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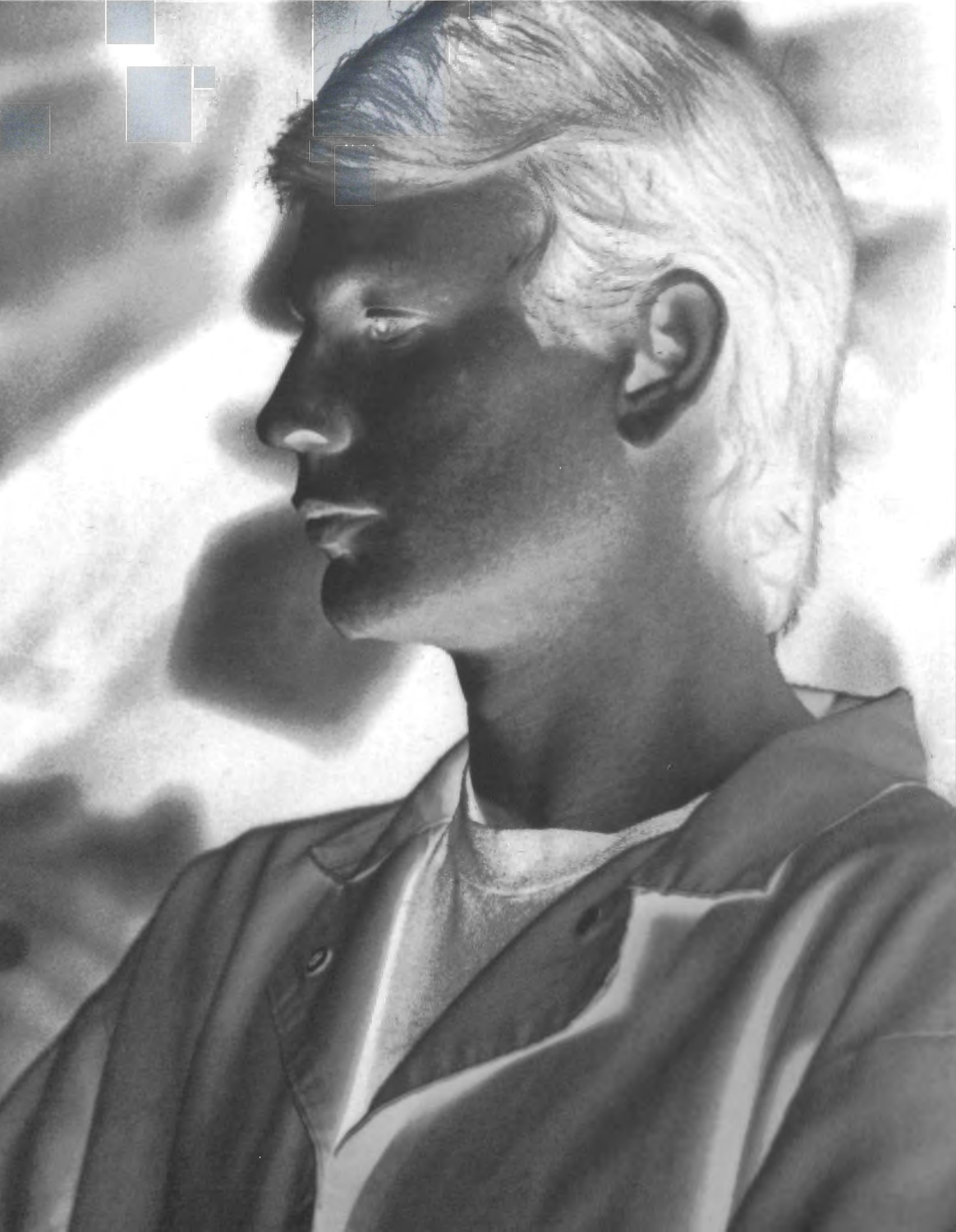
IN BRIEF

The Magazine of New York Law School Spring/Summer 1998

On the Edge

The
Insanity Defense
in America
Today





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C O N T E N T S

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Since John Hinckley, Jr., successfully used it in his trial for the shooting of President Ronald Reagan in 1981, the insanity defense has come under intense scrutiny and is the victim of many misconceptions regarding its use.

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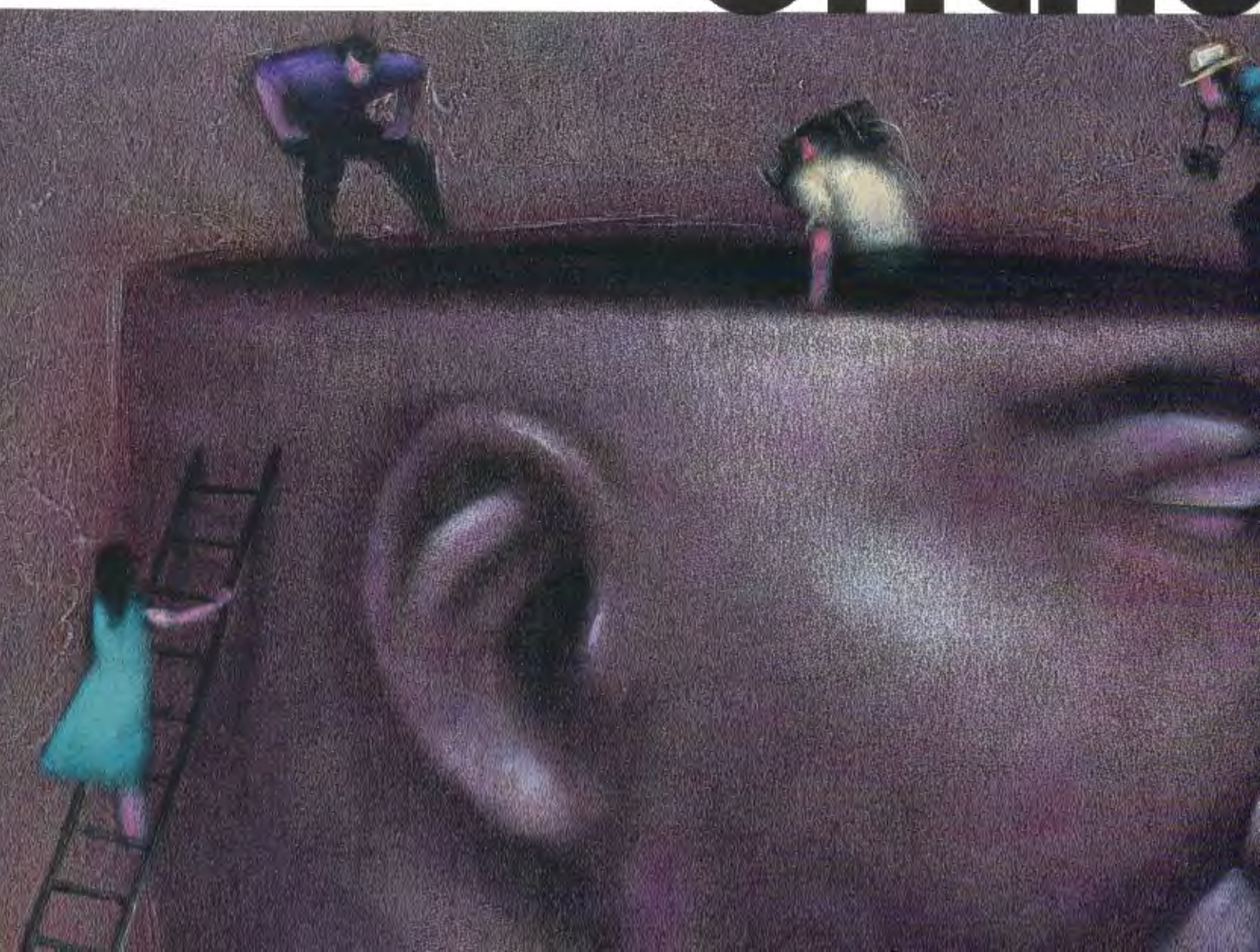
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On the



Edge:

The Insanity Defense in America Today

by Professor Michael Perlin



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ver since a jury found John Hinckley not guilty by reason of insanity on charges that he attempted to assassinate former President Ronald Reagan, it has seemed as if every high-profile, made-for-talk-show-TV case has somehow involved the insanity defense: Jeffrey Dahmer, Colin Ferguson, the Menendez brothers, John DuPont, and, as I write this, Theodore Kaczynski (the so-called Unabomber). This perception has led to the conclusion that there is something terribly wrong with the insanity defense. ➤

On the

This is not so. None of these defendants were successful insanity defense pleaders. Ferguson, in fact, fired his attorneys because they wanted to impose such a plea on him, and Kaczynski (as of this writing) has also resisted its use; the Menendezes never raised the defense at all.

The public's assumptions about the use of the insanity defense and its consequences are wrong, and we've known for years that these assumptions are wrong. Yet, we blindly adhere to myths, repeat them, reify them, and base mental health and criminal justice policies on them.

This is incoherent and ensures that we will remain trapped in eternal intellectual gridlock in our efforts to come to grips with the most basic questions about why a small percentage of individuals commit seemingly inexplicable and "crazy" criminal acts, about

how the legal system should respond to this set of cases, and, ultimately, about why we feel the way we do about "these people," surely, one of the most despised groups in all of society.

As I have studied the insanity defense, I have come to one gloomy conclusion. At the base of all the questions, all the myths, all the misstatements, all the misassumptions, there remains one basic truth: We simply don't care.

We don't care about the empirical realities, about the behavioral realities, about scientific tests, about philosophical advances, or about constitutional interpretations. And we don't care because there is something about the use of the insanity defense — about the persona of the insanity defense pleader and, by extension, his lawyer and the expert witness testifying on his behalf — that revolts the general public to the

core. The use of the insanity defense seems to reflect, to so many Americans of every political stripe, all that is wrong with this country's legal system.

The Evolution of the Defense

When John Hinckley attempted to assassinate President Reagan, the path of the insanity defense was forever altered in this country. Hinckley's use — Hinckley's successful use — of the defense immediately shifted the entire playing field and altered the terms of the debate. The question became, Would the insanity defense — a defense whose roots were found in the Talmud, the Codes of Justinian, and the Doms of Alfred — survive John Hinckley's expression of unrequited love for Jodie Foster?

Insanity defense supporters found themselves frantically engaged in rear-guard actions. Abolition became the center-

Misconceptions of the insanity defense: None of these four murderers pled not guilty by reason of insanity.

From left: Colin Ferguson, Lyle Menendez, Jeffrey Dahmer, and Theodore Kaczynski.



piece of a major federal crime bill, legislation quickly mimicked in many states. After lengthy Congressional hearings, the fact that the defense was reduced from the ALI/Model Penal Code test to the M'Naghten rules of 1843 was seen as a major "victory" for insanity defense supporters.

In short, since the passage of the Insanity Defense Reform Act of 1984, the insanity defense landscape has changed dramatically and irrevocably. Any politician or elected judge willing to support it as a matter of principle has to realize that it will serve as a convenient symbol for an "anticrime" opponent to focus upon. Any lawyer representing a severely mentally disabled criminal defendant must recognize that, if she enters an insanity defense plea, the jurors will likely be suspicious, negative, and hostile. Any editorial writer or columnist sug-

gesting that the defense remains a viable alternative needs to know that such a position will likely inspire a rash of angry letters to the editor, denouncing the supporter as soft on crime or worse. And any law professor willing to be identified as a supporter of the defense must realize that she is fighting a very lonely battle.

The insanity defense symbolizes the loss of social control in the eyes of the public. Its purported abuse symbolizes the alleged breakdown of law and order, the failure of the crime control model, the ascendancy of a "liberal," exculpatory, excuse-ridden jurisprudence. These symbols are at play in the most charged context imaginable — the trial of a mentally disabled criminal defendant. Simply put by Professor Susan Herman of Brooklyn Law School, the insanity defense is — and always has been — "the acid

test of our attitudes toward the insane and toward the criminal law itself."

The Myths

If we step back and consider the origins of our attitudes about mental illness, about crime, and about evil, there are some historical constants: For 5,000 years, conceptions of mental illness have been linked to concepts of sin. Mental illness was seen, more than 2,000 years ago, as a punishment sent by God. Through the Middle Ages, demonic possession remained the simplest, the most dramatic and, secretly, the most attractive of all explanations of insanity. Mental disease was God's punishment for sin, and mentally disabled persons were seen as agents of the devil.

It is no wonder that Michael Foucault suggested that this "face of madness" has "haunted" Western man's imagination for at least 5,000



On the

years. And it is thus no surprise that religious attitudes have always exerted great influence on the medical "treatment" of the mentally ill, and that, to a great extent, our characterizations of "sickness" track precisely what medieval theologians called "sin."

This conflation of mental illness and sin needs to be considered in the context of the role of punishment in our criminal justice system. It underscores the gap between the public's perceptions of how the criminal justice system should operate and the way that, in a handful of cases, a "factually guilty" person can be diverted from criminal punishment

been subjected to had he pled guilty or been found guilty after a trial.

What is there about the insanity defense that inspires such irrationality? Why do we adhere to these myths, ignore the reams of rational data that patiently rebut them, and willfully blind ourselves to the behavioral and empirical realities that are well known to all serious researchers in this area?

Our insanity defense jurisprudence is premised on a series of myths that research has revealed to be "unequivocally disproven by the facts."

Myth #1: The insanity defense is overused. All empir-

third of the successful insanity pleas entered over an eight-year period were reached in cases involving a victim's death. Further, individuals who plead insanity in murder cases are no more successful in being found not guilty by reason of insanity (NGRI) than persons charged with other crimes.

Myth #3: There is no risk to the defendant who pleads insanity. Defendants who asserted an insanity defense at trial and who were ultimately found guilty of their charges served significantly longer sentences than defendants tried on similar charges who did not assert the insanity defense. The same ratio is

The public's false perception of the circuslike "battle of the experts" is one of the most telling reasons for the rejection of psychodynamic principles by the legal system.

because of moral or legal non-responsibility. Although modern psychiatry and psychology illuminate many of the reasons why certain criminal defendants commit apparently incomprehensible "crazy" acts, we reject such explanations because they rob us of our need to mete out punishment to the transgressor. Most strikingly, we do this even when we are faced with incontrovertible evidence that the "successful" use of an insanity defense can lead to significantly longer terms of punishment in significantly more punitive facilities than the individual would have

ical analyses have been consistent: The public at large and the legal profession "grossly" overestimate both the frequency and the success rate of the insanity plea, an error "undoubtedly...abetted" by media distortions. The most recent research reveals that the insanity defense is used in only about one percent of all felony cases, and is successful just about one quarter of the time.

Myth #2: Use of the insanity defense is limited to murder cases. In one jurisdiction where the data has been closely studied, contrary to expectations, slightly less than one

found when only homicide cases are considered.

Myth #4: NGRI acquittees are quickly released from custody. A comprehensive study of California practice showed that only one percent of insanity acquittees were released following their NGRI verdict and that another four percent were placed on conditional release, with the remaining 95% being hospitalized.

Myth #5: NGRI acquittees spend much less time in custody than do defendants convicted of the same offenses. Contrarily, NGRI acquittees spent almost double the

amount of time that defendants convicted of similar charges spent in prison settings, and often faced a lifetime of post-release judicial supervision. In California, those found NGRI of nonviolent crimes were confined for periods over nine times as long.

Myth #6: Criminal defendants who plead insanity are usually faking. This is perhaps the oldest of the insanity defense myths, and one that has bedeviled American jurisprudence since the mid-19th century. Of the 141 individuals found NGRI in one jurisdiction over an eight-year period, there was no dispute that 115 were schizophrenic (including 38 of the 46 cases involving a victim's death), and in only three cases was the diagnostician unwilling or unable to specify the nature of the patient's mental illness.

Myth #7: Most insanity defense trials feature "battles of the experts."

The public's false perception of the circuslike "battle of the experts" is one of the most telling reasons for the rejection of psychodynamic principles by the legal system. A dramatic case such as the Hinckley trial, of course, reinforced these perceptions. The empirical reality is quite different. On the average, there is examiner agreement in 88% of all insanity cases.

Sanism and Pretextuality

Why do these myths develop and why do they persist in the face of hard data? Why do

cases such as Hinckley's have such a profound effect on the perpetuation of these myths? Why do they continue to capture a significant portion of the general public and the legal community? How do they reflect a "community consciousness?" Finally, why may their persistence doom any attempt to establish a rational insanity defense jurisprudence, no matter how much conflicting empirical data is revealed?

These are questions that seem to be rarely asked and even more rarely answered. What is there about the way we think, reason, and react that makes us susceptible to these myths?

There are several constructs that may help explain what is going on. First is the concept of sanism. Sanism is an irrational prejudice similar to racism, sexism, homophobia, and ethnic bigotry.

Insanity defense decision-making is sanist. It is often irrational. It rejects empiricism, science, psychology, and philosophy, and substitutes myth, stereotype, bias, and distortion. It synthesizes all of the irrational thinking about the insanity defense, and helps create an environment in which groundless myths can shape the jurisprudence. As much as any other factor, it explains why we feel the way we do about "these people."

The concept of sanism must be considered hand-in-glove with that of pretextuality, meaning that juries and judges

accept testimonial dishonesty, specifically where witnesses (especially expert witnesses) show a "high propensity to purposely distort their testimony in order to achieve desired ends." Experts frequently testify according to their own personal concepts of "morality," openly subverting statutory and caselaw criteria for commitment or the determination of competency to stand trial. Pretextuality riddles the entire insanity defense decision-making process; it pervades decisions by forensic hospital administrators, police officers, expert witnesses, and judges. The inability of judges to disregard public opinion and inquire into whether defendants have had fair trials is both the root and the cause of pretextuality in insanity defense jurisprudence.

I believe that much of the incoherence of insanity defense jurisprudence can be explained by these phenomena. Stereotyped thinking leads to sanist behavior. Sanist decisions are rationalized by pretextuality on the part of judges, legislators, and lawyers.

The development of the insanity defense has tracked the tension between psychodynamics and punishment, and reflects our most profound ambivalence about both. On one hand, we are especially punitive toward the mentally disabled, "the most despised and feared group in society"; on the other, we recognize that in some narrow and carefully

circumscribed circumstances, exculpation is — and historically has been — proper and necessary.

The post-Hinckley debate revealed the fragility of our insanity defense policies, and demonstrated that there was simply not enough "tensile strength" in the criminal justice system to withstand the public's dysfunctionally heightened arousal that followed the jury verdict. In spite of doctrinal changes and judicial glosses, the public remains wed to the "wild beast" test of 1724, a reflection of how we truly feel about "those people." It should thus be no surprise that, when Congress chose to replace the ALI/Model Penal Code insanity test with a stricter version of M'Naghten, that decision was seen as a victory by insanity defense supporters.

These dissonances, tensions, and ambivalences — again, rooted in medieval thought — continue to control the public's psyche. They reflect the extent of the gap between academic discourse and social values, and the "deeply rooted moral and religious tension" that surrounds responsible decision making. They lead to sanism and to pretextuality. Ours is a culture of punishment, a culture that grows out of our authoritarian spirit. Only when we acknowledge these psychic and physical realities can we expect to make sense of the underlying jurisprudence.



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BY JILL GOODKIND

Judge

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Tough, smart, and opinionated, Judge Judy Sheindlin is the star of television's hottest syndicated "reality" courtroom program, the eponymous "Judge Judy." She is also a NYLS alumna from the Class of '65.

The outspoken New Yorker has taken the nation by storm, and her television program is now in its second successful year. But stardom did not come overnight for the 55-year-old judge. She spent 25 years in New York's Family Court, making a name for herself with a swift, no-nonsense brand of justice and a tongue so sharp it could slice a ripe tomato. A profile on *60 Minutes* led to national recognition and the writing of her best-selling book *Don't Pee on My Leg and Tell Me It's Raining* (HarperCollins), a brutally honest look at the family court system, and then finally to Hollywood.

But looking back on her beginnings in the legal profession, it wasn't an easy ride. "The truth of

the matter is that, for women entering the profession at that time, there were many stumbling blocks the legal profession put in our paths," recalls the judge. "There was a sense you were taking up the space of a man who would need the job to support a family."

Her Honor transferred to New York Law School from Washington College of Law, where she had been the only woman in her class of 126. Told she "would never pass the bar" and that she should "find a nice guy and have a family," she persevered, knowing that she wanted to be a lawyer from the time she was a "single-digit human being." Rather than being discouraged, she credits those early years with toughening her up.

After graduating from NYLS in 1965, she per-

formed a stint as a lawyer with a large cosmetics company — where she was asked if she knew how to type — and then took some time off to start her family. In 1972, Judge Sheindlin found her true calling in New York's Family Court, at first prosecuting cases for the state. Ten years later, then Mayor Ed Koch appointed her to the bench as a judge in the Family Court. She describes the day she was sworn in as "the highlight of my career." In 1986, she was named Supervising Judge, and has heard more than 20,000 cases. She currently lives a bi-coastal existence, filming in California but making Manhattan her home with husband Jerry Sheindlin, a justice with the Supreme Court of New York.

What message has Judge Judy conveyed that has so touched a nerve with the public? It is a message she has expounded throughout her career: "You have to take responsibility for your life."

What advice does Judge Judy offer to today's New York Law School students?

"First of all you have to be inventive; the law must be elastic. The Constitution did not anticipate the Mir space station, problems of global warming, or the kinds of commerce we now have. Lawyers have to use the basics but then be inventive in trying to make this good document real for this millennium.

"Second, when you are looking for a job, or even after, know that there are certain things that you do better than others. You may not be comfortable litigating, or you may not be comfortable sitting in an office. So, even as the job market is tightening, try to find what you are most comfortable in, a job that suits your personality. You will be working for decades, and if you are not happy, you will resent every day that you have to get up and work. Conversely, if you find a position that is comfortable and optimally utilizes your talents, every day will be a joy."

I think it is safe to say that every day is a joy for Judge Judy.

Today's law students grew up on computers and technology. In an effort to reach these students in a medium with which they are familiar, the Office of Career Services decided to make more use of new technology in providing services to students. Our goal is to employ technology to enable us to deliver better service to students and alumni.

The Office's first step in this direction was to place all student job listings onto an online Student Job Listing Database. This substantially alters how a student obtains job listing information from our Office. In the past, a student would come to our Office or

and completely review each Job Binder to determine if any pages were missing. Due to time constraints, the Job Binders in the Mendik Library were reviewed and updated by our Office only once a week. Thus, students (particularly Evening Division students) who were unable to come to our Office during office hours were forced to rely on the sometimes less-than-current Job Binders in the Mendik Library.

The new Student Job Listing Database changes all this. Rather

Jobhunting in the Information Age

**BY DEBORAH HOWARD
DIRECTOR OF
CAREER SERVICES**

to the Mendik Library to review our Job Binders. The student would then physically leaf through the pages of the binders to see if there were any jobs of interest. If there were a job posting to which he or she wished to apply, the student would then write down the information listed or take the Job Binder down the hall to make a photocopy.

The Job Binder system left much to be desired. It was difficult to maintain. Students would often neglect to replace pages when they removed them to make copies, making it necessary for a member of our staff to regularly

than having to maintain these unwieldy binders, listings can be updated immediately each evening through a data download process made possible with great help from Sui-Ki Kan in the Law School's Information Technology Center. And the Student Job Listing Database is available on three computer terminals in the Office's Resource Room as well as from any computer terminal on the Law School network. Thus, students wishing to review the latest job postings need only log on to any computer terminal on the network. Once they log on and enter the Career Services Student Job

Listing Database, they can perform searches to find the kinds of jobs in which they are interested (e.g., search for all jobs that involve litigation or all jobs for Evening Division students). Regardless of whether our Office is open, students have access to the Job Listing Database whenever the Law School is open. This is especially useful for our Evening Division students. And the entire Job Listing Database can be saved on a floppy disk, eliminating the need to write down or make copies of job posting information.

The Office has also created an Alumni Job Listing Database. Alumni can now make use of this new, efficient system to obtain updated job listing information even if they are unable to come to our Office during office hours.

The Office has been making use of new software, Microsoft Powerpoint, to make presentations to students. Powerpoint, a presentation software, enables the Office to use colorful slides as visual aids for all its presentations to large groups of students. This is especially important in this day and age, in which students, raised on technology, find visual aids an important part of any presentation.

Finally, the Office has developed the Career Services Database, using yet another software product, Folio, which will be available to students in the spring. This software has enabled the Office to create an interactive database that includes the Career Services Manual and ten of the Office's major handouts. Students using the database will be able to move quickly and easily around the database using the hypertext links included in it.

Just as the Online Student Job Listing Database changes the process of reviewing job listings, this new Career Service Database

significantly alters the way a student obtains job search information. Currently, a first-year student starts with a review of the *Career Services Manual*. After reviewing the section that describes various employment settings, if the student determines that she is interested in working for a government agency, she will refer to the section of the Manual describing government practice. That section of the Manual refers students interested in government practice to the Career Services *Careers in Government* manual. The student would then have to come to our Office to pick up a copy of that manual. If she were using the Career Services Database, however, the student would realize that the reference in the text to the Career Services *Careers in Government* manual is written in hypertext. Thus, the student need only double-click on that hypertext and be taken immediately to the part of the database that contains the *Careers in Government* manual.

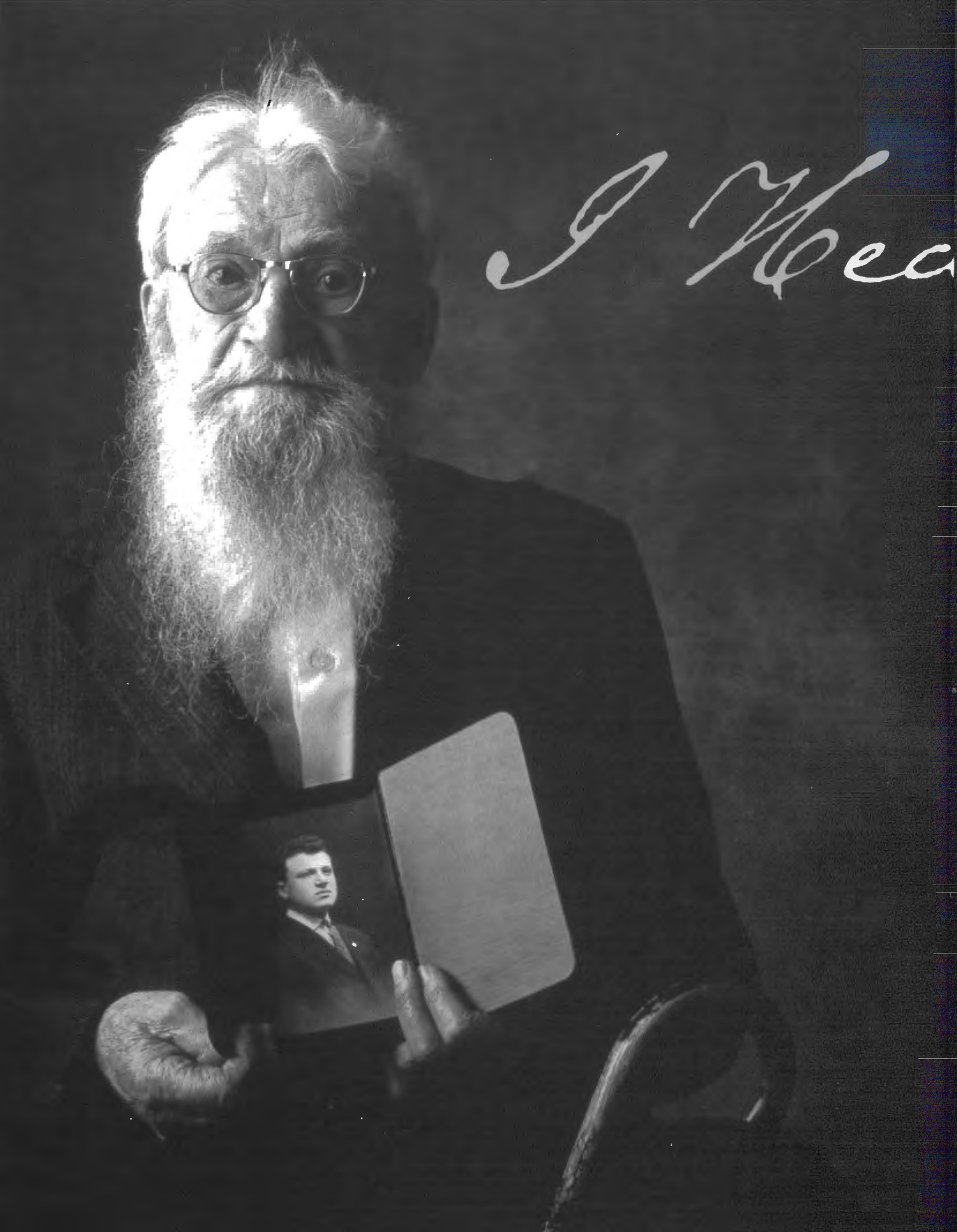
The database will enable students to make better use of the vast resources currently available in the Office of Career Services by making them more easily accessible. And by making them easily accessible in an interactive format, students may be more likely to take advantage of and benefit from these resources.

In the future, when the Law School is able to create an Intranet, available only to students

and alumni, the Job Listing Databases and the Career Services Database will be remotely accessible and therefore available on a 24-hour basis.

The Office of Career Services hopes the new technology we have been utilizing will make us better able to educate and assist students and alumni.





J. Mea

Immigrant America Singing

IMMIGRANT VOICES OF NEW YORK LAW SCHOOL

First Monday in October” is a national program that brings together the legal community in an annual celebration of the law as a force for furthering social justice and civil liberties. This past year, the First Monday program focused on immigration issues.

As part of the NYLS celebration, students, faculty, and staff were asked to share information about their immigrant backgrounds and the stories surrounding their families’ immigration. These stories were compiled into a booklet entitled *New York Law School Stories*.

The stories revealed a fascinating personal dimension of the New York Law School community. Those who responded had backgrounds from Spain, Poland, Russia, Iran, Italy, Ireland, Hong Kong, Germany, New Zealand, the Dominican Republic, Ukraine, Nova Scotia, India, Colombia, the People’s Republic of China, the Philippines, Finland, Cuba, Holland, Austria, Mexico, Romania, South America, Montserrat, Taiwan, Norway, Haiti, Denmark, and Honduras. Reasons for immigration were as varied as the places from which people emigrated. Many people came seeking a better life or employment opportunities; others came to escape political, ethnic, or religious persecution. Several people immigrated to follow loved ones or as a result of marriage.

A sampling of the stories shows the role immigration has played in the lives of NYLS families:

My grandparents emigrated from Poland and Russia in the 1920s, seeking employment opportunities here in the U.S. My great-uncle is founder of the famous Nathan’s Hot Dogs.

(continues on page 14)

In 1986, I was sent on a vacation to New York by my mother. While on vacation, I helped a friend in his bar for two evenings, and those two evenings turned into nine years.

My paternal grandmother decided to emigrate from Heidelberg, Germany, to make a fresh start after a divorce.... My maternal grandfather came from Austria to work in a lumber camp in West Virginia.

My mother's parents were married in Kamenets [the provincial capital city of Podolya, a province of Ukraine], then separated by the war, as my grandfather had come here in about 1912 to establish himself and send for his wife and young son (my uncle). My grandmother went back to live with her family in Skala, then came here with my uncle after the war.

My family emigrated from Nova Scotia, formerly known as Acadia. The English ethnically cleansed the maritime provinces of Canada in the 1750s and '60s and expelled all of the French inhabitants.... My family settled in South Louisiana, in an area called Acadiana.

My family tree is both confusing and inspiring — it gives me a great sense of pride to know that I am from a sort of melting pot of cultures that knew love as having many colors, not as being colorless; and my family is full of individuals who were not afraid to take chances and challenge the norm.

My maternal grandparents emigrated from Italy when they were in their teens.... My grandfather was in the Navy and became a prisoner of war in England. He eventually worked as a longshoreman, and my grandmother worked in a clothing factory as a seamstress until she married my grandfather and got pregnant.

My family relocated from Cuba to Jamaica, West Indies, during the time Fidel Castro began to take seat in Cuba. They were forced to leave their land (which had been in their family for years) and many of their possessions behind.

I am a fourth-generation immigrant from Holland and Austria.

I always make a point of remembering that my maternal grandmother was illiterate in both Italian and English and that my father was the first member of either family to go to college (courtesy of the GI Bill). I am the first lawyer in the family.

My Irish-Catholic mother [grandparents from Ireland] and my Eastern European Jewish father [grandparents from Romania and Kiev] eloped and got married in the city registrar's office in Paris. And just to complete my family's migration history — in 1970, my parents moved to England.

We left Guyana in 1977 because political corruption was driving the country's economy down. The standard of living was deteriorating and basic necessities were scarce.

My family emigrated from Ireland in the mid- to late-1800s because of the potato famine.

My father immigrated to the U.S. from Germany in 1965. He was unable to speak English and only had an eighth-grade education. He lived with his aunt and uncle, who were also immigrants. The pursuit of the American dream was my father's ultimate goal in immigrating to America. Today he is a somewhat wealthy butcher, landlord, and businessman.

My 92-year-old grandmother, who moved here in 1977, was the last member of my family to become a U.S. citizen — she was naturalized last month.

My parents, aunts, and uncles emigrated from Taiwan to the U.S. in the 1960s. My father came here by a student visa for graduate courses.

MY FAMILY TREE IS
BOTH CONFUSING
AND INSPIRING—IT
GIVES ME A GREAT
SENSE OF PRIDE TO KNOW
THAT I AM FROM
A SORT OF MELTING POT
OF CULTURES THAT
KNEW LOVE AS
HAVING MANY
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THE NORM.



Shifting the Burden of Proof: A Reckless Experiment

Professor Ann F. Thomas

The IRS restructuring bill (H.R. 2676) now pending in Congress contains a provision that would shift the burden of proof from taxpayer to IRS in most civil tax cases. The idea of burdening one's adversary is always appealing and there is little doubt that many Americans feel that the IRS is a blameworthy opponent. But present law places the burden of proof where it belongs in tax cases. The proposal to change the long-standing rule in civil tax litigation is misguided. It would add to the cost and complexity of tax disputes for taxpayer and IRS alike and yet is unlikely to enhance the fairness of tax law or tax administration. Indeed, the proposed change is more likely to harm honest taxpayers than it is to improve the functioning of either the IRS or of the Internal Revenue Code.

The Internal Revenue Code firmly and appropriately places the burden of proof on the IRS in criminal and civil tax fraud cases.

Similarly, where the IRS seeks extraordinary penalties in connection with tax evasion, it has the burden of proof. But in ordinary civil tax cases, there is a refutable presumption that the government's position is correct and the taxpayer has the burden of proving that the IRS is wrong.

Placing the burden of proof on taxpayers in civil tax cases is appropriate and necessary. The taxpayer is the party in possession of the facts at issue. In civil cases outside the tax area, the courts have ordinarily assumed that the burden of proof should be borne by the party in possession of the facts, which is the party most likely to be able to sustain the burden. The inherent logic of this view in non-tax litigation is reinforced in tax cases by the structure of the controversy. The IRS and taxpayer are not parties to a common transaction of which each has firsthand knowledge. The IRS has nothing to do with the taxpayer's affairs. The taxpayer asserts its view of the facts in its possession and its understanding of the law in filing its return. The IRS responds to the filing of (or failure to file) the

return. Typically, it is the taxpayer's own assertions in its own tax return that present law requires the taxpayer to prove.

H.R. 2676, which passed in the House of Representatives in October 1997 and is now awaiting action in the Senate Finance Committee, would assign to the IRS the burden of proof "in any court proceeding with respect to any factual issues relevant to ascertaining the income tax liability of a taxpayer," providing certain conditions are satisfied. The bill provides that the burden of proof shifts to the IRS only if the taxpayer "fully cooperated" with the Service with respect to the issue. Full cooperation is described as "including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer" that are "reasonably requested" by the IRS. The new rule would apply to more than 90% of individuals and businesses.

The preconditions for placing the burden of proof on the IRS in the trial phase of the controversy are apparently intended to leave the burden with the taxpayer in the

audit and administrative appeals phases, which account for the vast majority of taxpayer interactions with the IRS. The bill apparently envisions a new pretrial proceeding in which someone, probably the trial court, will determine whether the burden of proof is to shift to the IRS for the trial. While it is not clear how this new phase of tax controversies is to be implemented, it is very clear that it will be contentious and costly.

But an even more serious problem is that this change in law will needlessly disrupt tax collection for years to come. The numerous ambiguities in the bill's language and purpose will have to be clarified by the courts. It could well take a decade of appellate litigation before the law interpreting this new provision will be settled. What is to happen to tax collection in that decade?

Dishonest taxpayers will see this new system as an invitation to withhold information while they test the meaning of "full cooperation" and see what standards of proof are imposed on the IRS. Ambiguities in the proposed statute con-

cerning the requirement to substantiate items of income and expense may be seen as an encouragement to destroy records and falsify reporting. Tax evaders will have a field day for years as the courts struggle to develop meaningful standards.

Honest taxpayers may well be hurt also. Some may infer incorrectly that they no longer need to retain records since it will be up to the government to keep track of everything. They will be in for a rude shock when they discover that this is not the case.

If confusion over the burden of proof issue results in even a 1% fall-off in compliance, approximately \$10 billion in tax revenues would be lost annually. Pressure will inevitably grow to increase tax rates to make up the difference, tempting more taxpayers to cut corners and take their chances in court. As compliance drops, the efficacy and fairness of tax administration will inevitably diminish. But something even more valuable may be lost in the process: the noteworthy U.S. habit of voluntary tax compliance.

What impact shifting the bur-

den of proof will have on outcomes at trial is an open question. Many observers have noted that few cases are now won or lost on burden of proof issues alone. But this could change. It is not unusual for the testimony of the taxpayer to be the most relevant, if not the only, evidence of occurrences. Under present law, the courts can hold for the IRS where they find the taxpayer not to be a credible witness in such a case. But if the IRS has the burden of proof, the court's judgment that the taxpayer is lying may not be enough to carry the day for the government if it has no affirmative evidence to present. If affirmative evidence is required of the IRS, unscrupulous taxpayers will have all the more incentive to destroy records or simply never create them. Such behavior will increase the tax burden on honest taxpayers, make the IRS more aggressive at the audit stage and further fray at the fabric of voluntary compliance.

The idea that taxpayers should be encouraged to engage in paperless cash transactions or operate without meaningful records at this point in the development of infor-

mation technology seems particularly anomalous. It is easier than ever before for taxpayers to substantiate expenses and track income in managing their business and personal affairs. Why create a tax incentive to reverse this useful process?

The proposal to shift the burden of proof has been taken up by bipartisan Congressional leadership eager to make its mark against the IRS, even if it cannot figure out how to tackle the Internal Revenue Code. While it may not be intended to do so, the idea of shifting the burden of proof sends a confusing message to taxpayers, suggesting that henceforth they will not have to pay tax until the IRS proves what they owe. Confusion on this point could not come at a worse time. As the United States engages in an intense debate of the relative merits of the current income tax and fundamental tax reform, it is important to maintain our strong tradition of voluntary tax compliance. Whether we end up with a progressive income tax, a consumption tax, or a flat tax, we will need to collect it. Experimenting with the burden of proof is a reckless idea.

NYLS

NEWS

California

Dreamin'

by Diana Leo

C

alifornia:
land of movie magic and mud-
slides...winegrowers and surf-
boarders...You might think
Berkeley or Baja, but when you
think about California, you
probably don't think New York
Law School. But maybe you
should!

This past January, Dean
Harry Wellington, Associate
Dean Barbara Leshinsky, and
almost a dozen members of the
NYLS faculty journeyed west to
attend the 1998 meeting of the
American Association of Law
Schools (AALS), held in San
Francisco. Never one to miss an
opportunity to connect with
alumni/æ, Dean Leshinsky did
some research before the trip
and found that there was an
alumni/æ presence in northern
and southern California, as well



Dean Harry H. Wellington and Associate Dean Barbara Leshinsky (center) had the opportunity to meet with California-based alumni/æ during their West Coast trip in January.

as in Arizona. Receptions were planned in San Francisco, Los Angeles, and Phoenix, alumni/æ were invited and responded most positively, and Deans Wellington and Leshinsky headed west.

The AALS biannual meeting is an opportunity for law school deans, faculty, and administrators to exchange ideas and information and to attend seminars and workshops in specialized fields. Among those attending from the Law School were Professors Joyce Saltalamachia, Arthur Leonard, Lenni Benson, Denise Morgan, and William LaPiana. Deborah Howard, Director of Career Services, as well as Dean Harry Wellington and Associate Dean Barbara Leshinsky also attended.

From the AALS meeting, it was straight to the Hotel Nikko

for a chance to meet San Francisco-based NYLS alums. Interestingly, the majority of those attending were recent graduates, who were delighted with the opportunity to network and to visit with some of the faculty members who had so recently been their professors.

Reasons for settling in San Francisco were numerous: some were Californians who had welcomed the opportunity to experience New York while at school, others followed spouses, and some seemed simply to want a change.

Later in the week, Deans Wellington and Leshinsky arrived in Los Angeles on one of those classic L.A. days of unceasing sun and moderate temperatures. It was perfect for the reception at Shutters, a stunningly beautiful Santa Monica hotel located right on the ocean. The response was wonderful, with one alumna coming from as far away as San Diego. A wide range of graduating classes was represented and all were delighted to be together, sharing memories and laughter about their days at NYLS. Elif Keles

'95 gratefully acknowledged Professor Lenni Benson, who had helped place her with an immigration law firm in L.A.; Alvin Nierenberg '61 told about his struggle to attend law school while working as a New York City police officer. Arlene Moskowitz '62 is so determined to keep the momentum going, she volunteered to start an NYLS Alumni Association chapter in southern California.

The next day the Deans were set to fly to Phoenix to attend a reception for Arizona-based alums at the beautiful home of Paula Seider Solomon '60 and her husband Elliott. As they waited to board their plane, the first reports of fog between L.A. and Phoenix drifted in; within an hour, it was clear there would be no flights to Phoenix at all. While not assuaging their disappointment at all, as Dean Leshinsky observed, the experience did remind her that not all the bad weather is on the East Coast.

In all, the West Coast trip served to affirm the sense that NYLS alumni/æ, wherever they are, tend to have a sense of

camaraderie and a connection that is of tremendous importance to them. It is to strengthen these ties to each other and the Law School, to broaden support for recent grads in their areas, to network, and to support the Law School itself, that these visits are of special significance to Deans Wellington and Leshinsky.

Since the successful California journey, Dean Leshinsky has already traveled to South Florida, where she visited with a number of influential alumni and also discovered that there is a relatively large population of recent grads — so many that one of the recent grads she met with volunteered to start a Young Alumni Association chapter in the South Florida-Palm Beach area.

Future travel plans include Washington, D.C.; the Florida Gulf Coast; Boston; and next year, back to Los Angeles, and definitely to Phoenix, fog permitting.

NYLS Professors William LaPiana (photo, left) and Arthur Leonard (photo, right) met with alumni/æ during the San Francisco Alumni/æ Reception.



New Professor Paul Dubinsky

Comparisons are Professor Paul Dubinsky's *raison d'être*: from food to religion to legal systems. As an undergraduate, he studied comparative religion. After graduating from Harvard Law School, he went to Europe to study comparative law. As a lawyer, he practiced European Community law. Now, as he joins the NYLS faculty, his knack for analyzing legal systems around the world has landed

him an appointment as a member of the U.S. Delegation to the Hague Conference on Private International Law, where he and representatives from other nations are drafting a treaty enabling litigants to take judgments won in one country and enforce them in the courts of another. He is able to pursue this work with the help of an International Affairs Fellowship by the Council on Foreign Relations.

“Finding common denominators is what fascinates me

about comparative law,” Prof. Dubinsky says. “And in the field of international law, I am interested in how to construct an international legal system that actually works.”

He brings impressive experience to the classroom. Prior to starting at NYLS in January, Prof. Dubinsky was associate director of the Orville H. Schell, Jr., Center for International Human Rights at Yale Law School. Before that, he spent five years as an associate at Wilmer, Cutler &

Pickering in Washington, D.C. “The firm didn’t pigeon-hole me. I got to do a variety of things there, and I am grateful for that experience.” In addition to work in European Union regulatory law and international securities litigation, he worked on public offerings and telecommunications issues. While at the firm he served on the Telecommunications Committee of the U.S. Council for International Business and as vice chairman of the Law Committee of the Anti-

Defamation League. He also received the firm’s award for outstanding pro bono service.

Prof. Dubinsky hopes to impart to students both analytical skills and a perception of the “big picture.” “When a student leaves law school, she should be able to spot a case’s central issues, recommend several potential approaches, and communicate effectively with clients, courts, and others. Writing and communication skills are overlooked all too often.”

Students in Prof. Dubinsky’s international law courses will be rethinking private versus public international law. He previously taught European Community law as a visiting professor at Yale and international law as an adjunct professor at Georgetown University Law Center while still at Wilmer Cutler.

In 1995, he spent three weeks in Bhutan drafting contract and sales laws for the Royal Government of Bhutan, under the auspices of the United Nations Development Program. While on a strictly vegetarian diet of the hottest food in the world, he learned that sometimes the most efficient and standard models for

legal systems may not be the best choice for a developing country, at least not immediately.

“In working to improve the legal system of a developing country, you have to be familiar not only with the legal system itself,” he says. “Understanding the culture is also important. You have to try to understand why seemingly peculiar customs in the legal system have been perpetuated before you even consider trying to change them. In essence, one has to try to leave behind a ‘one-size-fits-all’ way of thinking.”

Like learning a language, immersion in another legal system is the only way to fully understand it, Dubinsky says. After graduating magna cum laude from Harvard Law School, he went with his mentor, Professor Koen Lenaerts, to work on his LL.M. in international and European Community law at the Katholieke Universiteit in Leuven, Belgium. “What continues to fascinate me about the European Union is that, after nearly 50 years, it is a legal system very much in flux, where very fundamental legal questions are still up for grabs.”

“When a student leaves law school, she should be able to spot a case’s central issues, recommend several potential approaches, and communicate effectively with clients, courts, and others. Writing and communication skills are overlooked all too often.”

Report from Development

Please join in a fond farewell to Steve Johansen, who retired as director of alumni affairs after eight years with the Office of Development and Public Affairs. Steve contributed greatly to increasing the Alumni Association's membership to 3,000. Laurie F. Dorf, the new director of alumni affairs and special events, will continue to work closely with the Alumni Association to continue building a strong and active alumni body. Laurie also will coordinate special events throughout the year. She comes to NYLS from the YMCA of Greater New York, where she worked closely with volunteer committees and boards and was very involved in special events and

citywide fund-raising.

This year, the Annual Fund Drive is chaired by Judith A. Bresler '74. NYLS Board of Trustees member Phil Damashek is the energetic chair of the Harlan Fellowship committee, and for a second year, Perry Habib '84 heads the Dwight Committee. Harlan Fellows are those who give an annual gift of \$1,000 or more; Dwight Fellows give a minimum of \$500. The 1997-98 campaign chairs are determined to set new records for the number of alumni/æ making donations as well as for the amount of money raised. They are on track to do just that, and if giving levels and rates continue into this spring and summer, the three chairs can rightly claim success

for their dedication and hard work.

New this year is the Harlan Associate giving level. It's open to those who have graduated in the last five years and who give an annual gift of at least \$250. As Harlan Associates, these younger alumni/æ are entitled to the same privileges as supporting members of the Harlan Fellowship and participate in all Fellowship activities and events. Many thanks to Alyssa Held and Carl Wistreich, both class of '94, for cochairing this new committee.

For more information on these and all giving opportunities, please call the Office of Development and Public Affairs at 212-431-2800.

LAW Luncheon

The Legal Association of Women

hosted its fifth annual Women at NYLS Luncheon on October 30. More than 75 faculty, students, and staff attended to hear Professor Carlin Meyer give an insightful talk about what it means to be "for women."

Prof. Meyer provided an historical overview of feminism and women's rights in the 20th century, as well as astute analysis of the present status of women in the workplace in general and in the legal profession in particular. She concluded that women have made enormous gains, but that there still are tremendous impediments, and she reminded the audience that to be "for women," means to cut across all social, economic, and professional classes and to recognize the commonality of women's interests.

In addition to a stimulating talk, the LAW Luncheon also provided an opportunity for the women of NYLS — faculty, students, administrative personnel, and staff — to get to know and understand one another. In fact, it was a wonderful way to turn Prof. Meyer's advice into practice.



Judge Cornelius Blackshear (center) gives advice on federal clerkships to minority students.

Some 20 federal judges were on hand on Wednesday, November 19, for the Second Annual Forum on Federal Court Clerkship Opportunities for Students of Color,

which was cosponsored by the Office of Career Services and the New York State Bar Association Committee on Minorities in the Profession. The program opened with a panel presentation featuring Hon. Harold Baer, Jr., U.S. District Court, SDNY; Hon. Cornelius Blackshear, U.S. Bankruptcy Court, SDNY; Hon. Sterling Johnson, U.S. District Court, EDNY; Hon. Laura Taylor Swain, U.S. Bankruptcy Court, EDNY; and

Hon. John M. Walker, U.S. Court of Appeals, 2nd Cir. After the panel, students were invited to join in roundtable discussions with the federal judges and learn about the educational and employment value of federal clerkships.

Faculty Publications Party

One of the first gatherings of the academic year was the Faculty Publications Party on Wednesday, September 3. Dean Harry H. Wellington welcomed faculty and staff back for the new academic year and invited them to honor the latest publications produced by what the Chicago-Kent Law Review Faculty Scholarship Survey called one of the most prolific law school faculties in the country.

A display featured the latest scholarly works by the full-time faculty. A total of 136 works were produced in 1996-97, including 40 law review articles, 27 chapters in books, 4 new books, and 2 newly issued paperback reprints; in addition, NYLS professors served as editors for 5 journals and publications.

Alumni Receptions

Recent Graduates Reception.

In August a reception was held for recent graduates at Coco Marina Restaurant in the World Financial Center. It was a great opportunity to renew friendships, develop new ones, and network with other NYLS alumni/æ. More than 150 alums did just that!

NJ Reception. This past September Dr. Ben and Lelia Pascariu, parents of NYLS student Corinne Pascariu '99, hosted a reception for alumni/æ from northern New Jersey and Rockland County in their spectacular home in Alpine, N.J.; Dean Wellington and others were there to enjoy a fabulous buffet dinner and the company of a group of interesting alums.

Long Island Reception. On October 21, well over 100 alumni/æ gathered at Carlton on the Park for the Long Island Alumni Reception. Anthony Capetola '70, owner of Carlton's, hosted the evening. Special guest was NYLS Civil and Human Rights Professor Carol A. Buckler, who spoke about her work with students at the Law School's Civil and Human Rights Clinic.

Holiday Party. On December 2, the Alumni Association held its annual Holiday Party at Tapika, a beautiful Southwestern-style restaurant located in mid-Manhattan. Over 150 alumni/æ joined Dean Wellington and Board of Trustees Chairman Taylor Briggs in a holiday toast. There was good food and great networking, all of which added up to a terrific time for all.

Alumni Luncheon. On January 30th, the Alumni Association held its annual luncheon in the Terrace Room of the Plaza Hotel. This year's luncheon chair was Guy Vitacco, Sr., '57, previous recipient of the Charles W. Froessel award. Over 150 guests were in attendance to hear guest speaker New York City Comptroller Alan G. Hevesi give an inspiring speech.

Two awards are presented each year. The Judge Charles W. Froessel Award is presented to an alum who has significantly enhanced the prestige of New York Law School in the legal community. This year the award was presented to the Honorable Alfred D. Lerner '51. The second award, the Justice William Kapelman Memorial Award, is presented each year by the Association to the best oralist in the Charles W. Froessel Moot Court Competition. This year's recipient was Leah Wigren '98.

PLEA Program. The P.L.E.A. program, under the leadership of Carol Kriesberg, promises to be an exciting one. The opening session on March 25 was "Business Succession Planning—Strategies & Resources for Law Firms' Clients" and was hosted by Merrill Lynch. The Alumni Association will be planning more P.L.E.A. programs in 1998.

More than 150 alumni/æ and guests gathered at the Terrace Room of the Plaza Hotel last January to listen to New York City Comptroller Alan G. Hevesi speak at the Annual Alumni Luncheon.



The NYLS Center for International Law, under the direction of Sydney M. Cone, III, C.V. Starr Professor of the Law of International Trade and Finance, and Adjunct Professor Lene Skou-Moynihan, sponsored two major symposia during the first half of the 1997-98 academic year, addressing important developments in regions of the world — the European Union and sub-Saharan Africa — that are currently undergoing historic economic changes. The symposia were cosponsored by New York Law School's *Journal of International and Comparative Law*. The Law School's International Law Society assisted the Center in producing the events.

The first symposium, *Trade and Investment Involving Sub-Saharan Africa*, was held on November 3. The symposium examined opportunities in sub-Saharan Africa for trade and investment, and the policies necessary for fostering these opportunities — in particular policies being contemplated by the United States and by Africa itself. The views of the speakers were far from uniform, and the symposium was an occasion for lively debate.

The speakers were:

Professor Stephen J. Ellmann, New York Law School, who set the stage in a talk about the important shifts occurring in many places in Africa as a variety of countries move toward democracy and market economies;

Ambassador Semkula Kiwanuka, permanent representative of Uganda to the United Nations, who discussed the new open economic policies that are being developed in Africa in a provocative talk with the title "Africa on the Move";

Lamon Rutten, Commodities Division, United Nations Conference on Trade and Development (UNCTAD) in Geneva, Switzerland, who gave an overview of financial vehicles for trade and investment in Africa; and

Irving A. Williamson, deputy general counsel, U.S. Trade Representative, who

outlined recent trade and development initiatives by the Clinton Administration and Congress.

The second symposium, *The Euro: Hard Questions to be Answered by Market Participants & Policy-Makers*, was held on November 13. The introduction in the European Union of a single currency, the Euro, to replace national currencies now seems certain to occur.

This process will involve the formation of a European Central Bank and the creation by the European Union member countries of an Economic and Monetary Union. The

The Euro and Sub-Saharan Africa: Major International Symposia Come to NYLS

transition to a single currency poses hard questions that will have to be answered by participants in capital and currency markets, and by policy makers in Europe and throughout the world. The symposium addressed many of these questions. The symposium received support from the New York Mercantile Exchange and the New York Delegation of the European Commission.

Ten highly qualified speakers from Europe and New York were featured:

Len Berkowitz, adviser to the Governors and head of the Legal Unit at the Bank of England, who discussed the United Kingdom's preparations for the single currency;

Daniel P. Cunningham, a partner of the law firm of Cravath, Swaine & Moore, who discussed legal issues relating to the

continuity of contracts under the Euro;

Joly Dixon, director of International Economic and Financial Matters in the European Commission's Directorate-General for Economic and Financial Affairs, who addressed the implications of economic and monetary union for the international monetary system;

Peter R. Fisher, executive vice president of the Federal Reserve Bank of New York, who discussed the United States' perspective on the Euro;

John D. Howlett, senior marketing manager for the New York Mercantile Exchange, who addressed the question of benchmarking stock and commodity indexes with regard to the Euro;

Filip Moerman, a partner in the law firm of Cleary, Gottlieb, Steen & Hamilton, who discussed problems of convergence (or non-convergence) of interest rates;

Jean-Pierre Patat, general manager of the Foreign Department at the Banque de France, who talked about the European Central Bank and the Euro as an international reserve currency;

Gonzalo Perez Piaggio, member of the Strategy and Economics Group with KPMG Management Consulting in London, who talked about the strategic implications of the single currency;

Patrick Poncelet, director, Payments Clearing and Treasury, Society for Worldwide Interbank Financial Telecommunications (SWIFT), who addressed the effect of the Euro on cross-border currency transfers; and

Hans Ulrich Wegener, chief representative of the Deutsche Bundesbank in the United States, who described the work of the Bundesbank on the way to European Monetary Union.

The proceedings from the two symposia will appear in a forthcoming issue of the *New York Law School Journal of International and Comparative Law*. To participate in any of the Center's programs, please call 212/431-2893.

NEWS

Mid-Year Reception

Those who completed the requirements for graduation with the close of the Fall 1997 semester were recognized by the Law School at the Mid-Year Reception, held January 22 in the Dining Room.

Dean Harry H. Wellington joined the faculty, administration, and staff in congratulating the graduates and their families on their achievements. As Associate Dean Ellen Ryerson read the names of those being honored, each graduate stepped up to the podium to share some memories and thoughts on his time at the Law School. Most students agreed that their accomplishments would not have been possible had it not been for the love and support of their families and loved ones.

The gathering was filled with laughter (one graduate made a special mention of Chase Manhattan Bank, without which his education would not have been possible) and an insight into the many hardships some of our graduates had to overcome in order to be able to stand in that room that day.

These mid-year graduates will be participating in the Commencement exercises taking place on June 8 in Avery Fisher Hall.



New York Law School has once again shown itself to be an important presence in

New York City politics, as it played host to a number of city events last fall.

On October 1, New York Mayor Rudolph Giuliani presented an address in the Ernst Stiefel Reading Room, announcing his anti-drug strategy for New York City. The room was filled to capacity with members of the press, and excerpts of the press conference were carried in local television spots throughout the remainder of the Mayor's reelection campaign.

On September 23 and October 27, the Law School was the site for two debates for New York City Comptroller. The events were carried live on NY1 and were cohosted by *El Diario-La Prensa*. Prof. Ross Sandler from the Center for New York City Law moderated both events.

Finally, Public Advocate Mark Green used the Law School on October 25 for the first annual City-Wide Citizen Action Team (CAT) Summit. Most of the event was closed to the public, but according to Mr. Green, those who attended were very impressed with NYLS, and the event was considered a success.

On November 4, Prof. Nadine Strossen and NYU Law School Prof. Burt Neuborne welcomed controversial publisher Larry Flynt and his lawyer Alan Isaacman

to an open forum, in which students from both the Law School and NYU were invited to ask Mr. Flynt questions about *The People vs. Larry Flynt, Hustler v. Falwell*, and other First Amendment issues. The Ernst Stiefel Reading Room was filled to capacity, and overflow was accommodated in A900.

The program began with opening remarks from each of the panel participants. Then Mr. Flynt and Mr. Isaacman responded to questions that had been submitted to Prof. Strossen's office in advance; attendees were also invited to step up and ask questions. The event concluded with Mr. Flynt offering autographs to anyone who wanted one. The line extended the length of the Stiefel Room, and nobody went home disappointed.



Some new people have been seen walking through the halls of NYLS over the last several months. Let's find out who they are.

The Office of Development and Public Affairs has made some changes.



Laurie Dorf, new director of alumni affairs and special events

With Steve Johansen's retirement after eight years as the director of alumni affairs, Laurie Dorf has quite ably stepped into his place, as director of alumni affairs and special events. Laurie was most recently the development director of the YMCA of

Greater New York, and had previously worked in human resources and hospital administration.

Also new to the department is Aileen Moroney, assistant director of communications. Aileen is the editor of *Counselor* and also helps produce *In Brief* and publicize Law School events. A graduate of Geneseo State University, where she also worked as a public relations intern in the Office of Communications and Publications, she previously worked for the Society of Motion Picture and Television Engineers as the associate editor for the Society's monthly journal.

New Faces at New York Law School

Kimberly Miller, as assistant director of admissions, is responsible for exploring new ways to ensure diversity throughout the student body. Kimberly was an Army Reservist, and ended her enlistment as a sergeant and a veteran of Desert Storm. She holds an MBA in marketing research from the University of Buffalo.

The Office of Career Services also welcomes two new people to its ranks. Alumni liaison Laurie Konopka returns to the United States from a year in the Czech Republic, where she taught English in Prague. In her new position at NYLS, she handles all job orders and posts them to students and alumni, as well as writes the *Alumni Newsletter* each month.

April Pyatt, career services assistant, has just relocated to New York from Virginia, where she attended Hampton University and received a B.A. in political science. It is April's responsibility to

keep up to date on all of the projects other members of the Career Services team are working on, so that she can direct students and alumni to the right sources of information.

Some people we already know have received promotions. Johanna Martin started at the Law School in 1996 as communications liaison. She was promoted last fall to admissions counselor, and has just been promoted again to assistant director of admissions. As such, Johanna does a great deal of recruiting in the fall, which involves travel to the West Coast and the Midwest. She also helps with event planning, application review, and mailings.

Wanda James has recently made the move from faculty assistant to resource development coordinator in the Office of Career Services. There, she maintains and develops materials for the Resource Room and is available to answer questions. She also assists students in finding those materials necessary to their job search. Wanda graduated cum laude from John Jay College of Criminal Justice in 1992.

Welcome to all our new staff members, and best wishes for a successful NYLS career!

NEWS

Herman Badillo Addresses City Law Breakfast

As the old saying goes, ask for the three most important factors in real estate and you'll hear "location, location, and location." Ask CUNY Trustee Herman Badillo for the three things most needed these days in New York City public education, and you're likely to get a

questioning CUNY's open admissions policy and calling for what would become the watchword of Mr. Badillo's talk that morning: standards in our public education system.

Mr. Badillo wasted no time in making the audience aware of the problems faced by students in both New York City's

elementary and secondary schools and in the CUNY system, citing a range of sobering statistics: Only 43% of our public school students are performing at grade level; 52% of students don't

graduate from high school; 87% of CUNY community college students can't pass basic English or math tests; and only 50% of CUNY Law School graduates pass the bar. Our educational system "simply isn't working, especially for minority students," he said. He pointed out that the lack of educational standards has resulted in rampant social promotion in elementary and secondary schools and grade inflation at CUNY institutions.

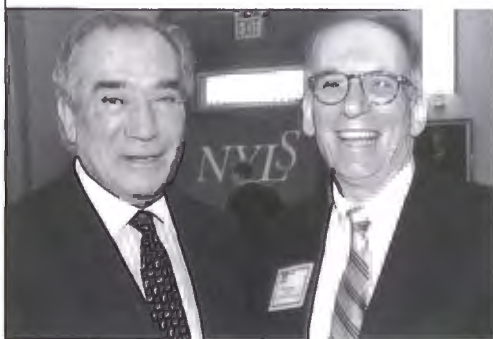
Despite the fact that only slightly more than 40% of public school children perform at grade level, 97% are promoted

each year. To Mr. Badillo, this focus on "social promotion, not educational promotion" means we are creating a generation of students who will never be prepared for higher education. He supports ending social promotion, with promotion to the next grade being reserved for students who can meet objective educational standards. He noted that when the city of Chicago ended social promotion last year, fully one-third of their public school students failed. But, wondered Mr. Badillo, wouldn't it be better to know which third of our students truly need remedial assistance so we can provide them with it?

This same lack of standards has affected the colleges of the City University of New York, where 87% of students now require remedial education. Mr. Badillo echoed the Mayor's

recent assertion that students must be able to perform at a college level before they are admitted to a CUNY college. He suggested that many community college students are now essentially receiving high school educations, and that grade inflation is allowing them to move on without ever mastering basic skills. When 60% of the students who graduate from City College with education degrees can't pass the teacher's exam, there is a serious problem with the system itself.

Mr. Badillo ended his presentation with a "call to arms" of sorts. He noted that while the call for increased educational standards and the end of social promotion has received political support, change will not occur without massive popular support. We need each of you to join us in this fight for the future of our public education system, he concluded, to influence "a change at the local level where it counts."



CUNY Trustee Herman Badillo, left, with Prof. Ross Sandler, director of the Center for New York City Law, at the February 6 City Law Breakfast.

similar answer: standards, standards and more standards.

Herman Badillo, trustee of the City University of New York since 1990 and a former special counsel to the Mayor for Fiscal Oversight of Education, came to the February 6 City Law Breakfast at New York Law School to address the issue of New York City public education. As Professor Ross Sandler, director of the Center for New York City Law and host of the monthly breakfast series, noted in his introduction, Mr. Badillo's presentation was especially timely. That same week, Mayor Giuliani had made headlines by

BREAKFAST SERIES WRAP-UP:

The 1997-98 City Law Breakfast Series has seen an especially interesting and dynamic lineup of speakers. On September 12, Commissioner Nicholas Scoppetta of the Administration for Children's Services outlined the challenges the city faces in providing for children's social services. Daniel Greenberg, executive director and attorney-in-chief of The Legal Aid Society, came to the Law School on October 24 and shared his experience in creating what has become a full-service law firm for the city's poor. On December 5, New York State Comptroller H. Carl McCall detailed the financial challenges faced by the city and the state. Herman Badillo followed on February 6. The March City Law Breakfast featured Hon. Judith S. Kaye, chief judge of the New York State Court of Appeals, discussing New York State court reform, and the series' final event on April 24 saw New-York Historical Society Executive Director Betsy Gotbaum highlight the efforts being made to preserve the Historical Society.



November 1st, 1997. The day was a perfect one...for pulling up the covers and staying in bed. The wind and rain were merciless, the temperature was dropping...and yet nearly 100 hardy souls defied the elements to participate in NYLS's Dean's Day '97.

And it was worth it! The theme was "Lawyering and the Internet," and it was a day of hands-on training and strategies for using the Internet, whatever the level of expertise, in the practice of law. Professors Armando Belly and Camille Broussard offered a fascinating workshop, "Litigating on the Computer," while Professor Jeffrey J. Hass's workshop, "Selling Stock on the Internet," also got high marks by those attending. Two sessions on "Surfing the Net," rounded out the morning.

Dean Harry H. Wellington and Associate Dean Barbara I. Leshinsky welcomed all to lunch in the Dining Room. It was a great opportunity for guests to renew old acquaintances and

make new ones. Professor Camille Broussard gave a fascinating talk about the impact of the latest technology on legal research and practice. A faculty book display and signing was of great interest and showed, once again, the range and diversity of the NYLS faculty's academic and legal interests and expertise.

After lunch, guests reconvened in the Stiefel Reading Room for "May It Please the Court: Privacy and the Internet." The mock appellate argument was introduced by Professor Nadine Strossen. Arguments

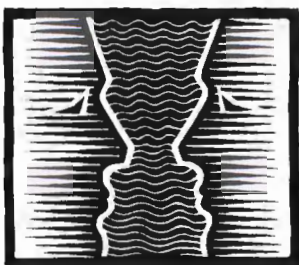
were presented to Hon. Frederic S. Berman '51, Hon. Herbert S. Friend '64, and Hon. Ute Wolff Lally '72. The advocates, Professors Richard D. Marsico and Jethro K. Liebenman, made strong cases and impassioned pleas, with Professor Lieberman finally prevailing.

As Dean's Day '97 drew to a close, the remark made by many was, "When I looked out the window, I almost didn't come, but I'm so glad I did." There's no higher praise than that.



NYLS professors who participated in the book signing included (standing, left to right) Annette Gordon-Reed, Jethro Lieberman, Michael Perlin; (seated, left to right) Nadine Strossen, Rudolph J.R. Peritz, and Karen Cross.

NYLS FACULTY PROFILES



It wasn't until she was a graduate student at Yale that Professor Faith Stevelman Kahn seriously considered a career in law.

When she started her work toward an M.Phil. degree in Renaissance Studies, she was planning on becoming a literature professor.

"I just loved the subject; it was an amazing period to study. It was also a good period to do interdisciplinary work. I liked taking a point in time and studying all aspects of it," she said.

But something was missing. "While I really loved the intellectual aspect of what I was doing, I wanted to do something that would be more practical, more contemporary," she explained. "I also wanted to learn more about contemporary government."

And so, after earning her masters and saying goodbye to Yale and to the Renaissance, Prof. Kahn enrolled at New York University School of Law. She credits two professors, Jeff Gordon and Helen Scott, for sparking her interest in corporate law.

Following graduation, she joined Fried, Frank, Harris, Shriver & Jacobson, in the firm's corporate area. While she enjoyed the practice of law, she found its pace too fast to allow her to think as much about the law's meaning as she would have liked, and Prof. Kahn soon realized that teaching law rather than practicing it would

give her the opportunity for such analysis. She would also be able to return to the goal she had set out for herself in graduate school: that of being a professor.

"I chose NYLS because I was extremely impressed by the faculty and I wanted to stay in New York," she said. "And people were very friendly when I interviewed."

Professor Kahn says that she finds teaching to be both a "challenging and rewarding" experience. Teaching, while different, is just as intense as practicing in a law firm.

"Students in the class all have different reasons for being there. My job is to achieve some common ground to make sure everybody gets what they need to benefit from the class," she said.

But Prof. Kahn is quick to acknowledge that the bonuses to teaching law are great: "Whenever you feel your enthusiasm is communicated to the students, it's extremely gratifying."

What's more, the rewards don't end when the students leave the classroom, or even New York Law School. "Every year, I get a few students who call me from their jobs and tell me how much my course helped them and how excited they are that what they studied is now clicking for them."

With a smile, she added, "They always sound surprised, which is funny to me. I tell them, 'I told you this was happening,' or that 'these issues have relevance.' When they figure this out for themselves, they're excited. I love to get that positive feedback."

Prof. Kahn returns to NYLS this spring after taking last semester off for maternity leave; daughter Allegra, born June 30, joins older sister Zoe, who is nearly five. "My first daughter has already told me that she knows everything I know. She's terribly confident and outspoken. She has a great sense of humor." And the baby "doesn't sleep and doesn't want to drink from a bottle, but other than that, she's perfect." When she is not working, Professor Kahn tries to spend as much time with her family as possible.

She is very close to her parents, who live near her Chappaqua, N.Y., home. When she hosted last year's symposium "Corporate Philanthropy: Law, Culture, Education, and Politics," they offered their support by sitting through the whole day's program, and even tried to participate. Prof. Kahn noted with a laugh that her father was "dying to raise his hand and ask questions, and my mother had to keep nudging him to keep quiet."

Outside of work and family, Prof. Kahn has very little time to pursue other interests and hobbies, but last year's move to Westchester County inspired a few. "If I had time, now that I live in the suburbs, I would like to learn to garden. And since there's no take-out food, I would like to learn to cook," she said. "But I get more than enough satisfaction from my job. I consider myself very lucky."

Professor E. Donald Shapiro describes his career as a law professor as “serendipitous.”

“I’ve always wanted to be a lawyer, since I was a little boy,” he said.

So upon his graduation from Harvard Law School in 1956, he returned to his native Pennsylvania to practice. That lasted for a year, until he was called back to Boston by a former professor.

His law school student paper had focused on legal medicine, which, in the 1950s, was just beginning to receive a great deal of notice. “Harvard Law School had one of the first courses on the subject,” he remembered. “Medical malpractice was just coming into being, and forensic medicine was just expanding beyond fingerprints. It was a very exciting time; that excitement hasn’t come along again until the 1990s, with DNA testing.”

The paper received widespread publicity, and in 1957, the professor he had written the paper for, William Curran, asked him to come back to teach at the newly established Law & Medicine Research Center at Boston University. The rest is history. “I’ve taught almost continuously since 1957,”

Prof. Shapiro says. He returned to practice briefly in 1971, as general counsel and partner at Andresen & Co., a Wall Street brokerage firm. At different times, he was director of the Practising Law Institute and president of the *New York Law Journal*.

Prof. Shapiro’s attention returned fully to education when he became dean of New York Law School in 1973. When comparing the Law School of that time to the NYLS of 1998, he says, “It’s like day and night.

“We only had limited accreditation, there were only six full-time faculty members, and the library was very small and inadequate,” he recalled. But he stressed, “We always had very good students. The top quarter of the students here were as good as the top quarter of students I had at Harvard or NYU.”

During his tenure as dean, Prof. Shapiro increased the size of the full-time faculty and expanded the library. He was also responsible for buying the building at 47 Worth Street and the adjacent parking area. He stepped down from the Law School’s helm in 1983, and has remained a member of the full-time faculty since then.

“I just love teaching,” he proclaimed. “I love dealing with the first-year students. They come in

with great enthusiasm for the law. It’s very exciting in a course like Torts to watch them explore the law.”

Prof. Shapiro also travels to London and to Israel several times a year to teach legal medicine, his specialty for over 40 years; he is a supernumerary fellow of St. Cross College at Oxford University and a visiting distinguished professor at Bar-Ilan University in Tel-Aviv. He believes that teaching law to students with such diverse backgrounds is not at all difficult.

“The lifestyle is different, the students are different, but my subject is the same,” he asserted.

Outside the Law School, he confesses to a love of the theater, both stage and screen. Preferring drama to musicals, Prof. Shapiro and his wife of 41 years, Merle, often find themselves at off-Broadway productions; they hold several theater subscriptions.

“We try to see at least one show a week,” he says. “I see a lot of movies as well.” The Shapiros also take advantage of London’s theatrical offerings when he is over there teaching.

In addition, Prof. Shapiro is an avid reader, with fellow lawyer John Grisham among the top names on his list of favorite authors. While Mr. Grisham’s works are definitely works of fic-



tion, Professor Shapiro believes that they “catch a lot of the spirit of the law.”

When he looks back, Prof. Shapiro is humble: “My career is very simple.” Now only teaching one semester each year, he plans to retire in a few years, probably to the Phoenix area. But even then, he doesn’t plan to leave academia completely behind.

“I’ll probably teach, but it’s not going to become a big thing; it’ll just be one thing I do to keep busy.”

And what else will he do to keep busy? “Well,” he said, smiling, “There are a lot of books I’d like to read, and I want to do some more writing.”

NYLS FACULTY NEWS

Adjunct Professor Frederic S. Berman '51

retired on December 31 as a trial judge from the New York State Supreme Court after sitting for 25 years in the criminal division. During a testimonial retirement dinner attended by government officials, judges, lawyers, family, and friends, it was announced that Prof. Berman had been appointed to a new full-time position as a judicial hearing officer, supervising jury selection in the civil division of the Manhattan Supreme Court. This year will also mark Prof. Berman's 40th year as a law professor at New York Law School.

In October, Professor Michael Botein participated

in a briefing of Hon. Françoise Bertrand, chairperson of the Canadian Radio-Television and Telecommunications Division, on U.S. media law. In November, he represented NYLS at meetings of the Council of Europe's European Audiovisual Observatory in Strasbourg, France. Prof. Botein has been appointed to the Committee on Government Relations of the Association of American Law Schools. The third edition of his casebook, *Regulation of the Electronic Mass Media*, will be available for adoption in the Fall 1998 semester.

On November 3, Professor Sydney M. (Terry) Cone, III, hosted a Center for International Law Symposium on "Trade and Investment Involving Sub-Saharan Africa" at New York

Law School. The media coverage was extensive for this event, with representatives from the *Journal of Commerce*, the Associated Press, *Newsweek*, *Black Star*, the *International Diplomatic Observer*, and *Reform Magazine* in attendance. Two international press services also carried information on the symposium: the Inter Press Service News Agency, which provides a daily newswire service in 12 languages to and from more than 100 countries for more than 1,000 media outlets and other clients; and the *World Bank Development Newsletter*, which provides worldwide special coverage of development issues. Ten days later, Prof. Cone hosted another symposium, "The Euro: Hard Questions to be Answered by Market Participants and Policy-Makers"; the *New York Times* covered this event and quoted Prof. Cone in an article it published on the subject.

Professor Paul Dubinsky has been appointed

as a member of the U.S. delegation to the Hague Conference on Private International Law. Along with attorneys from the State Department, Prof. Dubinsky represented the U.S. at the working group of the conference, where approximately 35 countries negotiated a multilateral treaty on the recognition and enforcement of judgments from one country to another.

Professor Aleta Estreicher gave a talk entitled

"Resolving Securities Disputes in the U.S. — Arbitration, Not Litigation" at the Interdisciplinary Center for the Study of Business, Law, and Technology, Radsyner Law School, Herzliya, Israel, in late December.

Professor B. James George's article, "ABA Mental

Health Standards: The Impact on Persons with Developmental Disabilities" was published in the Summer 1997 issue of *Impact*, a publication of the College of Education & Human Development, University of Minnesota. Also, he has published a translation of *Criminal Law of Japan: General Part* for the Comparative Criminal Law Project of Wayne State University.

Adjunct Professor Jeffrey B. Gewirtz was

named general counsel for the Eastern Tennis Association, which is a section of the U.S. Tennis Association.

On December 15, Adjunct Professor Kathleen Grimm was appointed the

State Deputy Comptroller for the City of New York by State Comptroller H. Carl McCall.

Professor Karen Gross

organized and moderated the Second Debtor Education Think Tank, which brought together bankruptcy judges, government personnel, and creditor and debtor representatives to discuss establishing a pilot debtor education program. She also testified on debtor education before the National Bankruptcy Review Commission. At the Consumer Bankruptcy Conference held at Fordham University in September, she participated in a panel discussion entitled "Should the U.S. Bankruptcy System be Modified to Change the Balance Between Creditors and Debtors?" Prof. Gross participated in three events held in conjunction with the National Bankruptcy Judges Conference in October; she spoke on "Reaffirmation Agreements"

for the Commercial Law League, cochaired an American Bar Association Task Force on data collection and bankruptcy, and spoke about "The Role of the Academic" for the International Women's Insolvency Reconstructing Confederation. She presented the keynote address at the Association for Financial Counseling and Planning Education (AFCPE) conference and discussed debtor education during the breakout group presentation. She was interviewed and was quoted by CNN, *Business Week*, CFO magazine (a publication of the Economist Group), and the Associated Press on various bankruptcy issues. Prof. Gross gave a speech on January 20 at Weil, Gotschal & Manges on "Pending Bankruptcy Legislation." She also discussed her book, *Failure and Forgiveness: Rebalancing the Bankruptcy System*, with the New York County Lawyers' Association and the bankruptcy department of Willkie, Farr & Gallagher.

Adjunct Professor Marvin E. Jacob received the Community Leadership Award from Bridge to Brotherhood, at its Inaugural Dinner at the Pierre Hotel on September 25. He also received an award for 25 years of distinguished service on the adjunct faculty of New York Law School.

Professor Randolph Jonakait gave two lectures

this summer at the New York State Judicial Seminars on the right to a public trial. His article, "The Assessment of Expertise: Transcending Construction," was published in the *Santa Clara Review*. He was also interviewed by NewsChannel 4 (WNBC-TV) concerning rules of evidence in the Abner Louima assault case.

Professor Arthur Leonard's

chapter, entitled "Employment Benefits for Domestic Partnership Families," was published as Chapter 24 of *Proceedings of New York University 49th Annual Conference on Labor* (Kluwer Law International). His review of two books on AIDS law was published in *Out* magazine's July issue. In the article, "No Longer Disabled: The Legal Impact of the New Social Construction of HIV" (*American Journal of Law & Medicine*), articles by Prof. Leonard from 1985 are credited as the "seminal" work conceptualizing AIDS-related discrimination as coming within the sphere of "handicap" discrimination law. Prof. Leonard's letter to the editor, commenting on the current status of protection for persons with HIV infection under the Americans with Disabilities Act, was published in the *New York Times* on August 23. His article, "Ethical Challenges of HIV Infection in the Workplace," published in *Notre Dame Journal of Law, Ethics & Public Policy* (1990), is anthologized in a new college textbook, *Business Ethics for the 21st Century*, to be published later this year by Mayfield Publishing Company. His anthology, *Homosexuality and the Constitution*, has been published by Garland Publishing Co.

Professor Jethro Lieberman

has completed extensive revisions to *The Evolving Constitution*. This revised edition, published by the University of California Press, includes more than 325 new cases, incorporating material from annual supplements since the Supreme Court's 1991-1992 term, up to and including the 1996-1997 term; it also contains more than 30 new essays and an extended bibliography. In addition, Prof. Lieberman contributed more

than a dozen articles on constitutional topics for the revised *Encarta Encyclopedia*, a Microsoft encyclopedia distributed on CD-ROM. During the Spring 1998 semester, Prof. Lieberman was an adjunct professor at Columbia University, teaching the basic undergraduate constitutional law course in the political science department.

On November 10, Professor Carlin Meyer

and several NYLS students were interviewed by *Eyewitness News* (WABC-TV) immediately after the reduction of verdict was announced in the au pair murder case. She was quoted in "The New Glass Ceiling," the cover story of the December 1 issue of *Barron's*. She appeared on Court TV commenting on the hearing in *General Media Inc. v. Perry*, concerning the sale of pornography on military bases, and on PBS's *Debate, Debate* regarding the controversy over the conference at SUNY New Paltz on sexuality and gender.

On September 4, Professor Zuhayr A. Mograbi

was the principal speaker on "International Trade Law, Import/Export" before the Asian-American Bar Association of New York.

Professor Denise Morgan

delivered a paper entitled "Planning for a Third Reconstruction: Lessons from the Eritrean Constitution-Making Process" at the Critical Race Theory Conference at Yale Law School.

Professor Rudolph J.R. Peritz's

article, "Corporate Size Matters," was published in the *Journal of Commerce*. His book, *Competition Policy in America 1888-1992: History, Rhetoric, Law,*

was celebrated by *The Antitrust Bulletin*, which published a symposium of papers entitled "Provocations and Reflections Upon Competition Policy in America" in its Summer 1997 issue. Last January, he presented a paper entitled "The Supreme Court's Curious Jurisprudence of Vertical Restraints: *State v. Khan* (1997)" as part of the Antitrust & Economic Regulation Section program at the AALS conference in San Francisco. The *Antitrust Law Journal*, the publication of the American Bar Association's Antitrust Section, recently published his article, "Some Realism About Economic Power in a Time of Sectorial Change." In late March, Prof. Peritz presented a paper at the Conference on Law, Culture, and the Humanities at Georgetown University Law Center. This spring, he began work as a co-author with Prof. Eleanor Fox of NYU Law School and Prof. Emeritus Lawrence Sullivan of the University of California at Berkeley School of Law on the second edition of *Cases and Materials on Antitrust* for West Publishing.

Professor Michael Perlin's

article "Make Promises by the Hour: Sex, Drugs, the ADA, and Psychiatric Hospitalization" has been published in the *DePaul Law Review*. His article "Mixed-Up Confusion": *Kansas v. Hendricks*, *Sexually Violent Predator Laws, and Empty Promises* was published in the Fall 1997 issue of the *Health Law Journal*. In August, he discussed "Into the Lion's Den: Politics, Science, and Insanity Defense 'Reform'" at the American Psychological Association's annual conference on the topic. The eighth annual supplement to his three-volume treatise, *Mental Disability Law: Civil and Criminal*, has been published, and he has signed a contract with Carolina Academic Press to prepare a casebook for

mental disability law classes. His newest book, "*On the Waters of Oblivion: Sanism, Pretextuality, and the Development of Mental Disability Law*," will be published by the American Psychological Association. In addition, his book *The Jurisprudence of the Insanity Defense* was cited in *State v. Wilson*, 700 A. 2d 633 (Conn., 1997), in the first paragraph of the concurring opinion by Justice Katz. He also contributed several chapters to *A Comprehensive Guide to Malpractice Risk Management in Psychiatry*, published by Hatterleigh Press. Prof. Perlin has been quoted in *U.S. News and World Report*, *American Lawyer* magazine, the *San Francisco Examiner*, and the *Indianapolis Times*, and has been interviewed on several occasions by Court TV in regard to various mental health cases. He was quoted by *Boston Globe* writer Ellen Goodman in her nationally syndicated column in regard to the insanity defense. He has also provided pro bono assistance and served as an expert witness in several cases. Prof. Perlin has been appointed to the Coordinating Council of the International Advisory Board of the new International Network on Therapeutic Jurisprudence and to an adjunct professorship in psychiatry at New York Medical College. He was the Pfizer Visiting Professor in Psychiatry at the Wright State University (Ohio) School of Medicine for the Spring 1998 semester. In September he presented two workshops to the New Jersey Protection and Advocacy System. He presented a Grand Rounds talk at NYU Medical Center and was the keynote speaker at the Guardianship Association of New Jersey's annual convention. In October, a paper Prof. Perlin co-authored was presented at a clinical law conference at UCLA Law School, and he presented a paper at a teaching

workshop at the American Psychiatric Association's Annual Hospital Services Conference in Washington, D.C. Prof. Perlin gave the keynote address at the Mental Disability Law Colloquium at Loyola of Los Angeles Law School, and his paper will subsequently be published in a special symposium issue of the *Loyola of Los Angeles Law Review*.

Professor Ross Sandler

was featured in an article in *Newsday* discussing *CityLaw*, the publication produced by the Center for New York City Law. Prof. Sandler was quoted in the *New York Times* regarding contributions to the Giuliani campaign, while *CityLaw* was quoted in the *New York Times*, *Crain's Insider*, *The New York Law Journal*, and *Newsday*.

Professor David Schoenbrod

was a participant in a roundtable discussion of "The Limits and Potential of the Common Law Approach to Pollution Prevention," sponsored by the Center for Private Conservation in Washington, D.C.

Adjunct Professor Anne Marie Santangelo

participated in a panel entitled "What are the Options? Part I- Abolish, Expand, Modify, or Status Quo?" as part of the "Sense or Cents?" symposium sponsored by the Federation of New York Solid Waste Associations.

Professor E. Donald Shapiro

as national news commentator for the CBS network, broadcast several commentaries on November 5 regarding the au pair murder case, especially the trial

judge's hearing after the case. On November 10, he was live on CBS radio for the entire day, as the judge reduced Louise Woodward's verdict and sentence.

Professor Richard Sherwin

appeared on Court TV on November 10 as a commentator about the au pair murder case; he also discussed the case in an interview with the *National Law Journal*. On November 11, he conducted a live discussion in cyberspace for *Law Journal Extra* regarding the aftermath of the verdict and sentence reduction. Prof. Sherwin was also interviewed by the *New York Times* regarding the Unabomber trial.

Professor James Simon

appeared on Court TV's *Miller's Law* on September 3, where he and Prof. Nadine Strossen participated in a discussion on privacy and free press issues concerning photography of celebrities and other people. He also has signed a contract with Simon & Schuster to write a book on Thomas Jefferson and John Marshall; this is his third book for the publishing company.

Professor Nadine Strossen

appeared on many TV shows, commenting on constitutional law and civil liberties issues. Appearances included NBC's *Today* show, CBS's *Late, Late Show* with Tom Snyder, CNN's *Crossfire*, Court TV's *Miller's Law*, *Internight* and *The Big Show* on MSNBC, the cable interview series *Interviews with Henry Hudson Channer*, *Good Day, New York* on Fox-TV, *Hannity and Colmes* and *In-Depth* on the Fox News Channel, MTV's *Fight for Your Rights!*, C-SPAN's *Close-Up*, William F. Buckley's *Firing Line* on PBS, and

Politically Incorrect with Bill Maher on ABC. She has also been a guest on Oliver North's radio program, and is a weekly commentator on the *Good Morning, America!* radio program on the Talk America Radio Network. Prof. Strossen has given many lectures and keynote addresses throughout the country, as well as participated in a number of panel discussions. On November 1, she spoke about cyber-liberties issues at New York Law School's Dean's Day event. At the Law School on November 4, she comoderated the "Open Forum with Larry Flynt and Alan Isaacman" with NYU Law Professor Burt Neuborne, in which the controversial publisher and his attorney answered audience questions and signed autographs. Her letter to the editor, "Can Court Now Reason Away Our Rights?: Religious Hostility Myth," was published on July 4 in the *New York Times*. Her article, "Why the ACLU Opposes Campus Hate Speech Codes," was published in *Academic Questions*. A keynote address she presented at a symposium held at the American University School of Law was published in the *American University Journal of International Law & Policy*. The German-language edition of her book, *Defending Pornography: Free Speech, Sex and the Fight for Women's Rights*, was published in Zurich, Switzerland. A speech to the Economic Club of Detroit was published in the December issue of *Vital Speeches*. "The Current Assault on Constitutional Rights and Civil Liberties," an article based on the Edward G. Donley Memorial Lecture she delivered at the West Virginia College of Law, was published in the *West Virginia Law Review*. Prof. Strossen was profiled in the *Pittsburgh Post Gazette*, in the July issue of

Gadfly Magazine, and in the October issues of *Current Biography* and *Police: The Law Enforcement Magazine*. She was pictured on the cover and inside the December issue of *Upside Magazine*, as one of the "Elite 100: 100 Executives Leading the Digital Revolution." She has become a member of the Board of Editorial Consultants for the new Book Review Section of the Jurist Web Site.

Professor Ruti Teitel

spoke on "Religion, Politics, and State: A Transitional Paradigm" at Columbia University's Center for Human Rights on September 18. On September 24 and 25, she was a participant in the Second Annual Comparative Law Meeting held at Hastings College of Law in San Francisco. On September 26, she participated in an American Society of Comparative Law panel, "Codification and Transition," at the University of California at Davis. On October 12, she presented a paper entitled "Transitional Rhetorics: Law and Political Change" at Yale Law School's International Law/International Relations Dialogue. Her article, "Transitional Jurisprudence: The Role of Law in Political Transformation," was published in the *Yale Law Journal*.



CLASS ACTION

1938

Richard S. Woodman is practicing in Waterville, a small town in upstate New York, where he reports law is practiced as it should be, with great relationships with fellow attorneys and judges you know!

1950

Jerome Friedman was plaintiff's counsel against a Louisiana hospital in a successful lawsuit resulting in a \$2 million verdict.

Irwin Wayne Uran has announced his engagement to the Rev. Betsee Parker of Middleburg, Va.

1951

Irving A. Garson of New City, N.Y., has been elected chair of the 4,100-member General Practice Session.

1953

Lyle A. Marshall, president of the Watts/Willowbrook Boys and Girls Club, is in the midst of a fund-raising campaign to build a badly needed clubhouse for these inner-city children.

1954

Walter A. Laske reports that he retired in August 1995.

1962

John J. Corbley sends warm regards to all his night-school classmates with whom he started out 40 years ago, and reports that he is still working and traveling full-time for his employer.

1964

Vincent A. Pirrone was elected Atlantic Beach (N.Y.) Village Justice for a term of four years. He had previously served as associate village justice and judge in the City Court of Long Beach.

1966

Arthur B. Cohn became of counsel to Collen & Dykman, specializing in utility regulatory matters. He is also of counsel to Kaufman & Libin PC in Queens.

1967

Joseph D. O'Neill was recently certified as a member of the Million Dollar Advocates Forum. Membership is limited to trial lawyers who have demonstrated exceptional skill, experience, and excellence in advocacy by achieving a verdict or settlement in the amount of \$1 million or more.

1969

Charles S. Tusa is a member of the executive committee in the Franchise Law Section of the Connecticut Bar Association.

1974

Ralph J. Mellusi is practicing law, specializing in the areas of maritime and admiralty, as well as personal injury.

Richard Stavin has been elected president of the Coastal Cities Unit of the American Cancer Society and serves on its Los Angeles Regional Council. He also has been elected president of the Executives,

a support group for the Jewish Home for the Aging.

1975

Benjamin R. DeCosta was the subject of an article published in the *Wall Street Journal* last June.

Patricia A. Donlevy-Rosen recently presented, with her partner Howard Rosen, "Asset Protection: Tax and Planning Considerations" for the Tax Committee of the Orange County Bar Association in Orlando, Fla.

1976

H. Richard Adelman opened a title insurance agency for Washington Title Insurance Company, known as Professional Land Services LLC, located in Staten Island, N.Y.

Stacy Olliphant Pifer and her husband John are happy to announce that their son, Steven, has been nominated by President Clinton to be the next ambassador to Ukraine. Steven took up his post in Kiev in January, and John and Stacy will be visiting Ukraine when the weather becomes bearable.

1977

Bruce Cholst is a partner at Rosen & Livingston, a firm specializing in co-op/condo board representation. He recently published a book entitled *When to Litigate/When to Mediate: A Guide to Dispute Resolution for Co-op and Condo Boards*. Copies are available to NYLS alumni/æ and faculty free of charge.

1978

Roger C. Campbell was recently awarded a United States Soccer Federation "A" Coaching License.

Richard L. Koral has moved his offices to Manhattan. His practice specializes in business bankruptcy, corporate reorganization, and debt workouts.

Ken Werner has been named executive vice president, network distribution, for the WB. He will be responsible for all facets of the relationship between the WB and cable affiliates.

1979

Cary B. Cheifetz was one of nine lawyers appointed to the New Jersey Supreme Court Board on Attorney Certification for Matrimonial Law by the Supreme Court of New Jersey. She also is the current secretary of the New Jersey State Bar Association Family Law Section, treasurer of the Essex County Bar Association, and an adjunct professor at Seton Hall Law School, where she teaches family law.

As of January 21, **Robert W. Forman** and the offices of Shapiro, Forman & Allen LLP have moved to Madison Ave. in New York City.

Spencer Herman recently chaired the First Annual March for Tolerance at the Herricks Community Center.

Craig Johns was reelected as Clarkstown (N.Y.) Town Justice for a second four-year term. He and his wife Lana have three children: Craig, Jr. (3), Alexander (2), and Cole, born August 8, 1997.

Neldra Zeigler has been appointed assistant deputy commissioner, legal matters, for the New York Police Department.

1980

Katheryn Roessel has taken a two-year sabbatical from her music law practice so that she can cruise the Caribbean on a private yacht.

1981

Louise Horowitz is in private practice in commercial and landlord/tenant litigation. She recently went to Bali on a schooner, and sailed the Eastern Islands.

1982

David W. Thompson has joined the New York office of the international law firm of Squire, Sanders & Dempsey LLP; he will work in the firm's growing real estate and corporate practice. He was formerly with Dewey Ballantine for 15 years.

1983

Kenneth L. Aron recently formed his own firm with his wife, Andrea J. Baron, specializing in insurance coverage and litigation, as well as commercial and personal injury litigation. The firm has offices in Manhattan and Palisades Park, N.J.

Barbara Cohen became director of the Mercy College Paralegal Studies Certificate Program in November 1997.

Andrew C. Kassner, Drinker, Biddle & Reath LLP, participated as a faculty member at the First Annual Real Estate Institute, which was organized by the Pennsylvania Bar Institute. He led a workshop titled "Real Estate Appraisals."

Ellen Perle is now the senior vice president and eastern regional counsel of Aon Group, Inc., located

at Two World Trade Center in New York City.

1984

Fred T. Haller, III, was elected president of the Blackstone Lawyers Club of Ridgewood, Queens.

Maida Meyers Lowin is actively pursuing her professional singing career. She's turned her time to singing mostly for charitable organizations at their events and galas, where she donates her performances.

Charles E. Valliere was elected secretary/treasurer of the Taxation Section of the Indiana State Bar Association for 1997-98.

On November 17, 1997, **Philip R. West** became the country's top international tax lawyer when he was appointed as the international tax counsel in the U.S. Treasury Department's Office of Tax Policy. He was also recently appointed as an adjunct professor at Georgetown University Law School.

1985

John DeFeo published an article entitled "The Future of CD-ROM Publishing" in the July 1997 issue of *Law Technology Product News*.

Julie B. Krasnogor has been made an associate of the Law Offices of Norine F. Krasnogor in Stamford, Conn.

John J. Schwab, previously a partner at Wilson, Elser, Moskowitz, Elderman & Dicker, left to form the new firm of Kaufman, Borgeest & Ryan.

1986

Louis Crespo was appointed special referee to the New York County Supreme Court.

David B. Foltz has been elected assistant controller, taxes, for Asarco, Inc., in Manhattan.

John T. Rieger is enjoying private practice with four other associates only a few miles from home. He is married and has three children.

1987

Kay Bassetti published a decision relating to medical necessity in the *New York No-Fault/SUM Arbitration Reporter*. She has served as a no-fault arbitrator since April.

Bruce Czachor became partner at Sherman & Sterling in Toronto, where he specializes in cross-border financings and mergers and acquisitions. He and his wife, Kim Mazziotta, are the proud parents of two children.

Rami S. Hanash is a senior environmental lawyer for NASA's John F. Kennedy Space Center.

David Murray has a research fellowship and is pursuing a Ph.D. in computer science at Lehigh University.

Frederic D. Van Arnam, Jr., married Laura Hunt on November 11, 1997. He also made partner at Barnes, Richardson & Colburn, a New York law firm specializing in customs and international trade law.

Harlan Wittenstein and his wife, Dorit, became the proud parents of a new daughter, Michelle Claire.

1988

Stephenie Lannigan Bross, of Levy, Phillips & Konigsberg, was quoted in the *Repetitive Stress Injury Litigation Reporter* after her client won a major settlement of \$5.9 million.

Anthony M. D'Iorio just completed a three-year term as secretary and acting chairman of the New York City Bar Association's Committee on Nuclear Technology and Law, and was recently appointed to the New York County Lawyer's Association Trade Regulation Committee. He is presently a litigation associate at Hughes, Hubbard & Reed LLP.

Mary Mastropaolo was promoted to assistant counsel to the speaker of the New York City Council.

Gilda Riccardi-Froude has started her own practice specializing in immigration law. She is proud to report that her two little boys are thriving.

1989

JoAnn J. Brighton was a featured speaker at the American Bankruptcy Institute Northeast Bankruptcy Conference in Newport, R.I. She gave birth to her third child, Micah Paul, on December 9, 1997.

Michael Friscia has become an adjunct professor at Seton Hall Law School, where he teaches trademark law.

Alan J. Jacobs has been appointed editor-in-chief of the Practising Law Institute.

Susan E. McHale is pleased to announce her move to Coudert Brothers to head up their intellectual property group. She joins Coudert Brothers after seven years at two prominent intellectual property law

firms. She also is active in the ABA and local bar associations.

Louis J. Posner was a panel speaker at a P.L.E.A. seminar on life planning, was cited in *Who's Who in America*, and has relocated his office to Madison Avenue.

1990

Ari M. Gross has been a trial attorney with Fuchsberg & Fuchsberg for six years, specializing in automobile, civil rights, and products litigation.

Peter Ventrice became a partner in the Metuchen, N.J., law firm now known as Brause, Brause & Ventrice, concentrating on criminal defense and family law.

1991

Bruce Cooke has opened a new general practice law office in Princeton, N.J.

Scott Goldstein is happy to report that on June 8, 1997, he married Deena Granirer.

Ronald Frederick Greek has accepted a civilian attorney-advisor position with the U.S. Army.

Alexander H. Whiteaker is a senior attorney at Guardian Life. He had a liver transplant in April 1997 and is back to work and doing well. His wife, Suzanne, is director of marketing for MetLife.

Scott Wiss is the deputy mayor of the Village of Massapequa Park, N.Y. He also has been appointed as legal counsel to State Assemblyman Steve Labriola from the 12th Assembly District. He is proud to share that his son, Jeremy David, has celebrated his first birthday.

1992

Toni Ann Barone and Gerald Franciosa are happy to announce the birth of their second child, Antonio Franciosa, on July 25, 1997.

Bradley Braut has been with the NYC Corporations Counsel, Torts Division, since 1993. He is currently in the Queens County office as a trial attorney.

Marie-Ann Greenberg has recently joined the firm of Fein, Such, Kahn & Shepard PC as an associate in the bankruptcy/foreclosure department.

Thomas R. Kleinberger has joined Kessner & Mass LLP as an associate.

Elizabeth Eilender Shulman gave birth to a baby girl, Sydney Catherine, and is now with her at home full time.

Eric Zahn was admitted to the California State Bar in April 1997. He also was promoted to vice president, business affairs, at the William Morris Agency in December 1997.

1993

Craig Averill has completed his first year as general manager of a brand-new record label, Gypsy Records.

Hudson County Assistant Counsel Michael A. Cifelli was quoted in the *New Jersey Lawyer* in an article entitled "Violent Kids: Passing the Buck."

William J. Buckley has joined Marshall, Dennehey, Coleman & Goggin, where he will be working in the areas of healthcare liability, general liability, and automobile negligence.

Jeffrey Gaier is proud to announce a new addition to the family. He and his wife, Sherry, had

a daughter, Dana Lauren, who joins big sister Jillian Paige. Jeffrey and Sherry have also celebrated their sixth wedding anniversary.

Elizabeth Ryder is working for the American Bar Association's Central and East European Law Initiative (CEELI) in Moldova. She recently arranged a meeting between 70 Moldovan and American jurists, in which Sandra Day O'Connor spoke to the delegation via a State Department phone link.

Peter Steckelman is working in the Feature Animation Business and Legal Affairs Department of the Walt Disney Company, and he continues as president and counsel of the Los Angeles Tennis Association.

Leatha Jean Sturges was admitted to practice before the United States Supreme Court on June 4, 1997. Her venues are now New York, New Jersey, California, and Washington, D.C. She also has opened her sole-practitioner office in Manhattan, specializing in entertainment law, intellectual property, and real property.

1994

Janine Azriliant is a litigation associate at Bingham Dana LLP.

Emilio Fernandez has joined the Miami office of Holland & Knight LLP. His practice continues to be in the areas of real estate and land use.

Lori E. Friedland was admitted to practice in New Jersey on June 18, 1997.

Louis Jakub, Jr., and Carlie Cannon Draper '95 were married on November 1, 1997.

Reed M. Podell is an attorney at Smith & Laquercia PC.

1995

Capt. Shannon R. Bishoff married Capt. J. Mitchell Hanscom on August 9, 1997, and became stepmother to six-year-old Spencer and four-year-old Madison.

Carlie Cannon Draper married Louis Jakub, Jr., '94 on November 1, 1997.

Jody Harrison married Tomas Giedraitis on October 18, 1997.

Tony Hom participated, as a Naval Reserve Officer, in Operation Assistance, the humanitarian relief effort in Central America.

Daniel Parente was recently appointed to the New York City police commissioner's staff.

Joe Sergi is now a trial attorney in the tax department for the Department of Justice in Washington, D.C.

1996

Jennifer K. Siegel joined the New York City Conflicts of Interest Board as assistant attorney.

Kim D. Victor now works at the Law Offices of Jacques Catafago, a firm comprised solely of NYLS graduates.

1997

Valarie Felicia Armstrong-Barrows is proud to report that her daughter, Shebra Kashmen Edwards, will begin college as an honor student scholar at Hamilton College. This is one of ten college acceptances Shebra received.

To MEMORIAM

Arthur Averbuck '32 died May 15, 1997, in Albuquerque, N.M. A career military man, Colonel Averbuck joined the Army Air Force in 1942 and was assigned to Air Materiel Command as a contract reviewer in the legal section, Procurement Division. He also served as staff judge advocate at a number of stations around the world. During several tours at U.S. Air Force headquarters in the Pentagon, he was first a member and then chairman of the Board of Review. He retired in 1967 and then worked in a number of consultant positions for the military. He is buried in Arlington National Cemetery.

Dominic A. Caronna, Sr., '52 died on October 29, 1997, in Harwich, Mass. He was 84.

After serving in World War II, he taught business administration at St. John's University and Brooklyn Polytechnic Institute. In 1950, he moved to Worcester, Mass., where he continued to teach at Holy Cross and Assumption College.

Mr. Caronna started his law career in 1957, as a group insurance attorney at State Mutual Life Assurance Co. He moved to civil and criminal law when he joined the law firm of Fusaro and Fusaro in 1962, where he remained until his retirement in 1979.

Following his retirement, he divided his time among homes in Estepona, Spain; Tucson, Ariz.; and Chatham, Mass. He authored

two books, *Passport to Paradise* in 1987 and *Death of the Bible* in 1997.

William F. Flynn '91 died suddenly on October 3, 1997. A resident of Pelham, N.Y., since his graduation from New York Law School, he worked for the U.S. Department of Labor in New York.

Herbert H. Kunmann '49 died on October 9, 1997, at his home in Boca Raton, Fla. Mr. Kunmann served in the U.S. Army Air Force during World War II. After his graduation from NYLS, he practiced law on Long Island for 25 years and in Boca Raton for 22 years.

He received an honorary degree from Capital University Law School in recognition of Christian Stewards Funds, which he founded in order to provide financial assistance to law students of all religious faiths.

He is survived by his wife, Margith; three daughters; two sons; and five grandchildren.

Jerry Masucci '60, president and COO of Fania Records, passed away unexpectedly on December 21, 1997.

Mr. Masucci, who served in the Navy during the Korean War, attended New York Law School during the day and worked as a New York City policeman at night. After earning his J.D., he worked in Cuba as the assistant to the director of public relations at the Department of Tourism. Upon his return

to New York a year later, he became a partner in the law firm of Pariser and Masucci. Later, Mr. Masucci's enthusiasm for Latin music led him to Fania Records, where he was responsible for promoting the company's various artists.

Masucci is survived by his father, two daughters, and a brother.

Sidney Orseck '26 died on his 90th birthday, August 16, 1996. A memorial service was held by the Sullivan County Bar Association on October 31, 1997. Former Chief Judge Lawrence H. Cooke addressed the participants. Judge Roger Miner, 2nd Cir., also sent a message.

Lloyd Peterson '52 died November 8, 1997, at the age of 79. After serving in the Army during World War II, he earned his degree at New York Law School and a master's degree in public administration from Baruch College.

Mr. Peterson's first position for the New York City Board of Transportation was as a change-booth clerk; he eventually worked his way up to secretary of the New York City Transit Authority. In 1972, he was appointed regional director for the U.S. Department of Transportation. He was chief executive officer of the Municipal Credit Union in New York City, and he taught political science at St. Peter's College in Jersey City, N.J. His last position was as construction inspector for the city of New Rochelle. He retired in 1995. He is

survived by his wife, two children, a sister, a brother, and four grandchildren.

Sidney B. Schatkin '24, died after a brief illness on November 24, 1997. He was 94 years old.

Born in New York City, Mr. Schatkin was an assistant corporation counsel for the City of New York. He lectured on paternity proceedings and blood tests at Yale University, Columbia University, New York Academy, and other schools. A former editor of *Criminal Law Review*, he authored *Disputed Paternity Proceedings* and contributed numerous articles to law reviews and medical journals.

Norman Steinberg '34 passed away on March 3, 1997. He was 86. Mr. Steinberg was the house counsel and a corporate officer for 20th Century Fox Film Corp., where he worked for 47 years until his retirement in 1973.

Ernst C. Stiefel

Ernst C. Stiefel, one of the Law School's most generous benefactors, passed away on September 3, 1997, in Baden-Baden, Germany. He was several weeks shy of his 90th birthday.

Born in Mannheim, Germany, Dr. Stiefel obtained his law degree from the University of Heidelberg. As anti-Semitic feelings were gaining momentum in 1933 Nazi Germany, he had the



Members of Ernst Stiefel's family gather around the portrait dedicated to him at his memorial service.

opportunity to practice for only two weeks before he and all other Jewish lawyers were disbarred.

Before arriving in New York in 1939, Dr. Stiefel received additional law degrees from the University of Paris and the Middle Temple in London, as well as an advanced degree from the University of Strasbourg, and practiced law briefly in both England and France. Upon his arrival in the Depression-era United States, his multiple degrees allowed him to obtain a job as a dishwasher in a restaurant. He later became a chauffeur for a prominent lawyer and then a clerk in a law office before John Foster Dulles and his brother, Allen, secured him employment with the Office of Economic Warfare, where he studied international insurance company records to identify German industrial targets.

Dr. Stiefel became a United States citizen and passed the New York State Bar in 1944. He became an independent practitioner, one who was now licensed in four countries. Since 1971, he had been with Coudert Brothers in New York. His practice focused a great deal on Germany, and he maintained an office in Dusseldorf. In 1995, the German government decorated Dr. Stiefel for his

many contributions to German commerce and law.

A long-time member of the New York Law School adjunct faculty, Dr. Stiefel established the Ernst Stiefel Fund in 1987, which makes possible the annual Stiefel Symposium, dedicated to foreign and international law. The Ernst Stiefel Reading Room was dedicated in 1992. His most recent gift had been a \$1.5 million endowment for a chair in comparative law.

On October 29, 1997, on what would have been his 90th birthday, the Law School honored Dr. Stiefel with a memorial service. The attendees were an international cross-section of his life, featuring, among others, the governor of Saxony, members of his family, lawyers and law professors from New York and Europe, colleagues from Coudert Brothers, and members of the NYLS community.

A portrait of Dr. Stiefel, commissioned by Weihua Tang '90, was unveiled during the ceremony.

Dr. Stiefel is greatly missed by all those who knew him.

Arnold H. Graham

The Law School lost a good friend in **Arnold H. Graham '52**. The former associate dean of administration passed away on January 29, 1998.

Mr. Graham graduated from New York University's School of Commerce in 1945, then went on to become a practicing CPA. He was prompted to pursue a law degree when he learned of a case in which a CPA was convicted of "illegally practicing law" for offering a tax opinion to a client.

After graduating from NYLS's Evening

Division, Mr. Graham learned that the American Bar Association and the American Institute of CPAs limited "dual practitioners" such as himself to practice in only one of their professions. This led him to help found the American Association of Attorneys-CPAs, which fought successfully to lift these restrictions.

Mr. Graham's joint degrees led to a large clientele seeking advice on complicated tax matters. One of these clients was New York Law School, for which he served as financial advisor under a number of administrations.

In 1975, Mr. Graham was invited to join the Law School on a full-time basis, both in

the newly formed position of associate dean of administration and as a member of the faculty, teaching accounting law. During his tenure, he established a number of important service facilities, including the financial aid office, the accounting office, the placement office, the copy center, the personnel office, the dining room, and numerous student services. Mr. Graham stepped down as dean in 1985 and returned to private practice.

Mr. Graham is survived by his wife, Roselle, and his sons Jul '78, Joel, and Stuart. A memorial service was held at New York Law School on April 8.

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Calendar

OF EVENTS

May 6

**Annual Black-Tie Dinner Dance
Gala**

Grand Hyatt Hotel
42nd Street & Park Avenue
6:30 p.m.–11 p.m.
Arnold Kopelson '59, Honoree

May 14

**Alumni Association Board
Meeting**

The Board Room,
Mendik Library
6 p.m.

May 21

**John Marshall Harlan Fellowship
Cocktail Reception**

Home of Phil Damashek

May 27

**Theodore H. Dwight Fellowship
Reception**

June 2

Board of Trustees Meeting

The Board Room,
Mendik Library

June 8

Commencement

Avery Fisher Hall
2 p.m.

June 16

Old Guard Luncheon

The Board Room,
Mendik Library

Reunion for Classes of

**1953, 1957/58, 1962/63, 1968,
1973, 1978, 1983, 1988, 1993**

Locations to be determined

June 24

Ragtime Alumni Theater Party

Ford Center for the
Performing Arts
214 West 43rd Street
Curtain rises at 8:00 p.m.

June 25

Connecticut Alumni Reception

Home of Beverly Chell '67