2016 • POLICING PROJECT • CORPORATE LAW CLOSE-UP • CYBERSECURITY: LAW MEETS TECH



Powering Up

The AnBryce Scholarship Program has helped scores of students chart paths to success—including Cravath's first Latina partner, Damaris Hernández '07.



HTD.

April 28–30, 2017 REUNION www.law.nyu.edu/reunion2017

The Morrison Memo

n May, I proudly watched graduates—most of whom were just beginning their 1L years when I came to NYU Law walk across the stage to accept their degrees. When I first arrived here, I often spoke about how inspired I was by the Law School's dedication to justice and to serving the public interest. National and international events have since underscored the need for that commitment—and for a global perspective that encompasses multiple viewpoints.

These are challenging times. The rate of technological, economic, and political change is accelerating even as the world becomes more complex—and, at times, seemingly more divisive. Instability abounds in countries around the world. Here and abroad, partisan rhetoric and ad hominem attacks often displace rigorous inquiry and genuine debate. And for all its virtues, our own legal system's deficiencies—including how it treats marginalized communities and disadvantaged groups—are palpable.

In this climate, I continue to be inspired by our community, not only as it has responded to trauma with messages of warmth and inclusion, but also in the concrete work being done here to make the world more just. Professor Rachel Barkow's Clemency Resource Center successfully pursues the commutation of lengthy sentences for non-violent offenders. The students of the Suspension Representation Project help younger students stay out of the school-to-prison pipeline. Professor Barry Friedman's Policing Project addresses fundamental questions about democratic oversight of police and engages police and citizens around the substance and process of law enforcement policymaking. We use our convening power, such as at a recent conference, to gather judges, legal practitioners, and scholars to discuss action steps toward closing the civil justice gap in the United States. Beyond our campus, members of the broader NYU Law community continue to lead by example in myriad pursuits of justice both domestically and internationally. The law touches nearly every important issue of the day, and in these pages you will see how our faculty, alumni, and students are using the law to bring people together for positive change.

Here at the Law School, we pride ourselves not only on leadership and service, but also on our history of innovation. As the world continues to change, it is more vital than ever that we chart our course with intention—not just to keep pace but to set the pace. We do this through projects like our collaboration with NYU's Tandon School of Engineering around cybersecurity issues, a pioneering database developed by Professor Stephen Choi and his students that comprehensively documents SEC enforcement actions, and the blending of theory and practice epitomized by our corporate law faculty—including its newest member, Professor Edward Rock. We will continue to train students for the jobs of today and tomorrow, to prepare them to succeed both at law school and in their careers, and to ensure that our alumni and the wider community are part of that evolution.

To that end, NYU School of Law spent the past year devising a strategic plan that we will launch this year. Thank you to all of you who participated in the process. Against the backdrop of our dedication to global engagement and public service, the Law School is committing to positive growth in three key areas: innovation in legal education, diversity and inclusion, and student success. As we begin, we are in the enviable position of acting not in response to an institutional crisis, but from a place of strength—building upon the thought leadership of our faculty and the work we have already done. This year, for example, the AnBryce Scholarship Program—which helps students who have faced challenging social and economic circumstances both awarded its 100th scholarship and saw program graduate Damaris Hernández '07 become the first Latina partner at

Cravath, Swaine & Moore. Her profile and the many others you will read here about our groundbreaking JD and graduate alumni illustrate just what kind of mark our community is making on the world.

But there is always more to do, and we can always do better. It is important to me and to the NYU Law community that our commitment to these goals is more than rhetoric, so you can expect to see concrete action toward realizing them in the coming year and beyond. The future of the profession is ours to shape. I look forward to working with all of you to do just that.

TREVOR MORRISON

2016 • VOLUME XXVI

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Kim Taylor-Thompson inspired "Kim's Song," a jazz composition; New York State's former Chief Judge Jonathan Lippman '68 will lead reform of Rikers Island; Christopher Jon Sprigman and students create *The Indigo Book*; and Mallika Dutt '89 and Bryan Stevenson win awards for social entrepreneurship.





Matthew Johnson '93 becomes president of the Los Angeles Police Commission; Stephanie Toti '03 argues and wins—her first case before the Supreme Court; NYU welcomes a new president; Stephen Choi and his students develop the Securities Enforcement Empirical Database.



NEW FACULTY The Law School welcomes leading corporate

scholar Edward Rock.

Arguments & Opinions



Mervyn King discusses the future of banking and the global economy; Katherine Strandburg takes a legal lesson from medical procedure patenting; Erin Murphy examines genetic identification's misuse; Jeremy Waldron proposes political theory that brings real-world institutions back into the equation.

O / **Proceedings**



Three Supreme Court justices visit NYU Law; the Forum on Law, Culture & Society turns 10; Christopher Meade '96 recalls his time in the Treasury Department; the Law School's Leadership Mindset shows students what successful leaders look like; the Furman Center for Real Estate and Urban Policy is still making its mark after two decades; the lawyer who successfully argued against DOMA at the Supreme Court explains why she took the case.

Relevant Parties



Vanita Gupta '01 and Frances Daniels LLM '86, '87 speak at Convocation; members of the class of 2016 reflect on their time at NYU Law; alumni celebrate Reunion 2016; the Graduate Tax Program marks two anniversaries; John Sexton receives the Judge Edward Weinfeld Award.

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Barry Friedman and his team at the Policing Project are working in communities across the country to drive greater engagement between law enforcement and those whom they serve.



Located throughout the magazine, these icons indicate stories with additional video or photo content, which can be accessed online at www.law.nyu.edu/magazine.

Digital Front Lines

With deep roots in law and engineering, NYU's new Center for Cybersecurity shapes public discourse and policy on technology and security issues.

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Known for their groundbreaking scholarship and their innovative teaching methods, NYU Law's corporate law faculty blend the best of theory and practice.

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Despite a devastating skiing accident, mergers and acquisitions expert Nancy Lieberman LLM '81 is a force to be reckoned with—at the negotiating table and beyond.

Dicta

Reform Target: Rikers

In February, the speaker of the New York City Council named New York State's former chief judge Jonathan Lippman '68 chair of the new Independent Commission on New York City "Rikers is clearly a symbol of everything that's wrong with the criminal justice system," Lippman told reporters. "The question is: what do you do about it?"



Criminal Justice and Incarceration Reform. As its name implies, the commission's mandate is broad, but its highest-profile assignment will involve assessing the city's long-troubled Rikers Island complex, which a growing number of critics say should close. Working for judicialsystem reform is nothing new for Lippman. During his seven years as chief judge of New York State's highest court, he increased state funding for civil legal services, set mandatory pro bono requirements for law students, pushed for new approaches to bail, and won adoption of rules to protect individuals in debt-collection proceedings. He stepped down from the court in December 2015, after reaching the mandatory retirement age of 70, and is now of counsel at Latham & Watkins. "My prior efforts to improve the legal system play right into my role as chair of the new commission," Lippman says. "It allows me to continue my work to ensure the scales of Lady Justice are exquisitely balanced and that justice is not determined by how much money you have in your pocket."

Whatever recommendations the commission makes on Rikers are sure to be controversial. Says Lippman: "We will go where the research, data, and sound public policy take us." "Decisions would never have been made in the high-handed and cavalier manner that occurred in Flint if the affected population group was well-off or overwhelmingly white. **Elected officials would** have been much more careful, there would have been a timely response to complaints rather than summary dismissals of concerns, and official accountability would have been insisted upon much sooner."

> John Norton Pomeroy Professor of Law **PHILIP ALSTON**, commenting on the Flint, Michigan, water crisis in the *Detroit News*



Balancing Acts

Sarah Brafman '16 has been selected as a 2016 Skadden Fellow. The prestigious two-year fellowship provides a salary and benefits to enable recipients to pursue public interest work.

Brafman will work for A Better Balance (ABB), a national legal advocacy organization dedicated to promoting better workplace policies to help families, particularly those that are low income. She will support efforts to enforce two workplace protection laws that ABB helped pass in New York City: the Earned Sick Time Act and the Pregnant Workers Fairness Act.

A former co-president of NYU Law Students for Reproductive Justice, Brafman was also a Ford Foundation Law School Public Interest Fellow and a student in the Reproductive Justice Clinic.

Why So Blue?

All graduates of law school are familiar-whether they like it or not-with The Blue*book*, the exhaustive guide to legal citation created and published by the Harvard Law Review. "It is a comically elaborate thicket of random and counterintuitive rules about how to cite judicial decisions, law review articles, and the like," wrote Adam Liptak in the New York *Times* last December, further describing it as "both grotesque and indispensable."

Professor Christopher Jon Sprigman, alongside Carl Malamud of Public.Resource. Org and more than a dozen NYU Law students, is working to make the legal citation process easier for all lawyers. Together, they have created *The Indigo Book: A Manual of Legal Citation*, a copyrightfree guide to the same Uniform System of Citation contained in *The Bluebook*.

The Indigo Book contains the same rules as The Bluebook, but expressed more simply and clearly. "Now that those rules are set free of copyright, others can work to improve them. It's a chance for all of us to think about what our legal citation system should look like, because there's a lot of dissatisfaction," Sprigman says. "The Bluebook also costs money, and there are people who need access to legal citation but don't have a lot of extra money—people in jail, for example, or solo practitioners."

Sprigman changed the name of the project from Baby Blue to The Indigo Book after the Harvard Law Review Association contested the original title, arguing that people would be confused and believe that Baby Blue was affiliated with The Bluebook. "They never had any substantial copyright or trademark claims," Sprigman says. "But rather than litigate for two years, we just decided to change the name."

The Indigo Book is now available online, released under Creative Commons "CCo," a public domain dedication that essentially means "no rights reserved," thus enabling users to copy, distribute, and improve on this expression of the citation system.

"A system is not copyrightable. It can be reexpressed," Sprigman says. "So we expressed the system in different words.

We think *The Indigo Book* does that more efficiently and understandably. And now that this has been done, innovation can happen. Anyone can take our work, modify it, and make it better."

Have Mercy

As the clock on presidential pardons began running out this year, the Law School emerged as a powerhouse of clemency applications. Led by Rachel Barkow, Segal Family

Professor of Regulatory Law and Policy, the Mercy Project and the Clemency Resource Center (CRC) at the Center on the Administration of Criminal Law have helped prisoners who are serving lengthy federal sentences for nonviolent offenses and are ready for reentry into society pursue sentencing reduction or commutation. "I am so proud of what the center and the CRC have achieved. They have transformed lives with their great work, reuniting families and giving people hope for a brighter future," says Barkow. "The CRC legal team, our center fellows, and our law firm partners represent the

legal profession at its very best." 625

> CLEMENCY APPLICATIONS SCREENED

150 PETITIONS FILED BY 10 ATTORNEYS AND 16 STUDENTS COMMUTATIONS, INCLUDING

> FOR CLIENTS SERVING LIFE SENTENCES



Professor of Clinical Law **KIM TAYLOR-THOMPSON** is the inspiration behind "Kim's Song," a jazz composition that her musician father Billy Taylor composed, and which was the basis for a modern dance work by Parsons Dance.

Doing Good

Members of the NYU Law community won two of five 2016 Skoll Awards for Social Entrepreneurship: Mallika Dutt '89, founder and executive director of Breakthrough: Building Human Rights Culture, and Bryan Stevenson, professor of clinical law and executive director of the Equal Justice Initiative (EJI).

The award comes with \$1.25 million in support investments to help each

organization scale its work. EJI, which Stevenson founded in 1989 in Montgomery,

Alabama, provides legal representation to indigent defendants and prisoners, including juvenile offenders and people wrongly convicted.

Dutt's nonprofit group combats genderbased violence by

using popular media, leadership, and advocacy to transform cultural norms in

the US and India. Breakthrough will use the new funding to expand its program combating gender-based violence to 500 US college campuses.

"How do you shift culture? Change stories, use the law, and dream big!" said Dutt. "That's what I learned at NYU Law. That's why I created Breakthrough." As New York State superintendent

superintendent of insurance, Eric Dinallo '90 helped throw a lifeline to insurance giant AIG during the 2008 financial crisis. This past December, he made another save, this time lifting a fellow straphanger from the path of an oncoming subway. Dinallo, a partner at

Debevoise & Plimpton who teaches business ethics and professional responsibility at NYU Stern, was waiting on the crowded platform for the M and F trains at 23rd Street and Sixth Avenue in Manhattan when a man appeared to fall onto the subway tracks. According to the attorney's e-mail to co-workers after the incident, which was published by the *American Lawyer*, Dinallo lay

XXXXX

facedown on the platform, perpendicular to the edge, and shouted for the man to grab his arm as an oncoming M train bore down on the station. "I heard the subway horn blaring and the brakes screeching and just grabbed his elbows and pulled as hard as I could. The man came up sort of on top and next to me on the platform. The subway then immediately came screeching by and stopped about 40 feet past us," Dinallo wrote in the e-mail.

It wasn't until after disaster was averted and the man caught the next F train—that Dinallo reflected on how dangerous his actions were.

"I did what any of us would have done—I was just in the right place at the right time, with a touch of technical [knowledge] that made me feel confident I was not acting recklessly at least that was my feeling in the moment!"

Winner's Circle

Future trial advocates at NYU Law excelled in two major international moot competitions this past year. Students on the Moot Court Board achieved their best performance ever in the Philip C. Jessup International Law Moot Court Competition's world championships last spring, ranking in the top eight out of more than 550 teams worldwide. The NYU Law competitors included Iqra Zainul Abedin LLM '16, Daniel Andreeff '16, Asmaa Awad-Farid '17, Rajkiran Barhey LLM '16, Megan Henry '16, Tim McKenzie '16, and David Isidore Tan LLM '16. The team earned seventh place for its written permissions, while Henry was named fourth-best oralist.

In March, Saif Ansari '16, Céline Braumann LLM '16, and Maanya Tandon LLM '16 placed third in the national rounds of the International Criminal Court Moot Competition. Braumann won the top oralist prize and was runnerup for the best written memorial by a prosecutor, while Tandon was runnerup for the best written memorial by a legal representative of the victims. The team is coached by NYU Law's Center for Human Rights and Global Justice (CHRGJ) former program officer Danny Auron and Bianca Isaias '15 and supported by the CHRGJ and the Hauser Global Fellows Program.

Despite decades of flossing, Vanderbilt Hall was encased in scaffolding for repair of its dentils toothlike blocks around the base of the cornice.

DINALLO: DEBEVOISE & PLIMPTON LLP



How to Protect Election Integrity in 6 Not-So-Easy Steps

Although half of US states have passed voter registration laws since 2010, many of the new rules address only in-person voter impersonation, which is rare. According to the Brennan Center for Justice, the actual danger comes from election fraud committed by candidates, parties, or their supporters. "The right to vote is under siege," former US attorney general Eric Holder noted at a Brennan Center conference on automatic voter registration. A Brennan Center report proposes the following measures to ensure honest elections and protect voters.

> Goodbye to ink and paper registration. Hello to automatic and online registration.

2 Make sure our voting machines are secure and reliable.

- Don't allow online voting until security is proven.

Adopt only commonsense voter identification proposals.

Increase security of mail-in ballots.

6 Protect against insider wrongdoing.



Brooklyn hipster or constitutional law scholar? **RODERICK HILLS JR.**, William T. Comfort, III Professor of Law, keeps beehives on the roof of his home in Brooklyn and makes his own honey.



Well-Appointed

Oregon Governor Kate Brown tapped Lynn Nakamoto '85 in December 2015 for the state's Supreme Court. Nakamoto, the first Asian Pacific American on the state's highest bench, pursued a public interest career before joining the Portland law firm Markowitz Herbold, specializing in business and employment litigation.

At NYU Law, the justice served as a Note & Comment editor for the *Review of Law & Social Change* and was also a member of the Asian-Pacific American Law Students Association.

"I appreciated NYU Law's attention to public interest law," says Nakamoto, who began her career representing indigent clients in New York after graduation, before moving to the West Coast and joining Marion-Polk Legal Aid Services in Salem, Oregon. Nakamoto was managing shareholder at Markowitz Herbold, where she spent more than two decades, before being appointed to the Court of Appeals in January 2011.



Number of NYU Law graduates clerking on the US Court of Appeals for the Second Circuit in the 2015 term

Crowded House

If apartment hunting seems like it's gotten tougher, it may be because you live in one of the 11 largest metropolitan areas in the US. According to the NYU Furman Center report National Affordable Rental Housing Landscape, renter population from 2006 to 2014 grew faster than the number of rental housing units. As a result, vacancy rates have gone down, the number of people in a rental unit has risen, and in most areas, prices have increased. In addition, more renters also struggled to find affordable housing in these regions; "affordable" rent is defined as being less than 30 percent of a household's income.

More findings about renting in the 11 largest US metro areas:

WASHINGTON, DC, was the least affordable for the typical American renter in a metro area, followed by the San Francisco, LA, and NYC metro areas.

30% OF NYC RENTERS spent at least half their household income on housing costs.

DALLAS AND HOUSTON metro areas were the most affordable to the median US renter household.





Danger may be Professor **ERIN MURPHY'S** middle name. The forensic evidence expert holds a motorcycle license, has visited all seven continents, and has swum from Alcatraz to San Francisco several times.

Why Your Grandfather's Coal Plant Is Still Here

No major source of electricity pollutes more than an old coal plant. So why are so many of these clunkers still in service? Ironically, much of the blame lies with our nation's most important environmental law. Richard Revesz, dean emeritus and Lawrence King Professor of Law, and Jack Lienke '11 of the Institute for Policy Integrity explain in Struggling for Air: Power Plants and the "War on Coal" that the Clean Air Act of 1970 imposed tough standards on new sources of pollution, but lax or no standards on existing sources. As a result, old facilities stay in business and new facilities are discouraged from coming online. Learn more at oldcoal.info.

The Proof Is in the Putting

In Stuyvesant Town, the sprawling residential complex a couple of miles north of the NYU Law campus, Bernie Rothenberg '39 might be the best-known and most beloved graduate of the Law School. The services he provides these days, however, are not legal ones: rather, he is known as the "Golf Pro" of the building complex, and the 99-year-old can often be found teaching his fellow residents how to perfect their strokes.

The New York Times caught wind of Rothenberg's story last fall and featured a character study of him and what the other residents call "The Rothenberg Golf Club," a practice range covered with turf where Rothenberg hits balls each morning. Rothenberg practiced law for just a short time after graduating from the Law School before being drafted into the United States Army during World War II and fighting in the Philippines and Okinawa. He has lived in Stuyvesant Town since he returned to the US. His golf club started only in the past decade or so.

Any fellow alumni looking to improve their games can heed Rothenberg's advice. "Keep yourself relaxed, don't tighten up," he told the *Times*. "Keep your weight on the front foot, elbows tucked into your body. Take a nice rhythmic swing and don't muscle it. Let the club do the hitting." "It is both unacceptable and unwise for policing to remain aloof from the democratic processes that apply to the rest of agency government."

Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics **BARRY FRIEDMAN**, "Democratic Policing," *NYU Law Review*, December 2015

From Big Law to Obstacle Sports

If there is one thing attorneys with Big Law experience excel at, it's competing at the highest levels. After starting their careers as associates at Cravath, Swaine & Moore, Marc Ackerman '92 and John Gauch '96 are now both at obstacle course racing companies that relish team spirit and work ethic—and the occasional barbed wire crawl.

Ackerman serves as general counsel and senior vice president of legal and business affairs at Tough Mudder, an obstacle race company that hosts a variety of 10-t0-12-mile courses, complete with electric shocks and ice baths. The attorney, who spent two decades in Big Law, draws parallels between working in a large firm and obstacle racing. "Overcoming the fear of the unknown and throwing oneself into intense experiences is how we grow and learn," says Ackerman.

Gauch's career took him to management consulting and IBM before he landed at Spartan Race, a firm with an intense lineup of obstacles throughout races, which include rope climbs and fire jumps and range from three to more than 12 miles. As vice president of Spartan Race, Gauch stresses the importance of remaining agile.

"Attorneys need to be mentally tough and resilient to navigate the profession,"

says Gauch. "Obstacles abound."

Game Theory

When Adjunct Professor and Senior Lecturer Alan Rechtschaffen teaches derivatives in his course Financial Instruments and the Capital Markets, he uses an unexpected tool: his backgammon prowess.

A p<mark>as</mark>t Princeton Club backgammon champion, Rechtschaffen employs that knowledge to convey key concepts. While backgammon requires strategic skill, it



also involves rolling dice and opportunities to double the stakes of a game, introducing the kind of unpredictability found in the financial markets.

"You can analyze a market, understand the risks in a portfolio, do the right thing based on all the data you have, and at the end of the day lose money," Rechtschaffen says. "That's like backgammon,

because you could do everything right and then the dice go against you. Similar to derivatives, there are ways of, over time, increasing the reward of being right. It's the leverage of that particular transaction or roll of the dice."

This spring, Rechtschaffen led a two-week crash course in derivatives for judges from the New York State Supreme Court's Appellate and Commercial Divisions. Interest in the class stemmed from legal cases involving the misuse of financial instruments in the 2008 global financial crisis.

"You can't apply correct law unless you understand the transaction really well," says Rechtschaffen. "These things, if you boil them down, are not so complex."



Dean's List

President Obama appointed TREVOR MORRISON, DEAN AND ERIC M. AND LAURIE B. ROTH PROFESSOR OF LAW,

as chairperson of the Public Interest Declassification Board, an advisory committee established by Congress to help facilitate access to the record of significant US national security decisions and activities. Morrison was also elected to the American Academy of Arts & Sciences as one of the members of the society's newest class.



hen Apple refused to help the FBI unlock an encrypted iPhone belonging to one of the San Bernardino, California, shooters this spring, it put the issue of cybersecurity squarely at the center of a long-running US debate over how best to balance national security interests with civil liberties.

Federal investigators urgently sought access to the phone's data to determine if the shooters were tied to a larger terrorist network. Apple CEO Tim Cook warned that complying with the

request would give government the power to reach into anyone's device.

In the public debate that ensued, policy experts clashed with technologists. The former proposed alternatives and compromises, while the latter maintained that giving the government a "master key" could possibly compromise security for all users. In the end, the government was able to retrieve the encrypted data without Apple's help. But the battle over cybersecurity still rages-drawing in players from law and technology as well as government and the private sector.

Placing itself at the center of this matrix is the newly established NYU Center for Cybersecurity (CCS). A collaboration between NYU Law and the NYU Tandon School of Engineering's computer science department, the center is addressing the vexing questions that arise at the meeting point of security and technology: How should the government and private parties interact when it comes to cybersecurity? What kind of legal and technical framework will enable companies to shore up their digital defenses? And what is the appropriate level of risk management for private companies?

MAPPING THE MATRIX

The new Center for Cybersecurity brings legal and technical talent together to take the lead on one of the most urgent issues of our time.

BY MICHELLE TSAI ILLUSTRATIONS BY KOTRYNA ZUKAUSKAITE

NYU is one of the first uni-

versities to leverage an interdisciplinary approach in cybersecurity, and CCS's founding team includes legal experts in national security and counterterrorism, as well as engineering specialists in digital forensics and hardware security.

"Unlike national security, which, for generations, has been the exclusive province of the state, cybersecurity inevitably requires a partnership between public and private actors," says Professor Samuel Rascoff, a co-founder of the new center and faculty director of the Law School's Center on Law and Security (CLS). "And we need to train people who are conversant not just with the legal issues, but who also understand the underlying technical problems."

As cyberthreats grow in complexity and more organizations, governments, and citizens fall prey to them, it is clear that solutions will require a multifaceted approach. At CCS, lawyers and public policy experts work with computer scientists to train attorneys for

> the jobs of today and tomorrow and shape public discourse and policy on technology and security issues. The center engages in research and teaching, convenes thought leaders in this area, and offers a scholarship program for students committed to interdisciplinary work on cybersecurity. (See related story on page 50 about Professor of Clinical Law Jason Schultz's work on technology policy at the White House.)

A CAT AND MOUSE GAME

What we call the Internet—a ubiquitous web of networked computers—took shape in the 1960s when US computer scientists experimented with sending data in packets and connecting computers over dial-up phone lines. "It was a communications network designed by and for a small community of researchers in government and the academy," says Zachary Goldman '09, a CCS co-founder and executive director of the CLS. "It was not designed to be the backbone for global commerce and communications."

In short, the Internet was not created with security in mind. But in an era in which everything from heart monitors to cash registers and entire "smart cities" is connected to the web, protecting data becomes all the more central—and challenging. Indeed,

in 2015 alone, a quarter of Americans reported that they were notified about their personal information being compromised in a data breach, according to the RAND Corporation.

A 2016 Verizon study found that in 2,260 breaches from 67 contributing organizations in 82 countries, attackers required just seconds or minutes to gain access to systems in 93 percent of breaches. Meanwhile, it took weeks—or longer—



for organizations to realize they'd been attacked. "On the Internet, no one knows you're a thief," says Randal Milch '85, a former general counsel at Verizon who is a senior distinguished fellow at CCS.

Adding to the security challenge, by its nature cybersecurity implicates private companies in unique ways. "The private sector owns almost all the infrastructure, the private sector is the victim, and the private sector has responsibility for fixing the problems most of the time," Goldman notes. "That demands a fundamentally different way of thinking about cybersecurity than other kinds of national security concerns."

Thwarting attacks has evolved into a game of cat and mouse, according to Nasir Memon, who represents Tandon as a co-founder of CCS, along with Ramesh Karri, professor of electrical and computer engineering.

"If I'm trying to block every window and door in the building, it's a tough job. The bad guys just have to find one opening, and they're in," says Memon, who leads Tandon's computer science and engineering department and researches digital forensics, data compression, and security and human behavior. "Plus, I have to follow laws and norms. The bad guys can be creative. They don't have to follow rules."

Although staging a cyberattack requires a certain level of technical acumen, defending against one—and coordinating a postattack response—requires the skills of multiple stake-holders and specialists, including attorneys who can evaluate legal risks and protections as well as executives who oversee business decisions. In the 2013 Target data breach, in which hackers stole credit card information from 40 million customers during the holiday shopping season, the retailer had already invested heavily in data defenses, maintaining a system that would raise red flags for potential incidents. But there was confusion at Target over the severity of the compromise, and the big-box store drew heavy criticism for its slow public response, says Judith Germano, a former federal prosecutor, now with CCS, who advises Fortune 50 and other companies on cybersecurity matters.



This spring Facebook Chief Security Officer Alex Stamos (above) discussed the Apple-FBI encryption dispute at the launch of the Center for Cybersecurity with CCS fellow Judith Germano.

"So much of getting cybersecurity right comes down to a communications issue among different stakeholders," both inside an organization and across disciplines and private-public sector divisions, says Germano. For an example of a successful interdisciplinary operation, Germano points to the 2014 bust of Blackshades malware, software that allowed criminals to control victims' computers—seizing passwords, banking credentials, and social media accounts, and even recording keystrokes and activating webcams. Law enforcement, diplomats, technologists, lawyers, and private sector companies from 19 countries came together in a takedown that resulted in more than 90 arrests and 300 executed searches.

Collaboration and coordination are still the exception rather than the rule, however. "Some people would say there's a lot of 'tech-splaining' going on," says Milch, describing how technologists sometimes talk down to legal and policy experts. "That's why it's important that technologists get a better grasp of the policy options and policy people get a better grasp of the technology issues—so they can speak to one another in the same language."

A BASE FOR CYBERSECURITY IN NYC

With a mandate that spans research, teaching, and public debate, CCS is poised to serve as a national hub of cybersecurity research. Its location in New York City, the heart of the US financial and legal industries, is an advantage as CCS addresses critical concerns. One of the first issues that CCS is investigating by leveraging its policy and technology expertise is how best to incentivize corporations to get better at cybersecurity. Milch points out that government regulations in this area constitute a tricky balancing act. One arm of the government, such as the Department of Justice (DOJ), may prompt private companies to share information about security incidents to help law enforcement pursue cybercriminals. But cooperation may expose the companies' security shortfalls, turning the companies into targets of investigation by other agencies-for example, the SEC or the FCC-due to their violations of security policies. Companies may also find themselves in the position of having to share proprietary information and trade secrets with the government.

"Trust between the government and the tech sector is not at a great place right now," says Luke Dembosky, a former DOJ official involved in investigating breaches at Target, Sony Pictures, Anthem, and many other companies, who has spoken about cybersecurity at the Law School's CLS events. Now a partner at Debevoise & Plimpton, Dembosky advises companies on managing their cybersecurity risks. "Improving cybersecurity is a common goal across public and private sectors, and to make progress, we must work together to identify the basic steps that will move us closer to that goal. If we wait until we figure everything out, we will never get there."

Since CCS is deeply rooted in two schools, teaching is naturally an area of focus. This fall, Goldman, Memon, and Milch will coteach a seminar on cybersecurity law and technology—the first of its kind at NYU. Goldman says the team expects every class to be an integrated discussion of legal and technical concerns, framing questions on issues like encryption, government access to data, and the use of sophisticated law enforcement investigative techniques from an interdisciplinary perspective.

In addition to their individual projects—for instance, Tandon's Karri intends to explore the cybersecurity implication of 3-D printing and Law's Milch aims to investigate the use of attorney-client privilege in the aftermath of cyberattacks—CCS scholars are already conducting interdisciplinary research together. Goldman, a former policy adviser in the US Department of the Treasury's Office of Terrorism and Financial Intelligence, teamed up with Tandon's Damon McCoy, who studies the financial and technical networks underlying cybercrime, to publish a peerreviewed paper in the July 2016 issue of the *Journal of National*



Security Law & Policy. "Deterring Financially Motivated Cybercrime" explores regulatory interventions that can make it harder for cybercrime networks to monetize their thefts.

"This kind of cross-cutting thinking is the way to solve problems in this space," says Dembosky. "Technologists aren't going to solve the cybersecurity problem by themselves, and neither will lawyers and policymakers. What the Center for Cybersecurity is doing is very important: bringing people together with disparate skill sets to help narrow differences and solve problems that can't be solved by any one discipline alone."

Michelle Tsai is a public affairs officer at NYU Law.

JDs WHO CODE

IT'S NOT OFTEN that law students have a chance to code (and hack passwords) alongside computer science engineers, but that is just another typical day for the NYU Law students participating in the ASPIRE program.

ASPIRE, which stands for A Scholarship for Service Partnership for Interdisciplinary Research and Education, provides students selected for the program with a top-tier interdisciplinary cybersecurity education and hands-on experience working in government. The Law School's ASPIRE scholars take a number of technical cybersecurity courses at NYU Tandon after the 1L year, for which they receive credit toward the JD degree. They are required to work at a state, local, or federal government agency for two years

after graduation and to work as a government cybersecurity intern during the summer before the 3L year. Funded by the National Science Foundation, ASPIRE students receive full tuition support.

Diving into master's level courses in network security is no easy feat. Kevin Kirby '17, a former army engineer who had been deployed in Afghanistan, described his experience as "drinking from a fire hose," but in a positive waywith opportunities to work on interesting projects, such as designing a web server. Kirby, whose ASPIRE internship was with the Bureau of Consumer Protection at the Federal Trade Commission, intends to pursue work in privacy and data security, especially concerning how companies safeguard consumer data.

Joshua R. Fattal '18 said he found the interdisciplinary discussions between Law and Tandon students enlightening as they taught each other about different approaches to the same questions. For example, said Fattal, "Is code speech? Is there freedom of speech to write any code you want? Can a company be compelled to provide source code to the government?"

Brian Eschels 'n6 taught himself to code in PYTHON and took exams that tested his ability to encrypt and decrypt using algorithms. During Tandon's annual Cyber Security Awareness Week, Eschels organized a policy competition around the question of whether the US should institute a national "bug bounty" program to award individuals for reporting system vulnerabilities. When the Pentagon announced a similar bug bounty program for its website not long afterward, Eschels was pleased to see that the agency's policymakers had the same ideas as students. Eschels's experience at ASPIRE led him to the Department of Homeland Security, where he will begin this fall as part of an honors program composed of four attorneys.

"There's a big divide between the policymakers and the tech people. Policymakers tend to focus on legal frameworks and to reason by analogy when confronted with something new. Tech people are more in tune with the capabilities and vulnerabilities of software-meaning that they can see the shortcomings of the analogies-but are less familiar with how the policymaking process operates," said Eschels. "There are relatively few people who are situated at the nexus between the disciplines, and I'm glad I'm here."

NYU Law Magazine recently brought together seven NYU Law faculty and alumni who are experts in environmental and energy regulation to discuss climate change and how an incoming presidential administration might approach it. In a wide-ranging talk, panelists weighed in on a number of topics including the strengths and weaknesses of US policy, the role of the private sector and the Environmental Protection Agency, the future of the Clean Power Plan, and the significance of the Paris Agreement.

MORENO: My first question is for Ricky Revesz and Ambassador Boyden Gray. The United States has taken a series of significant actions domestically and abroad to address climate change since President Obama's 2013 Climate Action Plan. The US has pledged to reduce greenhouse gas emissions domestically by 26 to 28 percent below 2005 levels by 2025.

The Environmental Protection Agency has issued a number of major rules, including the Clean Power Plan to reduce carbon

emissions from new and existing power plants. [Editor's note: This discussion was held prior to the Supreme Court's stay of the Clean Power Plan.] Most recently, the US played a leadership role at the UN Climate Change Conference in Paris to negotiate and sign a historic accord to strengthen the global response to the threat of climate change.

With less than a year remaining in President Obama's term, and challenges to the legality of the Clean Power Plan making their way through

the federal courts for some time to come, let's look ahead. What actions, if any, would you advise a newly elected president to take in his or her first 100 days in office to address climate change? As part of your answer, you may assume that either a Democrat or a Republican has been sworn into office on January 20, 2017. **REVESZ:** If you give the choice, I'll assume a Democrat has been sworn into office. I'm also assuming that congressional action to address climate change in a comprehensive way is not in the cards for the new president's first term.



Here's the problem: The Clean Power Plan is not enough to meet the Paris commitment. Where to go next? We can keep tackling this problem industry by industry. So there are new proposed regulations for methane release from oil and gas extraction. We could go then to refineries and so on. Doing what we've been doing has two serious problems. One is it's very cumbersome: Getting one of these rules out is an enormous undertaking, taking years of regulatory work, followed by years of litigation. Two, most peo-

> ple assume that these rules allow trading only within the industry to which the rule applies. Therefore, you don't get the advantage of the broader trading that would reduce costs further.

> There is a solution to this problem that the new president could announce he is launching in the first 100 days. It's called Section 115 of the Clean Air Act.

> Section 115 authorizes the EPA to require states to address emissions that endanger public health and welfare in other countries. But in

order to do that, a finding must be made that other countries are taking reciprocal measures that benefit the US. The Paris talks, and what will follow from that, provide a good basis for making the reciprocity finding.

PARTICIPANTS:

IGNACIA MORENO '90

(Moderator) Former Assistant Attorney General for the Environment and Natural Resources Division of the US Department of Justice (2009–13); Chief Executive Officer and Principal, The iMoreno Group

C. BOYDEN GRAY

White House Counsel to President George H.W. Bush; Counsel to the Presidential Task Force on Regulatory Relief; Founding Partner, Boyden Gray & Associates; Adjunct Professor

NAT KEOHANE

Former Special Assistant to the President for Energy and Environment on the National Economic Council and Domestic Policy Council (2011–12); Vice President of Global Climate, Environmental Defense Fund; Adjunct Professor

KARL KINDIG '75

CEO and President of Pittston Coal (1995–98); Attorney at Law

RICHARD REVESZ

Lawrence King Professor of Law and Dean Emeritus; Director, Institute for Policy Integrity; author, with Jack Lienke '11, of *Struggling for Air: Power Plants and the "War on Coal"*

BRYCE RUDYK LLM '08

Senior Legal Adviser to the Mission of Maldives to the United Nations; Climate Program Director and Senior Fellow, Frank J. Guarini Center on Environmental, Energy, and Land Use Law; Adjunct Professor

AMELIA SALZMAN '85

Former Associate Director for Policy Outreach at the White House Council on Environmental Quality (2009–11); Principal, Lazer's Bight; Adjunct Professor

THE FUTURE OF CLIMATE POLICY: AN EXPERT ROUNDTABLE

My advice to the president would be to announce that the administration will make such a finding as soon as it can be supported based on the Paris commitments of other countries. Then, use Section 115 as a one-stop effort to regulate greenhouse gases from the major sectors of the economy that create them.

GRAY: I will assume that a Republican will be the president. And I would advise him to use what authority he has to free up competition in the fuels market so that lower carbon fuels can compete in an open-market level playing field, primarily on the transportation side. The EPA does a lot to gum things up.

How to regulate all this? I am in complete agreement with our former dean that the best way is by emissions trading. But I don't think Section 115 is a viable method of doing it, because that section is tied to criteria pollutants. Greenhouse gases are not criteria pollutants regulated by state implementation plans under Section 110 of the act. I would encourage the president to think about a grand bargain where you do a cap-and-trade or a carbon tax, and whatever other revenue is generated is used in a revenue-neutral way to reduce, say, the corporate income tax.

Then you would suspend in order to get the Republican votes. You would say as long as the cap-and-trade or carbon tax is in place, there is no EPA jurisdiction at all over any greenhouse gases. Now that is something that a lot of people on both sides of the aisle choke on. I have been told that the Republicans and environmental groups think they can bring their crowds along. I don't know the truth to either assertion, but I would encourage a congressional-adopted bipartisan cap-and-trade program or carbon tax that replaces EPA's piecemeal regulation.

MORENO: Nat, you're an economist and have worked on these issues for quite some time. What do you think about a grand bargain and market-based approaches to addressing climate change? **KEOHANE:** It would be great if we could get a grand bargain. But the environmental community will not support anything that entirely removes the EPA's authority to regulate greenhouse gases under the Clean Air Act, so that's a dead end. That doesn't mean you couldn't have a deal of some sort, because you could imagine ways in which EPA authority could be a backstop.

If you think about a carbon tax from the point of view of economic theory, there are lots of things that economists in academia like about a carbon tax. From an environmental advocate's point of view, the problem is it doesn't have a limit on emissions. Ultimately what we have to do is stop putting carbon pollution into the air; we don't only need to

> put a price on it. So you can imagine the outlines of a grand

bargain that would maintain the EPA's Clean Air Act authority in order to provide that guarantee on emissions reductions, while using a tax or a market-based policy as the instrument to get the reductions we need. In such a scenario the EPA wouldn't need to exercise its existing regulatory authority under the Clean Air Act unless it looked likely that we would miss our emission targets.

The Paris Agreement and the Clean Power Plan are both critical pieces of the puzzle, but neither is enough to tackle the problem in the long run. So the main thing we need to start thinking about now is how to raise the ambition of the steps that countries take under the Paris Agreement—and how to raise the ambition of the United States. Even to meet the 2025 targets, we need to do more than the Clean Power Plan or the other regulations already in place.

If we're going to go beyond 2025 to the kind of cuts we would need in 2030 and beyond, we're going to need entirely new policies. Maybe that's Section 115, maybe that's new legislation in Congress. Ricky has laid out one pathway starting with Clean Air Act regulation and creating pressure that way. Boyden has laid out another in terms of the grand bargain.

MORENO: Karl, what is your view on market-based mechanism opportunities?

KINDIG: We've already seen in the United States a market-based response to reduce greenhouse gases—largely without a lot of government hands in the mix—with the replacement of coal by natural gas.

People talk about what's going to happen in 2050, which is 35 years from now. Well, 10 years ago if you'd asked most experts, "Where is the United States positioned on natural gas?" they would have said, "We're going to have to import a lot of it here very quickly because we're running out." Now we know through technological change that we have vast quantities of natural gas.

The private sector has been utilizing that gas to produce power. Last year was the first time that gas fire generation exceeded coal fire generation in the United States in decades. You get somewhere between a two-to-one or three-to-one reduction in carbon dioxide by using natural gas versus coal.

I'm watching what's happening in Germany with their very aggressive program to move to solar and wind as part of their energy mix, and see a very interesting juxtaposition with what's happening in France. Nobody talks about France, but it gets 75 percent of its electricity through nuclear, which doesn't produce a molecule of carbon dioxide. It is an interesting model of what might possibly work in the United States.

Obviously it's important to focus on Washington, what the president and the Congress might do. But for any of these programs to work, it also has to resonate with the other 330 million people in the United States. It's got to be something that makes sense to them and that does not cause electric power to be unreliable or outrageously expensive. Otherwise, you can't solve this problem just through promulgating a new regulation.

SALZMAN: I can't agree more. What we need to accomplish is well beyond the regulatory or legislative capacity of the US alone. Getting where we really need to go will have to involve the private sector and the citizenry of the world. I love the backstop power of the EPA, which is charged with protecting people and the environment of this country and has played a huge role in changing the global response to pollution. The government

is doing long-term research, investment, and great science, but that doesn't always lead to breakthroughs.

The changes that will come from Paris and that we've seen already from the mercury and air toxic standards, from the crossboundary rule, from the threat of 115, from the Clean Power Plan, is in the private sector's positive response. A good example is the coalition that Bill Gates launched to invest in clean energy technology. MORENO: Bryce, much is made about the Paris Agreement, but given the many commitments of the parties that are left for years to come, is the Paris Agreement really going to be a pivot point? RUDYK: Yes, and here's an example: Since 1995 there has been an annual Conference of the Parties, which reviews progress made toward the UN Framework Convention on Climate Change that was agreed to in Rio in 1992. The most recent conference was held in Paris at an old airport. There was a street they called the Champs-Élysées. On one side there was a bunch of halls in which negotiators and government officials met. On the other side was another set of airplane hangars that was all private sector and NGOs.

While the government people were doing negotiations, the private sector and NGOs were actually making announcements about new actions. Sometimes these actions were happening with it was 26 to 28 percent, for the EU it's between 30 and 40 percent. That's important because no longer is there just a number out there and countries trying to figure out how they meet that number. But rather, they have these reduction plans that they can put into place. **MORENO:** What about Ricky's suggestion that we look at Section 115?

KEOHANE: I have enough of the economist in me to say that change is not going to happen without clear, strong, well-designed government policy. You'll get a handful of leading companies that make commitments on their own because they see it as being in their business interests. But for us to really get the reductions we need, we need government to put in place the right incentives and market signals. They could come out of an economy-wide, capand-trade system through Section 115 that Ricky is talking about or the kind of carbon tax or emissions-trading system through legislation that Boyden is talking about.



government support; often they were not. This went on for eight days, sector by sector. There were about 75 new global initiatives announced, many of which did not involve governments. So the private sector is engaged in a way that I don't think we've seen before. That is different about what's happening now.

The agreement itself is radically different than what has come before, in two ways. One is the number of countries that have been participating. The UN convention signed in 1992, and a protocol a few years later, had commitments from only the developed countries, or just under 40 countries. In Cancún in 2010 about 100 countries made commitments. These were not legally binding.

But now with the new Paris Agreement, we have potentially 188 countries that have put in commitments of what they're going to do nationally, and this covers 99 percent of emissions. Just in terms of coverage, it's fairly significant.

Second, the old system was very top down. You had a global amount that needed to be reduced. This was allocated among the countries that were making reductions and they each got a number that they had to meet. What has happened under the Paris Agreement is countries have nationally determined what they're going to do. These national determinations of their contributions generally happened through domestic consultant processes, in which countries said, "OK, this is what we're able to do in transport, in energy," and looked across their entire economy. Then they added up these policies and got to a number. So for the US Karl mentioned the role of markets in the decline of coal in the US electric power sector and the rise of natural gas. Markets did play a role, but so did regulations—and actually not even primarily the kind of economically efficient, cost-effective regulations that Boyden, Ricky, and I would like to see, but good old-fashioned command-and-control regulations under the hazardous air pollutant provisions of the Clean Air Act, in response to the public-health threat posed by mercury and other air toxics from coal plants.

So even that story is one where regulation has played a key role. We need to keep in mind that it's going to be government policies—hopefully economically sound, economically efficient, market-based policies—that put a price and a limit on carbon that create those incentives for the private sector.

MORENO: Boyden, you've proposed a different framework for proceeding.

GRAY: Natural gas is very clean. Its potential, somewhat realized already in the stationary power sector, could be major in the mobile source sector. And that's where EPA has been a real roadblock.

Natural gas could be used as a fuel on its own, or as pressed or liquefied natural gas for heavy-duty trucks. It can be converted to methanol or ethanol. It could be the basis for the real home run, which is hydrogen. But that won't happen if the regulations aren't revised to provide for a level playing field, whatever is done about climate change. If there were really a level playing field, and if there were cross-sector trading permitted, which EPA has never indicated any tolerance for, you would find enormous innovation that would end up reducing carbon even without having directly put a price or limit on it.

REVESZ: Cross-sector trading would clearly be allowed under Section 115. We should be pushing for it, because we're not going to realize the full cost-reduction potential unless we do.

On a level playing field, I'm a fan of removing all subsidies, but the only way we can really create a level playing field is by also internalizing the pollution externality [an economics term meaning to adjust internal costs or benefits to take into account external social costs or benefits] because otherwise, we're subsidizing the dirty energy producers, not with money but with people's lives and with environmental harm.

KINDIG: In the short term, one thing that we could do today is to encourage the building of pipelines from Pennsylvania into

crowdsourcing in government, in the private sector, and at the community level.

KINDIG: The government has a wonderful test bed that it can use to check out these ideas, called the Tennessee Valley Authority.

The government doesn't need any regulation to tell the Tennessee Valley Authority what to do; it owns it. It is also one of the largest coal-fired electrical generators in the United States. But they also have nuclear plants and hydro plants and programs for solar and wind. Its headquarters is in Knoxville, right next to the Oak Ridge National Laboratory. What a great place to try and work out some of these issues.

MORENO: We talked earlier about a grand bargain, and others thought there could be no grand bargain as proposed. It seems like we might be stuck. We're talking about different approaches—market-based approaches, cap-and-trade systems—that every-one thinks would be a good idea, maybe as part of a mix, but how do we get there? What can we look at by way of existing



the South so that areas that are totally dependent on coal can have access to natural gas while we continue to support research.

The solution to this problem is probably not known today. When you think about the technological changes that have occurred over the last 30 years, everybody talks about fracking and natural gas. But the real technological breakthrough is computer-controlled drilling that allows you to take a six-inch pipe, send it two miles, and keep it within 75 feet of where you want it. That's a real technological breakthrough, and massive computing power made that happen.

As we look at the course of technological change, there will be other things that come along. But in the meantime we don't want to let the perfect be the enemy of the good. Let's take advantage of the opportunities that are in front of us while we look for these other solutions.

MORENO: Amy, would you like to address that?

SALZMAN: The government is a blunt instrument and doesn't act like a California investor who can ferret out the next Groupon. But the government can play a role in opening that world up for longer-term research at the energy labs.

One reform that might be really helpful with the energy labs is to encourage them to do even more public-private partnerships with real goals. The writing is on the wall: We are going to have to get off carbon in the next 30 years, and that's going to be very hard. It's going to require kind of a scientific and technological authority versus getting congressional action, which doesn't seem very encouraging right now? What is the path to get us from here to there?

KEOHANE: We need much, much greater ambition in the US. We need more ambitious policies in place even to meet the 2025 target that the president has put forward. Bryce, I imagine you'd agree, one reason we saw success in Paris is real leadership from the US. The French did a masterful job of diplomacy; the Chinese have come along a huge way. But real US leadership was something that had been lacking, and Paris showed what that could accomplish.

To continue that leadership and get the ambition we need, we're going to have to change the politics in the US. That has to start with a bipartisan conversation again in this country. It was only eight years ago, in 2008, that John McCain was running as the Republican presidential candidate and calling for a cap-and-trade program that was nearly as ambitious as what President Obama proposed.

I don't mean to put you on the spot, Boyden, but it would be great to hear your thoughts. There's a part of the Republican Party that has taken a stand of denial against climate change. We're really only going to start making progress in this country on this issue when Republican support for climate change policy stops being a badge of courage and starts being the politically smart thing to do. **GRAY:** I'm a lawyer. I'm a layman. I don't know the science, but I still am impressed by the position that President Bush 41 took, a no-regrets policy: When you have a choice, and it's not more expensive, and a significant way to take climate or some other externality into account, you do it because it's a hedge against the future and nobody knows what the future is.

The acid rain program worked really well because no one tried to game it. But along came Waxman-Markey, the 2009 congressional bill for CO_2 , and the gaming began and it has never ended.

There are two points that affect Republicans that are often reflected in ideological statements. The first is—and this explains the massive vote against the Kyoto Protocol—the fact that China and India aren't playing. You can use all the hype you want about this Paris Agreement, but what China agreed to do was to level off in 2030.

Until 2030 they can do any damn thing they want, and they can build power plants they don't even need, up until 2030. That's just an open invitation to game the system. India is not really cooperating either. Without those two, Republicans are going to say, "We're not going to put in rules that increase the price of energy for our manufacturers so that they will hightail it to China, India, or some other less-developed nation and get cheaper energy."

We've lost a lot of jobs before, and we're still losing jobs to China because of their traditional fine-particle pollution, 25 percent or 20 percent of which ends up in California or in the Rockies, where we have to clean it up. It's very expensive, and some way ought to be found to nail the Chinese for that. That would really get the ball rolling in the right direction.

Just two weeks ago, China admitted that they completely miscalculated last year's carbon output. They don't have the measurement system, let alone the infrastructure, to implement anything.

And EPA continues to drive people crazy. There's no reason why you have to use a root canal theory of regulation. **RUDYK:** Nat was right when he said that without US leadership, and without the hand-holding and massaging that France did, we wouldn't have ever had an agreement in Paris. But sort of contra to what Boyden has just suggested, China's engagement in this agreement was almost as essential as the US's. China was certainly a significant moderating force amongst the developing countries. If the US can bring along China, we'll start to see a whole rush of countries to ratify this new agreement.

KEOHANE: I get frustrated when I hear the China argument. In 1997, before the Clinton administration had finished negotiating the Kyoto Protocol, the US Senate voted 97 to zero on the Byrd-Hagel Resolution, which basically said don't bother bringing us any international agreement on climate that doesn't ask big developing countries like China and India to be part of the same framework as the US. Well, no surprise—the Kyoto Protocol never even made it to the floor of the Senate.

The shift in how the Paris Agreement is constructed relative to Kyoto, with 186 countries coming forward in the runup to the Paris conference with national contributions to reduce emissions, is 180 degrees. We have come so far. China is going to have a capand-trade program on its electric-power sector in the next couple of years, well ahead of the US having one.

So when people say, "Well, China is not doing enough under the Paris Agreement," that really starts to feel like moving the goalposts. In fact, Senator Hagel himself wrote an op-ed a couple of months ago that said the Paris Agreement would satisfy the conditions of the Byrd-Hagel Resolution. We're in a different place.

The final irony is that the reason that there aren't any legally enforceable binding obligations in the Paris Agreement is because the US Senate will not ratify an international agreement, and we're never going to get the 67 votes necessary for ratification. So to then turn around and say it's not enforceable and that means China can do what they want doesn't reflect the reality of the Paris Agreement, of what China is doing, and of the politics at home.

We are going to need, as Bryce said, a lot of work to make sure that the Paris Agreement lives up to its promise. We need a lot of work to implement the monitoring, reporting, and verification provisions to make sure that every country, including China, does what it says it's going to do. We need a lot of work to get India on a low-carbon track. But to say that the Paris Agreement doesn't get India and China onto that track and therefore the US shouldn't do anything at home is a real mistake.

MORENO: There's been some discussion about capacity building and the role of communities. What is the role of civil society and communities as an action-forcing element?

SALZMAN: The Clean Power Plan, uniquely among EPA actions, really took lessons from the needs and different situations of communities. When the EPA worked on improving the Clean Power Plan between its initial draft and the final regulation, it spent a lot of time talking to communities, to people of color, to the private sector, and to local government.

The EPA did something called a proximity analysis for all of the states that essentially looks at the main sources of pollution and who lives near them. It wasn't just looking at carbon, but it also requires looking at what we call criteria pollutants, the ones that can make people really sick.

EPA folded that analysis into the information that the states will have as they develop their state implementation plans. They also strongly encouraged the states to pay close attention to environmental-justice impacts and to have meaningful public participation.

This is huge. It's also politically very valuable. The environmental-justice community has generally been opposed to action to address climate change, being concerned that it would result in higher levels of pollution in their communities and/or divert resources from reducing pollution in their communities.

Plus, the EPA did something smart and very consistent with President Obama's vision, which is that they mandated that the distributional benefits of action to address carbon have to be equal; they also have to reach the environmentaljustice communities. That means that clean energy and clean energy jobs will not all be where the rich people live, but these will benefit communities of color and reduce the burden of environmental-justice communities. **MORENO:** With that, I'd like to thank each of the panelists. You were absolutely outstanding. Keep up your great work.

Damaris Hernández '07 Partner, Cravath, Swaine & Moore,

New York

Milestones

As one of its graduates becomes the first Latina partner at Cravath, Swaine & Moore, the AnBryce Program awards its 100th scholarship.

By Michael Orey

MAKING PARTNER IS ALWAYS SOMETHING

to celebrate, but for Damaris Hernández '07 it was particularly sweet and significant. She is the first Latina to reach the exalted ranks at Cravath, Swaine & Moore, among the bluest of blue-chip firms, and she has overcome huge odds to do so. Her achievement-and the critical role the AnBryce Scholarship Program played in it-was featured on the front page of the New York Times Business section earlier this year.

"When I was the only one of color or the only woman in the room, I had the confidence to believe in my ability," Hernández told Times reporter Elizabeth Olson, describing the advantages of AnBryce. "When you

are the first, you need someone to have your back."

Founded in 1998 by Anthony Welters '77, chairman of the Law School's Board of Trustees, and his wife, Ambassador Beatrice Wilkinson Welters, the AnBryce Program is all about having the backs of students who have faced challenging social and economic circumstances and are among the first in their immediate families to pursue a graduate or professional degree. The support begins with a full-tuition scholarship, but includes much more.

"We don't simply hand people a check," explains Anthony Welters. "We call it a program, and it really is: there's extensive mentorship and community building that helps AnBryce Scholars navigate law school and get launched on a career path."



Just ask Hernández, who grew up helping her parents run their Brooklyn bodega. Her father died just before she left for college at Harvard, and her mother lost the store two years later. When Hernández was accepted at NYU Law, she was supporting her family. An AnBryce Scholarship made it financially possible for her to attend, but the realm of elite law firms was something with which she had no acquaintance. "We didn't sit around reading the New York Times or Wall Street Journal in my house," she says, "so I had no familiarity with things like complex civil litigation, or the operation of multinational corporations."

When Hernández applied for a job at Cravath, Evan Chesler '75 was one of the part-

ners who interviewed her, and he subsequently worked with her on litigation. (Now Cravath's chairman, Chesler is a trustee of the Law School and of NYU.) "I knew from the moment I met Damaris that she was a person of enormous ability and potential," says Chesler, "and the AnBryce Program enabled her to demonstrate that to others. She's an extraordinarily talented lawyer."

"Given the backgrounds of most AnBrycers, navigating entry into the legal profession is very daunting," Hernández observes. "I think the program allows us access to resources that we wouldn't otherwise have, a support network that we sometimes are missing, and it just bridges the gap between where we come from and where we want to be."



THE ANBRYCE SCHOLARSHIP, which helped set Hernández on her path to a Cravath partnership, was initially offered to a single incoming student a year. With additional funding, the program expanded to support up to 10 in each class, and last year named its 100th recipient. Here are brief portraits of some of them.

SUMMER JOBS AT LARGE LAW FIRMS ARE TYPICALLY FOR

students who have completed their 2L year, but the AnBryce Summer Associate Program (ASAP) helps scholarship recipients get a running start by placing them in these positions after their first year. Raymond Fadel '17 recalls going to his first ASAP interview at Paul, Weiss, Rifkind, Wharton & Garrison in midtown Manhattan. "I walked into a skyscraper that looked like something from a movie, and the surrealness of it struck me. I remember having to stop myself and saying, "This is happening to me! I'm not here as a tourist, I have a business purpose here.'" He got the job, and returned to Paul Weiss following his 2L year as well.

The bustling streets and grand office towers of Manhattan stand in sharp contrast to Fadel's hometown of Niagara Falls, New York. While growing up there, Fadel says, he saw the town slide into economic decline as factories closed and unemployment soared. The bar his father ran became a rougher place, and Fadel's older brother, who took it over, was murdered there when Fadel was a high school freshman. A year later, his mother, an alcoholic who had been divorced from his father since Fadel was seven, died of liver failure. She was, he says, "a beautiful and passionate Iroquois woman whom I never really knew." Two weeks into Fadel's senior year, his father succumbed to a rare disease. "My response to all

these things was to commit myself to my schoolwork," he says. When he won a full scholarship to Harvard University, it garnered a headline story in the *Buffalo News*.

Fadel says he had learned the "pivotal role" that lawyers can play in people's lives through his own experiencehis parents' divorce; the prosecution of his brother's killer; the handling of his father's estate-and this led him to want to be a lawyer himself. "The AnBryce Program offers you a road map to pursue your dreams," Fadel says. "They put powerful people behind you, but they also provide an adoptive family to give you that sense of community that fills a void you may have. It does a lot to make you feel less alone."



Fadel '17 3L at NYU Law



Danielle Arbogast '15 Staff attorney, Legal Aid Society, New York

ing impact on the community. The first person in her family to attend college, she enrolled at NYU Law after graduating from the University of Pittsburgh.

"The AnBryce Program was the defining element of my law school education," Arbogast says. "The people who invest in the program"—faculty members, alumni, judges, and others— "*really* invest in it. They give tremendous time and support, come to programs where they tell us their stories, give us their e-mail addresses. It's kind of a weird feeling to have gone through life struggling to get by and then being in this position of honor." (Arbogast held a named scholarship within the AnBryce Program: the Jacob Marley Foundation Scholarship in Memory of Christopher Quackenbush '82.)

Law School Convocation involved more than just a graduation ceremony. Anthony and Beatrice Welters "threw this really spectacular reception" for AnBryce Scholars, family members, and program supporters, Arbogast recalls. "It was a really wonderful experience that kind of encapsulated our program—it was a celebration of our success, it was a celebration of our group effort, and it was a celebration of the people who were so helpful in getting us to this point. I think that's the moment you really feel that this is a family that's going to live beyond the three years of law school."

"I SINCERELY THINK I

have the best job in the legal field," says Danielle Arbogast '15 of her position as a public defender with the Legal Aid Society in Queens, New York. "I love going into work every day."

Arbogast decided at an early age that she wanted to be an attorney with a specific focus on criminal defense work. Growing up in Chesapeake, Virginia, she attended the poorest of the city's several high schools. "You really got to see the economic inequality," she says. And with friends who found themselves or family members in encounters with the criminal justice system, she came to understand the failings of the system and the result-

FOLLOWING NEARLY TWO YEARS AT SULLIVAN & CROMWELL

in New York and a clerkship with Chief Judge Theodore McKee of the US Court of Appeals for the Third Circuit, Sambo Dul '10 returned home to Arizona, where she is an associate in Perkins Coie's Phoenix office. Her experience there has included anticorruption investigations and compliance counseling, criminal defense and investigations, and commercial litigation. She also devotes significant pro bono time to immigrant rights matters and serves on her firm's Pro Bono Committee. Additionally, she founded Youth Adelante, a nonprofit organization that provides housing support and mentoring to unaccompanied immigrant youth following release from federal detention facilities.

The plight of those forced from their homelands is something Dul knows firsthand. Born in Cambodia, she, her mother, and three siblings spent four years in a refugee camp before being resettled in Phoenix. Her father and numerous other family members had died in Cambodia. Dul attended Arizona State University on a full scholarship, but still worked part time to help support her family.

Dul chose to attend NYU Law in good part because she met Anthony Welters at an admitted students' day. "I was extremely impressed by his commitment and humility, and the vision he had for the AnBryce Program," she recalls. "I was torn between Har-



Associate, Perkins Coie, Phoenix vard and NYU; AnBryce and Tony tipped the scale." During law school, AnBryce offered a support network. "I always had people to turn to with questions about navigating academic or career decisions," Dul says. "That was invaluable, because I was the first person in my family to graduate from college or attend law school."

Dul was an articles editor on the Law Review and obtained a joint degree from Princeton (a master's in public affairs), but the study of immigration law stands out in her law school experience. Taking both the Immigrant Rights Clinic and Advanced Immigrant Rights Clinic taught by Professor of Clinical Law Nancy Morawetz '81 "was the most challenging, rewarding, and influential experience for me in law school," Dul says. "Nancy taught me how to be an effective, creative, and compassionate advocate. I still carry those lessons with me."



Washington '07 Vice president, partnership development, Corvias Solutions, Fort Meade, Maryland

THE VERSATILITY OF A JD

is evident in the career of Jason Washington '07, who has moved from private law practice to government to business. After three years as an associate in the corporate group at Kirkland & Ellis in New York, he served as a senior policy adviser in the Mayor of Baltimore's Office of Government Relations and then spent a year as a White House Fellow. Currently, Washington is vice president at Corvias Solutions in the Washington, DC, area, where he works with cities and counties to solve systemic infrastructure problems through development of public-private partnerships.

Washington over-

came a number of obstacles before finding the path to success. Raised primarily by his mother in Texarkana, Texas, he grew up struggling to overcome a speech impediment and with "a lack of understanding about academic achievement." But he also spent a lot of time on his grandparents' farm outside of Texarkana, where he learned "grit and determination." Admitted to the University of North Texas on probation, he successfully completed required remedial classes and, after two years, transferred to Morehouse College in Atlanta, where he majored in biology. He spent two years teaching middle school with Teach for America in Houston and obtained a master's in education.

Law school offered its own challenges, and the support of the AnBryce Program was critical. "I can say quite frankly, had I not been an AnBryce student, I would not have attended NYU, and I definitely feel like I would have floundered," Washington says. "It's very rare from the first day of class to know that there were people you could rely on—for people like Tony and Bea to make clear that 'my Rolodex is yours.' It was extremely motivational to have someone who doesn't really know you believe in you and make you feel that you should have the same confidence in yourself."

Convocation stands out in his memory: "Receiving my degree from Bea Welters and having her say, 'Congratulations, we're so proud of you.' It was like having my family telling me the same thing."

BORN IN NORTH CAROLINA, BRANDON BUSKEY '06 HAS NEVER

fully left the South. After a federal court clerkship in Connecticut, he spent four years in Montgomery, Alabama, as a staff attorney at the Equal Justice Initiative (EJI) representing death row inmates and children sentenced to life without parole. (Professor of Clinical Law Bryan Stevenson founded and directs EJI.) Now Buskey is a senior staff attorney with the ACLU Criminal Law Reform Project in New York, working on litigation aimed at bail



Brandon Buskey '06

Senior staff attorney, ACLU Criminal Law Reform Project, New York and right-to-counsel reform. With much of that litigation focused in southern states, he travels often to Mississippi and Alabama.

Raised by a single mother in Fayetteville, North Carolina, Buskey recalls that "there wasn't a lot of money, but I always felt I had the freedom to do the kinds of things I wanted to do." Because his mother left college to raise him, Buskey became the first member of his family to obtain a college degree. He attended North Carolina State University on a full scholarship and graduated with a BA in psychology and as class valedictorian. After being accepted to NYU Law, he was awarded both Root-Tilden-Kern and AnBryce Scholarships.

When visiting the Law School, Buskey and some other admitted students were taken to dinner at an Italian restaurant on MacDougal Street, and then for a night on the town by two upperclass AnBrycers (Sheridan England '04 and Leila Thompson '05).

"I was amazed at their willingness to spend that kind of time with us," he says, "and that continued to be the case with both of them and others, like Bea and Tony Welters, while I was in law school."

Buskey says that, beyond the financial assistance, "it really comes down to the individuals involved in the program" and the help and encouragement they provided. "There were all these folks who asked, 'Hey, what is it you want to do after law school?' without any restrictions on what that might be."

Michael Orey is public affairs director for the Law School.

Leading Lights Show the Way

AnBrycers say that one of the main benefits of the program is that it introduces them to people in the worlds of business and law practice who serve as sources of inspiration and mentors. In part this is done through the Leading Lights Speaker Series, which invites executives and others to share their personal stories. Recent guests have included Kenneth Langone, co-founder of Home Depot; Clarence Otis Jr., former chairman and chief executive officer of Darden Restaurants; and Marianne Short, executive vice president and chief legal officer of UnitedHealth Group.

"I was always impressed and humbled that such incredible professionals took time out of their busy schedules to meet with us," says Danielle Arbogast '15. "I believe every speaker in the series gave us their personal contact information and



urged us to reach out if they could ever be of any assistance. The network that this program fosters is an incredible way for the scholars to orient ourselves in a professional

world that can feel very unfamiliar and unwelcoming at times. A common theme in the series was that none of the speakers felt that they would have reached their level of success without good mentors and support networks. I think that's a great message for law students, and it's something I've gone back to frequently now that I'm in my first year of practice."



CLOCKWISE FROM TOP LEFT: Marianne Short; Clarence Otis Jr.; Kenneth Langone (right) with Derry Sandy '15.

BY JENNIFER FREY PORTRAIT BY JULIANA THOMAS

The Indomitable Nancy Lieberman

As one of Wall Street's top dealmakers, Nancy Lieberman has built a reputation for never backing down. When a tragic event forever changed her life, she stuck to her winning approach. n Christmas Eve 2007, Nancy Lieberman LLM '81 was taking a ski vacation with her family in Telluride, Colorado. Riding the triple-chairlift with her husband, Mark Ellman, she had been planning to get off at an intermediate station until a fellow skier persuaded the couple to go to the summit. "'Oh, it's such a beautiful day," Lieberman recalls him saying. They continued on to the top of the mountain.

Lieberman wasn't one to be intimidated by difficult terrain. In her decades as an attorney, she had risen to the top of New York's competitive mergers and acquisitions (M&A) field and was a respected dealmaker at Skadden, Arps, Slate, Meagher & Flom. She had just come off a banner year, racking up the most billable hours in her career. Consuming many of those hours was a complicated three-way deal in which her client, Great Plains Energy Inc., was trying to acquire another company while simultaneously selling off assets to a third. Shepherding this transaction required all of her keen technical and management skills—not to mention steely resolve.

Terry D. Bassham, who was then chief financial officer of Great Plains and is now chief executive, says it was Lieberman's fortitude that got them past a critical point. The target company, Aquila, was demanding more money and threatening to walk. "Nancy and I turned and looked at each other," Bassham recalls. "We didn't say a word. She just had, as only she can have, this very firm look that we didn't need to budge one inch. I trusted her. We turned back to the lawyer and said, 'Well, this is as far as we can go."

Lieberman's command of the negotiating table paid off; the deal closed in 2008 for \$2.7 billion.

Having taken up skiing at the age of 11, Lieberman regularly honed her skills on the icy runs of Vermont. But as she entered



the not particularly steep slope in Telluride, something went wrong. "I caught an edge; I couldn't stop myself," she says. "I don't remember seeing anything, although I knew it was bad, and I was going fast and just hoping I'd get out of it. I hit a tree. I heard my neck snap, and that was it."

She came out of surgery a quadriplegic with limited lung capacity. Her prognosis was grim: the doctors told her she would never walk again. "Period, the end," she says. "That's a hard thing to hear when you're a can-do person."

BECOMING NANCY LIEBERMAN

Up until that time, there was little Lieberman couldn't do. Preternaturally determined, with an outsize sense of purpose, Lieberman decided to become a lawyer at the age of 12. Her cousin was a litigator, and she took note of his "exciting job in a big Chicago law firm," she says. Exactly what a lawyer did was still a mystery to her, but she was fairly certain that if she followed in his footsteps, "the world would be my oyster."

Her father, Eli, a traveling salesman who became a builder, was the biggest influence on her drive. The onetime *Jeopardy!* champion pushed Lieberman to excel. If she came home with a score of 98 on a test, recalls sister Jane Warren, he would say, "What happened to the other two points?" Her mother, Elayne, a homemaker and amateur interior decorator who sported red hair "like Lucy" and a larger-than-life personality, imparted her sense of style to Lieberman.

The family, which also includes a brother, Gary Lieberman, lived "an idyllic, *Leave It to Beaver*-ish" life in Little Neck, Queens, Lieberman says. "We didn't have buckets of money, but we had amazing times," echoes Warren. Still, Lieberman was eager to get out into the world. She raced through her education, skipping eighth grade and finishing high school at 16. While attending the University of Rochester, she persuaded the dean of arts and sciences to allow her to combine her last year of college with the first year of law school. She entered the University of Chicago Law School at 19—several years younger than her peers—which proved to be somewhat daunting.

"I was lost, like a deer with my eyes in the headlights," she says, recalling a particularly telling incident from her Torts class. Professor Richard Epstein, now the Laurence A. Tisch Professor of Law at NYU Law, was pacing up and down the classroom pressing students to define a tort. No one could provide an answer that would satisfy him, and eventually he got to Lieberman. "Honestly, I had no idea," she recounts. "So I blurted out, 'It depends, strawberry or apple?"

Epstein and Professor Geoffrey Stone, who later became dean of the University of Chicago Law School, took Lieberman under their wings. "She seemed like someone who was quite promising, but could use some reinforcement. She had to get over that barrier of self-doubt," says Stone. "The two of them helped me flip the switch," Lieberman says.

By her third year of law school, she was confident and selfassured. When Epstein grilled her again, this time with questions regarding a particular case in his class on tax law, she had the answers. Impressed, he handed her the chalk and asked her to teach the class. "By sheer force of will and intelligence she mastered the material. Then she took on the large world, myself included," says Epstein.

Earning her law degree in 1979 at age 22, Lieberman clerked for Judge Henry A. Politz of the US Court of Appeals for the Fifth

Circuit in New Orleans. Then in 1980, Lieberman entered NYU Law for her LLM in tax. She studied with Charles Lyon, who served as deputy chief prosecutor at the Nuremberg trials before chairing the NYU tax law department, and with James Eustice LLM '58, a legendary figure in the field. She credits her time at NYU for providing her with a deep understanding of tax law. "[It] gave me a superb grounding and sensitivity to the tax implications of every transaction, which I was able to incorporate into my M&A practice over the years. It was a fantastic experience." After graduating from NYU, she became an associate at Skadden in 1981, at age 24.

MERGER MANIA

Skadden was a revelation to Lieberman-contemporary (in comparison to the white-shoe firms of the time) and staffed with lawyers who were doing enterprising and bold work. "You felt like there was electricity pulsing through the floors," says Lieberman.

One area that sparked her interest was the frenetic world of mergers and acquisitions, especially the hostile takeovers that came to define the '80s. "It was sort of like the Wild West. The rules were first being written," she says. With the old-line Wall Street firms generally avoiding that kind of work, Skadden seized on an opportunity and quickly became a dominant player in M&A, as it is today.

In 1985, Lieberman was consumed with the then-largest nonoil deal in the world—the \$12 billion merger combining aerospace and automotive conglomerates Allied Corporation and the Signal Companies (the merged companies are now known as Honeywell). In this pressure-cooker environment, says former Skadden associate Pamela Fox, Lieberman never lost her cool. "She came to my office in a whirlwind, her arms full of black binders. 'We need to do this, we need to get that,' she told me, listing 100 things that had to be done by the next morning. Then she stopped, looked at my briefcase, and said: 'Bottega Veneta? We're going to get along just great."

Lieberman proceeded to draft the Allied merger agreement, her first ever from scratch, and with none of the databases available today, under a 12-hour deadline. "It was sink or swim. If you were good, you'd figure it out. It was a great feeling of empowerment," says Lieberman.

The following year she helped United States Steel Corporation fend off a takeover bid by Carl Icahn. Dealing with Icahn was a lesson in itself. She would draft an agreement one day, only to have him change his mind the next. The parties would insist she join them for dinner even though she still faced hours

In 1987, at the age of 30, Lieberman became Skadden's youngest partner ever-a record she still holds. "I got to work on all these great deals. I went to China before it really changed ... traveled all over the world ... and then became partner. What could be better?" Lieberman exclaims. But her greatest challenge was ahead.

WORKING HER WAY BACK

Following her injury, Lieberman was told that about 80 percent of spinal cord patients never return to work. She would have none of that. As an attorney, Lieberman had built a reputation for her skill at targeting a problem and inventing a novel way to break an impasse. And in addressing her injury, she took the same approach. While in recovery at Mount Sinai Hospital in New York, she received a visit from Dr. Mark Noble, director of stem cell and regenerative medicine at her alma mater, the University of Rochester. His team was conducting research in cell transplantation therapy and seeing promising results for spinal cord injuries. Though commercialization of his research was still years away, he thought she might be a candidate for robotics-based rehabilitation therapy at the Burke Medical Research Institute. He was right.

Burke's robotics program gave Lieberman a meaningful degree of upper arm movement. With hard-fought rehabilitation, she regained use of her arms and can now wiggle her fingers. Lieberman went back to Skadden in early 2009, just over a year after the accident. To accommodate her disability, the firm hired a consultant to make the office accessible and was ready to change the configuration of her office and buy a new desk plus other assistive devices. "They pulled out all the stops," says Lieberman. "But the one thing that someone like me wants is for everything to be the way it used to be." So she had her desk elevated and accepted the firm's offer to invest in a voice recognition system to take dictation and compose e-mails. She also types using pointers taped to her hands.

"It was a very hard recovery, make no bones about it. But I had every reason to live," says Lieberman, who turns 60 in December. "I knew I couldn't have 100 percent of my life back, but I knew I could get at least 90 or 95 percent. That was my goal, and I think I achieved a lot of it. I couldn't let my family down." Love and support from Ellman, founder and president of Celestial Capital Group, a real estate private equity investment firm, and their son, Eric, who was eight years old at the time of the accident, as well as from extended family, friends, and business associates, sustained her.

During her rehabilitation, Lieberman's clients visited

of work. "I'd be sitting there with the leading investment bankers in the world-the heads of M&A. It was exhilarating," she says.

Whether it was at dinner or a negotiating session, Lieberman was often the only woman at the table. But she doesn't focus on experiences of discrimination. "You wanted to be treated like one of the boys," she says, crediting Skadden's famed partner Joseph Flom for creating an environment where women could flourish.

At the age of 30, Lieberman became Skadden's youngest partner evera record she still holds. "I got to work on all these great deals. I went to China before it really changed traveled all over the world ... and then became partner. What could be better?"

her to offer their support and to ascertain her capabilities. "They wanted to know whether I had the stamina, the wherewithal, whether I was someone who could still work hard and be available," she says. The majority of them assured her that they didn't hire her for her pretty handwriting. "They'd say, 'You've got your brain, and that's what I care about."

Though Lieberman can't put the injury behind her completely,



1 Lieberman, 1961, age four 2 The Lieberman family at Niagara Falls, 1961: father Eli, mother Elayne, Nancy (left), brother Gary, sister Jane 3 As a young undergrad at the University of Rochester 4 With her mother on graduation day, University of Rochester, 1977 5 A newly minted attorney at Skadden, 1981 6 With her sister, Jane, 1982 7 With husband, Mark Ellman, in 1997, celebrating a sailing award

she has hardly slowed down. Just three years after returning to work, she handled a complex deal for Amylin Pharmaceuticals with the tenacity and skill she is known for, and it won her renewed recognition.

A small biotech, Amylin had joined with Eli Lilly in 2002 to develop and market drugs to treat diabetes. But in early 2011, Amylin learned that Lilly had struck a deal with another pharmaceutical company to market a rival diabetes drug. Lieberman pushed Amylin to negotiate to wrest two drugs back from Lilly. Talks hit a "brick wall," according to Lieberman, so the Skadden team, which she led, recommended that Amylin sue Lilly for breach of contract.

While saying the suit had no merit, Lilly agreed to resume talks. Lieberman worked out an innovative deal that allowed Amylin to buy back the drugs for \$1.6 billion with a smaller up-front fee-\$250 million-and the rest contingent on Amylin's getting FDA approval on a new once-a-week diabetes drug being developed and hitting certain revenue targets for it. "If the new drug flopped, we'd still own it, and we wouldn't have to pay them tons of money," she says. Lieberman and her team also made sure that the contract allowed Amylin to find a new partner without Lilly's interference. And that's what Amylin did, selling itself to Bristol-Myers for \$7 billion in 2012, representing a 50 percent increase from an initial bid just four months earlier.

For this masterful two-step transaction, the American Lawyer magazine named Lieberman a dealmaker of the year, and Law360 put her on its list of M&A MVPs.

Later that year, she helped Skadden client DigitalGlobe turn the tables on would-be acquirer GeoEye-all in a weekend. It started on Friday, May 4, 2012, when GeoEye, a satellite imagery

company, released a bear-hug letter proposing to purchase rival DigitalGlobe for almost \$800 million. Lieberman quickly set up a war room of executives and lawyers to work out a strategy. On Sunday night, DigitalGlobe released a three-page letter that rebuffed GeoEye and proposed instead that DigitalGlobe buy its rival—a tactic known as the "Pac-Man" defense. Less than three months later, DigitalGlobe announced plans to buy GeoEye for about \$900 million, a deal that closed in 2013.

Lieberman continues to be a rainmaker, having brought in most of the clients on her roster. "Nancy has intense relationships with her clients," says longtime Skadden colleague Mark Kaplan, and retains their business, he adds, when they move to other companies. She is also a valued mentor to her associates. Rather than marking up an associate's draft and sending it back for revision, she'll often take the time to go through her comments with the junior lawyer. "I've seen her do this on a Friday night, sparing the associate from a weekend of spinning wheels, trying to figure out what Nancy was getting at," says Alexandra McCormack, a young partner who was a Lieberman protégée.

FIGHTING FOR A CURE

It's been nearly nine years since the accident, and Lieberman has taken back her life, both professional and personal. She grows Sweet Williams in her kitchen to plant in her sister's garden. She has ridden a camel in Morocco; gone on safari in Africa; and visited South America, China, and elsewhere, refusing to let her disability dent her passion for travel.

Lieberman is also directing some of her enormous energy and determination toward furthering progress in spinal cord injury research. When New York State cut crucial funding for

spinal cord injury programs, including those dear to her-Dr. Mark Noble's and Burke'sshe took action. Lieberman co-founded New Yorkers to Cure Paralysis in late 2013 to restore the funding. "We went up to Albany and lobbied the hell out of this," she says. "I wasn't going to give up, and I didn't give up." Not only did her lobbying succeed in getting the money restored, but Governor Andrew Cuomo appointed Lieberman director of the review board that oversees the fund's allocation.

"It was a very hard recovery, make no bones about it. But I had every reason to live.... I knew I couldn't have 100 percent of my life back, but I knew I could get at least 90 or 95 percent. That was my goal, and I think I achieved a lot of it." husband, Mark, a serious sailboat racer, on leisurely sails. She also hosts Thanksgiving dinner for friends and family, taking charge in much the same way she does at Skadden. Assuming the role of executive chef, Lieberman oversees the making of the traditional Nana Elayne's Golden Vegetable Soup, "barking out orders ... too much of this, too little of that," says her sister, Jane Warren. Lieberman's table, like her documents, must be just right. "The fork is one inch too

high. The glass goes at 1:00 on the placemat, not 1:30," says Warren.

Lieberman has raised more than \$750,000 for spinal cord injury research and is committed to finding a cure, she says, for people like a young girl she met who was paralyzed when struck by a stray bullet. "I've already had a great life. She's only had 13 years."

Though Lieberman is incredibly busy—"It's hard to get a date with Nancy. Her calendar is very full," says friend Marcy Syms—spending time with family still trumps all. "Her son Eric is the love of her life," says her brother, Gary. She joins her

People often tell Lieberman that she is courageous, strong, and what her family calls "the forbidden *I* word"—*inspirational*. "What they're really saying to me is they would give up, and they could never cope with what I deal with on a daily basis," she says. "After hearing this over and over I thought, life is fantastic, and I'm sure glad I'm not missing it. I could either whine or drink wine. I'd rather the latter." □

Jennifer Frey is a New York City-based writer.



 Riding a camel in Morocco, 2014
Lieberman in her office at Skadden
Lieberman and David Carmel (second from right), co-founder of New Yorkers to Cure Paralysis, touring the University of Rochester's Neuromedicine Intensive Care Unit
With son, Eric, and husband, Mark, at Windsor Castle, 2015
Jinnia seedlings sunning in her office window



Best (Theory and) Practices

Whether questioning the gap between rhetoric and reality in corporate governance politics or teaming up with top New York dealmakers to teach students about real-world business transactions, NYU Law's corporate faculty take the conversation to the next level.

ELLEN ROSEN '83

ILLUSTRATION BY BENEDETTO CRISTOFANI

dward Rock should have no trouble calling NYU Law home. Over the course of more than two decades at the University of Pennsylvania Law School, he had established himself as one of the nation's leading corporate law scholars. But during that time, he also forged deep connections to NYU School of Law, teaching here as a visitor in 2011 and co-authoring numerous articles with NYU Law professors. In July, Rock made his move up the Northeast Corridor permanent, becoming a full-time faculty member at the Law School.

"With all the interesting scholarship and programming occurring at NYU Law and the fact that New York is the center for corporate law and finance, it was an unparalleled opportunity," says Rock, who will teach Corporations, Corporate Law Theory, and Advanced Corporate Law: Mergers and Acquisitions. He will also establish and head the new Institute for Corporate Governance and Finance. (See story on page 52 for a profile of Rock.)

Rock and Marcel Kahan, George T. Lowy Professor of Law, have jointly published 13 articles on hedge funds, corporate voting, proxy access, corporate federalism, and mergers and acquisitions—nine of which were ranked among the top 10 corporate and securities articles for their publication year by a survey of corporate and securities law professors conducted by, and published in, the *Corporate Practice Commentator*. "Scholarship can be lonely, so it's nice to have someone to work with," says Rock. "But more importantly, it leads to papers that are better than if they had been written alone. By the time Marcel and I are done, we've worked through so many arguments that the articles end up stronger than if we had done them by ourselves."

The duo's most recently honored article, "Symbolic Corporate Governance Politics" (which examines "the persistent gap between rhetoric and reality that characterizes so much of corporate governance politics"), is itself symbolic. That's because it captures a defining attribute of NYU Law's approach to legal education: top theorists pointing their scholarly lenses at real-world intersections of legal practice and business.

Corporate faculty members have taken aim at a variety of issues recently, often with eye-opening results. In the *Stanford Law Review*, Kahan and Assistant Professor of Law Emiliano Catan LLM '10—a specialist in corporate law, governance, and mergers and acquisitions—used empirical research to argue that finance scholars have been "barking up the wrong tree" with their focus on how antitakeover statutes affect corporate managers. Catan and Kahan found them to be largely irrelevant in the face of the more powerful poison pill defense. That defense was created by Martin Lipton '55, co-founder of Wachtell, Lipton, Rosen & Katz, a firm

known for defending companies against hostile takeovers. (See story on page 62 for an in-depth look at Catan and Kahan's article.) And Kahan and Rock, along with Stephen Choi, Murray and Kathleen Bring Professor of Law, and Jill Fisch from Penn Law, questioned in the *University of Chicago Law Review* whether majority voting rules really improve board accountability in corporations. They concluded that reform advocates seem to have initially targeted the firms that are already most responsive, then used "the widespread adoption of majority voting to create pressure on the non-adopting firms."

Capturing data for such empirical analyses can be challenging, and sometimes it calls for creative solutions. Choi, director of the Pollack Center for Law & Business, wanted to provide researchers, counsel, and corporations with easily searchable and verified data about Securities and Exchange Commission enforcement actions against publicly traded companies. To accomplish his goal, he had to create the Securities Enforcement Empirical Database (SEED), the first of its kind. (SEED was designed, built, and launched by the Law School's Information Technology Services Department.) "The SEC is often viewed as a black box," says Choi, whose center partnered with Cornerstone Research on the project. "Our goal is to shed light on securities law enforcement decisions. There are lots of things we want to look at, including the difference between SEC enforcement through admin-

General Counsel Get Specific

Dean Trevor Morrison leads the Role of the Corporate General Counsel seminar, in which current and former corporate general counsel present case studies drawn from their actual work. Recent guests have included an array of Law School alumni:

Stephanie Abramson '69

Formerly of DoubleClick

Laurie Ferber '80 MF Global Holdings

Vijaya Gadde '00 Twitter

Andrew Hendry '72

Formerly of Colgate-Palmolive

Scott Hoffman '87 Lazard

Ramsey Homsany '00 Formerly of Dropbox

Randal Milch '85 Formerly of Verizon

Sara Moss '74 The Estée Lauder Companies

Brian Schorr '82 Trian Partners

Kenneth Siegel '80 Starwood Hotels & Resorts Worldwide

John Suydam '85 Apollo Global Management

Gary Way '83 Nike

istrative proceedings and civil court actions. I'm like a kid in a candy store and just starting to analyze the data." (See story on page 42 to read about the work students are doing on SEED.)

Jennifer Arlen '86, Norma Z. Paige Professor of Law, and Geoffrey Miller, Stuyvesant P. Comfort Professor of Law, broke new ground of a different kind when they launched the Program on Corporate Compliance and Enforcement in the spring of 2014. Recognizing that their specialty was transforming into a dynamic growth area, they created a program dedicated to developing a richer and deeper understanding of the causes of corporate misconduct and the nature of effective enforcement and compliance. (See story on page 73 to read about the program's recent events.) Miller (the author of the first casebook to link governance, risk management, and compliance) and Arlen (one of the nation's leading experts in corporate liability and the newly elected secretary-treasurer of the American Law and Economics Association) also developed in-depth courses for students interested in careers in compliance or enforcement. "It's often quite hard to get into a white-collar department at a firm," says Arlen, "but because our students are well prepared, they have been able to work on white-collar matters even as summer associates."

Signature law and business courses held jointly with the Stern School of Business prepare students for the reality of corporate practice. In these classes (part of the Paul, Weiss, Rifkind, Wharton, & Garrison LLP Transactional and Law and Business courses). law students and business stu-

dents work together analyzing deals. "Having a mix of JD and MBA students brings a lot to the table," says Nnenne Okorafor '15, now a corporate transactional attorney with Debevoise & Plimpton.



William Allen Nusbaum Professor

of Law and Business; Founding Director, Pollack Center for Law & Business



Jennifer Arlen '86

Norma Z. Paige Professor of Law; Co-Director, Program on Corporate Compliance and Enforcement



Emiliano Catan LLM '10 Assistant Professor

of Law



Stephen Choi

Murray and Kathleen Bring Professor of Law; Director, Pollack Center for Law & Business

Corporate

Assets

"Law students, unlike business students, are risk-averse. The different perspectives made for many really interesting class discussions." Professors Gerald Rosenfeld and Helen Scott— who co-direct the Mitchell Jacobson Leadership Program in Law and Business for exceptional students pursuing high-level careers at the intersection of those disciplines—think this cross-pollination is essential to success. "Students need to understand that law and business is a team sport," says Rosenfeld. "Business students need to know that transactions take place within the framework of the law; they shouldn't be surprised when they're working with someone with the opposite armband. That's what they will encounter if they go into transactional work."

In classes such as the Law and Business of Corporate Transactions, Rosenfeld (advisor to the CEO and vice chairman of investment banking at Lazard) and Nusbaum Professor of Law and Business William Allen (the former chancellor of the Delaware Court of Chancery) go beyond analyzing the theory of the deals and host the practitioners who orchestrated them. "We bring in the people who did the deals to help us in the course and, more important, to help teams of students to conduct an anatomy of the deal," says Rosenfeld. "We look at the drivers of the transaction, but also the roadblocks and how they were overcome." Guests in recent years have included executives from HG Vora Capital Management, Lazard, Moelis & Company, and Rothschild, as well as partners from leading law firms such as Cleary Gottlieb Steen & Hamilton; Fried, Frank, Harris, Shriver & Jacobson; Gibson, Dunn & Crutcher; Latham & Watkins; Paul, Weiss, Rifkind, Wharton & Garrison; Wachtell, Lipton, Rosen & Katz; and Willkie Farr & Gallagher.

NYU Law's strong reputation, its deep bench of corporate alumni, and its central location in the heart of Manhattan make attracting such top practitioners easy. "We use the city and its resources and the Law School's network of resources to really enhance the experience that the students have," says Scott, who co-teaches the Law and Business of Corporate Governance, as well as two courses with Affiliated Professor Karen Brenner: the Law and Business of Corporate Turnarounds and Leadership and the Ethical and Legal Challenges in the Modern Corporation.

"We bring in the people who did the deals to help us in the course and, more important, to help teams of students to conduct an anatomy of the deal."

GERALD ROSENFELD

The approach is much appreciated by students like Pat Andriola JD/MBA '15. "When you go out into the real world, you know what you're doing," says Andriola, now an associate at Davis Polk & Wardwell. "We had a networking event with Goldman Sachs, an outreach with Seamless, and got to meet corporate executives at the Mets. They just give you all of the opportunities possible to really get the job done."

Rock's new Institute for Corporate Governance and Finance will further strengthen ties between the Law School and the business community. "We've reached a period where the largest institutional investors are the deciders in any critical controversy in corporate governance," says Rock. "This change, long predicted, raises a host of critical questions about where corporate governance is going. I want to gather all the critical people in the same room and have them talk together." That room, where theorists and practitioners commingle, will be on Washington Square. \Box

Ellen Rosen '83 is a freelance writer whose stories have appeared in the New York Times and Bloomberg News.



Marcel Kahan George T. Lowy

Professor of Law



Geoffrey Miller

Stuyvesant P. Comfort Professor of Law; Director, Center for Financial Institutions; Co-Director, Program on Corporate Compliance and Enforcement



Edward Rock

Professor of Law; Director, Institute for Corporate Governance and Finance



Gerald Rosenfeld

Professor of Practice and Distinguished Scholar in Residence; Co-Director, Mitchell Jacobson Leadership Program in Law and Business



Helen Scott

Professor of Law; Co-Director, Mitchell Jacobson Leadership Program in Law and Business
The People

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39 Remembering NYU Law community members who passed away this year
43 Students take on the school-to-prison pipeline 52 Meet Professor Edward Rock

Doris Ling-Cohan '79, New York's first Asian American woman to serve as an appellate judge, receives the Women of Color Collective's 2016 Woman of Distinction Award.

The Star Lawyer Overseeing the LAPD

edia mogul Oprah Winfrey, comedian Sacha Baron Cohen, and tennis star Serena Williams have achieved fame for different talents, but they all have one thing in common: their lawyer, Matthew Johnson '93. The managing partner at Los Angeles firm Ziffren Brittenham, Johnson has spent more than two decades building his reputation as one of Hollywood's top lawyers; he has been named to the *Hollywood Reporter*'s list of "power lawyers" every year since 2008. This year, Johnson also took on a new role: president of the Los Angeles Police



Commission, the five-person civilian board that oversees the nation's third-largest police force.

Although he has built his career in entertainment law, Johnson's interest in government and public service is long-standing. "When I went to law school, I had two competing interests: the entertainment business and politics and social justice," he says. "I ended up basically doing both."

After graduation, Johnson set his sights on dealmaking in Hollywood. "Matt moved out to California pretty much knowing no one and with a clarity of vision about what he wanted to do," says Dean Garfield '94, president and CEO of the Information Technology Industry Council, and Johnson's roommate during law school (see story on page 51). "That is very much his personality: He's willing to identify a vision and work incredibly hard to get it." That drive led Johnson to develop a remarkable roster of clients from the worlds of entertainment and sports. "My business philosophy has always been to do things that I find interesting and fun, and if the money follows, great, and if it doesn't, at least it was interesting and fun," Johnson says. "If there's one thing that distinguishes my practice from a lot of entertainment lawyers, it's that I tend to have more entrepreneurial clients." Representing filmmaker Tyler Perry, for example, Johnson helped create a new model of producing original content for cable networks.

But even as he made groundbreaking Hollywood deals, Johnson continued to pursue public service work. A volunteer with the Boys and Girls Clubs since 1997, Johnson has served on the board of two chapters of the organization and as a national trustee. He is also a member of the Democratic National Committee, and he served on Los Angeles Mayor Eric Garcetti's five-person transition team in 2013.

Now, in his role as president of the Los Angeles Police Commission, Johnson recognizes the challenges that Los Angeles and the country at large face in grappling with the need for police reform. "When you look at the environment today, the feelings of people are informed not just by what happened in their neighborhood or their city; it's what happens nationally. So when you see a video of Eric Garner being choked to death by policemen in New York, that's going to impact how people feel across the country," Johnson says. "This starts to create a level of distrust between communities and the police department. So the biggest challenge is reversing that trend."

Friends and colleagues say Johnson is well suited to this daunting task. "He is certainly someone who has a strong sense of right and wrong and is also willing to fight for what he believes in," says Garfield. Sam Fischer, the partner who hired Johnson at Ziffren Brittenham, underscores his toughness: "He does Navy SEAL obstacle courses."

Johnson's physical fitness has been tested by what essentially amounts to two full-time jobs. As to how he manages both, Johnson says, "First of all, I don't sleep very much." He also had to step down from the boards of several nonprofits for the duration of his time as president of the police commission. "That was very hard to do," he says. "But I do feel that there's really no more important work to do right now." \square *Rachel Burns*

Keeping Abortion Legal

Stephanie Toti '03 takes the fight against Texas's restrictive abortion laws to the Supreme Court.

hole Woman's Health v. Hellerstedt, argued before the Supreme Court this past March, was the first abortion case to come before the court in two decades. The case successfully challenged a pair of Texas laws known as "Targeted Regulation of Abortion Provider" or TRAP laws. Stephanie Toti '03, senior counsel at the Center for Reproductive Rights (CRR), represented the Texas abortion providers making the challenge. An experienced trial and appellate advocate, Toti has served as a counsel at the CRR for a decade, litigating reproductive justice cases in both state and federal courts. This case—a crucial one for the reproductive rights movement—marked Toti's first argument before the Supreme Court.

If enforced, the Texas TRAP laws would have required the closure of 75 percent of the state's abortion clinics. Toti argued that these laws, which required abortion clinics to be designated as ambulatory surgical centers and doctors who provide abortions to have admitting privileges at local hospitals, were medically unnecessary and that the resulting closure of clinics would also place an undue burden on Texas women.

On June 27, the Supreme Court affirmed Toti's arguments in a 5–3 decision. "I'm elated the nation's highest court struck down Texas's sham restrictions, protecting the health and dignity of millions of women across the country," Toti says. "This ruling fulfills the promise of *Roe v. Wade* for the next generation of American women."

Whole Woman's Health v. Hellerstedt drew particular attention because it was one of the first cases to come before an eight-person court shortly after the passing of Justice Antonin Scalia. "It created some uncertainty about what the oral argument would be like and what the cadence of the questions would be like," Toti says. "But ultimately, it didn't change anything about the way that I prepared or our overall strategy."

"She was brilliant in her arguments, as I expected her to be," says Suzanne Sangree, senior public safety counsel for the Baltimore City Law Department, who has partnered with Toti and the CRR to defend a Baltimore ordinance requiring crisis pregnancy centers to post signs indicating that they do not provide abortions. The ordinance was intended to counteract what Toti describes as the centers' "deceptive advertising," which implies that they do provide abortions and contraception. After it passed, the ordinance was quickly challenged by the Archdiocese of Baltimore.

"She is extremely calm under fire, and just really clear-thinking, even when things are going haywire," Sangree says of her experience working with Toti. "She's also very empathetic and able to relate to what the impact of various legislation is going to be on real women's lives."

Prior to taking on *Whole Woman's Health v. Hellerstedt*, Toti had led a series of successful challenges to Oklahoma laws restricting abortion access, including a 2010 law that required any woman seeking an abortion to submit to a mandatory ultrasound exam. "That was really a great victory because it shielded women from having to deal with a very demeaning requirement," she says.

Diana Hortsch '98, senior director of the CRR's Law School Initiative, notes that Toti's capacity

for empathy is one of her greatest strengths. "Our clients are often independent, small abortion clinics in different parts of the country," Hortsch says. "One thing that I see over and over again is that our clients really trust her and know that she cares—about the

her and know that she cares—about the law, about their individual lives, and about their clients, who are women seeking abortion."

Even after the Supreme Court's ruling in *Whole Woman's Health v. Hellerstedt*, Toti still stresses the importance of continuing the fight for reproductive

justice in America. "In recent years, there has been a flood of antichoice legislation, seeking to interfere with a woman's ability to make decisions about her pregnancy," Toti says. "It's really important to continue to ensure that women throughout the United States have access to the full range of reproductive health care." □ Rachel Burns

TRAP Effect

There were 42 abortion clinics in Texas prior to the partial enactment of the Texas TRAP laws in 2013, after which only 19 clinics remained. Had the laws fully taken effect, there would have been only 10 legal clinics left in the state.

"This ruling fulfills the promise of Roe v. Wade for the next generation of American women."

Honoring a Teacher of Social Justice

Peggy Cooper Davis receives the 2015–16 Dr. Martin Luther King Jr. Faculty Award.

Faculty Briefs

Jennifer Arlen '86

was elected secretarytreasurer of the American Law and Economics Association for 2016–17; she will serve as president of the association in 2018–19.

Adjunct Professor **Pedro Martinez-Fraga** was appointed a conciliator to the International Centre for Settlement of Investment Disputes by President Obama.

Richard Revesz and Philip Weiser '94 were named to the National Jurist's list of Most Influential People in Legal Education.

Google.org donated \$1 million to the Equal Justice Initiative, led by Executive Director **Bryan Stevenson**, to support its mission of racial justice. Stevenson was also included among *Fortune*'s 2016 World's 50 Greatest Leaders. Peggy Cooper Davis, John S. R. Shad Professor of Lawyering and Ethics, was awarded the University's 2015–16 Dr. Martin Luther King Jr. Faculty Award. Nominated by her students and selected by a committee composed of faculty, her students through both rigorous analysis and searching inquiries," wrote Leo Gertner '16 in his nomination. "In fact, her classroom is one of the most intellectually dynamic places I've found at NYU, where questioning the historical under-

administrators, and students, Davis was recognized for her leadership, excellence in scholarship and teaching, and commitment to the values of community service and social justice.

A prolific scholar, Davis is the author of two books and more than 50 articles and chapters. Her 1997 book *Neglected Stories*:

The Constitution and Family Values and her book-inprogress *Enacting Freedom* show how anti-slavery and civil rights traditions can serve as guides for interpreting the 14th Amendment. (See story on page 66.)

Davis, who taught Critical Narratives of Civil Rights during the Fall 2015 semester, "brings constitutional debates on race and history to life for



Stefan Canizares, Leo Gertner '16 , Peggy Cooper Davis Henry Sherwin, Patricia Carey deeply about my moral autonomy in the world as a future lawyer and as a person." Over the course of her career, Davis has also had a deep im-

pinnings of constitu-

tional personhood has

led me to think more

also had a deep impact on the evolution of legal pedagogy. Along with University Professor Emeritus Anthony Amsterdam,

Davis was one of the architects of the Lawyering Program, which introduces first-year students to practical lawyering skills. Today, she directs the Law School's Experiential Learning Lab, where she works with students to develop strategies for addressing interpretive, interactive, ethical, and social dimensions of professional training.

The Hamilton Presidency

In January, Andrew Hamilton became the 16th president of New York University. A renowned chemist, he is former vice chancellor of the University of Oxford and provost of Yale University. He now brings his robust résumé to the global university.

In announcing the selection of Hamilton as NYU president, Martin Lipton '55, then chair of the NYU Board of Trustees, and William Berkley, then chair of the Presidential Search Committee and now chair of the Board of Trustees,



underscored their faith in him. "[I]t was clear to us that he understood NYU—our urban character, our distinctive global presence, our vibrancy, our focus on the future, our innovative spirit, our sense of being on the move, and our habit of exceeding others' expectations," they wrote.

Hamilton, who jokes that he mistook eagerness to see the popular Broadway musical *Hamilton* among members of the NYU community for excitement at his arrival, is already working to match that pace. Assuming office amid nationwide calls for college affordability, he quickly announced plans to lower the annual increase in cost of attendance to 2 percent in 2016–17 for most undergraduate programs, the lowest it has been in 20 years. He also introduced a three-year plan to raise the minimum pay for work-study recipients and other student workers to \$15 per hour.

Hamilton succeeds President Emeritus John Sexton, who oversaw the University's elevation to a highly regarded global institution during his nearly 14-year tenure. In an early message to the NYU community, Hamilton acknowledged the weight of his new undertaking. "The steep ascent in the quality of NYU's research, the high caliber of the education it offers its students, and the esteem in which the University is held are striking to behold and are unprecedented in higher education," he wrote. "I am deeply honored to be asked to join all of you in this grand endeavor."

Lester Pollack, 1933–2015

or decades, Lester Pollack '57, chairman emeritus of the NYU School of Law Foundation Board of Trustees, was among the Law School's most dedicated and visionary leaders. Pollack passed away on December 9, 2015, after a prolonged illness.

Pollack's generosity exemplified his commitment to the Law School and its mission. He was integral to the creation of the Law School's endowment in the 1970s and later served as chairman of the Law School's Board of Trustees, from 1998 until 2008. He also chaired the board of the Law School's National Center on Philanthropy and the Law, served as the director and president of the Law Alumni Association, and was a member of John Sexton's Council on the Future of the Law School. Pollack's remarkable commitment to the Law School also led to the creation of the Pollack Center for Law & Business and to the dedication of his eponymous colloquium room on the ninth floor of Furman Hall.

"NYU Law could not have gained the stature it enjoys today without Lester's wisdom and commitment over many years," says Dean Trevor Morrison. "He was truly a great man, and we will miss him deeply."

In addition, Pollack was an invaluable member of the broader University community, serving as an active member of the NYU Board of Trustees from 1987 through 2013 and as a life trustee after that. Over the course of many years, he received numerous accolades for his professional achievements and contributions to NYU, including the Vanderbilt Medal, Edward Weinfeld Award, Alumni Meritorious Service Award, and Albert Gallatin Medal.

"The Law School lost one of its transformational leaders," says Richard Revesz, Lawrence King Professor of Law, who was dean of the Law School from 2002 to 2013. "Lester had founding father status as a result of his role in designing the Law School's modern governance structure in the 1970s. His imprint is now everywhere: in the Pollack Center, which so interested him; in the Pollack Colloquium Room, where some of our most important conversations take place; and in the values and perspectives of those of us who had the privilege to know him well and to work with him closely. I lost an important mentor and good friend. I'll miss him greatly."

YORK UNIVERSITY ARCHIVES

OF THE NEW

IMAGE COURTESY

Pollack earned his bachelor's degree from Brooklyn College. After graduating from the Law School in 1957, he practiced law at Booth, Lipton & Lipton, becoming a partner. Pollack then joined Preston and Laurence Tisch at the Loews Corpo-

ration, where he rose to become executive vice president. After leaving Loews, he worked as vice chairman and co-chief operating officer of the United Brands Company and as a partner at Oppenheimer & Company. He co-founded Odyssey Partners in 1982 and founded Centre Partners Management, a private equity firm, in 1986. At the time of his death. Pollack was chairman emeritus of Centre Partners. In addition, Pollack was a director of numerous corporations, including Bank Leumi USA, Loews Corporation, Paramount Communications, Polaroid. SunAmerica. and Tidewater, and he was director emeritus of US Bancorp.

Pollack was also a philanthropist and humanitarian. He was deeply involved with Jewish community organizations, including as chair of the Conference of Presidents of Major American Jewish Organizations, president of the Jewish Community Relations Council of New York, chair of the Associ-

ated YM-YWHAs of Greater New York, and honorary chair of the Anti-Defamation League. In addition, he was a director of the United Way of Tri-State and chair of the Morocco-US Council on Trade.

Pollack is survived by his wife of nearly 60 years, Geri Pollack; their children Bruce Pollack and Wendy Isaacs; their daughter-in-law Susan Pollack; and five grandchildren.

"NYU Law could not have gained the stature it enjoys today without Lester's wisdom and commitment

DEAN TREVOR MORRISON

over many years."



In Praise of Kaye

The NYU Law Review dedicated its 1994 volume to Kaye in recognition of her enormous accomplishments as a jurist and scholar. Here are a few key quotations from that issue:

"Chief Judge Kaye ushered in an era of innovative thinking and new paradigms for delivering justice." CHIEF JUDGE JONATHAN LIPPMAN '68

"She is my kind of woman. She has embodied the qualities of a judge that reflect the highest value of that office to our democratic society." JUSTICE SANDRA DAY O'CONNOR

"What accounts for her extraordinary success? Colleagues on the bench and at the bar attribute it to her intelligence, dedication, integrity, unfailing collegiality, and above all, her caring for the welfare and respect for the dignity of all people law exists to serve." JUSTICE RUTH BADER GINSBURG



ormer chief judge of the New York Court of Appeals Judith Kaye '62 passed away on January 6, 2016, at the age of 77. Kaye was a trailblazer, a brilliant jurist, a vocal advocate for reform in the New York Court system and beyond, and a dedicated NYU Law alumna.

Not only was Kaye the first woman to serve as New York's chief judge, but she held that job longer than anyone else—for 15 years until her retirement in 2008. She was known for her decisions on statutory, constitutional, and common law issues, including LGBT rights and the death penalty. Her legacy includes streamlining New York's jury system and establishing specialized courts to focus on issues such as drug addiction, domestic violence, and mental health. She was the chief architect of the "Adoption Now" statewide initiative that brought together Governor George Pataki, Mayor Michael Bloomberg, and judges and commissioners from counties across New York to finalize adoptions for more than 5,000 families and to create more effective procedures to better serve children in foster care and their families.

Before her appointment to the bench, she practiced law at Sullivan & Cromwell; IBM; and Olwine, Connelly, Chase, O'Donnell & Weyher, where she became that firm's first female partner. After retiring from the Court of Appeals, Kaye joined Skadden, Arps, Slate, Meagher & Flom, where she focused on appellate litigation and arbitration.

Kaye received scores of awards in her lifetime in recognition of both her judicial and scholarly work. On top of her staggering list of professional accomplishments, Kaye was an active alumna of the Law School, serving as a trustee from 1983 to the late 1990s, and as an advisory board member of NYU Law's Center on Civil Justice. She served as a director of the Law School's Institute of Judicial Administration, and was also the driving force behind the institute's annual Brennan Lecture on State Courts and Social Justice. Kaye was the recipient of many of the Law School's most distinguished awards, including the 2014 Judge Edward Weinfeld Award, 2007 Public Interest Service Award, 1995 LAA Alumni Achievement Award, and 1984 Arthur T. Vanderbilt Medal.

"Judge Kaye left a profound impact on this state and our school. I am deeply grateful for her good counsel and leadership here at NYU Law," says Dean Trevor Morrison. □

Marie Garibaldi, 1934–2016



Marie Garibaldi LLM '63, former associate justice of the New Jersey Supreme Court, passed away January 15, 2016, at the age of 81. An illustrious judge and highly regarded expert in tax law, Justice Garibaldi broke down barriers for women and became one of the state's most revered and consequential figures in the law.

A pioneer in her own right as the first woman to serve on the New Jersey Supreme Court, Garibaldi wrote 225 opinions during the nearly 18 years she served on the court. They settled some of the biggest questions facing the state of New Jersey, upholding legal standards on the rights of women, the disabled, the press, and other groups. She is perhaps best known for her decisions regarding eliminating all-male eating clubs at Princeton University, for ruling in favor of

the right of individuals to refuse life-sustaining treatment, and for establishing the standards still used in sexual harassment cases today.

"It is not just that she was a woman who was first, but it was how she was first," New Jersey Chief Justice Stuart Rabner told *The Record* after her passing. "She left an army of admirers behind her in every job or appointment she held. Her colleagues refer to her as among the best one could hope to know."

Jerome Bruner, 1915-2016

niversity Professor Jerome Bruner—a trailblazing figure in psychology and a towering mind in a multitude of other disciplines—passed away on Sunday, June 5. In the 1960s, Bruner helped spearhead a revolution in psychology, emphasizing learning through interpersonal interactions and exploring such topics

as how we gain meaning through those interactions as well as how the mind deals with the limited information it is given.

While a professor at the Law School, Bruner interwove psychology, literature, philosophy, anthropology—almost every aspect of the humanities into his teaching, illuminating numerous points of intersection between law and culture. His colleague Peggy Cooper Davis hailed him as the "Pied Piper of interdisciplinary wonder."

Bruner left a mark on the

world beyond academia as well. He served on the President's Science Advisory Committee during the Kennedy and Johnson administrations, and was a force behind the federal preschool program Head Start. Furthermore, his contributions helped shape modern views of both psychology and education. In an e-mail, Howard Gardner, Hobbs Professor of Cognition and Education at the Harvard Graduate School of Education, wrote, "I think that he was the most important contributor to educational philosophy/psychology in America since John Dewey and there is no one like him today." After graduating from Duke University in 1937, Bruner earned his PhD in psychology from Harvard in 1941. He held faculty positions there and at Oxford—sailing his own boat across the Atlantic to take up that post. He co-founded and served as director of the Center for Cognitive Studies at Harvard, and served as president of the American Psychological Association.



Bruner brought his sense of wonder about the human mind to NYU Law in the 1980s, where he delved into the relationships among law, culture, and society. His 10 years of teaching at the Law School began in 1991 as a Meyer Visiting Professor, collaborating with John S. R. Shad Professor of Lawyering and Ethics Peggy Cooper Davis, University Professor Emeritus Anthony Amsterdam, and Russell D. Niles Professor of Law Oscar Chase. Bruner

became a University Professor in 1998.

Among a number of awards and accolades, Bruner was a recipient of the International Balzan Prize, the CIBA Gold Medal for Distinguished Research, and the Distinguished Scientific Award of the American Psychological Association. Duke University offers the Jerome S. Bruner Award for Excellence in Undergraduate Research, an honor bestowed upon Duke's most promising undergraduate researcher in the senior class.

Bruner celebrated his 100th birthday in October 2015. □

BRUNER: © MEL EVANS

Beatrice Silverstein Frank, 1928–2016



Beatrice Silverstein Frank, former clinical associate professor of law, passed away on April 21, 2016, at the age of 87. Frank joined NYU Law's clinical faculty in 1974, and for many years, she taught the Consumer Law Clinic. Frank also worked closely with University Professor Emeritus Anthony Amsterdam in the 1980s and '90s, and she helped design and teach in the Lawyering Program that had just launched. Frank retired from the Law School in 2000 as a beloved teacher and colleague whose tireless commitment to experiential learning played a significant role in helping NYU Law build the program it has today.

Frank, a 1950 graduate of Sarah Lawrence College, went on to receive a degree in 1953 from Cornell Law School, where she was one of two women in her graduating class. Before joining the NYU Law faculty, she practiced law in New York City and edited law books.

Frank also served as vice president of the New York City Bar Association and chaired a number of its committees and task forces. She considered a particular accomplishment to be a 1991 report on the decline of the rule of law in Singapore and Malaysia that she co-authored with former NYU Law Dean Robert McKay.

Cultivating SEED

Led by Professor Stephen Choi, NYU Law students develop the Securities Enforcement Empirical Database.

ver the past two years, NYU Law students have played a central role in building a pioneering database that sheds new light on the federal government's pursuit of civil securities law cases. Conceptualized by Stephen Choi, Murray and Kathleen Bring Professor of Law

"Students have been integral to the whole undertaking. They helped build the data set, they continually update it, and they have the opportunity to draw on it for their own projects." STEPHEN CHOI and director of the NYU Pollack Center for Law & Business, the Securities Enforcement Empirical Database (SEED) tracks and records information on US Securities and Exchange Commission

(SEC) enforcement actions against public companies. The database was launched in conjunction with Cornerstone Research last fall.

A great deal of what the SEC does is a matter of public record. But without the public material being evaluated, organized, and made easily accessible, it has been hard to discern trends in how the agency operates. How have enforcement division priorities shifted over time? What proportion of cases does the division file in federal court versus before its own administrative law judges? With SEED, it's finally possible to gain insight into these and

Stachon, Feng, and Choi

other questions. Having worked hard to create the database, students are among those who can now draw on it for their own research in corporate law and governance.

"Students have been integral to the whole undertaking," says Choi. "They helped build the data set, they continually update it, and they have the opportunity to draw on it for their own projects."

Yujia Feng '17 and Caitlin Stachon '17, for example, are part of a team of student research fellows (JDs, LLMs, and MBA candidates) who have been collecting, evaluating, and entering information into the database. The 3Ls came to the project through very different paths. After growing up in China, Feng attended Yale, majoring in economics and history and employing econometrics for her senior thesis. (The Law School recently awarded her a Lederman Fellowship in Law and Economics.) Stachon grew up in Urbandale, Iowa, and earned a BA in psychology from Columbia. They met and signed up to work on SEED as 1Ls in a Corporations class taught by Choi. "We both have backgrounds in social science so were interested in the chance to work with data again," says Stachon.

Stachon and Feng are now tapping SEED to write papers for the JD program's substantial writ-

ing requirement. Stachon is using SEED as a resource to assess how the SEC treats individuals in enforcement actions, including the positions of individuals charged, the bases of the allegations, and the outcomes.

> Feng is examining how the Dodd-Frank Act has strengthened the SEC's ability to pursue aiding and abetting charges in securities fraud cases. Various law firms have written memos on the topic, generally highlighting the legal basis for the SEC's strengthened authority. But with SEED, Feng can try to identify patterns and quantify developments across a large number of SEC enforcement actions. "I'm interested in what the data can show," she says, "especially how the SEC has used its new authority." *Michael Orey*

VIDEO ONLINE

Students Advocate for Students

When Queens high school senior Najib received a months-long suspension for fighting last April, he felt his college dreams slipping away. Students who receive superintendent's suspensions—those lasting more than five days—are entitled to an administrative hearing to which they may bring advocates. Teachers warned him he would almost certainly lose his hearing, even though he had been attacked. Fortunately, Internet research led Najib to Suspension Representation Project (SRP) members Adrienne Warrell '15 and Diane Johnston '15, who prevailed on his self-defense claim and got all charges dismissed.

NYU Law students founded SRP in 2007 to take on the school-to-prison pipeline—disciplinary policies they felt were increasingly pushing at-risk

students out of school and into the criminal justice system. Entirely student-run and staffed, SRP represents, at no charge, public school students facing long-term exclusion.

Since its inception, SRP has established chapters at Columbia, Brooklyn, Cardozo, and Fordham

law schools; trained more than 1,000 law student advocates citywide; and become the largest provider of suspension hearing advocates in New York City. NYU Law students conduct all training, manage case assignments, and lead the five-school SRP consortium. "SRP has filled a tremendous need by providing advocates for indigent parents and children facing suspension hearings who otherwise would have gone unrepresented," says New York City Family Court Judge Jacqueline Deane '85, who advised SRP's founders while an NYU Law adjunct professor.

Last year, SRP's five chapters represented 118 clients, some as young as age six, reports 2015–16 Co-Director Tristen Edwards '17. Working with 3L supervisors, students learn how to interview clients, conduct direct examination and cross-examination, present mitigating factors, and deliver closing arguments. The results are impressive. In 50 hearing representations last fall, SRP succeeded in reducing the length of suspensions—which averaged 77 daysby 74 percent and got charges dismissed in nine cases, says 2015–16 Co-Director Ashley Alger '17.

"SRP is part of a movement to push for a reduction in punitive student discipline and for alternatives such as restorative justice and counseling," says SRP Co-Founder Andy Artz '09, a civil rights attorney with the US Department of Education. Its members have participated in advocacy coalitions and testified before the city's Department of Education. SRP Co-Founder Randi Levine '08, project director at Advocates for Children of New York, says city leaders now recognize the negative impact of excluding students from school. But while superintendent's suspensions decreased 18 percent over the past three years, black students and students with disabilities are still disproportionately punished. In

> 2014–15, black students—28 percent of the student population—received 52 percent of all suspensions. Students with disabilities were suspended at more than twice the rate of those without special needs.

> The disparity between the suspension rates of black and white stu-

dents is even greater nationally, says Tanya Coke '94, principal investigator for the School-Justice Project at John Jay College. Studies, however, find no notable difference in the two groups' behavior. Furthermore, black students are overwhelmingly suspended for subjective offenses like "defiance" or "insubordination." Such excessive discipline exacts a steep toll, says Coke: "Studies show that a single suspension in the ninth grade is correlated with a doubled chance of dropping out and that suspended students are three times as likely to end up in the juvenile justice system."

Najib remains grateful to Warrell and Johnston, who represented him as members of NYU Law's Education Advocacy Clinic, an outgrowth of SRP. "I definitely could not have won my suspension hearing by myself," he says. Now in college, having graduated from high school on time with his record clear, Najib is taking every advantage of the fresh start that his NYU Law advocates gave him. *Jane Sujen Bock '85*

Student Briefs

The **Black Allied Law Students Association** won Northeast Region Chapter of the Year in 2016.

Ayelet Evrony '17

was awarded a 2016 fellowship within the law program of the Fellowships at Auschwitz for the Study of Professional Ethics. The program examines ethics and the contemporary legal profession.

Michael Gsovski '17, Mason Pesek '18, Daniel Treiman '17, Maria Walker '18, and Audrey Winn '18 were awarded Peggy Browning Fellowships to advance the cause of workers' rights.

Shana Knizhnik '15,

co-author of *Notorious RBG*, was named to *Forbes*'s 30 Under 30 list.

"Suspended students are three times as likely to end up in the juvenile justice system." TANYA COKE '94

Accepting the Whole Client—and the Whole Lawyer

ván Espinoza-Madrigal '05, executive director of the Lawyers' Committee for Civil Rights and Economic Justice and OUTLaw's 2016 Alumnus of the Year, has focused his career on LGBT rights, immigra-

tion rights, and HIV law and policy. In accepting his award from OUTLaw, Espinoza-Madrigal explained how his experience growing up in a lowincome immigrant community fueled his passion for justice and equality. "Even today," he said, "every case I file reminds me of my family's struggles."

Before his current role, Espinoza-Madrigal served at organizations

including the Mexican American Legal Defense and Educational Fund, Lambda Legal, and the Center for HIV Law and Policy. Describing some of the cases he has worked on, Espinoza-Madrigal argued for the importance of considering the whole lives of clients. "I know from my own experience that poverty, marginalization, and oppression can be messy," he said. "I know that the struggle is real. And I would like to think that our rights and our equality don't have to wait for picture-perfect plaintiffs and clients."

Just as every client must navigate multiple experiences and roles, so too does every lawyer, Espinoza-Madrigal said—underscoring the necessity of accepting one's own whole identity. "We should not be afraid of being the only dissenting voice," he said. "To do this, we must be comfortable

> with ourselves. I didn't bring my full self to work until I fully came out.... I had to embrace not just my sexual orientation but also other aspects of my lived experience, from growing up in poverty and surviving domestic violence to having undocumented family members."

> Acknowledging the difficulty of being a lone dissenter, Espinoza-

Madrigal encouraged today's students to consider themselves part of a long tradition of involvement in civil rights movements. "You do not stand alone," he said. "From Harvey Milk and Audre Lorde to Bayard Rustin and Sylvia Rivera and countless others, you are in good company."

A Three-Front March Toward Equality



Law Women recognized Nancy Duff Campbell '68, co-president of the National Women's Law Center, as its 2016 Alumna of the Year, honoring her work in three legal and cultural movements: civil rights, poverty and welfare, and women's rights.

In accepting her award, Campbell spoke about becoming involved in the civil rights movement first as a college student, then as a law student. She particularly recalled "on one very memorable occasion in 1965, briefing Dr. Martin Luther King on developments in Selma as we shared a plane ride from Montgomery to Atlanta." After law school, Campbell worked at the organization that is

now known as the National Center for Law and Economic Justice. "It took until 1968 for a welfare case to get to the US Supreme Court," Campbell said. First *King v. Smith* challenged the "man in the house" rule, which prevented women from receiving welfare benefits; then in 1970, *Goldberg v. Kelly* established a constitutional right to a hearing before welfare benefits could be terminated. "Our lawyers secured these victories," she added, "and we successfully pushed to expand their reach, working with legal services across the country."

In the 1970s, Campbell became involved with the organization that would become the National Women's Law Center. "We and our allies in the women's movement can now count among our victories outlawing discrimination on the basis of pregnancy in employment and education; improving the tax treatment of single heads of households; expanding federal child-care assistance; expanding athletic and other educational opportunities for women and girls; increasing child support enforcement; protecting and improving Social Security; securing a mandated package of benefits for women in the Affordable Care Act; and many, many more," she said.

Despite these victories, "the equality our country promises has not yet been realized," Campbell cautioned. She expressed optimism, however, that today's students are equipped to take on the challenge of achieving equality. Said Campbell: "There is nothing more fulfilling than to have a cause and be committed to it."

BALSA Salutes Social Justice Stars

This year's Black History Month Gala honored three figures whose careers and accomplishments are leaving an impression on both the Law School and broader New York communities. The Black Allied Law Students Association (BALSA) celebrated Zachary Carter '75, corporation counsel of the City of New York; Kenneth Thompson '92, Brooklyn district attorney; and Professor Paulette Caldwell, an expert on race and civil rights.

The night's theme highlighted the racial and social concerns of 2016: "Keep the Fire Burning: Promoting Social Justice Through the Black Lives Matter Movement."

Judge of Distinction

The Women of Color Collective honors Judge Doris Ling-Cohan '79 with its 2016 award.

ot every judge takes her interns to karaoke as an educational experience. But for Monica Cheng, former intern to Judge Doris Ling-Cohan '79 of the New York State Supreme Court, one such karaoke trip became a formative lesson: She remembers the judge telling her that if she could get over her fear and stand up to sing in front of a group of strangers, she would be able to be a fearless lawyer, too. Ling-Cohan, New

York's first Asian American woman to serve as an appellate judge, takes her work as a mentor as seriously as her docket. In recognition of her leadership and lifetime of work in public service, Ling-Cohan was the

recipient of the 2016 Woman of Distinction Award from the Women of Color Collective (WoCC). The award was presented by WoCC Alumnae Chair Elizabeth Zhou '17 (pictured below).

Growing up, Ling-Cohan did not imagine that one day she would be a leader, or even a lawyer. "As a child, I didn't dare to dream. Reality simply stifled my dreams," Ling-Cohan recalled in her speech at the WoCC ceremony. "Growing up in Manhattan's Chinatown, my parents were immigrants. My father worked in a laundry, and my mother was a seamstress. As a child, I too worked in a sewing factory sewing and cutting thread."

Ling-Cohan entered law school hoping that her law degree could be a tool for social change, for both her own community and other disadvantaged groups. Although WoCC did not yet exist, as a member of the Asian Pacific American Law Students Association (APALSA), "she helped look out for the newbies, especially at a time when we were a small minority at the Law School," says Sharon Hom '80, executive director of Human Rights in China.

As a young lawyer, Ling-Cohan worked for several New York legal services agencies. At the same time, she helped found the Asian American Bar Association of New York and the New York Asian Women's Center (NYAWC), an organization that provides support and legal assistance for victims of domestic violence and other forms of abuse.

In the early days of NYAWC, she and the other founders often opened their own homes to women in need. "Late one night, my husband and I drove to a hospital in Chinatown and picked up a woman and her child, to give them a safe place to stay," Ling-Cohan says. "I saw the woman a few years later, and she seemed to be doing well." Conscious of the lack of representation of Asian Americans within the judiciary, Ling-Cohan decided to run for a position on New York City's Civil Court when she saw a vacancy. She was elected to that court in 1995 and served until 2002, when she was elected to the New York State Supreme Court.

"She's very interested in people and understands people's problems," says Torrey Whitman, executive director of NYU Law's Institute of Judicial Adminis-

"As a child, I didn't dare to dream. Reality simply stifled my dreams."

edge of real-world New York and her sympathy for the issues people face to bear on her judging." One of Ling-Cohan's most high-

tration. "Even now on the appellate

court, she can still bring her knowl-

profile decisions was in the 2005 case *Hernandez v. Robles*, in which she ruled in favor of the right of same-sex couples to marry. When her decision was reversed by the New York Court of Appeals, Ling-Cohan says, "I felt a personal loss. I realized what it meant to the individuals involved in the case and to anybody who was gay or lesbian and really wanted to marry their partner."

On the first day on which the New York State Legislature permitted same-sex marriage, Judge Ling-Cohan volunteered and performed 24 weddings, including the marriages of several of the original plaintiffs in *Hernandez v. Robles*. Although at the time of her decision Ling-Cohan faced criticism and death threats, she felt vindicated for standing by her convictions when nearly a decade later the Supreme Court's marriage equality decision in *Obergefell v. Hodges* came down—a lesson she imparted to current law

students in her WoCC speech. "Do not fear criticism. Do the right thing," she said. "And most importantly, push the envelope by dreaming on a grand scale for your community." *Rachel Burns*

Honoring Latinas

At the annual Latino Law **Students Association** (LaLSA) dinner, Ignacia Moreno '90, chief executive officer and principal of the iMoreno Group, was honored with the association's Distinguished Alumna Award (for more on Moreno see story on page 14). LaLSA's Community **Organization Award** went to the National Latina Institute for Reproductive Health, the only national organization dedicated to advancing reproductive justice goals among Latinas.

A Legal Resource on Water

In the face of a historical drought, Felicia Marcus '83 leads the fight to conserve California's water.

Alumni Briefs

Lenore Anderson 'oı, executive director of Californians for Safety and Justice, received a James Irvine Foundation Leadership Award.

Craig Boise LLM '99 became dean of Syracuse University College of Law.

David Fagan '01, Joy Gallup '90, Lou Kling '77, and Natasha Labovitz '96 were listed among *American Lawyer*'s 2016 Dealmakers of the Year.

Volkswagen retained Kenneth Feinberg '70 to oversee a program addressing claims related to the company's use of deceptive emissions tests.

Scott Fischer '97 was appointed New York's executive deputy superintendent for insurance, the state's top insurance watchdog.

Hasan Ibrahim LLM '09 and Vilma Arce Stark '05 were named 2016 Top Lawyers Under 40 by the Hispanic National Bar Association.

s a young lawyer in 1985, Felicia Marcus '83 testified before the Los Angeles Regional Water Quality Control Board for the group that would become Heal the Bay, an environmental nonprofit devoted to cleaning up Santa Monica Bay. Now, after three decades working in environmental law-including stints at the Natural Resources Defense Council and the **Environmental Protection** Agency (EPA)-Marcus has

returned to her roots: As chair of the California State Water Resources Control Board, she is leading the response to the most severe drought in the state's history.

Marcus, who concentrated in East Asian studies as an undergraduate at Harvard, did not originally plan to go into the law at all, let alone environmental law. But while taking a break between college and graduate school, she worked as a legislative assistant for California Congressman Anthony Beilenson just as the Love Canal tragedy was gripping the public consciousness. "All of a sudden I realized the environmental movement was about public health and about all people, rich and poor," Marcus says. "It also involved challenging, complex trade-offs, not just good and evil, and so it captured my mind as well as my heart."

After becoming the congressman's environmental legislative deputy, Marcus came to NYU Law as a Root-Tilden Scholar to study environmental law. After law school, she clerked for Judge Harry Pregerson of the US Court of Appeals for the Ninth Circuit, then worked at the Center for Law in the Public Interest (CLIPI) as a visiting fellow. While she was still at CLIPI, Marcus agreed to serve as a lawyer for the Coalition to Stop Dumping Sewage into the Ocean, which was eventually renamed Heal the Bay.

Working with Heal the Bay gave Marcus her understanding of the importance of forging connections within the infrastructure of a community—in this case, the city of Los Angeles—in order to achieve change. "The folks at Heal the Bay would say, 'We'll pound the table, but as soon as someone sits down, we'll sit down and try to make progress on the issues



we care about," Marcus says. She continued to work with the organization as a litigation associate at the law firm Munger, Tolles & Olson.

Marcus would go on to serve first as a commissioner, then as president of the Board of Public Works of Los Angeles, then as a regional administrator for the EPA in the Clinton administration, where she played a leading role in the Bay-Delta Accord and worked to make the agency more responsive to tribal

communities. Looking back at these key successes, Marcus emphasizes the importance that openness and willingness to negotiate have played in her career. "I like to think I have good legal skills, but the real issue is fourth-grade civics," Marcus says. "Government is of the people, by the people, for the people. And so what I do is try to bring empathy and respect for the role of government as convener of all people and a neutral arbiter between people."

Marcus's classmates and colleagues note that she is particularly skilled in navigating situations involving complex competing interests. "She's a very unusual person, because she's so smart—she was always a really big thinker—and yet she's approachable and not at all egotistical," says US Magistrate Judge Chris McAliley '83 of the Southern District of Florida, who was Marcus's classmate at NYU Law. "I can see Felicia bringing very diverse interests together in the California water crisis, because she's that kind of person."

Marcus's people skills have served her well in her current role. She has been a key player in the passage of historic groundwater legislation, in a statewide campaign that has led to the conservation of a quarter of the water in urban California, and in the shepherding of a \$7.5 billion water bond, passed by California voters, to pay for droughtcombatting measures.

"It's a big job trying to persuade millions of Californians to use less water," says Hal Candee '83, partner at Altshuler Berzon, who has worked with Marcus during her time at the EPA and the State Water Resources Control Board. "But she's done a great job getting that message out." \Box *Rachel Burns*

Judging with Clinical Attitude

s a justice of the Michigan Supreme Court, Bridget McCormack '91 contends with the state's most complicated legal problems. Since joining the court in January 2013, McCormack has considered cases on matters including employment law, sentencing guidelines, and parental custody. As she grapples with these and other issues, McCormack still draws on lessons she learned as a student in NYU Law's clinics.

As the only lawyer in her immediate family-or even among her 51 first cousins-McCormack credits her godmother, Lisa Blitman, who worked for

Legal Aid in New York, with inspiring her choice of career. "I would go into the city to visit with her, and it had a really lasting impact on me," says McCormack, who grew up in central New Jersey.

While at NYU Law, where she was a Root-Tilden-Kern Scholar, McCormack was particularly drawn to clinical work and names Randy Hertz, vice dean and professor of clinical law, and Martin Guggenheim '71, Fiorello LaGuardia Professor of Clinical Law, as among her chief mentors.

"She was a truly exceptional clinic student," says Hertz. "She worked on more cases than any other student because she kept volunteering for more. And the work she did on each case was flawless."

Guggenheim's Child, Parent, and State seminar held particular resonance for McCormack when the case In Re Sanders came before the Michigan Supreme Court in 2013. McCormack authored the majority opinion, which held as unconstitutional a long-term practice of taking away parental rights from a parent when the other parent was judged unfit. "I still remember very acutely the constitutional lessons I learned in [Guggenheim's] class," says McCormack. "In Sanders, I felt that our court made an important decision that affects parents throughout the state, and that grew directly out of my time at NYU."

After law school, McCormack worked first as a staff attorney with New York's Office of the Appellate Defender, then as a senior trial attorney with the Legal Aid Society, before transitioning

"It's always fascinating to me how much you can get done on that administrative docket you really can make our courts function more efficiently for the people they serve."

into academia. After serving as a Cover Fellow at Yale Law School, where she taught clinical law, McCormack moved to Michigan Law School in 1998, where she founded nine clinics including the Michigan Innocence Clinic, the first non-DNA innocence project in the country. She eventually became associate dean for clinical affairs.

Her experience in academic administration, McCormack says, helped prepare her for the administrative nature of her role on the Michigan Supreme Court. "It's always fascinating to me how much you can get done on that admin-

> istrative docket-you really can make our courts function more efficiently for the people they serve," she says.

> It was that desire to help the courts better serve the people that inspired McCormack to run for a seat in 2012—a decision, she says, that she might not have made had she understood what running for state election entails. One high note of the campaign, which was the most expensive state judgeship race in the nation that year, was the assistance of her sister, actress Mary

McCormack, who gathered former castmates from The West Wing to act in a television spot that served both as a public service announcement about voting in judicial elections and as an endorsement.

McCormack is still getting used to being a public figure, but she wholeheartedly enjoys her work as a justice, particularly the multimember nature of the court. "The court has achieved a very noticeable level of collegiality," says McCormack. "We've had more unanimous opinions in the last couple of years than ever in the court's history, and we've had no cases divide along traditionally partisan lines."

"Being on a Supreme Court is being a member of a committee," Guggenheim says. "You need to be somebody who can work well with others who may come from very different places-and to learn how to persuade them to your perspective. Bridget is perfectly well suited to accomplish that. She's just someone you want to work with because she's going to make you better."

Rachel Burns

Continued from page 46

Renu Mandhane

LLM '03 became chief commissioner of the **Ontario Human Rights** Commission.

Georgia Pestana '87

was appointed first assistant corporation counsel of the New York City Law Department, the first woman and person of Hispanic heritage to hold the position.

Lourdes Rosado '95

was named chief of the Civil Rights Bureau for the New York Attorney General's Office.

Janet Sabel '84 was

named chief deputy attorney general in charge of affirmative litigation by New York Attorney General Eric Schneiderman.

Arjun Sethi '08,

director of law and policy at the Sikh Coalition, was listed among 16 Faith Leaders to Watch in 2016 by the Center for American Progress.



A Diplomat for Democracy

jani Husbands '17 lived in four countries during seven years with the US Department of State. In his last posting, South Sudan, where he served as spokesperson and cultural attaché for the US Embassy, he found himself at the airport wearing a helmet and flak jacket as he helped resident Americans leave a country suffering from violent civil unrest. Less than a year after the US military evacuated Husbands and the rest of his team, he arrived at NYU School of Law.

Husbands had applied to law school while working under Ambassador Susan Page, herself a lawyer who had worked on the peace agreement between Sudan and South Sudan as well as the latter's con-

"You're trying to sit down and explain that all this works in the grand, cosmic scheme of things. But then you get home and you turn on the TV and you see Ferguson on fire." stitution. The continual practice of describing democracy to foreigners not used to living in one ultimately led Husbands to a jarring realization. "You're trying to

sit down and explain that all this works in the grand, cosmic scheme of things," he says of his diplomacy work. "But then you get home and you turn on the TV and you see Ferguson on fire. Part of me wanted a chance to come back to the United States and be a little bit more engaged in what's going on."

In 2012, while working as a vice consul in Haiti, he was so moved by the Trayvon Martin killing in Florida that he wrote an emotionally searing online piece, "The Bullet Next Time: An Open Letter to My Unborn, Black Son." But the best way for him to make a personal contribution to addressing systemic racial issues, he decided, was to learn how law functions and interacts with policy and grassroots organizations.

He entered the application process with modest expectations. Then he was accepted to NYU Law as a Root-Tilden-Kern Scholar; Page urged him to grab the opportunity. Husbands describes the RTK Program as an incredible resource for pursuing his public service interests: "You're always able to tap into people who either have done some of the things you're thinking of or who are doing entirely different things that you didn't know were an option."

Husbands is currently conducting directed research under Vice Dean Kevin Davis as a Lawrence Lederman Fellow in Law and Economics. He is working on establishing metrics for how legal services organizations exert a net-positive economic impact on communities, then using those measurements to leverage more funding. Having experienced some of the typical challenges that cash-strapped nonprofits face while he was working for the Georgia Legal Services Program's Farmworker Rights Division in the summer of 2015, he is particularly interested in the potential of social impact bonds, which have not yet been used for legal services.

As an incoming 3L, Husbands still has time to consider his post-graduation plans. In the longer term, he wants to find ways to address the root causes of limited resources in low-income communities and says that social enterprise models could play an important role in those endeavors.

Even in the midst of law school life, Husbands makes time to fly every month to Belize, where his wife, Emilia Adams, a US diplomat working in public affairs, is stationed. They met while working in Pakistan—she was stationed in Lahore while he was in Islamabad and were married after Husbands started law school.

Their son was born in May 2015. Husbands stays connected to him and his wife as much as possible, using Skype and FaceTime between trips to Belize. Although the son to whom Husbands once wrote an anguished letter is no longer theoretical, the new father isn't rushing to introduce the harder truths. Besides, there are more immediate matters to address.

"Right now," Husbands says, "I'm just working on peekaboo."
— Atticus Gannaway

For the Defense

Growing up with a mother who worked as a police officer, Emily New '16 got a kind of homeschooling in the criminal justice system. Her sympathies, though, lay with criminal defendants, and her desire to advocate for their rights led New to law school. This fall she will join the Orleans Public Defenders in New Orleans as a staff attorney.

"I want to do public defense to fight for the victims of society, the people who we label as criminals and write off without a second thought," says New.

A Florida native, New supported herself during college by working full-time jobs at grocery stores, at summer camps, and in a factory. After three years teaching English and working on community development in the Peace Corps in the country of Georgia, she returned to the US to pursue a law degree. At NYU Law, New combined her coursework with out-of-the-classroom activities such as representing students in New York City public high schools who had been suspended, teaching legal writing in a women's prison, and advocating for individuals serving long prison sentences who had been denied parole.

As a law clerk at Orleans Public Defenders after her first year of law school, New worked on a number of cases in which defendants faced life sentences. She saw firsthand the consequences of limited public defender resources for those facing serious charges. "At times the Constitution seems like it's suspended there," she says.

New remains positive in the face of immense challenges, however. "I don't think I've ever sat down at a table with a person and not seen hope and light inside them," she says. "That's what I'm fighting for: to bring that light and hope to other people's attention."

Making Problems for Other Law Schools

At NYU Law, the Moot Court Board is classified not as a student organization but as a student journal, a unique arrangement for a top law school. Besides competing in moots nationally and hosting an innovative competition annually, what puts the board in a class by itself is the *Moot Court Casebook*, published each year since 1976.

"It turned out that there's an enormous need for high-quality, non-preempted moot court problems," says Alec Webley '16, the Moot Court Board's 2015–16 editor-in-chief. "This is partially because the Supreme Court tends to pick the most interesting problems every year and delete them. So you're continually having to generate new



material." All 86 members of the board work on aspects of the casebook, with 30 taking casebook editor titles and contributing to the writing and line editing. More than 150 law schools currently subscribe, making NYU Law's moot problems among the most widely disseminated in the country.

The casebook editors hone their research and writing skills. "When you've graduated from Moot Court, you will have written several briefs that are dealing with much the same content and substance as you'll be doing in practice," Webley says. "You'll have written several memos that engage in thoughtful but useful and easily digestible analyses of existing problems that are being litigated." Prominent board alumni include Brendan McGuire '02, chief of the Terrorism

and International Narcotics Unit in the US Attorney's Office for the Southern District of New York, and Jesse Wegman '05, a *New York Times* editorial board member. But no one is a more active champion of the board than Albert Podell '76, who has attended the final argument of the Orison S. Marden Moot Court Competition nearly every one of the past 35 years.

Podell, who participated in Marden as a 2L, established the Albert Podell Award for Best Oral Advocate the year that he graduated. But his most visible contribution may be a spontaneously donated massage chair that is one of the office's most popular features. All this generosity stems from Podell's appreciation of the skills he learned through mooting. "As I started to practice law, I realized that talking to the judge, either from a distance or at a bench conference, was really important," he says. "Moot court provides very good training for how to address the bench."

"We think of competitions not as the capstone of what we do but as the foundation for everything else we do," says Webley. "The point is to have a good educational experience rather than earn hardware—though we do earn hardware, and we're glad to."



Professor Jason Schultz has two words to sum up his experience as senior advisor on intellectual property and innovation in the White House Office of Science and Technology Policy: "challenging and exhilarating." Schultz has been on leave from the Law School since beginning his tenure at the White House last fall. Working with US Chief Technology Officer Megan Smith, Schultz has been given a full plate of policy initiatives, focusing on issues such as patent reform, digital copyright, health care and data privacy, artificial intelligence, data discrimination, and the use of data science to improve the criminal justice system.

One recent project resulted in the release of a report about big data and civil rights. Part of a series of White House reports on big data, it examines the ways in which algorithmic systems can help uncover patterns of discrimination in society. "I was fortunate to be able to work very closely with Megan Smith; DJ Patil, chief data scientist of the United States; and Cecilia Muñoz, head of the Domestic Policy Council for the White House, to pull the report and blog post together and try to make sure that the technical communities, the civil rights communities, and the policy community saw themselves and their concerns reflected in the report," says Schultz.

The pace of technology policymaking in Washington, DC, right now is extremely fast-moving and intense, says Schultz. In order to meet these challenges, he draws on an important lesson that he often teaches in his NYU Law Technology Law and Policy Clinic: "Lawyers can rarely solve problems on their own," he says. "Especially with technology, you need to have people who work on all aspects of the issue. It often involves legal questions, but it also involves technical questions, economic questions, sociological questions, or community engagement questions. It takes a team approach."

An In-House Seminar



When Adjunct Professor David Pashman '97 graduated from the Law School, Google was nonexistent and Yahoo! was just four years old. Pashman initially wanted to become a criminal prosecutor, but exposure to the fast-paced work of technology startups changed his course. More than 19 years later, in addition to being general counsel at Meetup—an online social platform to facilitate groups—Pashman helps students navigate the evolving path to becoming an in-house lawyer for technology companies.

In his seminar, the Law of the Startup, Pashman consolidates his experiences of navigating legal and business issues for technology companies into a course designed to give students the tools and insight necessary to be successful in the industry. Past guests of the seminar have included attorneys from startup darlings BuzzFeed, Spotify, and Tumblr.

Pashman focuses on the practical issues that in-house lawyers face, an approach that differentiates his seminar from the "black-letter law" curriculum that a typical corporate law course would cover, he says. "In the initial public offering class, for example, we don't really focus on the securities laws about an IPO, but rather we explore if an IPO is right for a company and, if not, what could be some alternative paths to liquidity."

"We're seeing a lot more students entering law school with startup experience or even just an interest in startups," says Samantha Ku '16, development chair of the Social Enterprise & Startup Law Group student organization. "Professor Pashman's seminar is a unique opportunity for students to gain insight into what it's like to be an in-house counsel at a startup, which isn't at all addressed by a typical law school curriculum."

A Hard Drive for Change

"When you represent the

tech sector, you represent

evervone, because we're so

central to how people work

and plan their lives."

Dean Garfield '94 is the legal voice of the technology sector.

s president and CEO of the Information Technology Industry Council (ITI), Dean Garfield '94 represents an association of the most influential technology companies in the nation and the world, working with them to create policies that address challenges including the expan-

sion of the global marketplace, the advancement of sustainable technology, and ever-evolving risks related to cybersecurity.

"In DC, he's often the face and the voice of the technology sector," says Julian Ha'95, a partner at exec-

utive search firm Heidrick & Struggles and a former classmate of Garfield's. When deciding to go into the legal profession, however, Garfield had no particular vision of entering the technology realm. "The thing that drew me to the law was a desire to drive change," he says. "Specifically, my thought was that the legal profession was a good place to be a catalyst for change for those who were disempowered."

As a Root-Tilden-Kern Scholar at NYU Law, Garfield particularly loved his work in the Juvenile Defender Clinic, led by Randy Hertz, vice dean and professor of clinical law. "He did excellent work in the clinic, representing young people accused of crimes in New York Family Court delinquency cases. But even back then, it was clear that Dean was preparing for a career that goes far beyond the usual types of work and skill sets of lawyers," Hertz says, noting that while in law school, Garfield simultaneously pursued his master's in international affairs and public administration at Princeton.

Garfield began his legal career as a litigation associate at Kaye, Scholer, Fierman, Hays & Handler, a firm he chose because it gave him "the opportunity to satiate my soul by working on pro bono assignments," Garfield says.

While focusing on death penalty cases in his pro bono work, Garfield also became involved in the firm's intellectual property (IP) litigation team, which was in need of associates with strong litigation backgrounds. "Because of my work in the clinic, and because of my pro bono work, I had ended up getting courtroom experience much earlier than most young associates," Garfield says. As a result, he began to work on IP issues "at a time when technology was having a meaningful and nearly disastrous impact on the recording industry."

Garfield had a particularly close view of that impact when he joined the Recording Industry

Association of America (RIAA) as vice president of legal affairs. In that role, he led the copyright infringement case against file-sharing companies Grokster and Kazaa, a landmark case in which the Supreme Court ruled in favor of the recording industry.

After his work with the RIAA, Garfield moved out

west to serve as the executive vice president and chief strategic officer of the Motion Picture Association of America. In addition to developing the association's global strategies, Garfield worked to build industry alli-

ances with Silicon Valley—an experience that served him well when he returned to Washington, DC, to lead ITI, whose member companies include Amazon, Facebook, Google, and Microsoft.

In his work at ITI, Garfield has found a role that enables him to be the catalyst for change he envisioned when first entering law school. Next to the family he has built with his wife and children, he considers this to be his greatest achievement. "When you represent the tech sector, you represent everyone, because we're so central to how people work and plan their lives," Garfield says. "Part of the challenge is figuring out how we can be a platform for enabling the success of our companies but also uphold broader societal responsibilities."

According to Matthew Johnson '93 (see story on page 36), Garfield is up to the challenge. "What

really distinguishes him is his thoughtfulness and his patience," says Johnson, Garfield's best friend and former law school roommate, who is now managing partner at entertainment law firm Ziffren Brittenham and president of the Los Angeles Police Commission. "He's a great consensus builder, which makes him perfectly suited to do the work that he does." Rachel Burns

MR. GARFIELD



Taking Off in a New Field

Boris Segalis '03 once worked as a project engineer on the space shuttle program. Now a co-chair of the Data Protection, Privacy, and Cybersecurity practice at Norton Rose Fulbright, he has left rocket science behind for the legal complexities of data protection.

"As everything is becoming connected to the Internet, there's a massive gathering of information that raises a lot of privacy and cybersecurity issues," says Segalis, who was named to *Crain's New York Business*'s 40 Under 40 list in 2015. "And that means it's a great time for lawyers to get into this field."

New Faculty

EDWARD ROCK

Professor of Law

dward Rock does everything with energy. A self-proclaimed "gym rat," he swims and works out several days a week. An avid sports fan, he is devoted to the Philadelphia 76ers, despite their losing record. A prolific scholar, he publishes regularly on corporate law and corporate governance.

The popular Penn Law professor, whose classes were often oversubscribed, joined the NYU Law faculty full-time in July—and he's already embracing



the Law School with his usual vitality. Rock not only will teach Corporations and Mergers and Acquisitions, but he also will launch the Institute for Corporate Governance and Finance. The new institute will create a nexus for understanding the changing nature of corporate governance by bringing together institutional investors—the most powerful stakeholders in corporate governance decision-making with academics, judges, lawyers, bankers, and private equity and hedge fund principals.

Rock will also continue his longtime collaboration with Marcel Kahan, George T. Lowy Professor of Law, with whom he has published more than a dozen articles on hedge funds, mergers and acquisitions, proxy access, and corporate voting. Their relationship dates to 1989, when Rock, already a professor at Penn, interviewed Kahan for an entry-level academic position. Although Kahan chose NYULaw, their paths crossed again several years later at an annual meeting of the American Law and Economics Association. "We were supposed to be listening to the presentation of papers, but instead we stood outside and chatted about poison pills," says Kahan, referring to the antitakeover defense that had become standard for companies facing down hostile takeover attempts (for more on Kahan's work, see story on page 62). The conversation evolved into their first groundbreaking paper together, which they called "How I Learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law." (The title, a nod to the film classic *Dr. Strangelove*, was itself a hit.)

Rock, who received undergraduate degrees from Yale University and the University of Oxford and a JD from Penn Law, began his career as a plaintiffs'-side antitrust litigator at the boutique Philadelphia firm of Fine, Kaplan and Black. "Once you've litigated, you have a certain feel for the law that you never lose," says Rock. "You learn that the only legal rights you have are the ones you can enforce." At Penn, Rock went on to serve as associate dean, senior adviser to the president and provost, director of Open Course Initiatives, and co-director of the Institute for Law and Economics. In addition, he was a visiting professor at the Hebrew University of Jerusalem, Columbia Law School, Goethe University, and NYU Law.

Rock is excited to be back in New York and already has a favorite place to eat: Pó, an Italian restaurant near the Law School. His wife, Andrea, a lawyer who decided to pursue a second career as a high school English teacher, will also work at NYU; she will design and launch a peer-tutoring program to support undergraduate writing across the curriculum. The couple has three grown children. "When my wife and I thought about the next chapter of our personal and professional lives," says Rock, "the chance to move—to be part of the most exciting and interesting law faculty in the country—was irresistible."

As for Kahan, he's delighted to have his frequent collaborator down the hall. "Ed has the ability to merge a deep understanding of current developments with analysis," says Kahan. "He uses what he learns from judges and practitioners as inputs to raise—and to answer—new theoretical questions. He is without doubt one of the top scholars in corporate law in the nation." \Box *Ellen Rosen '83*

Arguments & Opinions

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60 Samuel Rascoff examines the politics of spying 63 Katherine Strandburg uncovers medicine's IP lessons
64 David Garland makes a case for welfare 65 David Kamin tackles taxation of the wealthy



Mervyn King considers the future of banking and the global economy.

ervyn King served as governor of the Bank of England from 2003 to 2013 and played a key role in shaping global policy during the 2008 financial crisis. He holds a joint appointment as a professor of economics and law at NYU Stern School of Business and NYU School of Law. In March, King published *The End of Alchemy: Money, Banking, and the Future of the Global Economy*, which he discussed in a recent interview.

Whom are you trying to reach with your book, and what impact do you hope it will have? *The End of Alchemy* is aimed at the general reader with an interest in why we had a financial crisis, why this



was by no means the first crisis, and how we can prevent such crises in the future. Economists have got into a little bit of a rut in thinking in terms of precise mathematical models. By teaching at NYU Law and talking to wider audiences, I found that non-economists come with much less prejudice about how to approach these questions. They're much more open-minded. That makes it much

easier to explain many aspects of what went wrong in our economy, but also to engage them in a debate as to what we should do in the future.

Why do you compare central elements of our financial system to "alchemy"? It reflects the idea that there's no really intrinsic value to many of the things we think of in terms of money and banking. For paper money, it's just paper, but we believe it has value because we trust the people who issue it. The same with banking. We put money into a bank. It belongs to us, we think. We think we can go and take it out whenever we want, and up to a point, we can. But if all of us decided to go to a bank and take

This interview has been edited and condensed. our deposits out, the money isn't there. It's been lent, long term and in illiquid form. So there is a sense of alchemy about the way that banking works and trying to pretend that you can convert very safe shortterm deposits into long-term risky loans.

The title of your final chapter is "The Audacity of Pessimism." What does that mean? I think that the problems facing the world economy and the United States at present are not ones that central banks can solve. It requires a significant degree of government action to improve productivity, to improve the supply performance of the economy, and to make sure our exchange rates between countries are more flexible. What I mean by the audacity of pessimism is that when things are bad enough, governments will eventually summon up the courage to do something about it, instead of pretending that our problems can be solved by leaving it all to central banks.

Has teaching here at NYU informed your work?

It has, because I wanted to teach students who had a real curiosity about the world, students who were not well versed in all the technical aspects of economics, but had a deep interest in what was going on in the financial sector. NYU Law students and also Stern business school students make a very nice combination. They're not used to each other, but they come to respect and interact with each other. Everyone says, "I really want to know how the world works. How is it that we got into this mess? What was it about our economy that made not just this crisis happen, but also many previous crises?" Their questions have been immensely helpful in helping me to think through both what I think about the issues and also how best to explain them. \Box Leslie Hart

Testing DNA

In her new book, Erin Murphy investigates how the criminal justice system misuses genetic identification.

he plot twist is familiar to viewers of procedural television: at the last minute, investigators find a trace of DNA at the crime scene, test the sample, and identify the killer. But contrary to popular conceptions of forensic science, the use of DNA in the US criminal justice system is often murky and unregulated. In *Inside the Cell: The Dark Side of Forensic DNA*, Professor Erin

Murphy explores the technical challenges posed by forensic DNA and the privacy concerns raised by law enforcement's DNA databases, and considers the potential uses of what can be a powerful forensic tool.

"You can't take even a perfect science and put it into the dysfunction that is our criminal justice system and expect everything to come out OK," says Murphy. And forensic DNA is by no means a perfect science. "There's a huge difference between taking a controlled DNA sample in a clinical setting, like a laboratory or a hospital, and testing DNA found at a crime scene," she says. "In the rough and tumble world of crime, DNA is going to be subject to all these conditions that make it much more difficult to get an accurate result."

One method of dealing with incomplete or damaged forensic DNA is the use of probabilistic software, which relies on statistical models to assess



the value of information missing from a sample. While this software can help make use of evidence that might otherwise be too complicated

to interpret, Murphy points to wide variations in their formulations. Some states use closed-source programs, which means that only the private companies that sell the software know how the algorithms work. Lab technicians therefore cannot know what weaknesses the software may have—and there is little oversight to ensure that technicians are properly trained in how to input and analyze the data.

What is more, the traditional safeguard of the adversary system is unlikely to correct any mistakes. "A lawyer presented with a statistic from probabilistic software may just take that as a given because the math behind it seems impenetrable," Murphy says. "So we're essentially allowing what



may be the most damning evidence in the case to go entirely unchecked."

Not only is lab analysis of forensic DNA lacking in adequate oversight, but so, too, is DNA collection. There is little to prevent what Murphy calls sneak sampling—collecting DNA from individuals without their consent. "Right now the law is really a Wild West," Murphy says. "The same rules that apply for physical objects apply for

DNA. If you've thrown away your cup or your tissue, police can take your DNA sample and test it, store it forever, search it, do whatever they want with it."

Murphy argues for greater regulation of whose DNA can be collected, whose DNA ends up in shared databases, and how those databases can be searched. She is opposed to using DNA databases for familial searches—that is, identifying suspects through near-matches to the DNA of their relatives. In her book, Murphy describes one case in which the DNA of a rape victim implicated her brother as the perpetrator of a different, unsolved crime. Cases such as this one could deter future victims from submitting their samples. "You have to think about how people are going to adjust their behavior if they're worried about their DNA being collected," Murphy says.

While sounding an alarm about flaws in our current DNA policies, Murphy recognizes the value that the technology can provide when done well and according to reasonable limits. For instance, DNA testing in sexual assault cases has proved crucial to improving the investigative process. Advocates have long complained of law enforcement's tendency to dismiss rape allegations, says Murphy,

especially from certain demographics such as sex workers. But in Detroit, where there has been a concerted effort to analyze a backlog of over 10,000 kits discovered in 2009, testing revealed a high rate of serial offenders. "These results had the effect of casting new light on rape allegations and prosecution," Murphy says. "It's a way to use DNA to help law enforcement correct for some of the societal biases that we all share." **D** Rachel Burns

PROFESSORIAL PUBLICATIONS

A Sampling of Recent and Forthcoming Faculty Books

Kwame Anthony Appiah

(co-author) A Decent Respect: Honour in the Life of People and of Nations, Faculty of Law, the University of Hong Kong, 2015

Samuel Estreicher

(co-editor) Beyond Elite Law: Access to Civil Justice in America, Cambridge University Press, 2016 (co-author) Labor Law, Foundation Press, 2016 (co-author) Legislation and the Regulatory State, LexisNexis, 2015

John Ferejohn

(co-author) Forged Through Fire: War, Peace, and the Democratic Bargain, Liveright, 2016

Continued on page 60



The Age of Criminality

Kim Taylor-Thompson advocates for a bright-line rule to keep juvenile offenders out of adult courts.

s a public defender in Washington, DC, in the 1980s and early '90s, Professor of Clinical Law Kim Taylor-Thompson represented children and teenagers in the juvenile delinquency system. At the time, she says, it was unusual for children to be waived into the adult system. But it has since become common; today, more than 200,000 people under the age of 18 are prosecuted as adults every year. In "Minority Rule: Redefining the Age of Criminality," published in the 2014 NYU Review of Law & Social Change, Taylor-Thompson explores the problems with

to misunderstand the developmental stage during which this individual is committing these offenses."

There is also racial disparity among arrestees and those transferred into the adult system. African Americans ages 10-17 make up 15 percent of their age group nationally, but make up 25 percent of juvenile arrestees and 60 percent of waivers to the adult criminal court.

The US criminal justice system's treatment of youth has not always been this severe. In fact, the US juvenile courts, Taylor-Thompson writes, emerged in the late 19th century in reaction to a blurring of



trying young people as adults in criminal courts and argues for a bright-line rule preventing anyone under the age of 17 from being transferred out of the juvenile system.

In the United States, the guidelines for the prosecution of young defendants vary state by state. In Vermont and Wisconsin, a child as young as 10 can

be transferred to criminal court for trial as an adult. The criminal justice system is the only area of the law that fails to recognize the distinction between children and adults, Taylor-Thompson argues. "If you look at any

other part of the law, we recognize that kids are different," she says. "Kids can't buy liquor; they can't vote; they can't drive."

Drawing on her work as a member of the Mac-Arthur Foundation Research Network on Law and Neuroscience, Taylor-Thompson argues that teenagers do not have fully developed adult minds. The brain's prefrontal cortex, which is responsible for executive functioning, is still developing "well into your 20s," Taylor-Thompson says. "To treat the child as someone who is beyond redemption and is as culpable as an adult, and is not amenable to rehabilitation, is really

the lines between child and adult as children entered the labor force. The first juvenile court was developed in Chicago in 1899, and by 1928 all but two other states had created courts that exercised jurisdiction over people under the age of 18. As violent crime increased in the 1980s, however, a new attitude of teenagers as "super predators" became prevalent, Taylor-Thompson says.

In the past few years, Taylor-Thompson has seen hopeful signs that the nation may be beginning

to reexamine the issue of juveniles in the criminal justice system.

Although New York and North Carolina still automatically prosecute anyone over the age of 15 as an adult, in the past eight years, 23 states have made legislative changes to reduce the transfer of juvenile defendants into adult courts and correctional facili-

> ties. And the Supreme Court, in Roper v. Simmons, Graham v. Florida, and Miller v. Alabama, recognized that child status matters when youth are facing capital punishment and life imprisonment without parole. For

Taylor-Thompson, though, the court has not gone far enough. "There are still all of these states that say there is no floor in terms of how old you have to be to be waived into the adult court."

"The prosecution of very young children as adults cannot sensibly be reconciled with the constitutional obligation to consider child status," Taylor-Thompson writes in her article. "Child status matters. The time has arrived for criminal justice to reflect that reality."
Rachel Burns

VIDEO ONLINE

"If vou look at anv

other part of the law,

we recognize that

kids are different."

Putting Politics Back Into Political Theory

BEREMY WALDRON

political

political

theory

In his latest book, Jeremy Waldron argues for the importance of focusing on real-world institutions.

t's sometimes difficult to be philosophical about the down-and-dirty milieu of political institutions—but University Professor Jeremy Waldron is urging that we try.

Waldron's new book, *Political Political Theory: Essays on Institutions*, originated in his belief that political theory in recent years has paid insufficient mind to structural, constitutional, and political issues. Although some might say the gears and levers of political institutions are best left to politi-

cal scientists, Waldron makes the case that normative political theorists play an equally important role.

He suggests that, ever since John Rawls's seminal 1971 work *A Theory of Justice* rejuvenated the field of political theory with its attempt to reconcile freedom and equality, philosophers have focused increasingly on higher ideals to the neglect of institutional questions. "Even if our main preoccu-

pation remains with justice, liberty, security, and equality," Waldron writes, "we still need to complement that work with an understanding of the mechanisms through which these ideals—these ends of life—will be pursued."

While Waldron believes that American political philosophers have strayed from the machinery of politics, he feels that their United Kingdom counterparts have done so to an even greater extent. The recent history of dramatic institutional change in the UK—including the creation of the Supreme Court of the United Kingdom and the devolution of power to Scotland, Ireland, and Wales—was, he thought, not being addressed in philosophy curricula.

"All the time there were intense controversies about all these things, and none of it was being taught in political theory classes," says Waldron. "People were not learning how to think about these really important issues." The subjects of the book's essays range widely: a skeptical view of constitutionalism; separation of powers and the rule of law; bicameralism; representative lawmaking; legislative principles; accountability; and Hannah Arendt's constitutional politics.

Out of all the pieces collected in the book, Waldron's critique of judicial review, he says, has attracted the most attention—and resistance—since its initial journal publication: "It's a minority position, and it criticizes a practice and an institution

that's very close to the hearts of many American scholars."

Waldron's thoughts on this topic have been a particular "lightning rod," he says, in places like Canada, Germany, and New Zealand, where "they see it as a critique of their aspiration to have a more robust form of judicial review." Such arguments have also gained traction in the United States, Waldron adds, as prominent scholars, such as Mark

Tushnet of Harvard Law School, have written about a populist framework that reclaims power from the courts to make constitutional determinations. Coupled with Waldron's chapter on baremajority court decisions, the critique of judicial review became particularly timely after Justice Antonin Scalia's death left the Supreme Court facing potential deadlocks.

Other essays taking on greater relevance in this presidential election year include one on loyal opposition. "We're in danger at the moment of having one of the parties implode, torn apart by factionalism and infighting," says Waldron. "Even those who think the Democrats are wonderful ought not to be relishing the decay of the other party. They ought to be hoping for good, responsible leadership and plausible candidates to emerge." Atticus Gannaway

Immigration Impossible

o-Director of the Immigrant Rights Clinic (IRC) and Professor of Clinical Law Nancy Morawetz '81 has authored two recent papers challenging false assumptions about the US immigration system.

In "Convenient Facts: Nken v. Holder, the Solicitor General, and the Presentation of Internal Government Facts," Morawetz considers the case of IRC client David Gerbier. Deported to Haiti in 2000, Gerbier won his deportation case two years later. However, seven years on, he was still fighting to return to the US. Meanwhile, the Office of the Solicitor General (OSG) had informed the Supreme Court in Nkenv. Holder (2009) that the government returned to the US individuals who subsequently won their deportation cases, a representation on which the court relied when it wrote that deportation is not an "irreparable harm." The IRC led Freedom of Information Act litigation that unearthed government e-mails showing there was no factual basis for the OSG's claim. The clinic also facilitated Gerbier's return.

In "Immigration Law and the Myth of Comprehensive Registration," Morawetz collaborated with former clinic student Natasha Fernández-Silber '13 to investigate the widespread misconception that all noncitizens in the US must carry proof of registration and be ready to "show their papers."

Federal law explicitly requires all aliens who have registered under the Alien Registration Act of 1940 to carry their registration receipt



card, even though registered aliens often receive no papers. Morawetz and her co-author argue that the language of the statute is vestigial. "The whole system has largely been dismantled," Morawetz says, "but the law was left on the books."

In Arizona v. United States (2012), the Supreme Court upheld the "stop and verify" clause of an Arizona statute requiring police to request papers and check the immigration status of anyone stopped on suspicion of having committed a crime. Morawetz and Fernández-Silber opposed the statute in an amicus brief. After the ruling, they collaborated on the paper.

"Even though it is an uphill battle, it is a battle that simply has to continue," says Morawetz. □

Housing in Order

Roderick Hills Jr. proposes comprehensive planning to fight "NIMBYism" and increase affordable housing.

A fundamental obstacle to solving the affordable housing crisis in New York and other American cities is reconciling the interests of neighbors with the interests of

the larger community. Roderick Hills Jr., William T. Comfort, III Professor of Law, looks at this issue in his latest paper, "Planning an Affordable City" (*lowa Law Review*, 2015), co-authored with David Schleicher.

Because developers in most cities must bargain parcel by parcel with each neighborhood, its community board, and its city council member, "Not in My

Backyard" or "NIMBY" politics rule the process, say Hills and Schleicher. The only way to avoid this, they argue, is to spread affordable housing simultaneously across all neighborhoods in one comprehensive plan.

"Fewer developers are capable of proposing projects, especially smaller projects, because they just don't want to hire expensive lobbyists and engage in a lot of massaging of the political process," Hills says. Hills and Schleicher refer to the prevailing piecemeal process as the "zoning bazaar," and they say it imposes a high cost of information on real estate developers.

If cities instead adopt comprehensive citywide plans,

Hills says, they increase transparency in the zoning process and allow more developers to get involved. Hills and Schleicher also argue that the mayor of a city, rather than the city council, is in the best position to execute these plans.

Hills says he is examining current housing plans in New York City as a test of his theory, citing Mayor Bill de Blasio's citywide rezoning efforts. The

de Blasio administration's success in ratifying its citywide housing program provides anecdotal support for Hills and Schleicher's theory.

When it comes to city planning, Hills says, "One mayor will do a better job [than many council members], because there's only one of him and he knows his reputation turns on making the city as a whole better."

VIDEO ONLINE

Doubly Condemned

Alina Das '05 seeks fairness for convicted criminals in the immigration system.

s Immigrant Rights Clinic co-director since 2011, Alina Das '05 has spotted a certain pattern repeatedly: clients with criminal convictions, even if minor, are punished a second time in the immigration system, and often harshly. Drawing on casework, the associate professor of clinical law published articles demonstrating biases in cases of mandatory detention and deportation and suggested correctives. Since 2013 her work has been cited five times in two US Supreme Court decisions.

In an article in the 2011 NYU Law Review, Das argued immigration officials were using erroneous methods to assess whether a person's criminal record will require deportation. She found that immigration adjudicators were effectively retrying cases, often years after the fact. They based immigration penalties on the findings in police reports or other documents that may not have been the basis of a person's conviction, and assumed maximum conduct.

Das wrote that immigration officials should limit themselves to the criminal record and adhere to the categorical approach, which bases immigration penalties on the minimum conduct that could give rise to a conviction. In Moncrieffe v. Holder-a case involving a minor drug trafficking conviction triggering mandatory deportation-the Supreme Court ruled in April 2013 that the categorical approach is the appropriate one, citing Das's scholarship in the

majority opinion. In Mellouli v. Lynch, a case that also focused on the categorical approach, the Supreme Court again cited Das's article multiple times in the June 2015 ruling.

In more recent work, Das has argued that the United States has overstepped in its use of mandatory detention. With the passage of the Antiterrorism and Effective Death Penalty Act, many types of criminal convictions made noncitizens subject to mandatory detention. In

2013, nearly 441,000 immigrants were detained, according to the US Department of Homeland Security. In a 2015 NYU Law Review article, Das argued the federal courts should play a robust role in reviewing the interpretation of

immigration detention laws.

VIDEO ONLINE

A common thread in all of Das's casework and scholarship is an effort to counter the notion that certain individuals are deserving of the worst consequences, without due process. "This rhetoric of criminality," says Das, "ends up justifying the worst of our laws and the worst of the penalties." □

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Stricter Scrutiny

Samuel Rascoff sparks debate with his argument for greater presidential oversight of intelligence gathering.

PROFESSORIAL PUBLICATIONS

Continued from page 55

Franco Ferrari

(co-editor) Cross-Border Litigation in Europe: The Brussels I Recast Regulation as a Panacea?, CEDAM, 2016

Eleanor Fox '61

(co-editor) *The Economic Characteristics of Developing Jurisdictions: Their Implications for Competition Law*, Edward Elgar, 2015

Clayton Gillette

Advanced Introduction to International Sales Law, Edward Elgar, 2016

Martin Guggenheim '71

(co-author) Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders, American Bar Association, 2015

Sally Engle Merry

The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking, University of Chicago Press, 2016

William Nelson '65

The Common Law in Colonial America, Volume III: The Chesapeake and New England, 1660–1750, Oxford University Press, 2016

Continued on page 64

hen the Harvard Law Review invites three separate online critiques of an article to be published at the same time as the article itself, it's a safe bet that the piece in question is provocative. Professor Samuel Rascoff indeed made waves with the publication of "Presidential

Intelligence" in January—as he had anticipated.

Rascoff's basic premise is simple: The president of the United States should exercise greater authority over intelligence collection, similarly to how the commander-in-chief already maintains direct oversight of other intelligence activities by monitoring covert actions and consuming intelligence analysis in daily briefings. But Rascoff's proposal is more radical than it might initially sound.

"Presidential Intelligence" owes its origins largely to Edward Snowden. In the messy aftermath of Snowden's leaking of thousands of classified National Security Agency documents, Rascoff observed the widespread repercussions—in particular, the incurred wrath of foreign allies, domestic technology firms, and the American public—and decided that the crisis was a game changer. His argument was bolstered seven months later when the White House issued Presidential Policy Directive 28, which gave the executive branch the authority to "review decisions about intelligence priorities and sensitive targets on an annual basis so that [intelligence agencies'] actions are regularly scrutinized by [the president's] senior national security team."

Rascoff observes that previous intelligencecollection scandals had been scarce and limited to discrete surveillance incidents—most famously, Watergate. But the Snowden affair demonstrated on a massive scale the pitfalls of rapidly advancing collection methods. "The real pressure is coming from an expectation that there is going to be a new normal in intelligence," explains Rascoff, "and that technology, ideology, and a commitment to transparency among people who are going to end up working in the NSA—like Snowden—are going to change the way that intelligence operates, generating essentially predictable scandals of intelligence collection."

Rascoff distinguishes between government interaction with the traditional business sector and the drastically different dynamic that exists with Big Tech. "What's complicating about this domain is that you have major economic powers like Google and



Facebook and Microsoft and, to an extent, the telecommunications firms. That's a lot of American economic might, and that economic might is very misaligned right now with American national security power."

Rascoff previously served as a special assistant with the Coalition Provisional Authority in Iraq before

becoming director of intelligence analysis for the New York City Police Department. He knows better than most that his argument inevitably raises hackles in an intelligence community that has enjoyed considerable autonomy in spying, particularly his suggestion that intelligence collection be "politicized."

"We've been very accustomed to thinking, after the fiasco of WMDs in Iraq, of politicization of intelligence as dangerous," says Rascoff. Rather than the sort of politicization that was implemented to garner support for Operation Iraqi Freedom, Rascoff suggests that intelligence collection functions better when the executive branch makes judgment calls with its own political accountability in mind. "Politics' stands in for 'judgment,' for understanding the disparate costs and benefits far afield of what you're seeing in a more narrow, technocratic silo," says Rascoff.

Not everyone agrees. The three national security law experts who authored the critiques posted online include Columbia Law School professor Philip Bobbitt; Carrie Cordero, an adjunct professor at Georgetown University Law Center; and Stephen Slick, director of the Intelligence Studies Project at the University of Texas at Austin. In Rascoff's online response to his critics, he writes, "We agree that greater transparency is not necessarily an unvarnished good. (Championing presidential intelligence is not the same as championing the circumstances that catalyzed it or that make it necessary.) But [transparency] is a trend that will inevitably continue to redefine intelligence practice in the coming years and decades."

Pushback from the intelligence community, he adds, is as it should be. "We're asking too much of the spies to self-regulate when we simultaneously want them to be pushing the envelope," says Rascoff. "Let the application of the brakes come from the executive branch that has the macrocosmic view of intelligence, that sees intelligence but also sees the tech firms, the allies, both costs and benefits." Atticus Gannaway

A Hierarchy of Equalities

Gráinne de Búrca examines how the European Court of Justice is dealing with anti-discrimination laws.

he European Court of Justice (CJEU) traditionally has been viewed as an institution in the vanguard of the development of antidiscrimination law, particularly with regard to gender equality, which has been part of EU law since 1957. In 2000, the EU enacted new anti-discrimination laws with respect to age, race, disability, sexual orientation, and religion. In ongoing research, Gráinne de Búrca, Florence Ellinwood Allen Professor of Law,

is examining the cases invoking this legislation before the CJEU, questioning why there has been relatively little litigation, why it has been strikingly uneven across different grounds of discrimination, and whether the court has become increasingly cautious in its anti-discrimination rulings.

"I was curious to find out what had happened in relation to these laws, which had initially been controversial and took some time to be adopted," de Búrca says. "As lawyers examining the impact of a new

law, we often ask, has there been litigation? Because litigation can indicate either resistance to the law or use being made of the law."

De Búrca has found significant disparities in the amount of litigation arising before the EU Court, depending on the type of discrimination. While between 20 and 30 age discrimination cases have come before the CJEU since 2000, there have been fewer than 10 cases concerning discrimination based on disability, fewer still on sexual orientation, and only four on race, and the first two cases alleging religious discrimination are currently pending before the Court of Justice.

How might the uneven volume of litigation be explained? One possible reason may be related to what de Búrca describes as the "hierarchy of equalities" within EU anti-discrimination law. While the original gender equality rule (an equal pay rule) in EU law was "directly effective," meaning it became law in all EU member states without needing transposition into domestic law, the newer antidiscrimination laws had to be enacted by each of the EU member states. Many states delayed implementing the laws or enacted them only partially.

There also may be gaps or weaknesses in the laws themselves. In the area of race discrimination, for example, one possible partial explanation for the paucity of case law may be that the EU Directive prohibits discrimination on grounds of racial or ethnic origin, but allows discrimination on the ground that the person is not an EU member state national. Hence the likely impact of the law is weakened by the fact that race discrimination in the EU context is often manifested in discrimination against migrants from outside the EU.

Another possible reason is that there is greater caution about addressing divisive social issues through law in the wake of the EU's economic crisis and the growing popular distrust of EU



institutions. "Citizen confidence in the EU has been very shaken by the Euro crisis and its aftermath, and by the perception that the EU is driving policies of austerity which create harsh social conditions," de Búrca says. "Could it be that the court is more tentative about its development of the law because all of the EU institutions are currently under scrutiny? Or might the opposite be true—that the court feels it could do something here to counter the EU's austerity image and to advance social equality?"

She has been researching anti-discrimination cases moving through member states' national courts to investigate whether the reason for fewer

and more tentative rulings on EU antidiscrimination law might be found at the domestic level. De Búrca has been examining the incidence of domestic anti-discrimination litigation to see

whether there are cases raising issues of EU law that are not being referred by national courts to the CJEU. She has thus far examined the UK, France, Belgium, Greece, Cyprus, Austria, and Germany. "Germany, for example, has been strongly resisting a new proposed European anti-discrimination law because the state is skeptical about the prospect of interfering with the freedom of employers and businesses through further anti-discrimination legislation at EU level," says de Búrca. *Rachel Burns*

VIDEO ONLINE

"Litigation can indicate either resistance to the law or use being made of the law."

Adverse Reaction

Professors find fatal flaws in a body of work on takeovers and corporate governance.

n an article in the March 2016 *Stanford Law Review*, Professors Emiliano Catan LLM '10 and Marcel Kahan shine a bright light on a body of empirical work that examines one of the most central questions in corporate governance: How does the threat of takeovers shape the behavior of company managers? What's revealed in the glare of Catan and Kahan's scrutiny isn't pretty. The studies, they say, are based on a fundamental misunderstanding of the legal landscape in which corporations operate and raise broader questions about scholarship at the intersection of law and finance.

For years, finance academics have been churning out papers describing the effects that state statutes designed to protect corporations from hostile takeovers have on management. In study after study, they have found that the presence, absence, or varying levels of protection of these laws affect things such as a company's overall performance, executive pay, worker wages, innovation, and more. The analyses don't always agree. One paper, for example, concludes that antitakeover statutes led to a drop in the value of bonds issued by firms subject to the statutes, while another concludes that the adoption of those statutes is associated with an increase in the value of bonds.

In "The Law and Finance of Anti-Takeover Statutes," Catan

and Kahan call into doubt nearly all of the studies' findings. Finance scholars, they write, have been "barking up the wrong tree" with their focus on antitakeover statutes. Not only are the laws ineffective for defeating raiders, they are also essentially irrelevant to the vast majority of corporations, because they can deploy a much more powerful tool to thwart hostile bids: the poison pill.

Catan

Also known as shareholder rights plans, poison pills were the brainchild of one of NYU Law's most illustrious graduates: Martin Lipton '55, co-founder of Wachtell, Lipton, Rosen & Katz, a firm that has made its reputation in part by defending companies against hostile takeovers. When triggered, poison pills give existing shareholders the right to acquire large quantities of company stock at a steep discount, thereby diluting a hostile bidder's holdings and making an acquisition prohibitively costly. They are, Catan and Kahan write, "the takeover defense that really matters."

Catan received his PhD in economics from NYU in 2014, the same year he joined the Law School faculty, and is fast developing a reputation as an innovative empiricist who calls into question conventional wisdom. Crusaders against active poison pills, for instance, point to studies saying they depress firm value, but Catan's research is punching holes in those claims. Kahan, George T. Lowy Professor of Law, has long been a leading scholar of corporate governance

> and deal making. *Corporate Practice Commentator* has selected 19 of his articles as among the best on corporate and securities law.

> When they began hearing from their business school colleagues about studies on the impact of anti-takeover statutes, the two professors were perplexed. "From the perspective of a corporate mergers and acquisitions lawyer," Kahan says, "anti-takeover statutes matter very, very little, if at all." One might then wonder how finance scholars found so much empirical evidence of their effect. After conducting their own detailed analysis of huge amounts of data, Catan and Kahan address this in their paper as well. The finance studies, they found, were replete with methodological flaws, omission of important control vari-

ables, miscoding, and selection bias.

The fact that so many academics found themselves pursuing this specious line of inquiry in the first place, Catan and Kahan say, points to a bigger issue in the relationship between law and empirical economics. "The underlying problem in the studies of anti-takeover statutes—that empiricists have a readily available explanatory variable for use in their regressions, but do not pay much attention to why and how this variable would matter—is not unique," they write. Finance scholars, they note, need a better understanding of how law and legal institutions work.

"To put it more bluntly," they conclude, "it is high time for finance scholars to pay more attention to the 'law' in 'law and finance." \Box *Michael Orey*





Driven by Reputation

Katherine Strandburg investigates why physicians don't patent medical procedures—and what that means for patent law.

atenting has expanded in the United States, and awards for related lawsuits have increased significantly. But one area of innovation has lagged behind expectations—medical procedures. Although physicians patent their medical device innovations, they elect not to patent their medical procedure innovations. Katherine Strandburg, intellectual property scholar and Alfred B. Engelberg Professor of Law, recently examined medical history to find out why.

Strandburg studied two iconic patent cases, one involving the invention of ether anesthesia in

the mid-19th century and a second involving a cataract surgery procedure in the 1990s. Her research revealed that the medical profession is driven by reputation and maintains an ethical norm of sharing procedure innovations. In "Legal but

Unacceptable," a chapter in *Intellectual Property at the Edge* (Cambridge University Press, 2014), and "Derogatory to Professional Character?," a chapter in *Creativity Without Law* (NYU Press, forthcoming), Strandburg stakes out a controversial position in favor of broadening patent law exemptions.

When it comes to medical procedures, physicians are "user innovators"—people who invent things for their own use rather than to license or sell, says Strandburg. Physicians invent medical procedures to improve their ability to practice medicine and to serve their patients. They share their inventions with other doctors in exchange for scientific credit and professional reputation. Physicians benefit mutually from free access to procedural innovations in the pool.

Strandburg dug into the American Medical Association's archives to trace the history of medical procedure patenting. In 1846, William Morton, a dentist, and Charles Jackson, a Harvard lecturer, collaborated in the first use of ether as anesthesia for a tooth extraction and jointly applied for a patent for the invention. Jackson primarily wanted scientific credit, in line with his profession's ethical norm of sharing inventions. Morton, however, commercialized the discovery by charging for licenses and even sued the New York Eye Infirmary for patent infringement, thus alienating the medical community. At the patent infringement trial in 1862, the court invalidated the patent and famously ruled that natural phenomena are not patentable.

Strandburg also looked at the 1990s dispute between Samuel Pallin, an eye surgeon who patented an improvement to a sutureless cataract surgery technique, and Jack Singer, a surgeon who refused to pay Pallin's royalty. Singer galvanized the medical

"We should think about this more from the perspective of social institutions and social structures."

community against procedure patents; physicians lobbied Congress to exclude medical procedures from patentable subject matter. Although the effort failed, Congress did eliminate remedies, including injunctive relief, against physicians for

infringing pure procedural patents.

This user-innovation model in medical patenting has altered Strandburg's view of patent law. Just as there is the fair use exception in copyright law, so should there be exemptions in patent law, she says. Patents are intended to promote innovation, but they also raise prices and bring other social costs. Strandburg favors exemptions when sufficient innovation exists without patents, taking social context into account. "I'm arguing that we should think about this more from the perspective of social institutions and social structures," Strandburg says. "It's not just individuals. People do their inventing in social contexts."

Because physicians are motivated to invent procedures for their own use and, as a group, have developed community norms for sharing those inventions, medical procedures would probably be better off without patents, says Strandburg. "Most groups of inventors want patents. If you have a group of people saying 'Don't give us patents,' it's worth taking that seriously." *Michelle Tsai*

Finding a Place to Sue

Linda Silberman tracks the evolving, and often confusing, Supreme Court decisions on jurisdiction.

PROFESSORIAL PUBLICATIONS

Continued from page 60

Richard Revesz

(co-author) *Struggling for Air: Power Plants and the "War on Coal,*" Oxford University Press, 2016

David Richards

Why Love Leads to Justice: Love Across the Boundaries, Cambridge University Press, 2015 It took the Supreme Court 100 years to officially bury *Pennoyer v. Neff*, its landmark ruling on jurisdiction. As a young law professor, Linda Silberman commemorated the moment in a 1978 article in the *NYU Law Review*, proclaiming "the end of an era."

Fast-forward to 2014 and the Supreme Court's dramatic ruling on jurisdiction in *Daimler AG v. Bauman*. It prompted Silberman, now Martin Lipton Professor of Law, to write an article entitled "The End of Another Era: Reflections on *Daimler* and Its Implications for Judicial Jurisdiction in the United States," in a 2015 issue of *Lewis & Clark Law Review*. "These dramatic jurisdictional changes have bracketed my career," observes Silberman.

Prior to *Daimler* (and *Goodyear Dunlop Tires v. Brown*, a 2011 ruling), under the concept of general jurisdiction, a plaintiff could bring claims that are unrelated to the defendant's activity in a given forum. But in *Daimler*, for general jurisdiction, the court held a corporation may be sued only "at home," which it defined as its place of incorporation or principal place of business. Silberman argues

in "End of Another Era" that, in *Daimler*, the



court went too far. That's because in recent rulings the justices have also narrowed opportunities for plaintiffs to sue even in forums where the alleged wrongs do take place (specific jurisdictions). She points to a 2011 decision holding that a New Jersey employee injured by a machine in New Jersey could not sue the machine's English manufacturer, even though the manufacturer's distributor had sold that very machine to the employer in New Jersey.

In light of several post-*Daimler* decisions in the lower courts, Silberman also worries that the Supreme Court overlooked the potential impact of *Daimler* on actions to enforce foreign-country judgments and arbitral awards. She and Aaron Simowitz, an NYU Law research fellow and former Lawyering professor, examine that issue in the May 2016 *NYULaw Review*.

Collective Living

In his new book, David Garland asserts the necessity of the welfare state.



David Garland, Arthur T. Vanderbilt Professor of Law, has authored a series of award-winning books on crime and punishment. Now, Garland takes on the welfare state with *The Welfare State: A Very Short Introduction*, his entry to the best-selling Oxford University Press pocket series. He recently sat down for an interview on the topic.

This interview has been edited and condensed.

841 A

Did Oxford approach you to write this book? I proposed it. I was very much a product of the welfare state growing up in Scotland in the 1960s. I wanted to reflect on what that welfare state was and the form in which it continues today. I knew I could write an argument that was provocative, but well grounded.

Is the "provocative" your assertion that the welfare state is an essential feature in a modern society? Exactly. We often talk, especially in the United States, as if the welfare state were some kind of big-government aberration that a really authentic American political system would undo.

Welfare states vary, but the involvement of government in regulating the economy, providing economic security for workers, and ensuring social provision and social rights for the population as a whole is a characteristic of all developed societies.

You examine welfare states in Sweden, Germany, the United Kingdom, and the United States. Where does the United States fit in? Inequality and child poverty in this country are much greater, and levels of social mobility are now lower than elsewhere in the developed world.

America has ceased to be a country in which the American Dream operates on any large scale because we have an economic system where the returns are unequally distributed between capital and labor.

Ultimately, is this book optimistic? The book's message is a very positive one. Rational, collective life has to be based on doing the right thing. My book reminds us of the moral elements of collective life that market economics sometimes makes us forget.

VIDEO ONLINE

How to Tax the Rich

Plenty of people call for increasing taxes on the wealthy. David Kamin looks at how to do it effectively.

n the ongoing national debate over income inequality, policymakers have clashed over how to combat the widening gap between the rich and poor. Associate Professor David Kamin '09, who previously served in President Obama's administration as special assistant to the president for economic policy, thinks the solution is tax reform.

"Our fiscal system is an incredibly powerful tool," says Kamin. "And some of the most important ques-

tions I'm interested in as an academic and as a citizen get answered by how we make our fiscal decisions-the process and substance of that." Kamin favors increasing taxes on the wealthy, not merely because of inequality, but also because the United States faces longterm fiscal shortfalls-the result of an aging population, rising health care costs, and investment needs in areas

such as infrastructure and education. "Given the trend of income growth over the last three decades, where it's been so concentrated at the top, there is good reason to try to seek more revenue from some of those with the highest incomes," he says.

In a paper published last year in Tax Notes titled "How to Tax the Rich," Kamin parts ways with those who say this should be done simply by increasing the



capital gains tax rate on sales of stock, real estate, and other capital assets. The wealthy are likely to respond, he argues, by holding onto these assets

until they die. Their heirs would then get a steppedup basis (valuing the assets at the time they receive them) that effectively wipes out taxes on gains during the original owner's lifetime.

Instead, Kamin would like to see taxes on bequests and gifts of property increased substantially over what is currently collected by gift and estate taxes. Potential revenue gains, he calculates, could total at least \$40 billion per year. And because people would no longer have an incentive to hold on to assets until death-the so-called "lock-in" effect-the market would gain efficiency as people sell their assets when it makes the most business



sense to do so.

Kamin has also examined inequality from the opposite end of the income spectrum. In a 2013 article published in Tax Law Review, "Reducing Poverty, Not Inequality: What Changes in the Tax System Can Achieve," Kamin showed how tax policy has shifted over the past 30 years from contributing to poverty (through excessive tax burdens) to reducing it.

"With a given amount of support to low-income families, you raised their incomes quite a bit in percentage terms," says Kamin. "Raising someone above the poverty line is hugely important for that family, and it doesn't take a lot of dollars to do that."

Kamin acknowledges that efforts to combat inequality should include other policy tools, such as addressing the increased concentration in many industries, which may be generating abnormally large profits for firms with market power, and implementing regulations that target unfair practices on Wall Street. "The kinds of changes you need in the tax system to address the broad problem of rising inequality," Kamin says, "turn out to be very large-larger than anything we've had on the table." D Michelle Tsai

And the Winner Is...

AWARD-WINNING 2015–16 SCHOLARSHIP BY FACULTY AND STUDENTS

Kenji Yoshino

Speak Now: Marriage Equality on Trial Winner, 2016 Silver Gavel Award for Media and the Arts (American Bar Association) Winner, 2016 Stonewall Book Award—Israel Fishman Non-Fiction Award (American Library Association's Gay, Lesbian, Bisexual, and Transgender Round Table)

Ross Campbell '16

"3-D Printing and the **Regulatory Future of** Home Remedies: Pharma to Table" Winner, 2016 National Law Review Law Student Writing Competition

Luis Inaraja Vera '16

"Compelled Costs Under **CERCLA:** Incompatible Remedies, Joint-and-Several Liability, and Tort Law" Winner, 2015 White **River Environmental** Law Writing Competition (Vermont Journal of Environmental Law and Vermont Law School)

Dueling Legacies

Peggy Cooper Davis examines the history of the conflict between individual rights and the Confederate narrative at the Supreme Court.



n her scholarship and teaching, Peggy Cooper Davis, John S. R. Shad Professor of Lawyering and Ethics, considers the centrality of narrative to the development of law. Her working paper, "The Persistence of the Confederate Narrative," coauthored with Howard University School of Law professor Aderson Francois '91 and University of

Baltimore School of Law professor Colin Starger, traces two conflicting legal narratives that have emerged over the course of American history: a Confederate story about the protection of local sovereignty and a "people's" story about national protection of human and civil rights.

"With the end of slavery and the drafting of the Reconstruction

Amendments, there was an intention to give the national government authority to enforce basic human rights. And we believe that that's been stymied by the Confederate narrative," Davis says. "There is a way of thinking, with deep origins in the

"There is a way of thinking, with deep origins in the support of slavery and in Confederate secession, that continues to prevent the federal government from protecting fundamental human rights." support of slavery and in Confederate secession, that continues to prevent the federal government from protecting fundamental human rights."

With Francois and Starger, Davis describes a series of post-Reconstruction Supreme Court decisions that reasserted the Confederate narrative. One is *United States v. Cruikshank*, in which the federal government attempted to prosecute those responsible for the Colfax massacre. In Louisiana's 1872 gubernatorial election, two candidates had declared victory, and each party attempted to make judicial appointments. When a group of 300 freedmen gathered in the Colfax, Louisiana, courthouse to support the Republican appointees, a mob of white men on horseback set fire to the building and killed those inside.

The federal government charged members of that mob with civil rights violations under Reconstruction enforcement statutes, but the court held the prosecutions unconstitutional, determining that it was states that had authority to police civil rights violations by individuals. Subsequent rulings continued to assert what Davis and her co-authors call the *Cruikshank* Creed, but, Davis notes, "The people's narrative was also being sounded, most notably in dissents of Justice John Marshall Harlan."

Drawing on their collaboration with civil rights veteran Robert Parris Moses in seminars at NYU Law, Davis, Francois, and Starger argue that the 1960s civil rights movement was part of a continuing effort of African Americans to move from the status of constitutional property to constitutional personhood. Civil rights proponents saw the Reconstruction Amend-

> ments as guaranteeing a measure of inalienable rights and the Confederate narrative as a revisionist story undermining that guarantee. In response to violence against civil rights workers, the Supreme Court became guardedly more tolerant of federal enforcement of civil rights.

Davis notes, however, that in recent years the court has reverted

to versions of *Cruikshank*'s Confederate creed. For example, *Shelby County v. Holder* invalidated a portion of the Voting Rights Act as an unconstitutional infringement of state sovereignty. Although four justices dissented, Davis writes that they failed to sound the people's narrative. "The dissent failed to evoke the cruel lesson of slavery: that majoritarian political processes can yield results that violate human rights principles that bind us as a nation."

Despite the outcome in *Shelby County*, Davis is hopeful as the Supreme Court builds on decisions such as *Obergefell v. Hodges*, which relied on national civil rights authority to legalize same-sex marriage. "My most optimistic hope is that when there's a new appointment, the court will build on *Obergefell*'s recognition of federally enforceable human rights protections. Were that to happen, the court would find firm support in our historical narrative of the fall of slavery and the nationalization of civil rights." *Rachel Burns*



Proceedings

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US Supreme Court Justice Elena Kagan offered an NYU Law audience her perspective on recent developments at the court and presided over the final argument of the Orison S. Marden Moot Court Competition.

A Survey for Sotomayor

At the Law School, Justice Sonia Sotomayor reflects on civil juries and is honored by the Annual Survey of American Law.

n her visit to NYU Law last February, Associate Justice Sonia Sotomayor of the US Supreme Court did double duty, first engaging in a dialogue about civil jury trials, then receiving the glowing praise of some of her closest peers at the ceremony dedicating the 73rd volume of the *Annual Survey* of *American Law* to her.



At the start of a discussion between Sotomayor and Adjunct Professor Stephen Susman, executive director of the Law School's Civil Jury Project and a renowned trial attorney, Susman reminded the audi-

Sotomayor would compare her own views on the proper outcome of cases with her juries' verdicts. Virtually without exception, she said, her internal determinations matched theirs. ence of Sotomayor's uniqueness among current Supreme Court justices: she is the only one who has participated in a civil jury trial both as a lawyer and as a judge.

Sotomayor, an unabashed proponent of juries, has nearly two decades of experience with them: 13 years as a lawyer followed by six as a district judge. Sotomayor would compare her own views on the proper outcome of cases with

her juries' verdicts. Virtually without exception, she said, her internal determinations matched theirs.

During the *Annual Survey* dedication, four instrumental people from Sotomayor's life in the law delivered heartfelt encomiums, beginning with Chief Judge Robert Katzmann of the US Court of Appeals for the Second Circuit, who had served with her on that bench for a decade. Remarkably, he and Sotomayor, whom he called "a sister to me," had agreed on 100 percent of the 138 cases in which they were both involved.

Katzmann observed that "structure" has been a guiding principle for Sotomayor. "Law," he said, "with its myriad and vibrant connections to practical lives of human beings, spoke to her the way a song or piece of music can speak to us when we immediately recognize something that makes sense to us, and we feel it and know it in our bones."

Judge Guido Calabresi, another former Second Circuit colleague (and 2013 *Annual Survey* dedicatee), who taught Sotomayor and also fellow justices Samuel Alito and Clarence Thomas at Yale, spoke to Sotomayor's moral courage.

Despite being a young Latina out of her traditional element at an Ivy League law school, Calabresi recalled, Sotomayor did not hesitate to challenge conventional thinking in Calabresi's torts class.

This courage, he continued, did not flag when she ascended to the bench. Her refusal to tread cautiously as a district court judge imperiled her subsequent Second Circuit confirmation: "But Sonia had refused to let cautious careerism keep her from doing what she believed justice and law required."

Judge Deborah Batts of the US District Court for the Southern District of New York deemed herself and her fellow speakers part of "a very deep bench of Sotomayor fans." Batts segued from that sports metaphor into an account of one of Sotomayor's most famous cases. Sotomayor's preliminary injunction against Major League Baseball in 1995 ended a players' strike just one day before the start of the season, making her, in the later words of President Barack Obama, the woman who "saved baseball."

Dawn Cardi, founder and partner at Cardi & Edgar, was a Legal Aid attorney when she argued her first case, opposing New York County Assistant District Attorney Sonia Sotomayor. One of Sotomayor's biggest fears upon her Supreme Court confirmation, Cardi said, was being changed by power. Cardi insisted, however, that Sotomayor has never forgotten her humble Bronx roots.

Accepting the *Annual Survey* dedication, a visibly moved Sotomayor said that, beyond the obvious honor,



the most meaningful aspect of the experience was "the gift of palpably knowing, palpably feeling the love of friends whom I adore." □ Atticus Gannaway



The Judgment of the Junior Justice

During her NYU Law visit, Justice Elena Kagan provides an inside glimpse of a newly post-Scalia Supreme Court.

S Supreme Court Justice Elena Kagan's visit to NYU Law in April occurred during a crucial national moment for the court. The eight current justices faced the possibility of tie votes in some of their most contentious cases as the White House and the Senate engaged in a protracted battle over the nomination of a successor to Justice Antonin Scalia in a presidential election year.

Kagan engaged in a wide-ranging dialogue with Dean Trevor Morrison before a full house in Tishman Auditorium, then served as chief justice for

the final argument of the Orison S. Marden Moot Court Board Competition. She reflected on the loss of Scalia, who was a close friend of Kagan's despite their considerable jurisprudential differences.

"I just loved Justice Scalia, and I miss him every day," said Kagan. More significant, she added, "He was a big presence at argument, and trying to figure out argument in his absence is actually a little bit disconcerting, because there's such a hole where he used to be."

Beyond the personal loss, Kagan said, she and her fellow justices are dealing with the complications arising from an eight-member Court. "I think we always work hard to reach agreement, but I think we're especially concerned about that now. I will say there is a reason why courts do not typically

have even numbers of members."

In a lighter vein, Kagan described her experience of being the junior justice for the

past five and a half years. One of her duties as the newest member of the court is to answer the door during conference and hand off certain items to her colleagues.

"They forget their glasses," she explained. "They forget their cup of coffee. They forget their aspirin, which they discover in the middle of conference that they really need."

Later that afternoon, Kagan joined Judge Thomas Griffith of the US Court of Appeals for the District of Columbia Circuit and Judge William Fletcher of the

> US Court of Appeals for the Ninth Circuit to judge the Marden Moot Court final argument.

> Marden finalists Sean Stefanik '16 and Alexander Levine '16 argued for the petitioner, while Kevin Benish '16 and Gabriel Panek '17 represented the respondent. After a hard-fought moot and subsequent deliberation, the judges named Stefanik as Best Oralist, awarding him the honor for a second consecutive year. The panel's members then offered final thoughts as well as general praise.

Kagan had some practical advice: "What you have to understand is that the judges are asking the questions at the weakest links in your argument.... You have to really look at it as an opportunity to convince the judges otherwise." She also

> offered high compliments: "All your hard work and preparation showed, and we are very grateful to have been the recipients of it." □ Atticus Gannaway

Chief Concerns

Last November, NYU Law facilitated an event co-hosted by the Historical Society of the New York Courts and the Supreme Court **Historical Society** that brought Chief Justice John Roberts to campus to discuss Charles Evans Hughes, chief justice during the FDR administration. Observers noted similarities between Hughes, criticized by a liberal White House as well as fellow conservatives. and Roberts, who encountered blowback over both the upholding of Obamacare and more conservative-friendly opinions. Roberts, mum on his own difficulties, did suggest why Hughes may have commanded authority: "The beard helped. He looked like God."



PHOTOS ONLINE

"What you have to

understand is that

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weakest links in your

argument.... You have

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an opportunity to

convince the judges

otherwise."

US SUPREME COURT

JUSTICE ELENA KAGAN



Police + Public

Last November, the inaugural conference of NYU Law's Policing Project, headed by Professor Barry Friedman, drew some of the nation's leading and most innovative police officials to discuss ways to build trust between law enforcement and citizens. In three substantive sessions, participants focused on community engagement, how to measure success, and the challenges of involving the public in formulating "democratic rules" for policing. (See story on page 96 for more about Friedman and the Policing Project.)

Black Lives Matter Everywhere

ast September, the Center for Human Rights and Global Justice (CHRGJ) and the Bernstein Institute for Human Rights invited activists and lawyers to discuss how the Black Lives Matter movement may be better served by an international human rights framework as opposed to a civil rights one. Moderator Philip Alston, John Norton Pomeroy Professor of Law and the UN special rapporteur for extreme poverty and human rights, asked: For the Black Lives Matter movement, "how significant is the international component?"

Meena Jagannath, co-founder of the Community Justice Project (CJP) in Miami, illustrated how involving international bodies can deliver worthwhile results, however subtle. She shared the story of an 18-year-old tased to death by a Miami police officer. After making little headway in Florida, the CJP brought the case to the UN Committee Against Torture—a move that even drew a response from the Fraternal Order of Police, which also wrote to the committee. The Miami Beach Police Department subsequently revised its Taser policy. "The sense from the family and the people on the ground was that that was directly connected to the international pressure that they had been receiving," Jagannath said.

Gay McDougall, a member of the UN Committee on the Elimination of Racial Discrimination, pointed out that using an international human rights



framework allows lawyers and activists to directly address the larger social problems at hand, going beyond the civil rights enshrined in American law. "The important paradigm shift is that human rights includes economic and social rights, which here in the US are seen as, at best, aspirations," McDougall said. To believe that housing, food, clothing, and education "should be considered public goods that accrue to all of us because we are human, and the job of government is to make sure that our basic human needs are met—that's a transformative thought in the US context." □

Forging Agreement on Use of Force



In April, the Center on the Administration of Criminal Law's annual conference examined the roles of prosecutors, police, and the community in use-of-force cases. Two keynote speeches bookended the day: one from Vanita Gupta '01, head of the Justice Department's Civil Rights Division, and the other from Roy Austin Jr., deputy assistant to the president for the Office of Urban Affairs, Justice, and Opportunity at the White House Domestic Policy Council.

"People want to trust the police," said Gupta. "People need to trust the police. Decades of research show that fair and respectful treatment matters sometimes just as much as the ultimate result of one's interaction with police."

"We have to be able to be critical of policing and not have everyone think that we're anti-police," said Austin, "and we have to acknowledge at the same time that there's some really violent crime that's happening in our communities and not be anti-black or anti-brown."
Impressive FOLCS

10th-anniversary celebration of NYU Law's Forum on Law, Culture & Society (FOLCS) last fall featured a conversation between legal analyst Jeffrey Toobin and Thane Rosenbaum, director of FOLCS and a distinguished fellow at the Law School. What appeals to Toobin about covering law-related subjects, he said, is "the endless newness of the law."

FOLCS continued to draw an array of luminaries at the beginning of its second decade. In a postscreening discussion of *The Bonfire of the Vanities*,



Tom Wolfe recalled visiting Wall Street 25 years after publishing his novel: "All of the great masters of the universe are now little clerks behind

a bank of computers." During another event, former US Treasury Secretary Lawrence Summers, reflecting on what he had learned in government, said, "It seems to me the best economic policymakers are always engaged in a kind of reflective equilibrium between the political and the economic aspects."

Other discussions included famous NYPD whistleblower Frank Serpico; US Attorney Preet Bharara; actors Jesse Eisenberg, Paul Giamatti, and David Strathairn; French intellectual Bernard-Henri Lévy; and New York Giants Hall of Famer Harry Carson.



Odds-Defying Senator

At the Attorney General Robert Abrams '63 Public Service Lecture last September, US Senator Heidi Heitkamp of North Dakota urged students to be leaders for positive change. Heitkamp grew up at a time when few women were lawyers.

"People your whole life will tell you that you can't. Well, that just makes me more determined to do it." She did do it: studying law, serving as North Dakota's attorney general, overcoming breast cancer, and winning a Senate seat as a Democrat in a primarily Republican state.



The Civil Jury: Out?

US Senator Sheldon Whitehouse of Rhode Island capped off the inaugural conference of the Civil



Jury Project at NYU Law last fall with a potent entreaty to preserve the civil jury trial as a pillar of the American democratic system.

Since 2005, the rate of federal cases resolved by juries has been below 1 percent,

down from just over 5.5 percent in 1962. Whitehouse, who has served as both US attorney and attorney general in Rhode Island, criticized the Supreme Court for making it more difficult to jointly seek redress via class action and limiting the jury's ability to impose punitive damages. Above all, he stressed the civil jury trial's potential to rectify some of the excesses in today's post-*Citizens United* political climate.

"That tide of special interest money and influence comes to a crashing stop at the jury box. There, the merits of the case dictate the jury's decision," he said. "There, even the mighty corporation must stand equal before the law, even with the humble citizen it has injured."

Chuck Schumer Chats

US Senator Chuck Schumer of New York visited NYU Law in March at the invitation of the NYU Law Democrats student group. Schumer engaged with the broader Law School community in a timely discussion on the current state of politics and this year's election, as well as the effect of his legal education on his subsequent career.



PROCEEDINGS

Topical Punch

The Milbank Tweed Forum continues to draw some of the brightest minds from multiple disciplines to examine important issues affecting the field of law.

n 2015-16 the weekly Milbank Tweed Forum, a lunchtime panel series for the NYU Law community, focused on topics ranging from public corruption to caregiving to sexual assault on college campuses to free speech in academia.

said Slaughter, caregiving will remain a challenge for both men and women. "As long as we see this care problem as a women's issue," she said, "we are reinforcing the very problem we need to overcome." Several of this year's Forum discussions focused



on particular forms of inequality, an issue increasingly prominent in the national conversation. In a March Forum on how colleges should address on-campus sexual assaults, Professor Suzanne Goldberg of Columbia Law School described the context: "We are in a time where there is increasing attention to the conditions that give rise to injustice and harm."

That same month, a Forum

on campus speech inspired passionate debate about a different type of inequality. For Professor Jonathan Haidt of NYU's Stern School of Business, the proliferation of trigger warnings threatened academic freedom. Relating how a student had swiftly reported him to the administration for course content she found offensive. Haidt posed the risk

> starkly: "Did the most sensitive student in the class feel unsafe? If so, vou're accountable."

> Viviana Bonilla López '17 countered that content warnings signal the importance of encouraging historically marginalized viewpoints by creating a safe space for more inclusive dialogue. "The attempt is

to make students who are asking for those accommodations, students who are asking for accountability, seem weak," she said. "And I resent that. I don't think that it is a weakness to aspire to a society where we don't hurt each other."

For University Professor Jeremy Waldron, differing views were the nature of the academic beast. "You are preparing yourself for a lifetime of professional dealing with difficult topics," he said, "but the other side of it is that you deal with those topics as a professional-that is, with the obligations of civility and learning how to conduct yourself in relation to other people who have sensitivities and traumas that need to be respected." Not unlike, one could argue, the Forum itself.

Atticus Gannaway, Gina Rodriguez, and Michelle Tsai

A Right Turn?

At last October's Hayek Lecture, Douglas Ginsburg, senior judge of the DC Circuit, addressed an article by Harvard Law professors Cass Sunstein and Adrian Vermeule criticizing his circuit's alleged rightward shift. Ginsburg was not engaging in defense, he said, but simply reminding his critics that administrative law "emphasizes limited government, checks and balances, and a strong protection of individual rights."



Last October, Preet Bharara, US attorney for the Southern District of New York, discussed the role of his office in deterring public corruption as well as a recent blow to insider trading prosecutions.

In the political realm, Bharara's frank statements to the press about recent cases have stirred controversy. He stressed that in other instances,

such as promoting education or raising awareness of gang violence, the voices of prosecutors and district attorneys are welcome: "I don't, frankly, get why it's different in the public corruption context."

Bharara has also made waves for his dogged prosecution of insider trading, but the Supreme Court's denial of

cert in USv. Newman was a setback for his office. The US attorney theorized that the Second Circuit's gamechanging ruling meant the head of a major company could pass a tip to a friend or family member and claim it was merely a gift. "Is that how you get people to have confidence in the securities markets?" he asked.

Anne-Marie Slaughter, president and CEO of the New America think tank and a former highranking State Department official who sparked heated debate with her 2012 Atlantic essay, "Why Women Still Can't Have It All," visited in November to highlight the problem of caregiving.

Until we build an infrastructure of care in society so that we have paid maternity leave and paternity leave as well as access to quality child care,

"We are in a time" where there is *increasing attention* to the conditions that give rise to injustice and harm." SUZANNE GOLDBERG

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"Americans should

never believe, even

criminal activity

will go unpunished

simply because it was

committed on behalf

of a corporation."

SALLY QUILLIAN YATES

Laying Down the Law

n a major speech hosted by NYU Law's Program on Corporate Compliance and Enforcement (PCCE) last September, Deputy Attorney General Sally Quillian Yates outlined the reasoning behind the

Department of Justice's new policy on individual liability in instances of corporate wrongdoing.

The policy, which addresses calls for the Justice Department to pursue more prosecutions of corporate leaders whose malfeasance contributed heavily to the 2008 financial crisis, garnered a front-page New York Times story on the morning of Yates's speech. The audience for the

speech included a number of US attorneys from around the country and other high-ranking Justice Department officials.

While the DOJ has made headlines in the recent past for its criminal prosecutions of large corporations, individual culprits within companies have largely avoided punishment. Yates acknowledged

the difficulty of bringing specific executives to justice in organizations "where responsibility is often diffuse." Nevertheless, Yates said, "The public expects and demands this accountability.

Americans should never believe, even incorrectly, that one's criminal activity will go unpunished simply incorrectly, that one's because it was committed on behalf of a corporation."

Other recent high-profile PCCE events include a November discussion with Andrew Weissmann, chief of the Fraud Section in the Justice Department's Criminal Division, and Hui Chen, the Fraud Section's

compliance counsel; a roundtable in January with Justice Department officials Virginia Romano, Joyce Branda, and Sung-Hee Suh; and an April conference on corporate and individual liability for corporate misconduct in the aftermath of Yates's policy memo, featuring a keynote by David Green, director of the UK's Serious Fraud Office.

Man with a Tax Plan

Pascal Saint-Amans, director of the Organisation for Economic Co-operation and Development (OECD) Centre for Tax Policy and Administration. delivered the David R. **Tillinghast Lecture on** International Taxation last October only a week after issuing the OECD's much-anticipated final guidelines on base erosion and profit shifting. Saint-Amans provided useful insight into the historical background and architecture of a landmark plan for international tax cooperation and information exchange.



Latinos' Legal Strides

At the Latinos in the Law Lecture last March, Jenny Rivera'85, associate judge of the New York State Court



of Appeals, highlighted a sampling of court victories for Latino civil rights spanning decades. She also noted continuing challenges: The school of the average K-12 Latino student is 57 percent Latino and 25 percent African American.

"That is not to say that Latino students or students of color cannot learn in a school that is majority black or Latino," Rivera said. The point, she said, is that the opportunities available in segregated environments typically don't match up to those in non-segregated environments.

Price of Admission

In this year's Korematsu Lecture, Judge Pamela Chen of the US District Court for the Eastern District



of New York focused on raceconsciousness in school admissions and the evolving debate over the issue within the Asian Pacific American (APA) community. "At one end, there are those

who believe that consideration of

race in school admissions has resulted in APA students being denied admission to elite schools solely because they are overrepresented," Chen said. "Then there are those who believe that... the APA community has a moral obligation to support programs that benefit other minority communities."

Making Bail Fair

At the 22nd annual Brennan Lecture, DC Court of Appeals Chief Judge Eric Washington focused on individuals facing criminal charges who cannot post bail. Such defendants are likelier to be found guilty, be incarcerated, receive a longer sentence, and even plead guilty simply to go home: "Today, those individuals are disproportionately people of color who have been arrested for nonviolent and/or quality-of-life crimes and are primarily low-level, low-risk individuals."



A Treasured Time in Government Service

hristopher Meade '96, general counsel and a senior managing director at BlackRock, was the honoree at this year's Law Alumni Association Luncheon in January. Meade joined BlackRock after spending more than five years at the US Department of the Treasury, first as principal deputy general counsel, then as acting general counsel, and finally as general counsel. For his service, he received the Alexander Hamilton Award, the Treasury Department's highest honor. Speaking at the luncheon, Meade reminisced about his Treasury years, which he described as "a magical time" in his life.

NYU Law's first Sinsheimer Scholar, Meade has had an impressive career in both the public and private sectors. Following law school, Meade clerked for Judge Harry Edwards of the US Court of Appeals for the DC Circuit—an NYU Law adjunct professor—and then for Justice John Paul Stevens of the US Supreme Court. Meade subsequently worked at the ACLU Immigrants' Rights Project as a Skadden Fellow before joining the law firm Wilmer Cutler Pickering Hale and Dorr, where he became a partner and argued four cases before the US Supreme Court.

"When I finished my clerkships, government service actually didn't have an allure," Meade confessed. But during his time at WilmerHale, he worked with a host of mentors who had served in government and who talked about their time in public service in glowing terms. "These individuals inspired me," Meade said.

Meade joined the Department of the Treasury about a year into Barack Obama's presidency. As general counsel, Meade dealt with matters as diverse as the debt limit, financial reform, housing policy, foreign investments, sanctions, tax policy, and the Affordable Care Act. He praised Treasury's strong collegial culture, under both Secretary Timothy Geithner and Secretary Jack Lew: "I feel such loyalty to the people I worked with."

Kaplan believed that the case was winnable,

about unfair taxation. "Every American in their gut

noting that the United States was founded on a fight

would get what it means to have to pay an unfair tax."

She contended with conflicting advice on how

to approach arguments. In crafting her strategy, she

focused on what would best serve her client, Windsor.

Ultimately, Kaplan's strategy worked: the court

ruled 5-4 in favor of Windsor. Recalling the response

she received walking out of the court after the

arguments, Kaplan said, "It was the closest I'll

ever get to being Mick Jagger."



In DOMA Case, Attorney Repays a Long-Ago Kindness

At the Law Alumni Association Annual Fall Conference last November, Roberta Kaplan, partner at Paul, Weiss, Rifkind, Wharton & Garrison, spoke candidly about her personal connection to *United States v. Windsor*, the landmark case that overturned the Defense of Marriage Act (DOMA)—the first and only case she has argued before the Supreme Court.

The plaintiff, Edith Windsor, had been denied an estate tax exemption under DOMA after her spouse, Thea Spyer, died. "When I got the call, I had never met Edie, but I knew exactly who she was," Kaplan said, explaining that 18 years earlier, after coming out to her family, she had become a patient of Spyer, who was a psychologist. "[Thea] was convinced that the only way she would persuade me— I was so despondent—that I could have the life I wanted was to tell me about her own life with this woman named Edie Windsor."

Kaplan and Dean Trevor Morrison

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What It Takes to Lead

NYU Law's Leadership Mindset brings members of the vanguard to campus to illustrate powerful leadership concepts for students.

his year, the Law School's Leadership Mindset, a signature initiative that encompasses intensive training, specialized programs, events, mentor relationships, and other exposures to ethical and inclusive leadership concepts, hosted two conversations featuring successful leaders.

In January, Danny Meyer, CEO of Union Square Hospitality Group (USHG); Jordan Roth, president of Jujamcyn Theaters; and Rocco Landesman, president emeritus of Jujamcyn, discussed how individual leadership styles can benefit from incorporating an unlikely concept: love.

In his 2006 memoir and business guide, *Setting the Table: The Transforming Power of Hospitality in Business*, Meyer advocated developing a workplace culture of "enlightened hospitality" that emphasizes employee satisfaction. Prioritizing employee happiness, he said, creates a "virtuous cycle," since that in turn boosts customer and investor satisfaction.

Landesman agreed with the need for fostering an esprit de corps. "Creating a loving experience starts right at home with having an organization where, from the top down, people feel that they're valued and that people care about them."

As employees internalize a positive work culture and the experience that a company wants to convey—its "authentic voice," as Roth called it they can also interact more effectively with customers. "The result of inverting the leadership pyramid is we are creating a company of leaders," Roth said. "Because when that theatergoer has a problem with their ticket, I'm not there, Rocco's not there, and the house manager may not be there. The usher who is there is the leader of our company at that moment for our customer."

In theater and dining, caring about the customer's experience is crucial, yet the conversation's participants maintained that having these emotional skills—which Meyer calls a person's "hospitality quotient"—is key for lawyers as well. As Roth put it, "I don't know any business that isn't a hospitality business." Just as theaters and restaurants need to create positive experiences, lawyers need to make sure clients feel that they are "on their side."

A second conversation in March featured John Sexton, president emeritus of NYU and dean emeritus of the Law School, and University Professor Anna

Deavere Smith. Playing off their long relationship, the two explored the connection between leadership and storytelling with Vice Dean Jeannie Forrest.







to be my lawyer—or be my actor, or be my director? Because you've really learned something that's going to make this engagement with you worthwhile."

For a leader, however, knowing one's own story is not enough. "It's very well and good to know your narrative, but you have to observe the desire of someone else in order to bring them along," Smith said, recalling the effectiveness of Sexton's argument to bring her to NYU.

Sexton, acknowledging his long-standing reputation for talk-

ing big, recalled how, as both a new dean and a new president, he had encountered skepticism. But, he added, there was "a small group who would say, 'Wait a minute, I'm beginning to get his story. And I don't know whether I believe it yet, but I now have come to the point where I know he believes it.' And so now you're in the position where you're saying to people,

> 'Come along with me, but I'm giving it my life.' So your narrative of who you are becomes blended with the professional mission that you have." □ *Gina Rodriguez*



"We produce lawyers who are at the center of the conversation, who love their craft, and who make a difference in the world." JEANNIE FORREST



22 PROCEEDINGS

Homing in on Better Housing Policy

The NYU Furman Center for Real Estate and Urban Policy, going strong at 20, arms policymakers with the nonpartisan data they need to improve housing—and people's lives.

Nothing But Net Proceeds

The Deans' Cup, the annual basketball game between NYU Law and Columbia Law. drew a spirited crowd to Columbia's Morningside Heights campus in April. After intense competition, Columbia prevailed 75-71, its fifth win in the 15-year series. Deans' Cup co-chair Cristina Stiller '17 provided perspective: "We had an incredible turnout this year, which is especially awesome news because that means we were able to raise even more funding towards public interest work."





PHOTOS ONLINE

n April, the NYU Furman Center for Real Estate and Urban Policy, a joint center of the Law School and the Robert F. Wagner Graduate School of

Public Service, celebrated 20 years of work that has made it an invaluable data resource for public policy stakeholders across geographies and political spectrums.

Among those toasting the center at the anniversary celebration was Shaun Donovan, director of the Office of Management and Budget, who was US secretary of housing and urban development from 2009 to 2014. (Read more about the celebration on page 91.) Earlier in his career, Donovan had worked as a research fellow at the Furman Center, illustrating the center's importance as a multidisciplinary training ground for future leaders in housing and urban policy.

Furman Center researchers help inform policy conversations well beyond their time there. Many of the center's nearly 300 former research assistants, fellows, and staff members now occupy important positions in government, academia, and the private sector. Also in attendance at the anniversary celebration was Boxer Family Professor of Law on Leave Vicki Been '83, former faculty co-director of the Furman Center and current commissioner of the New York City Department of Housing Preservation and Development.

Endowed by the late Jay Furman '71, the Furman Center, which conducts research in the broad categories of housing finance and foreclosures, affordable housing, land use regulation, and neighborhood change, at first limited its scope primarily to New York City. In more recent years, the center's research has expanded far beyond the five boroughs.

The center's annual *State of New York City's Housing and Neighborhoods* report, first published in 2001, has become required reading for policy wonks. Each report looks at a specific policy issue. This year's focus, gentrification, was the subject of a panel at

AVERAGE RENT BY CENSUS TRACT IN BEDFORD-STUYVESANT AND WILLIAMSBURG/ GREENPOINT Average Rent Less than \$750 \$751-\$1,000

\$1,001-\$1,250

Greater than \$1,250





the report's launch event in May. After greetings by Executive Director Jessica Yager '03 and Faculty Director Ingrid Gould Ellen, moderator Laura

> Kusisto, the *Wall Street Journal*'s national housing reporter, led a discussion that included Colvin Grannum, president and CEO of Bedford Stuyvesant Restoration Corporation; Brad Lander of the New York City Council; Katherine O'Regan, HUD's assistant secretary for policy development and research; and Deborah Wright, a senior fellow at the Ford Foundation. Evidence that New Yorkers feel strongly about housing issues wasn't difficult to find; when Lander said, "We should work harder to make sure that rising rents don't displace people," his words met with resounding applause.

> In 2008 and 2009, the center's major national conferences on foreclosed properties and the potential transformation of federal housing policy yielded important conversations among academics and policymakers. In 2010, the center's newly launched Institute for Affordable Housing Policy, made possible by Ronald Moelis '82, released a report analyzing potential reform of Fannie Mae and Freddie Mac. Another publication, the yearly National Affordable Rental Housing Landscape report, examines rental affordability trends in the US's 11 largest metropolitan areas. The Furman Center's research encompasses far more than faceless economics, working to debunk common fears about subsidized housing's spillover effects and to address the challenges of stormproofing multifamily housing in Superstorm Sandy's aftermath.

> The beneficiaries of that research seem grateful. Exhibit A: a \$1 million MacArthur Award for Creative and Effec-

tive Institutions from the John D. and Catherine T. MacArthur Foundation in 2012. "People have come to rely on us," said Been at the time, "because they know that we're asking the right kinds of questions." \Box Atticus Gannaway

Prejudicial Predictions

In the film *Minority Report*, police prevent crime by identifying suspects preemptively. Similar concerns arise in today's predictive policing and detention, though forecasts now arise from data models instead of "pre-cogs." During the Robert L. Bernstein Institute for Human Rights conference "Tyranny of the Algorithm? Predictive Analytics & Human Rights," Professor Latanya Sweeney of Harvard University explained how models can incorporate bias through stereotyping. Jennifer Lynch, senior staff attorney at the Electronic Frontier Foundation, argued that such a system "threatens the notion that we should be allowed to choose our own destinies."





Sin of Racial Omission

Sherrilyn Ifill '87, head of the NAACP Legal Defense and Educational Fund, revisited *Brown v. Board of Education* last November in the Derrick Bell Lecture on Race in Society. In the *Brown* opinion, the court wrote about segregation's "detrimental effect upon the colored children." Ifill suggested a missing narrative.

"As we watch these astonishing displays of indifference and violence and inhumanity in some of the videos that we have seen over the last year," said Ifill, "I believe we must reckon with the reality that the record in *Brown* predicted with clarity not only what would happen to black children, but what would happen to white children if we failed to reckon with segregation." □

Women and Children Last

Judge Rosemary Barkett of the Iran-United States Claims Tribunal at The Hague argued in the Madison Lecture last October that American courts lag far behind their international and foreign peers in protecting women's and children's human rights. "That we in the United States have a history of arbitrarily failing to adequately respond to victims of gender violence, whether in a domestic setting or outside of it, has been continually documented," she said.



<text><text><text><text>



Tax Proactivity

In his keynote at the 16th annual NYU/KPMG Lecture on Current Issues in Taxation, Robert B. Stack, deputy assistant secretary for international tax affairs in the US Treasury Department's Office of Tax Policy, urged practitioners to take a more active role in international tax policy: "I do not think the United States tax and business communities are sufficiently engaged in the global agenda-setting in tax, and I don't think it's enough anymore to simply look at the US Congress or even the US Treasury as the font of all international tax that affects your lives and your practices."

Uber Complicated

n a panel last November, "Uber Alles? Implications of the 'Share Economy,'" an expert group of academics and practitioners addressed a central legal question that Uber and its cohort have raised: Are these drivers independent contractors or employees? Since its founding, Uber has grown exponentially, spreading from San Francisco to more than 60 countries. Now Uber, Lyft, and the like are embroiled in more than 40 lawsuits nationwide. Rachel Bien, co-chair of Outten & Golden's Class & Collective Action Group, explained how, by calling its drivers independent contractors who set their own schedules, Uber avoids providing benefits and reimbursing its drivers for work-related expenses. At the same time, to keep customers, Uber needs to exert an employer-like control. "They're really not going to be able to ensure that their customers have a good experience unless they have some rules that they will require their drivers to abide by," Bien said. □



Balanced Intelligence

t the Center on Law and Security's symposium "Governing Intelligence: Transnational Approaches to Oversight and Security" in April, former US representatives Jane Harman and Mike Rogers, both of whom served on the House Permanent Select Committee on Intelligence, opened the event with a discussion of current security threats facing the US. "We need a robust surveillance system, the framework of which has buy-in by the American public," said Harman. On the issue of encryption that the recent Apple-FBI case spotlit, Rogers asserted the choice is not either-or. The question, he said, is "How do we align the digital economy going forward with our national security?"

In the day's second keynote, David Cohen, deputy director of the CIA, affirmed the agency's embrace of strong oversight while acknowledging the inherent secrecy of the organization's work: "We know that for the sake and security of our democratic society, we must be accountable for our actions. And we understand that such oversight is both right and wise."

Civil Justice for All

n April, NYU Law's Institute of Judicial Administration and Center on Civil Justice co-sponsored a two-day conference springing from *Beyond Elite Law: Access to Civil Justice in America*, a book coedited by Dwight D. Opperman Professor of Law Samuel Estreicher. Academic experts, attorneys, and judges convened to discuss the plight of Americans unable to afford legal representation.

Jonathan Lippman '68, New York State's former chief judge, inspired judiciaries in other states with his push to expand access to civil justice. He explained how, by framing the problem as an economic issue in which \$1 devoted to legal aid provided \$10 in savings, he brought policymakers on board.

Texas Supreme Court Chief Justice Nathan Hecht took a similar tack in his state, and asserted the judiciary is uniquely positioned to press the issue. "Who else will? In the other two branches of government, those who hold office listen to constituents, as they should. And often the poor and the cause of justice, sadly, don't have powerful voices to get legislative attention."





Relevant Parties

80 Vanita Gupta '01 and Francis Daniels LLM '86, '87 address the class of 2016 82 Family hooding album 88 A reception for scholars and donors 91 NYU Law's tax programs celebrate anniversaries 92 Reunion 2016 95 NYU President Emeritus John Sexton, former dean of the Law School, is honored at the Weinfeld Gala

Judge Betty Staton '79 speaks at the annual Spring Dinner of the Black, Latino, Asian Pacific American Law Alumni Association, now renamed the Law Alumni of Color Association.

Leading with Courage

At Convocation, graduating JD, LLM, and JSD students hear from Vanita Gupta '01 and Francis Daniels LLM '86, '87.

raduating students and their families gathered at the Beacon Theatre on May 19 to celebrate NYU Law's 2016 Convocation and to hear from a variety of speakers, including Dean Trevor Morrison; Vanita Gupta '01, head of the Department of Justice's Civil Rights Division, who spoke at the morning JD ceremony; and Francis Daniels LLM '86, '87, co-founder of Africa Opportunity Partners, who addressed the LLM and JSD ceremony.



"The ability, or at least the willingness, to think critically and to engage deeply with ideas is, unfortunately, in rather short supply today," Morrison said, offering graduating students the advice of Judge Learned Hand: "The spirit of liberty is the spirit that is not too sure it is right."

"Never rest on your intellectual laurels," Morrison said. "Don't become stagnant. Remember that questioning is learning. And remember that each of you has a valuable skill: the ability to bring people together toward shared goals."

The JD class speaker, Georgia Stasinopoulos '16, shared her experience of how the NYU Law community came together for her, reminding fellow graduates



of what makes the Law School stand out from its peers. NYU Law, she said, is "#SmartWithHeart." The members of the Class of 2016 fully embody this

concept as they embark on their careers, Stasinopoulos said, whether they are representing US interests before international organizations, working to close the wage gap, or making a difference in other ways. For her, the idea was even more personal. "I experienced firsthand what #SmartWithHeart means," said Stasinopoulos, whose mother passed away a few months before graduation after battling cancer. Faced with this loss, Stasinopoulos recalled how NYU Law professors, administrators, and students all rallied to support her in her time of need: "All of you made it possible for me to graduate."

In her keynote address, Gupta focused on how lawyers can use their skills to help build a better society. "In too many communities across America today, we see a dramatic gap between what our laws guarantee, on the one hand, and what people experience, on the other," Gupta said, noting particularly the gaps that exist in voting rights, access to education, interactions with the police, and LGBT rights. She told the graduating students that, as lawyers, they will have the power to close those gaps. "If you lead with courage, if you work with purpose, and if you act with kindness and compassion, I know you will change this profession and our country for the better."

Evangelia Andronikou LLM '16, the speaker for her degree program, likened the yearlong LLM experience to the period during which a new Chinese bamboo plant needs diligent nurturing until, in a six-week period, it shoots up to 90 feet tall. Her classmates were similarly about to flourish, she said: "We networked, grew, added to the experiences we had, and now we're ready to break through the ground."

Francis Daniels LLM '86, '87 suggested what that growth might mean. Now the co-founder of Africa Opportunity Partners and manager of its subsidiary Anibok Investment Research Chambers in South Africa, he reflected on how an early setback being laid off from his first job after law school—had spurred his decision to start investing as a hobby.

"Errors and losses are humbling, humanizing, and, above all, instructive," he said. To graduating students, he added, "Never forget your inchoate missions or dreams at this time of graduation. Realizing a fraction of them may be by routes circuitous and meandering. They give an arc, purpose, and passion to your career."

Before the hooding commenced, Isabela Garcez '16 and Maximilian Viski-Hanka LLM '16 each presented the Class of 2016 Gift at their respective ceremonies. This year, more than 170 JD, LLM, and JSD students, including 26 new Weinfeld Fellows, came together to give more than \$115,000 to the Law School. \Box *Rachel Burns and Gina Rodriguez*







Stasinopoulos







Daniel.







Challenge to Serve

At NYU's 184th Commencement Exercises, Darren Walker, president of the Ford Foundation, challenged the graduates gathered in Yankee Stadium to ask themselves the question "How will my life serve the cause of justice?" Walker, who received an honorary Doctor of Laws, rose from a decade of prominence in corporate law at Cleary Gottlieb Steen & Hamilton to become a leader in philanthropy, working at the Rockefeller Foundation before taking the reins at Ford.

President Andrew Hamilton also presented honorary degrees to comedian and actor Billy Crystal; Emmanuelle Charpentier, a microbiologist and biochemist who made discoveries in the pathways governing antibiotic resistance and the virulence of bacterial pathogens; John Lewis, a civil rights leader who has served as a congressman from Georgia's Fifth **Congressional District** for nearly three decades; and Margaret Marshall, the first woman to serve as chief justice of the Massachusetts Supreme Judicial Court.





Daniel Rudofsky with his cousin Lauren Katz '13













The Class of 2016 Family Tradition











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Reflections

"As a student interested in law and business, I chose to study abroad in Shanghai, where I was able to learn about China's expanding rule of law and also its growing capitalist economy. I think that experience will be extremely important going forward in my career."

> D. K. SMITH ASSOCIATE, STROOCK & STROOCK & LAVAN



EMMA TROTTER Clerk, Justice Joel Bolger of th Alaska Supreme Court



"I took the LGBT Rights Clinic as a 2L, and through that, I interned at Lambda Legal. It was a really exciting time because the organization was working on filing briefs in Obergefell v. Hodges, the marriage equality case that was at the Supreme Court later that summer."

> **ALOK NADIG** Clerk, US Court of Appeals for the 10th Circuit





Members of the Class of 2016 share where they are going and what they are proud to have done.



"I came into the Furman Academic Scholars Program as a historian and I'm leaving it knowing how to read and write and think like a legal scholar. In the process, I've gained incredible faculty mentors who have helped me develop two pieces of academic writing of which I am very proud."

<KRISTEN LOVELAND Clerk, Judge Jesse Furman of the US District Court for the Southern District of New York







STEVE MARCUS Clerk, Judge Harry Edwards of the US Court of Appeals for the DC Circuit



JUAN CABALLERO West Michigan Legal Fellow, ACLU of Michigan

"For my 1L summer, I worked in Tunisia with an organization called International Idea. I researched international human rights standards and the role of the international community in a post-conflict state, and I got to work with some of the most well-known constitutional experts in that area."

> **JESSICA BOULET** GLOBAL LEGAL FELLOW. CENTER FOR REPRODUCTIVE RIGHTS



Richard L. Posen Scholar Emily New was hooded by Warner Posen



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



Mario DiNatale Scholar Zachary Lanier was hooded by Matthew Fishbein '79

The Class of 2016 Scholars and Donors

Fay Zarin/Shirley Rosenfeld Scholar (AnBryce Program) Korey Inglin was hooded by Professor Gerald Rosenfeld



Jacob Marley Foundation Scholar in Memory of Christopher Quackenbush '82 (AnBryce Program) Monica Heinze was hooded by Dr. Gail Quackenbush



was hooded by Lois L. Weinroth

M. Carr Ferguson Scholar in Tax Law Tyson Willis was hooded by M. Carr Ferguson LLM '60



Anthony Welters '77, chairman of the Law School's Board of Trustees, and his wife, Ambassador Beatrice Wilkinson Welters, hooded graduates with scholarships within the AnBryce Program: Monica Heinze (Jacob Marley Foundation Scholar in Memory of Christopher Quackenbush '82), Brittany Simington (John D. Grad Memorial Scholar), Korey Inglin (The Fay Zarin/Shirley Rosenfeld Scholar), Ian Dummett (Kenneth & Kathryn Chenault Scholar), Nicole Kramer (William Randolph Hearst Scholar), and Ashley Ferguson (Clifford Chance Scholar)



Furman Academic Scholars Wen Xue, Steven Marcus, Kristen Loveland, Nabil Ansari, Susan Smelcer, Alex Lipton, and Jack Millman were hooded by the Honorable Jesse Furman A. H. Amirsaleh Scholars Ameneh Bordi and Babak Ghafarzade were hooded by Fran Amirsaleh





John D. Grad Memorial Scholar (AnBryce Program) Brittany Simington was hooded by Dr. Joyce Lowinson



Latino Institute for Human Rights Scholars Alicia Nieves and Frances Dávila were hooded by Professor Alina Das '05



Clifford Chance Scholar (AnBryce Program) Ashley Ferguson was hooded by Evan Cohen



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



Derrick Bell Scholars for Public Service (LACA Aimee Carlisle and Frances Dávila were hooded by Janet Dewart Bell

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Jacobson Leadership Program in Law and Business Scholars Monica Smith, Becki Steinberg, Laura Brayton, Jacqueline Marino, Jay Thornton, James Salem, Sara Spanbock, Alex Lipton, and Danhua Ma were hooded by Professors Helen Scott and Gerald Rosenfeld



Norman Ostrow Memorial Scholar Christopher Murray was hooded by Roland G. Riopelle





Pickholz Family Scholar Emily Ellis was hooded by Marvin Pickholz '66, LLM '68



Honorable Charles Swinger Conley Scholarship within the AnBryce Program: Ellen Conley with Scholars Evan Shepherd '17 and Claudia Carvajal Lopez '18



Dean Trevor Morrison



Scholarship Reception Student Speaker: Furman Academic Scholar Riane Harper '17

Supporting Our Students

Ensuring that NYU Law students get the financial aid they need is at the heart of the Law School's mission. At the annual Scholarship Reception, students get a chance to mingle and meet with the scholarship donors who are making their journeys possible.

> In the 2015–16 academic year, the Law School awarded **MORE THAN**

.....

\$18 MILLION to JD and LLM students.

.....

Institutional support was given to 42 PERCENT of all JD students.

MORE THAN 50 PERCENT of the JD Class of 2018 received some form of institutional support.





Frances Moelis Fellowship in Real Estate Law: Ron Moelis '82 and Kerry Sperling with Scholar Brad Greenburg '17

Judge M. Blane Michael Scholarship: Cora Michael and John Luhtala '68 with Scholar Virginia Dawson Kirkland '18



Richard L. Posen Scholarship: Susan Posen and Warner Posen with Scholar Adam Winer '18



Jacob Marley Foundation Scholarship in Memory of Christopher Quackenbush '82 within the AnBryce Program: Dr. Gail Quackenbush, Dylan Melisaratos, and Diana Holden with Scholars Michelle Musielewicz '18, Monica Heinze '16, and Getzel Berger '17



Furman Academic Scholarship; Furman Public Policy Scholarship: The Honorable Jesse Furman and Dean Trevor Morrison with Scholars Riane Harper '17, Jack Millman '16, Kristen Loveland '16, Ann Jaworski '17, Alex Lipton '16, Alexandra Bursak '17, and Nicholas Krafft '18

Desmarais LLP Scholarship: Mike Stadnick 'oo with Scholars Raymond Habbaz '18 and Arthur Argall '17



Derrick Bell Scholarship for Public Service (LACA): Janet Dewart Bell with Scholar Frances Dávila '16



Sinsheimer Public Service Scholarship: Warren Sinsheimer LLM '57 and Flo Sinsheimer with Scholar Victoria Yee '18





Doris C. and Alan J. Freedman Scholarship: Karen Freedman '80 with Scholars Dian Yu '16 and Tyler Walton '18

AnBryce Scholars: Jeannie Forrest, Thelma Duggin, Trevor Morrison, and Richard Revesz with the AnBryce Scholars





Connecting over Connect Four

At the inaugural Public Service Benefit, students, alumni, and faculty celebrated NYU Law's commitment to public service work with good old-fashioned board games. Attendees bonded over games including Connect Four, Checkers, and Jenga and also had a chance to bid on items in a silent auction. As part of the celebration, which was sponsored by the Public Interest Law Center, Dean Trevor Morrison conferred Public Service Awards on Candice Jones '07, director of the Illinois Department of Juvenile Justice, and Ona Wang '98, partner at BakerHostetler and vice chair of the firm's Pro Bono Committee.















For those in the NYU Law community who didn't get a chance to snag *Hamilton* tickets this year, NYU Law Revue produced a fine substitute for the Broadway musical experience. A trailer for this year's production told the story of Dean Trevor Morrison's career set to the tune of Lin-Manuel Miranda's "Alexander Hamilton." The theatrical production itself—the Law Revue's 42nd—was titled *Catch Me If NYU Can*! and followed the adventures of a transfer student from Columbia who, after being mistaken for a professor on his first day at NYU Law, decides that teaching the law is much easier than studying it.



Throwback Ball

Every year around

Halloween, students

shed their lawyerly

PHOTOS ONLINE FOR THIS PAGE Former Co-Director Vicki Been '83; Faculty Director Ingrid Gould Ellen; Executive Director Jessica Yager '03

Two Decades for the City's Center

YU's Furman Center for Real Estate and Urban Policy marked its 20th anniversary this year with an evening of toasts and celebration. The event also marked the announcement of NYU Law Trustee Jonathan Mechanic '77, partner at Fried, Frank, Harris, Shriver & Jacobson, as the new chairman of the center's Board of Advisors.

In a video made especially for the anniversary, experts in the field spoke about the mark that the center has made on New York City. "Focusing specifically on housing, and those kind of urban problems and zoning, was something that no other institution

was really doing, and by looking at that, [the center] helped the city evolve much more innovative poli-

> cies over the years," said Mark Willis, senior policy fellow at the center.

"Because NYU Furman is rooted in both rigor and in understanding of communities, it produces essential research," said Darren Walker,

president of the Ford Foundation. "NYU Furman is a gift to the city."

Book Party

In conjunction with the 2016 annual conference of the Robert L. Bernstein Institute for Human Rights, the Law School hosted a celebration of Robert L. Bernstein's memoir, Speaking Freely: My Life in Publishing and Human Rights. The president of Random House for 25 years, Bernstein is also the founder of Human **Rights Watch.**



Double Taxation

On March 24, NYU Law's tax faculty and alumnitwo frequently overlapping groups-gathered with students to celebrate a pair of important anniversaries occurring this academic year: the 70th anniversary of the pioneering Graduate Tax Program, founded in 1945, and the 20th anniversary of the International Tax Program, started in 1996.

The continuing draw of NYU Law's worldrenowned tax curriculum is sufficiently powerful that many tax students eventually become tax professors-or vice versa for professors who, alongside many private-practice professionals, earn their tax LLM at the Law School. One such professor is Joshua Blank LLM '07, the Graduate Tax Program's faculty director, who opened the recent celebration with a warm welcome to current and former faculty and students. Blank likened the tax program to "a family—a family that really enjoys tax."

The evening featured remarks from alumni including M. Carr Ferguson LLM '60 and John Samuels LLM '75 and concluded with the presentation of the 2016 James S. Eustice Tax Leadership Award to Deborah Schenk LLM '76, Ronald and Marilynn Grossman Professor of Taxation Emerita.







The Public Service Award, which recognizes alumni who forge careers in public service and honors those who profoundly affect society, was given to US Secretary of Transportation Anthony Foxx '96 (left, at center). Appointed to his current position in 2013, Foxx previously served as the mayor of Charlotte, North Carolina.







D. Theodore Rave 'o6 (near left), assistant professor of law at the University of Houston Law Center, celebrated a special family reunion with his grandfather and fellow alumnus, Donald Theodore Rave '56.













Back at School Again

With spring in full bloom, 12 classes from 1956 to 2011 returned to the Law School to celebrate Reunion 2016. Events throughout the weekend included academic classes, dining, special alumni organization receptions, and an all-reunion dance. Four alumni were also honored by the Law Alumni Association.





Wayne Perry LLM '76 (below left), CEO of Shotgun Creek Investments, was honored with the Alumni Achievement Award, recognizing his professional achievements and commitment to the development of the Law School. Deborah Schenk LLM '76 (below right), Ronald and Marilynn Grossman Professor of Taxation Emerita, received the Legal Teaching Award, honoring her scholarship and extraordinary dedication to the education and training of law students.





LLM '06 (above right) with the Recent Graduate Award. Hudson is executive director of Crisis Action, a nonprofit organization that works to protect civilians from armed conflict around the world.







The View from Europe

Fallout from the collapse of states—particularly Syria—was the focus of an NYU Law conference in Barcelona in July. Held with the support of former Congressman Frank Guarini '50, LLM '55, the conference addressed issues such as the ongoing refugee crisis, its national security implications, and the obligations of states to noncitizens. Alongside NYU Law professors and trustees, conference participants included former UK prime minister Gordon Brown; current and former US Supreme Court justices Samuel Alito, Ruth Bader Ginsburg, and John Paul Stevens; and Chief Judge Robert Katzmann of the US Court of Appeals for the Second Circuit.







Confronting the Migrant Crisis

O'Sullive

s millions of refugees flee war-torn Syria, the European Union has come under scrutiny for its handling of the migrant crisis. At the Hauser Global Law School Program's Annual Dinner on March 7, David O'Sullivan, ambassador of the EU

to the United States, sought to quiet some of that criticism by illustrating the immensity of what the EU is confronting.

In 2015, 1.8 million migrants entered the EU—six times the number from the previous year. "The pace and scale of this unabating humanitarian emergency has been challenging both fiscally and polit-

ically for the European Union and for its member states, some of which, like Greece, are just emerging from an economic crisis," said O'Sullivan in his keynote, "The Refugee Crisis: Europe's Response?"

With Syria's civil war showing no signs of resolution, O'Sullivan emphasized creating a clear point of entry at the frontier to process migrants in an orderly fashion; enabling relocation across the EU; and working with the countries that migrants pass through to reach the EU, particularly Turkey. (The EU-Turkey plan was unveiled the morning after O'Sullivan's keynote.) He also suggested reform-

> ing the Dublin Regulation, which requires migrants to file for asylum in the country of entry, and envisioning new forms of legal migration.

> O'Sullivan underscored the importance of rallying all of the EU member states. "The pressure for continued migration is not going to go away, and we better figure out a way of how we're going to deal with this in

the most equitable and the most honest and just way possible while at the same time—yes—looking out for our own self-interest," he said. "Because we cannot allow our society to be completely upturned by a disorderly process of this kind." For the EU, negotiating that balance between self-preservation and extending humanitarian support remains a challenge. □

Celebrating LACA's Evolution

he annual Spring Dinner of the Black, Latino, Asian Pacific American Law Alumni Association (BLAPA) drew an ebullient crowd to Capitale on April 1. Referring to the evening's theme, "BLAPA 4.0: Still Blazing Trails," Rafiq Kalam Id-Din II '00, BLAPA's board president, explained, "We are constantly being self-reflective. We are constantly seeking to evolve."

In that vein, Kalam Id-Din revealed that, after a student told him the BLAPA acronym seemed not to encompass the student's Native American identity, the organization had decided to rename itself the Law Alumni of Color Association (LACA), making the Spring Dinner the last official BLAPA event.

BLAPA presented the President's Distinguished Leadership Award to John Sexton, president emeritus of NYU and dean emeritus of the Law School. Three alumni were also honored with Distinguished Alumni Achievement Awards: Vijaya Gadde '00, general counsel of Twitter; Judge Albert Diaz '88 of the US Court of Appeals for the Fourth Circuit; and Vanita Gupta '01, head of the US Department of Justice's Civil Rights Division.

All of the awardees spoke about the roles that race and diversity—or the lack thereof—have played in their legal careers. Gadde recounted how, as a newly arrived immigrant in a small Texas town in the 1970s, her father struggled to find work. When he found an



Diaz

opportunity collecting insurance premiums door to door, his boss told him that he feared for the safety of someone with Indian heritage; Gadde's father would have to meet with the local Ku Klux Klan leader to get permission to walk around his own community.

Gupta

"Nobody was there to defend my father," said Gadde. "Nobody gave voice to those people in that community. My family felt very powerless in those moments. And when people ask me why I went to law school, I went to law school to make sure that people have a voice and that people have someone to fight for them." \Box

An Artful Award Ceremony

John Sexton, president emeritus of NYU and former dean of the Law School, received the 2015 Judge Edward Weinfeld Award for his many contributions to NYU Law and in celebration of the 25th anniversary of his founding of the Weinfeld Associates Program. The award was presented at the annual Weinfeld Gala, which 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. This year's gala was held at the Museum of Modern Art.









PHOTOS ONLINE FOR THIS PAGE





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