50 years ago or more. He read from a congratulatory letter sent by Chief Judge Jonathan Lippman '68, who could not attend. In his letter, Lippman praised Kaye for "her erudite and insightful legal opinions, her dynamic leadership of the New York courts, and a legal career that has been so representative of the nobility of our profession."

Lippman continued in a more personal vein, describing Kaye as a mentor and inspiration: "I learned from the master as to how to move the mountains of court reform, while at the same time performing a judge's critically adjudicative role."

Kaye accepted her award with grace and also admiration for its namesake, Weinfeld. She recalled how awed she was when she appeared as a young lawyer before the legendary federal judge, and how proud she was after the conclusion of that case to receive his letter of praise, which she still considers one of her highest credentials.

Kaye reflected on being a woman pioneer in the law, and how "visionary and way ahead of its time" NYU Law had been to accept her as a part-time night student while she was pursuing a career in journalism. Over time, her studies nurtured a love of law and changed the course of her career. Kaye would go on to become the first female partner at Olwine, Connelly, Chase, O'Donnell & Weyher. In the judiciary, she wrote notable decisions on issues ranging from the death penalty to equal rights for gay couples. She also streamlined the jury system and established specialized courts for drug addiction, domestic violence, and mental health issues.

In the 1960s, Kaye recalled in her often-funny acceptance speech, women were assumed to be looking for jobs at law firms to find husbands. She accepted a position at Sullivan & Cromwell, however, to be a litigator. Incidentally, she says, she found her husband there, too. "I got both an LLB and an MRS. Thank you, NYU!" □

See related photo gallery at law.nyu.edu/media2015





Together Again

Amidst gorgeous New York City spring weather, 12 classes from 1955 to 2010 gathered at NYU School of Law last May for Reunion 2015.

The weekend events included academic programming, dining, dancing, and outdoor activities. At dinners held for the reunion classes, four alumni were honored for their exceptional work at the Law School and in their careers.



See related photo gallery at law.nyu.edu/media2015



At the Saturday class dinners (left), Andrew Sagor '10 popped over to greet his father, Elliot Sagor '65, LLM '70. A first for the Law School, the Sagors celebrated their fifth and 50th reunions, respectively.



Dean Trevor Morrison presented the Public Service Award to Thomas Buergenthal '60 (right), praising the former judge of the International Court of Justice as a model of the values that the Law School hopes to instill in its students. Buergenthal has also served as a judge on the Administrative Tribunal of the Inter-American Development Bank and as judge and president of the Inter-American Court of Human Rights.



Buergenthal



Dean Trevor Morrison presented the Legal Teaching Award to Professor Troy McKenzie '00 (below), who teaches bankruptcy, civil procedure, and complex litigation. In 2008 he received the Albert Podell Distinguished Teaching Award. Currently on leave, McKenzie is working at the US Department of Justice Office of Legal Counsel as a deputy assistant attorney general.



McKenzie



NYU Law Trustee Evan Chesler '75 (right), chairman of Cravath, Swaine & Moore, received the Alumni Achievement Award, which recognizes significant professional achievements and commitment to the development of the Law School. As the leader of the strategy committee of the Law School Board of Trustees, Chesler made recommendations leading to the creation of NYU Law Semesters Abroad, the Legislative and Regulatory Process Clinic in DC, and leadership initiatives.



Chesler



Lindstrom

Beatrice Lindstrom '10 (above), a staff attorney with the Institute for Justice and Democracy in Haiti (IJDH), received the Recent Graduate Award. A former Root-Tilden-Kern Scholar, Lindstrom has sued the United Nations on behalf of IJDH for its role in Haiti's cholera outbreak following the devastating 2010 earthquake.





CLOSING STATEMENTS

Bryan Stevenson has been speaking about compassion and justice his whole career. But with the publication of his first book, *Just Mercy: A Story of Justice and Redemption*, last October; the exoneration of a death row client after a successful Supreme Court appeal in 2012; and the release of an unflinching report on the history of lynching in the American South, he sparked a year-long national dialogue.

“I’ve come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.”

President Barack Obama has appointed Stevenson to 2 new initiatives: the Task Force on 21st Century Policing (along with Constance Rice '84) and My Brother's Keeper Alliance, a nonprofit designed to help boys and young men of color.

Kudos for Stevenson's 2014 book, *Just Mercy*:

2015 Carnegie Medal for Excellence in Nonfiction

100 Notable Books of 2014, *New York Times*

5 Most Important Books of 2014, *Esquire*

TOP 10 Nonfiction Books of 2014, *Time*

Outstanding Literary Work in Nonfiction, 46th NAACP Image Awards

In April, *Time* magazine named Stevenson to its

100

Most Influential People of 2015 list in the Pioneer category.

“Yet as we cringe at the hideous acts of terror being committed elsewhere today, it’s as essential as it is painful to remember what we ourselves were once capable of.” —**Carl Hiaasen**, *Miami Herald*, on the value of Stevenson’s Equal Justice Initiative lynching report

“I remember specifically that [my last lawyer] told me he was trying to get me life without. And I told him, ‘Get that for someone that is guilty. I’m innocent.’ I need someone that would believe in me and would fight for my life as hard as they could, and that is when Mr. Stevenson came in.”

—**Anthony Ray Hinton**, Stevenson’s client who was exonerated in April after nearly 30 years on death row

“Bryan Stevenson may, indeed, be America’s Mandela. For decades he has fought judges, prosecutors, and police on behalf of those who are impoverished, black, or both.”

—**Nicholas Kristof**, *New York Times*

“A brilliant lawyer representing America’s conscience on a mission to guarantee equal justice for all.”

—**Desmond Tutu** on Stevenson, *Vanity Fair*

The Equal Justice Initiative documented

3,959

lynchings in 12 Southern states between 1877 and 1950.

From the EJI report *Lynching in America: Confronting the Legacy of Racial Terror*



See related video at law.nyu.edu/media2015



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Weinfeld Program

The Weinfeld Program is the NYU School of Law's most prestigious donor recognition group. We invite you to join the program by committing to annual gifts at one of the following levels:

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\$25,000 or more

WEINFELD PATRONS
\$10,000 or more

WEINFELD ASSOCIATES
\$5,000 or more

WEINFELD FELLOWS
\$1,000 or more
(until your 10th Reunion)

Wallace-Lyon-Eustice Associates

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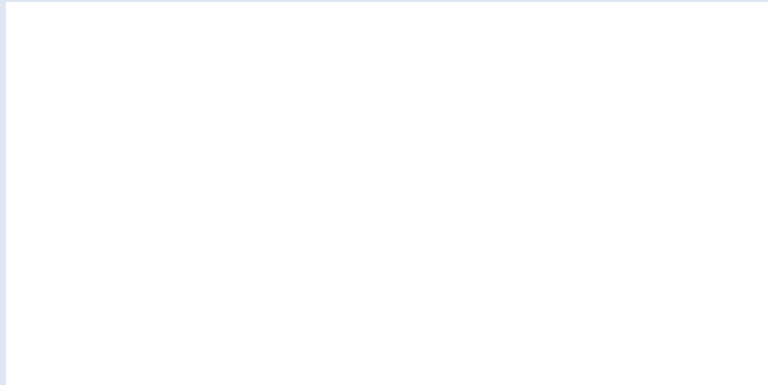
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