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New York Law School



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New York Law School In Brief

ETHICS AFTER ATLANTA: Confidentiality vs. Candor

The revised *Model Rules of Professional Conduct* adopted by the American Bar Association in August, have provoked more internecine debate and public anathema than any of the previous codes of ethics promulgated for self-regulation of the legal profession.

As noted in the Preamble to the new *Model Rules*, "virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living." Perhaps the two *Model Rules* which most encompass these conflicting responsibilities are **RULE 1.6 Confidentiality of Information** and **RULE 3.3 Candor Toward the Tribunal**.

The draft language and scope of these two rules, as composed by the prestigious ABA Committee of Evaluation of Professional Standards, were subjected to a fierce process of editing and amendment by the ABA House of Delegates prior to the adoption of the *Model Rules* at the Annual Convention in Atlanta.

In a recent statement released by Presiding Judge **Francis T. Murphy '52** (Appellate Division, First Department) in his position as president of the newly formed Federation of New York State Judges, Justice Murphy proclaimed the confidentiality rule to be "indefensible." However, he pointed out that the "dispute over this rule provides a unique opportunity for an inter-disciplinary analysis of our profession's ethics."

In an effort to lend yet another forum to such debate, *NYLS In Brief* interviewed NYLS Associate Professor of Law Marshall Breger, Judge Ernst Rosenberger and Adjunct Professor Frank Rosiny.

Marshall Breger is associate professor of law at NYLS. A former visiting professor of law at Bar Ilan University in Israel, Breger has published in the areas of social research and legal ethics. He has clerked for the Honorable Marvin E. Frankel, former United States District Judge for the Southern District of New York. Judge Frankel, was a member of the ABA Committee that composed the *Model Rules of Professional Conduct*.

In 1982-3 Professor Breger was visiting fellow in legal policy at the Heritage Foundation.

Hon. Ernst H. Rosenberger, '58, New York State Supreme Court Justice, Presiding Justice, Extraordinary Special and Trial Term, is also an adjunct professor at NYLS. Prior to becoming a Judge in the Criminal Court of the City of New York, Judge Rosenberger was counsel for civil rights cases throughout the South. He received the New York State Bar Association award for Outstanding Work in the Field of Criminal Law Education, 1980. Presently he is serving on that Bar Association's Committee on the Second Century.

Frank R. Rosiny, member of the firm Rosiny & Rosiny is an adjunct professor at NYLS. He is chairman of the New York State Bar Association's Special Committee to Review ABA Draft Model Rules of Professional Conduct. He is former chairman of the NYSBA Committee on Professional Ethics, in addition to his membership on related committees in a number of other Bar Associations. Professor Rosiny is contributing author to *New York Civil Practice*, Volumes 10 and 10A, Matthew Bender, 1970.

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THE MAN IN THE MIDDLE Dean Pro Tempore



By very dint of his title, Dean Pro Tempore James F. Simon might well have been a lame-duck dean. Preceded as he was by E. Donald Shapiro, the dean of NYLS for ten years, and succeeded by Eugene V. Rostow, the former dean of the Yale Law School, James Simon's success in mobilizing New York Law School is all the more remarkable. Although such situations are ripe for divisiveness, Dean Simon managed to engender an esprit de corps, which was critical to the Law School during this challenging period of transition.

The recent progress made at NYLS, both substantive and cosmetic, made this a pivotal year in the School's route to recapturing its historic pre-eminence. During Dean Simon's interim tenure, several long-standing goals were realized: sweeping renovations of the facilities, hiring of a distinguished cadre of new faculty, and increased recognition and respect for the School.

New York Law School in Brief discussed his deanship with James Simon and some of the changes that have resulted both for himself and for the School.

"Speaking from my vantage point," began Dean Simon, "New York Law School has adjusted remarkably well to the administrative transition. People representing the entire Law School community recognized this as an important transitional year and pulled together."

While cooperation and consensus were the hallmarks of Dean Simon's tenure, he found that the necessity to accommodate all segments of the community, in a way that they perceived as fair, posed the most difficult challenge of his deanship. He quipped, "I have an almost unlimited respect for administrators and particularly deans, now that I have been a dean. I think the job of an administrator, and certainly the dean, is an impossible one."

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NYLS In Conference

Women in the Law Today

Perhaps the salient feature of the "Women in the Law Today" symposium held at the Law School, was its effort to address not only the case law and litigation related to women's issues, but also to deal with life-style aspects of the female attorney.

Presented by the NYLS Legal Association for Women (L.A.W.), the September 24 symposium complemented its workshops on Family Law and litigation under Title VII, with discussion groups that probed the special problems of the "Lawyer as Parent" and "Networking for Women in the Law."

The cohesiveness of the conference, if not the consensus of the audience, was reflected in the keynote speech presented by Civil Court Judge Kristin Glen, a former professor at NYLS. Judge Glen reminded the participants that one does not have to "go back to medieval England to see a society divided according to gender into the public and private spheres: thrusting men into the public arena, while women were relegated exclusively into the domestic world.

To illustrate her point, Judge Glen recounted some of her personal experiences as a student at Columbia Law School in the early sixties, where she was one of 19 females in a class of nearly 300. It was only after she entered law school that law which made it criminal to use contraception was struck down by *Griswald v. Connecticut*. In



that same year (1963) women were either routinely dismissed from juries or were not even asked to sit on these "cornerstones of citizenship."

What progress there has been in gender equality and towards the erosion of the barrier between the public and private spheres, Judge Glen credits to a feminist vision. "The changes in the law were not the result of luck or the dumb process of history, but the product of political movement... We have made our own history."

Judge Glen admonished those present that the recent changes are not immutable. "It's not enough to be a successful woman; you've got to be a feminist."

On the note of solidarity, Louise Zito, the president of L.A.W., expressed satisfaction with the diversity of the women, including NYLS students and students from other law schools and professional women in private practice, government and corporate firms.



Members of L.A.W. (far right: front) Louise Zito, president

Congressman Biaggi Is Outstanding Alumnus



Congressman Biaggi accepts NYLS Phi Delta Phi plaque from Drew Britcher '84, (l) Vice Magister and from Eugene Maquire, Magister.

U.S. Congressman and a member of the Class of 1963, Mario Biaggi was presented with the first Dwight Inn Outstanding Alumnus Award by the NYLS chapter of Phi Delta Phi. For Biaggi, becoming an alumnus was indeed an arduous task, encumbered as he was with numerous other responsibilities. But, he persisted and both his constituents in the Bronx and the Law School are the beneficiaries of his tenacity.

Upon receiving the Award, the Congressman spoke of his gratitude to *alma mater* for all the support he received during his law school (nights). Recalling the "inhumanity" of the Bar Exam, the Congressman remarked that "the further you get from the whole process, the greater your affection for it."

But Congressman Biaggi's message to the students on the process of Democracy was considerably less ambivalent. He stressed the importance of the "common man," recounting how "human incidents were translated into national legislation" with the passage of Bills he introduced which resulted in staying the eviction of pet-owning tenants in public housing, making George Washington a "five-star general," and prohibiting the distribution of Teflon coated bullets which are capable of penetrating bullet proof vests worn by police officers. Congressman Biaggi is himself a former New York City Police Officer.

Court Adjourned—Indefinitely

Cautioning his audience about the possible "chilling of judicial independence" when the court system gauges performance in terms of administrative expediency, Professor Shimon Shetreet inaugurated this year's NYLS Faculty Luncheon series.

Professor Shetreet is a senior lecturer in law at the Hebrew University of Jerusalem and is a new visiting professor of law at NYLS. The Professor has done extensive work in analyzing the administration of justice in Israel, the United Kingdom, Germany, the United States and most recently, the administration of justice in New York State.

Speaking on "Contemporary Trends in the Fundamental Values in the Administration of Justice," Professor Shetreet discussed the impact of administrative problems on the values of law and justice. While providing an international perspective on this issue, the Professor also wove an historical context, pointing out that Shakespeare judged court (law) delay fifth amongst the problems of man. Court congestion, Professor Shetreet reminds us, is certainly not solely the creation of modern man.

... The Man in the Middle



Dean James Simon

"We've completely renovated the classrooms, the student center and the Admissions and Financial Aid Office. We've also rented an entire floor in an adjacent building to house our clinical programs and student publications. The new spaces are fresh, smart and sophisticated. Students and faculty alike have expressed their satisfaction with the changes. The classrooms, which are in a sense mini-amphitheaters, are conducive to learning. Our admissions and financial aid reception areas will present the Law School in a particularly positive light. The clinical facilities include high tech video support for interviewing, observing and recording court proceedings and for the production of NYLS programming. In general, the facilities are infinitely superior to what they were a year ago.

"To get a project like this done in a short time, we needed the coordination on a lot of levels within the School and we got it," Dean Simon gave special kudos to the administration of Vice Dean Arnold H. Graham, including Mr. Phil King, manager of buildings and grounds, and to Dean Edward Samuels and the Faculty Building Committee.

However, some important decisions regarding the direction of the School were reached with Simon at the helm:

Renovation

"After much discussion and after bids for the proposed new building came in, which were 40% over the estimate, we decided to suspend construction plans. We examined our budgetary choices and decided on major renovations for the School.



NYLS On The Move

Faculty

"Our new faculty, I believe, are notably impressive in terms of the range and depth that they offer our student body. We have young professors who have superior academic credentials and show enormous promise. We have seasoned professors from other law schools, who are well known nationally. Adding lustre to our faculty this year is the presence of a distinguished group of visiting professors. This is a very exciting place to be intellectually. We're bursting with ideas."

Once again, Dean Simon returned to his theme of esprit de corps. "We were so successful in our faculty recruitment efforts because we engaged the entire institutional community in the process. That meant hard work by the support staff and the Appointments Committee, under the leadership of Professor Dent, as well as the entire faculty. The results speak for themselves."

Recognition

"The staff, the administrators, the faculty, the students, the alumni and the trustees are now working toward a common purpose—basically, we know we are moving forward. Indeed, it is remarkable that this feeling has been achieved in a year of transition—a very radical transition for NYLS. The building renovations and the bringing on of new faculty are two aspects of the cooperative spirit. A third point is that we're beginning to be recognized—even in this transition year—as a law school on the move. We've had two recent articles in the *New York Times*; one on our commencement ceremony, at which Justice Blackmun delivered the commencement address. The second major article occurred with the announcement of Eugene Rostow's appointment as Dean. The impression given by the *Times* articles is, I think, that we are a law school with high aspirations and are in a position to realize those aspirations."

Although he deferred to Dean Designate Rostow on calling the new directions for NYLS, Simon emphasized "the increasingly strong faculty, able student body and loyal alumni who are not going to be satisfied with the status quo. That will mean we will want

to develop new academic programs and attract the very best students. The fact that a man of Eugene Rostow's distinction has chosen to lead this institution speaks very well of what we have achieved and, more importantly, of our potential."

A question lingers amidst the optimistic talk of the future, however. Will NYLS have to abandon its role as an institution that for opportunity for those who have had little in the past?

Dean Simon responded, "I hope not, because I see that role as vital to the Law School in its future as it has been in its past. The School has and should continue to accommodate many ambitious people. Congressman Biaggi '63, for example, spoke here recently and remembered with much gratitude the opportunity that the School gave to him—and he's not alone."

On the subject of the opportunity he had to be dean of a law school, Simon expressed his surprise that he has found it satisfying. "I could have happily lived the rest of my life without having been a dean. Now, I see that it has been professionally challenging. Trying to bring the institution together and to do some short term things that, I think, will help the School in the long run has been very fulfilling. But the work is never done. When you write a book there is a beginning, a middle and an end. With administration, there's a beginning and a middle. In fact, it always seems to be the middle.

"I'm looking forward to working on my new book (a study of the personal and professional relationship of Justices Hugo Black and Felix Frankfurter). There will be a beginning, a middle and—with a little luck—an end."

Prior to his eight years of teaching at New York Law School, Dean Simon served as a Correspondent and Contributing Editor to Time magazine. He has written several well received books and has been a Visiting Lecturer at Yale and a Fellow in Law and the Humanities at Harvard. From March through December, 1983 he will have served as Dean Pro Tem of New York Law School.

New Full-Time Faculty

Appointed as associate professors of law were Marshall Breger, Alice Cunningham, Lawrence Grosberg, Randolph Jonakait, Serge Levitsky, Jeffrey Roth, Gene Shreve and Marjorie Silver.

New visiting professors at New York Law School this year are Stephen Anderman, Jesse Goldner, Norvie Lay, Alfred Meyer, James Parver and Shimon Shetreet.

Named assistant professor of law are David Chang and James Bowen, and as clinical assistant professor of law, Margaret Flint.



Associate Professor Marshall Breger, a former visiting professor of law at Bar Ilan University in Israel, earned a Doctor of Jurisprudence Degree at the University of Pennsylvania School of Law. The Professor has taught at several law schools, including the University of Texas and SUNY at Buffalo. Frequently published in the areas of social research and medical ethics, Professor Breger's editorial for the *New York Times* entitled "Reducing Lawyers' Fees," appeared in the May 27 edition.



Alice Cunningham is a graduate of Yale College and Harvard Law School. She comes to NYLS as associate professor of law after having been an associate with the firms of Heller, Ehrman, White & McAuliffe in San Francisco, and Debevoise & Plimpton in New York. She is a member of the Subcommittee on U.S. Activities of Foreigners and Tax Treaties of ABA Section of Taxation. Professor Cunningham, whose expertise is in taxation, has been a member of the New York State Bar Association's Committee on Taxation.

Lawrence Grosberg joins the staff as associate professor of law and as Director of our new Housing Discrimination Clinic. Professor Grosberg most recently was the Director of the Fair Housing Clinic at Columbia University School of Law. He earned his J.D. from Columbia and is also a member of the Executive Committee and Board of Directors of New York Lawyers for the Public Interest. Professor Grosberg has noted that "NYLS has taken several significant steps reflecting its commitment to meaningful clinical education." He looks forward to carrying out that commitment "both in the client clinics and by expanding the use of audio-visual and simulation techniques in the more traditional classes."



Associate Professor Randolph Jonakait, who most recently taught at Pace University Law School, received his J.D. from the University of Chicago Law School and a Master of Laws Degree from New York University Law School. Mr. Jonakait worked for the Criminal Defense Division of the Legal Aid Society for eight years, and has written on genetic markers in criminal cases. The professor plans to delve into other legal areas, including the First Amendment and the Freedom of Information Act.



Professor Serge Levitsky brings a background in marketing and banking as well as law. Most recently he was senior fellow at the Faculty of Law of the University of Leiden in the Netherlands. Truly a citizen of the world, Professor Levitsky earned an LL.B., an LL.M., and a Doctor en Droit, from the University of Paris, and has published on Soviet Law, copyright issues and international contracts.



Professor Jeffrey Roth, who began his teaching at NYLS last semester as a member of the Adjunct Faculty, was formerly an associate of the law firm, Paul Weiss, Rifkind, Wharton & Garrison. He was a faculty fellow and National Science Foundation Graduate from Columbia University. He earned his law degree at Yale. Professor Roth is a trustee of the Jose Limon Dance Foundation and a member of the visiting committee on the Dance Division at Bennington College.



Prior to coming to NYLS as associate professor of law, **Gene Shreve** taught at the National Law Center, George Washington University. He has an LL.B and an LL.M. from Harvard Law School. Professor Shreve has served in several other professional capacities: as staff attorney for the Massachusetts Department of the Attorney General; as law clerk for U.S. District Judge Sarah Hughes in Texas and as staff attorney for the Boston Legal Assistance Project. His areas of research and publication include civil procedure, Federal courts and conflict of laws.



Margaret Silver is a former chief regional civil rights attorney for DHEW, then United States Department of Education. She is co-author of *Dissent Without Opinion: The Behavior of Justice William O. Douglas in Federal Tax Cases*. Professor Silver, who received her J.D. from the University of Pennsylvania Law School, finds NYLS "an increasingly promising institution for intellectual growth and social utility." Having practiced as an administrative lawyer with the Federal Government for the past nine years, she "welcomes the challenge of teaching administrative law, not only for its doctrinal importance, but also for the difficult and demanding issues of current political and economic relevance to which that doctrine relates."



James Bowen has several degrees from Columbia University: a B.A., a M.Phil., and a Ph.D. in Sociology. He received his J.D. from Yale Law School, where he was a teaching assistant. After having instituted a block of courses in black studies at the State University College at New Paltz, Dr. Bowen was promoted to chairman of the department.

Stephen Anderman joins the faculty as a visiting professor of law. He is a Reader in Law at the University of Warwick, having earned a law degree from Yale Law School and a Masters Degree in Economics from the London School of Economics. Professor Anderman has published in the area of industrial and labor relations.

Jesse Goldner is on leave from Saint Louis University School of Law. He has recently taught at the University of Warsaw. Professor Goldner received his J.D. from Harvard Law School. Comparing his initial reactions to NYLS with his year in Poland, the Professor remarked that "It's great fun and most enlightening to realize very quickly how much the similarities dwarf the differences."

Novie Lay, visiting professor of law, is a professor at the University of Louisville where he formerly served as acting dean. He received his J.D. from the University of Louisville and LL.M. and S.J.D. from the University of Michigan. His areas of expertise include federal taxation and estate planning.

Visiting Professor Alfred Meyer is a former dean at Valparaiso University, where he still is a professor. He received his LL.M. at Harvard University and has taught at Columbia University, Indiana University, the University of South Carolina and at Stetson University.

Professor Meyer had come to believe that "law student bodies were fungible in their diversity." But Mr. Meyer's brief experience at this Law School prompted an amendment to his perception; "The diversity is here (NYLS), but the here constitutes a stunning difference. With the sounds, sights and life of the city punctuating the learning process." While the Professor is reserving judgment on the impact of the environment, he observes that "both Darwinism and 'New York, New York' suggest that if you can make it here you'll make it anywhere."

Shimon Shetreet is a senior lecturer in Law at the Hebrew U. of Jerusalem. He was law clerk to Mr. Justice Wikon of the Supreme Court of Israel, Member of the Landau Commission of the Israeli Court System, and chairperson of the Legislation Committee of the Jerusalem Bar, in addition to maintaining a private practice. The professor holds the degrees of LL.B. and LL.M. from the Hebrew University and a Masters and Doctorate Degree from the University of Chicago. He is also a frequent commentator on legal affairs in Israeli newspapers and television and is involved in public activities.

Visiting Associate Professor of Law James Parver was formerly a partner and associate with Hughes, Hubbard & Reed. Professor Parver's area of expertise is in civil commercial litigation, particularly antitrust and class actions. He earned his LL.B. at Columbia University School of Law where he was Law Review Editor.

Assistant Professor of Law David Chang is a former law clerk for Judge W. Arthur Garrity of Massachusetts. Mr. Chang earned his J.D. at Yale Law School, where he also was an assistant-in-instruction. He has published an article examining issues of racial discrimination and equal educational opportunity. Mr. Chang's grandfather, Maurice Joseph, graduated from NYLS in 1956.

Professor Chang made his career choice early in his legal education: "A law professor, far more than a practitioner, or even a judge, has the luxury of being able to think about and pursue what law should be, rather than what law is. While the practitioner is slave to his or her client, and the judge bound by precedent, the professor is free to probe beneath parochial interests and prevalent rules to seek something better."



Joining the faculty as Clinical Assistant Professor of Law to the new Housing Discrimination Clinic, **Margaret Flint** brings experience in legal and social services. Most recently, Professor Flint served as legal intern with the Fair Housing Clinic, Columbia University School of Law, where she also earned her J.D.

Class Action

1925

Irving Stolz was honored by Bronx Borough President Stanley Simon as a "Bronxite who stayed with it." Mr. Stolz currently serves as president of the Hebrew Home for the Aged and honorary president of the Riverdale YM-YWHA. His community involvement has ranged from sponsoring wartime fundraising campaigns to his current activities in several Bronx philanthropic and academic institutions.

1930

Louis Jackson's article entitled, "The Ethics of Stealing Clients," appeared in the *American Bar Association Journal* (Volume 9, June 1983). Mr. Jackson and co-author of the article Anthony Atlas posit that law has become Big Business with an increasing number of lawyers raiding the lost covenant: "The spiriting away of branch officers or of entire departments, the ensnaring of meticulously trained associates, the siphoning off of clients, ... all these events occur today. Firms are being bled and even destroyed." The authors conclude that the "time has come for the ethics committees to tell lawyers what they can and should do in these circumstances. Let not fraternity continue its descent into fratricide."

1938

Kenneth Stein is a professor of philosophy at Sacred Heart University.

Jerome Katz has been engaged as a labor arbitrator since his retirement from the National Labor Relations Board in 1973.

1940

Hon. William Kapleman, Supreme Court, Criminal Term was a panelist at the New York County Lawyers' Association Forum Evening of "Administrators." The panel of administrative judges, headed by Hon. Betty Weinberg Ellerin, Deputy Chief Administrative Judge of the New York City Courts, discussed problems and procedures.

1949

Albert Marten is working on the financing of a production about Edgar Cayce, self-proclaimed psychic and champion of holistic medicine. Mr. Marten began his dealings with the film industry in the early fifties, but more recently has been concentrating on the alternative energy business.

1950

Lester Fetell, senior partner in the firm of Fetell and Coen, P.C., was a panel member of a team of prominent attorneys and law professors which toured the State of New York lecturing to attorneys in programs entitled "Decision." Mr. Fetell covered contribution and indemnity and general obligations law and construction accidents.

Maurice Greenberg, a NYLS trustee, was named by Governor Cuomo to a 17-member temporary state commission established under a new law that liberalized investment rules for life insurance companies in the State. In announcing the appointees, the Governor said the panel would assure that "changes in financial services industries and their investments occur with appropriate regulation to protect the solvency of the institutions and the interests of the consumer."

1952

Hon. Francis T. Murphy Jr., Presiding Justice of the Appellate Division, First Department, was named president of the newly formed Federation of New York State Judges. The Federation's objective is to "speak with one voice" on issues concerning the judiciary and the court system.

1953

Hon. Joseph Mazur, New York State Supreme Court, is lecturing across the State on capital punishment and voir dire.

Bennett Newman is a partner of Laventhol and Horwath, a national accounting firm in Los Angeles, California.

Thomas Langan and his wife Christine have received the Senior Service Award presented by the Senior Personnel Employment Council of Westchester for their outstanding contributions to the community. Since his retirement as president of the Bank of New York, County Trust Region, Mr. Langan's concerns have shifted to the shortage of affordable housing in Westchester. The Langans have formed their own financial and real estate firm called CLT.

1958

Gerald Goldsmith is first vice president and member of the board of trustees of the Riverdale-Bronx YM-YWHA. In private practice, Mr. Goldsmith specializes in maritime matters.

Jack Wohl is associate general counsel for the American Life Insurance Company.

Hon. Newton Greenberg is a circuit Judge with the U.S. Administrative Law Judge Office of Hearings and Appeals.

Benjamin Poznansky has formed a professional corporation, Levine & Poznansky, specializing in criminal law and business law.

1960

Anthony Papa has been appointed as Chief Executive Officer of the State Liquor Authority. In 1981 Mr. Papa led a coalition of labor, legislative and civic leaders in a successful effort to prevent abolition of the agency.

He is the "first" representative from organized labor, the first professional educator and the first Italian-American to hold the post of Chief Executive Officer in the agency's fifty year history.



1961

Joseph Chervin has become a senior partner of the firm, Rosenman, Colin, Freund, Lewis & Cohen. Mr. Chervin's concentration is in creditors' rights and corporate law.



Robert Dowd was elected to the Board of Governors of the Association of Trial Lawyers of the City of New York.

Arnold Yablin is a partner of Yablin & Schwind, P.A., a general law firm specializing in immigration law, franchising, and condominium law, located in Hollywood, Florida.

1962

Hon. Edward Esteve was appointed to the Suffolk County Family Court.

1963

Laurence Casey has been Director of Security with the First Charter Financial Corporation of Beverly Hills since his retirement as a special agent of the FBI.

Robert Cohen has been named Director of Professional Services for the National Association of Social Workers.

Dr. George Glehan resigned as tax collector and is now vice chairman of the Ocean County, New Jersey Library system.

Blair Powell completed 20 years with the U.S. Naval Air Reserves in 1974 and 25 years with Citibank, N.A. in March 1983.

Peter Schweitzer is now a licensed securities and commodities broker with Bear Stearns & Company.

Norman Stollman was appointed senior vice president, CBS Electronics, CBS Records International.

1964

Jeffrey Minot, formerly counsel and secretary to MacMillan Publishing, has joined the Hearst Corporation as senior counsel.

1965

Alan Grosman has been elected president of the American Academy of Matrimonial Lawyers, New Jersey Chapter. Mr. Grosman, a member of the Short Hills firm of Grosman & Grosman, is an editor of the *New Jersey Family* and is chairman of the American Bar Association Family Law Section, Albany, Maintenance and Support Committee.

Richard Hartman, attorney for the Patrolmen's and Correction Officers' Benevolent Association, was profiled in the *New York City Chief* on August 6. At one time, Mr. Hartman represented more than 200 civil service groups throughout the State.

Stanley Markowitz was appointed vice president of Berman & Brickell Inc. Previously, as acting general manager for development and rentals at the World Trade Center, he was in charge of negotiations and lease administration for the 10-million-square-foot facility.

Jeffrey Sapir was a faculty member at a course entitled "Bankruptcy Court Litigation," sponsored by the New York State Bar Association.

1966

Anthony Feranda has become associated with the firm of Morro and Serluco, P.C., as director of Tax Services.

1967

Joseph O'Neill lectured on "Arguing damages under New Jersey's new time unit rule" on June 25 for the New Jersey Institute for Continuing Legal Education and the Certified Trial Attorneys of New Jersey. Mr. O'Neill will continue practice at his new office building in Vineland, New Jersey.

Elaine Rudnick Sheps is a consultant and panelist in the five-lecture series "Matrimonial Practice in New York in 1983," sponsored by Appellate Division, Second Judicial Department and the Brooklyn Bar Association. The course will be held on five consecutive Mondays beginning October 17.

1968

Jeffrey Boxer, formerly vice-president and general counsel of First Commodity Corporation of Boston, has opened a practice with offices in Boston and New York, specializing in Commodity and Security Law.

Seymour Fuchsberg is a N.Y. State delegate to the American Trial Lawyers Association.

Gerald Maltz is a partner in the firm of Miller & Pitt, P.C., of Tucson, Arizona, where he is in charge of commercial litigation. He is a member of the Arizona State Boxing Commission.

Hon. Lorraine Miller, New York City Civil and Criminal Courts, is program chairman of a series of five lectures entitled "Matrimonial Practice in New York in 1983," to be held at the Brooklyn Bar Association.

James Nodroff announces the merging of his law firm and the law firm of Richard Quan, with a specialization in immigration law.

1969

Julio Brady was elected Lieutenant Governor, Virgin Islands Government for a five year term. Prior to taking office, Mr. Brady was the first Federal Programs Coordinator of the Virgin Islands. His service to the Territory also includes tenure as United States Attorney.



Richard Ferreri is assistant general counsel for District Council 37 ARSCME. Mr. Ferreri is an adjunct professor at Pace University, S.U.N.Y., Cornell University (NYSSILR) and the College of New Rochelle.

1970

Cheryl Bradley was sworn in as Acting Family Court Judge in Westchester County last July. Most recently the Judge was in private practice, specializing in family, custody and matrimonial law, and was a consultant in the areas of child welfare, adoption and foster care law.



Hon. Francis A. Nicolai is the Democratic-Conservative candidate for Westchester County Court Judge, a seat he has held since March 1983 by appointment of Governor Mario Cuomo.

James Shalleck was appointed Assistant State Attorney General by Hon. Robert Abrams.

1971

Jonas Gelb, former senior A.D.A. with the Bronx District Attorney's Office, is now in general practice with a specialization in criminal law.

Clayton Knowles Jr. is in private practice oriented toward entertainment matters, primarily in the areas of music, motion pictures and television.

Barbara Newman has been appointed as chief of the Sex Crimes Bureau for the Kings County District Attorney's Office.

Alan Schnurman, a partner in the law firm of Zalman & Schnurman, will host a new weekly audience participation program, "Law Line." The show,

which will be broadcast Fridays on cable channel J, made its debut on September 23 with the topic of co-ops and condominiums. Mr. Schnurman finds that there is a need for a program such as *Law Line* "to answer the general public's questions and hopefully to show that lawyers do perform a public service."

1972

Phillip Bernstein of Woodmere, New York has been nominated by the Town of Hempstead Democratic Committee to run for Town Council.

Ute Wolff Lally was named U.S. Small Business Administration Lawyer-Advocate of the Year for 1983 and was reappointed chairman of Nassau County Industrial Development Agency.

Frank Loverro, Marvin Ray Raskin '72, and Stephen Holtz '81 recently added **Justine Levine '84** to the staff of their law offices. The firm, which is located in the Bronx, specializes in criminal, landlord-tenant and matrimonial law.

1973

Andrew Karlen has become a member of Keane & Beane, P.C. with offices at White Plains and Rye, New York.

1974

Jeffrey Gurren has become a member of the firm Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey. Senator Robert Wagner, Class of 1900 was a founding partner in the firm.

George Heymann was installed as a member of the Board of Directors of the Criminal Court Bar Association of Queens County. He was also recently elected vice-president of the Brandeis Association (Jewish Attorneys and Judges in the County of Queens.)

Carol Kriesberg has announced the opening of her office for the general practice of law at Madison Avenue in New York City.

Helene Netter, formerly a member of Bondy & Schloss, has become counsel to the firm of Schoeman, Marsh, Updike and Welt.

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CONFIDENTIALITY

The amended **RULE 1.6 Confidentiality of Information** which was ultimately adopted by the ABA, limits the lawyer's discretionary disclosure to instances where the lawyer believes that his or her client is about to kill or inflict substantial bodily injury.

IN BRIEF: Does the wording of **RULE 1.6 Confidentiality of Information** reflect a rejection of the public interest? If so, will it serve to tarnish the public image of the legal profession?

Professor Breger: If revealing information given to a lawyer by a client will prevent the client from committing a criminal act that will result in death or bodily harm I don't see why a lawyer should have the choice as to whether or not to reveal such information. The present model rules, given that choice, merely says he *may* reveal such information. Further retreat from the discussion draft requirement that the attorney reveal information that would do substantial financial injury is also unfortunate. For the attorney to be aware of information related to future crimes and to keep quiet about that information is injurious to the public interest. Indeed, it seems to me that one role of the attorney ought be to insure that clients don't engage in future illegal conduct.

Professor Rosiny: In arguing against mandated disclosure, the New York State Bar Association Committee to Review *Draft Model Rules of Professional Conduct*, of which Mr. Rosiny is Chairman, responded as follows:

First, mandated disclosure often frustrates the very ends which it seeks to accomplish by discouraging the client from confiding in his lawyer. Thus, ironically, the lawyer may be denied an opportunity to correct the situation which mandated disclosure is intended to remedy.

Second, mandated disclosure almost inevitably confers legal rights upon the class of persons intended to be protected by requiring disclosure and thereby raises the possibility that lawyers will be far less than zealous in protecting their clients' legitimate rights in order to avoid personal liability from third-party claims.

Third, mandated disclosure may deny to the lawyer a more efficacious alternative course of action in dealing with what is usually a very difficult set of circumstances. Once a lawyer is *permitted* to speak, the excuse for his failure to disclose is removed.

Judge Rosenberger: The rule permits a lawyer to reveal information to prevent a client from committing a criminal act which the lawyer believes is likely to result in imminent death or substantial bodily harm. If the bodily harm likely to result is less than substantial, he can't reveal it. I think that's an absurd rule. It is not only a step backwards from the *Code*, but it's also a step from the canons which preceded the *code*. You note, the other exception to silence is to establish a claim or defense by the lawyer in a controversy between the lawyer and the client. Now, to equate those two is just wrong. If you read this literally, the lawyer may not warn the intended victim or the police, of a planned kidnapping or rape—which most people view as very serious crimes, though they may not result in death or substantial bodily harm. Elsewhere you'll find that lawyers are very concerned about the current low estate of the bar, and people's low opinion of lawyers. This certainly isn't going to do anything to raise that.

IN BRIEF: What possible effects would a rule which mandated "whistle-blowing" have on the lawyer-client relationship? On the adversarial system of justice?

Professor Rosiny: The lawyer in our system of justice is the champion of his client. His function within our adversarial system of justice is to preserve, promote, and defend his client's interests. It's the hope that out of this dialectical process will come a greater truth, a more certain justice. That doesn't always happen. But we preserve the position of the lawyer in the process, and have created a professional ethic for him, on the assumption that, in most instances, it will. And the lawyer's role, in this context, is not unlike that of the courts of law that evolved exclusionary rules.

ETHICS AFTER ATLANTA:



"We can all agree that without the trust of our clients, we would soon lose the capacity to render effective counsel."

—Professor Rosiny

Judges do not use exclusionary rules because they want the guilty to go free. They use the exclusionary rules because they want to send a message to the police that in a free society there are certain methods which are not permitted.

Now, can you imagine what the first interview with the client would be like if I sit down and say, "I want you to understand that whatever you tell me will be held in strictest confidence, except that if what you have to say, should, in any way, implicate you in the commission of a fraud, it will not be held in confidence; I will be, perhaps, compelled to reveal it in a court of law," etc. So you place the client in a position where he can't really rely on the attorney's obligation of maintaining confidentiality, and he has to, sort of, guess for himself whether what he is about to say is going to implicate him in the commission of a fraud.

IN BRIEF: How sacrosanct is the lawyer-client privilege? Is there an inherent conflict between confidentiality and the lawyer's prevailing responsibilities as an officer of the court and a public citizen?



"I think there's a basic morality which should control what we do."—Judge Rosenberger

Professor Rosiny: We can all agree that without the trust of our clients, we would soon lose the capacity to render effective counsel. That trust is supported by three pillars of legal ethics: our abiding respect for the sanctity of client confidences; our professional obligation to remain free from conflicting interests; and, the warm zeal with which we have traditionally sought to advance the legitimate interests of our clients. In a word, if we are to enjoy the trust of our clients, we must remain loyal.

The Code of Professional Responsibility (CPR) expresses it beautifully. It says, "the duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law."

The Commission attempted to dispel the popular image of the lawyer as a "hired gun" who will advance any argument, to any purpose, set by his client. Regrettably, in seeking to undo that popular image, the Commission seems to have adopted the view that lawyers will be as amoral as the metaphor suggests. On that assumption, the Commission has proceeded to indulge in a kind of legislative overkill, where the client's interests are ultimately subordinated to the lawyer's judgment and sensibilities. It is a perception of the lawyer's role in the legal system that we cannot accept.

Confidentiality vs Candor

Judge Rosenberger: I think there's a basic morality which should control what we do. We teach people in law school, and lawyers always say, that they're members of an honorable profession. Certainly, **RULE 1.6** is a substantial retreat from any position which could be called honorable.

IN BRIEF: Can you offer an illustration of the ethical dilemma posed by the prohibition against alerting third parties of a client's fraudulent or criminal schemes?

Professor Breger: What if you represent a divorced or separated husband who informs you that he intends to kidnap his child; it seems to me that that's a clear violation of law. Merely counseling your client against such a course of conduct is not sufficient. One can respond by pointing out that "childnapping" may not fall within the disclosure provisions of the present **RULE 1.6**, because it may not be substantial bodily harm. I think that underscores one of the problems with **1.6**. You can inform your attorney about a host of future crimes, which, as long as your attorney does not believe you to be a violent man, he may keep silent about them, and, I might add, continue to represent you. **RULE 1.6** does not even require you to withdraw.

Judge Rosenberger: If you had a client who was planning a straight-out kidnapping for money, in which he told you that no matter what happened, he wasn't going to kill anybody, but he'd hold his victim for a month or more and if no money came in, then at the end of the month or 45 days, he'd just let him go in another city—it's neither death nor substantial harm.

IN BRIEF: Is there any other notable inconsistency within the black letter **RULE 1.6**?

Professor Breger: Even though the confidentiality concerns of **RULE 1.6** make clear that confidentiality is paramount to the client, the attorney can divulge information not only in a controversy between the attorney and the client, but even in a controversy involving a third party, where divulging will provide a defense for the attorney. This means that confidentiality counts less, in many instances, than attorney security.

IN BRIEF: Would broader disclosure of client confidences violate the client's protection under the Bill of Rights?

Professor Breger: I believe that that claim is a rhetorical one about future illegal conduct. I don't see how the disclosure rule would deny the client effective assistance of counsel for offenses for which he has already been charged, or how it would otherwise violate his Constitutional rights.

Judge Rosenberger: Neither 5th Amendment rights, which deal, basically, in this context, with self-incrimination, nor the 6th Amendment rights, which deal with the right to counsel, will be jeopardized by this.

Professor Rosiny: In addition to the cost of legal service, we were also concerned about a phenomenon that has been discussed by the Supreme Court in decisions dealing with the right to counsel. Basically, it recognizes that if lawyers can be subjected to personal liability for the activities of their clients, lawyers may be somewhat reticent in advising their clients about the full extent of their rights under the law. Thus, in practical effect, the Commission's notion of creating a "law for lawyers" may result in less law and fewer legal rights for everyone else.

"The dichotomy between disciplinary rules and ethical aspirations in the old Code was inherently unstable as a mechanism for creating a climate for ethical conduct."—Professor Breger

IN BRIEF: What of the lawyer's rights and protections under the new *Rules of Professional Conduct*?

Professor Rosiny: One of the problems with going from the present *Code* to the *Model Rules* is that the notion of what it means to violate a rule has changed. The present *Code* is essentially divided into **ECs** (Ethical Considerations) and **DRs** (Disciplinary Rules). If a lawyer violates a **DR**, because **DRs** state the minimum level of conduct below which no lawyer can fall, in theory, some form of professional discipline should always follow from its violation. Not so, if the lawyer violates an **EC**, since **ECs** are essentially aspirational or guidelines for common sense practice.

The *Model Rules* have a somewhat different concept. They don't like, or they eschew the notion, of aspirations and minimum standards. Instead, they amalgamate the two into a kind of norm which, if violated, may or may not necessarily subject you to professional discipline. When you move to the format, or statutory schema, of the new *Rules*, you've got a problem. You don't know when professional discipline will follow.

IN BRIEF: In amending the proposed draft *Model Rules*, the ABA House of Delegates eliminated a provision allowing the lawyer to disclose confidences in order to rectify a client's past crimes or frauds in which the lawyer's services were used. What is the practical basis for such an amendment?

Professor Rosiny: On the whole, the ABA accepted our view that the appropriate response to a client's fraudulent use of a lawyer's services is withdrawal, rather than disclosure. We're talking about whether, in fact, lawyers who are not necessarily aiders and abettors or co-conspirators with their clients—should be subject to mandated disclosure obligation. We're talking about a situation where the lawyer really knows, but does nothing; as distinguished from the situation where the lawyer has done something, acquires knowledge, and then continues to act. There is a difference between imposing a liability or actions taken with knowledge of the client's wrongful intent, and the *Code*, which may impose liability merely for remaining silent. The attorney-client privilege excepts from its coverage an attempt by a client to use a lawyer to perpetrate a crime or fraud. But the attorney-client privilege is exceedingly limited in its application, and it is limited specifically to litigative matters. The ethical obligation of the lawyer, as is stated in **Canon 4** of the present *Code*, is much broader than the evidentiary privilege.

Professor Breger: I believe it's clear that the bias of the original *Code* was to place a very high value on protecting the interests of attorneys, against the interests of clients and the interests of society. The final draft of the *Model Rules* continues to place a high value on the interest of attorneys.

*Monroe Freedman did a critique of an earlier draft of the *Model Rules*, arguing that attorney-client confidences are so important that the attorney should not divulge confidences even under the threat of a court order. The attorney should go to jail rather than inform on a client. While I disagree, substantively with Freedman's position on this matter, at least it is a client-centered position; one which takes the view that the purpose of an attorney-client privilege is to protect clients, even where it injures attorneys. I don't believe that the *Model Rules* are as sensitive to the client's interest as they are to the attorney's.

*Monroe Freedman, former dean of the Hofstra University School of Law, is author of *Lawyers' Ethics in an Adversary System*.

(continued on next page)

"I would have preferred that we risk taking a further step towards enhancing respect for the process generally by placing slightly greater emphasis on the rights of third parties and others dealing in the judicial process."

—Alexander Forger, past president of the NYSBA, NYLS Trustee

CANDOR

A number of those delegates who championed the sanctity of the lawyer-client privilege were distressed by the expansion of the lawyer's obligation to the court as enumerated under **RULE 3.3 Candor Toward The Tribunal.**

IN BRIEF: Theodore Koskoff, past president of American Trial Lawyer's Association, wrote in a special report in *Trial*, May 1983: *"This rule is a radical departure from the historical resolution of these conflicts which has been in favor of the client. The in-court rule would take away something beautiful and sacred from the lawyer-client relationship, leaving the courtroom lawyer a mere bureaucrat, performing a ministerial function on behalf of the State in the image of collectivist society."*

Do you agree with Mr. Koskoff's assessment regarding the impact of the Candor obligations? Is there a logical consistency between the narrow permissibility of disclosure under **RULE 1.6** and the broad mandate under **RULE 3.3**?

Professor Breger: First of all, the requirement of Candor toward The Tribunal, as stated in the present Model Rule, prevents you from making any false statements, or from offering false evidence. That's a different point from refusing—staying silent when you know about truthful information. You merely can't provide false information. Secondly, the whole nature of the adversary system within the context of the courtroom, is that the judge is relying on representations that attorneys make in helping him effectuate his understanding of the case. If the judge can no longer rely on the representations of the attorneys, then the adversary system will fall under its own weight.

No one has written the definitive history of 19th century legal ethics in America, but if you look at some of the early references to ethical rules, there is a strong recognition of the duty to the court.

Rule 1.6 pertains to the duty of an advocate in counseling and negotiations, and a host of functions that don't require him to be acting before the court. I might add that even the present **RULE 3.3** has been watered down. The original proposals regarding candor required not only

that an attorney have the discretion to refuse to offer evidence that he reasonably believes is false, but it also required that if the lawyer be convinced beyond a reasonable doubt that the evidence is false, he must so advise the court.

Professor Rosiny: It is possible to rationalize what was done, although it is difficult, logically, to see how a lawyer is compelled to reveal evidence of perjury in even the most insignificant case (under **3.3**), while he is not required to reveal his client's intention to commit mayhem or murder (under **1.6**).

The rationale lies in recognition of the fact that lawyers are officers of the Court—from which they derive their authority to act as counsel and to which they owe a supreme obligation of candor. It is argued that unless the profession accepts this obligation of candor, the courts will be frustrated in their effort to render justice.

IN BRIEF: In another context, Justice Cardozo remarked that "justice is a larger and more intimate thing than truth." Can you reflect upon the relevance of this statement to the *Model Rules of Professional Conduct*?

Judge Rosenberger: Well, abstract truth is not necessarily the ultimate value. We see many situations in which the rules of evidence act to preclude the revelation of the ultimate truth. When we speak of a trial being a search for the truth, it's a search for the truth within the framework of the rules of evidence. Justice is somewhat difficult to define succinctly.

Professor Breger: In criminal law, we have staunch concerns that protect the rights of individuals; we do not reject torture solely because of the belief that such confessions as result from torture might not be true, we reject torture on normative grounds as well. On the civil side, we have concerns for finality; we don't want a case to continue to be raised innumerable times, even though, in theory, the nth time, or the nth appeal might provide the ultimate truth; we have proper concerns for efficiency, cost, and expeditiousness. In civil cases, we have a concern that the parties be satisfied, and, to that extent, we have an interest in arbitration,

mediation, and alternative resolution mechanisms. Indeed, judges in Jewish law are charged with inquiring of litigants whether they desire adjudication according to law, or settlement by arbitration. Maimonides tells us that a court that offers arbitration is praiseworthy. Concerning such a court, it is said: "Execute the justice of peace in your gates." The idea behind this approach is that peaceful resolution of the dispute is important in the same way as seizing at the truth is important. What I'm trying to suggest is that it's also important that the people be satisfied, feel happy, or at least, not too unhappy. Unalloyed truth, for example, in a family situation, may ruin it for everyone; in a partnership situation, it may destroy the partners' personal relations.

On the other hand, it is clear that we ought not devalue the importance of truth as a goal within the adversary setting.

IN BRIEF: How would you capulize the central differences between the European lawyer's role and the lawyer in the States?

Professor Breger: The tendency to place a duty to a client over the duty to the court is a 20th century development, perhaps unique to the United States. Certainly, in England, where the adversary system is not unknown, an unbridled adversariness would not be allowed. An attorney would be required to inform the court of any false information. Indeed, should a client admit guilt to a barrister after the trial has begun, he cannot then call the client into the witness box, or call any other evidence (such as evidence in support of an alibi) he knows to be false.

Judge Rosenberger: When you hear lawyers as we are now engaged in discussions in the New York City Bar Association, which go on and on, speaking about the low estate of lawyers and the low public esteem for the profession, it's always a comparison which is drawn to the public images of barristers in Britain, who enjoy a far higher reputation. Neither public confidence nor public approval, generally, of lawyers or the law, is diminished by a different form of defense—which doesn't come

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

anywhere near the prohibitions against disclosure enumerated in the *Model Rules*.

IN BRIEF: Frank Rosiny, chairman of the New York State Bar Association Committee to Review ABA Draft *Model Rules*, was quoted as concluding that the new rules regarding confidentiality "will imperil the authority created by existing case law and hundreds of ethics opinions," which referred to the previous *Model Code of Professional Responsibility* adopted in 1969. What is your position?

Professor Breger: I have had the pleasure of working under Frank Rosiny when he was chairman. I am aware of the extraordinary work which the Bar Association has done in developing ethical opinions under the old *Model Code*. Obviously, to

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:
(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Judge Rosenberger: That's a substantial problem. It may well result in cases where the laws of evidence will come into conflict with **RULE 1.6**. Because under our rules of evidence as to what is and is not privileged, certainly it has always been held that the disclosure of a planned crime is not privileged; that's the law. The lawyer can be compelled to give such testimony. Now we're going to run into a situation where the canons of ethics and the laws of evidence will conflict.

IN BRIEF: How important are these Rules and their workings to the process of self-regulation of the legal profession? What are the disciplinary implications?

Professor Breger: I believe that the *Model Rules* will ultimately have a substantial impact on the ways in which the legal profession is regulated. The very fact that the *Model Rules* were adopted as regulations which lawyers must follow in order to consider themselves to be behaving properly, is an important change, and I believe an improvement, from the *Model Code*, which, distinguished between disciplinary rules, which lawyers had an obligation to adhere to, and ethical considerations, to which lawyers can aspire.

To the extent to which a code of ethics is viewed as a paradigm for the ideal attorney, its effect on the practitioner in his day-to-day duties will be lessened. To the extent to which the model rules are seen as obligations on the attorney in his day-to-day practice, I believe in time they will have a significant effect on the standards of practice.

Professor Rosiny: In moving from an attempt to state the ethical precepts of the law, on the two levels addressed by the present Code, the *Model Rules* lose this ability, both to clearly define the kind of conduct for which lawyers will be punished through discipline, while at the same time pointing the future generation to a better time, the direction in which the generation should aspire.

Our earlier reports criticized the *MPC* for its tendency to overregulate the profession. We observed that this had been done principally by raising to the level of disciplinary rules a number of aspirational comments or practice guides currently found only in the ECs. Because all blackletter Rules are intended to have the force of law, and that body of law is acknowledged to have relevance in non-disciplinary proceedings, we explained that its practical effect would be to require action when the exercise of good judgment and common sense under present standards would permit the lawyer to forebear. This would ultimately increase the cost of legal service, with little if any enhancement of its quality.

IN BRIEF: (To Professor Rosiny) How successful was your Committee that reviewed the draft ABA Model Rules, in influencing the final product?

The *MPC* is no longer the radical assault upon the traditional relationship between lawyer and client that we examined last year at this time. While proceedings in the ABA's House, as well as negotiations with the ABA's leadership and the Commission, have produced a far less radical document, the *MPC* still requires significant modification—not all of which can be accomplished by amending its Preamble, Scope and Comments. Nevertheless, though the *MPC* would not be suitable for adoption in New York without further amendment to its blackletter, it seems advisable to withhold final judgment concerning the *MPC*'s capacity to serve as a national model.

It would not be fair or accurate to suggest that the February proceedings did not produce, overall, a substantively better document than this Association reviewed in January. Clearly, to some extent a number of our previously noted concerns have been relieved. These roughly divide into five categories: (1) confidentiality; (2) organizational representation; (3) withdrawal; (4) professional independence; and (5) pro bono service.

The Rules went too far in some respects and not far enough in others.

For instance, although the ABA's House accepted the basic validity of our position with respect to confidentiality, black letter **RULE 1.6** which is intended to state the general obligation and recognize its exceptions, seems overly protective and somewhat less desirable than current standards.

The debate on the *MPC* has been long, and in many respects, fruitful. In other respects, it has been less so. But, even if the product of that debate has been unsatisfactory to some extent, one cannot question the value of its undertaking, or the good work and sincerity of those who have participated in the process. No profession can afford to be complacent in its ethics, and unending self-examination by the members of our profession is especially appropriate.

Perhaps the most difficult problem with which we have to contend now is the idea that there is something fundamentally wrong with the ethics of the profession. And that, I'm afraid, is in large measure a by-product of the internal battles generated by the Commission itself in trying to push these rules through the ABA.

Many of us, I think, were concerned for years that we were taking the burden on ourselves in the form of guilt for what happened in Watergate. Our view is that Watergate was essentially a political episode, and that no code of ethics could have prevented it. The people who were involved in Watergate violated the penal law of this country; no code of ethics was going to stop them from doing it. The fact that there were so many lawyers involved is not remarkable; lawyers are involved in the business of government and making law. To suggest that Watergate was a signal of the failure of the profession is a monstrous distortion which plays into a popular stereotype about lawyers.

the extent which substantive policy choices are made in the new *Model Rules*, prior opinions based on now outdated substantive policy choices will lack authority. But, the important issue is discerning the right policy choices for the profession and the regulation of lawyers' conduct. Furthermore, the dichotomy between disciplinary rules and ethical aspirations in the old Code was inherently unstable as a mechanism for creating a climate for ethical conduct. It pointed out that some conduct was required as a minimum, and other conduct was only desired if you wanted to call yourself a saint. The new methodology would make clear that the type of ethical conduct required by the *Model Rules* is incumbent upon all attorneys to follow.

... Class Action

1975

Benjamin DeCosta resigned as HRA Chief of Staff to become Assistant Manager with the Port Authority of N.Y. and N.J.

Alan Ehrlich and his wife Karyn announce the birth of their 2nd daughter, Erin Rachel.

Kenneth Jannen has been appointed as Southeast Regional Counsel for First American Title Insurance Company.

Marc Livanos is presently associated with the admiralty law firm of Walsche, Sheinbaum & O'Regan of NYC.

Jeffrey Resnick is now director, Headquarter Services, at John Blair & Company.

1976

H. Richard Adelman of Esquire Abstract Corp., Title Insurance Agents, announces the firm's fourth seminar on Real Estate Transactions to be held in February. Two of the speakers are also NYLS graduates, **Sal Bate '75** and **Mark Stengel '77**.

Governor Mario Cuomo has announced the appointment of **Gerald Crotty** as chief legal counsel. Mr. Crotty was formerly first assistant counsel to the Governor. Governor Cuomo praised him as an "avid and precise student of the law with particular expertise in public finance."



Menahem Kastner, a landlord-tenant specialist who is an associate at Parker, Chapin, Flattau & Klimpl, was quoted extensively in a recent *National Law Journal* article entitled "Rent Wars: Lawyers vs. Landlords." Conceding that landlord prejudice against renting to lawyers is not entirely without foundation, Kastner admitted; "I can see the landlord's point of view. There's a crack in the ceiling, he gets a certified letter, return receipt requested ... instead of the normal tenant who goes down to the super and says, 'Fix it.' ... Of course, it's possible to just go ahead and fulfill the prospective landlord's worst fears by suing to get an apartment."

Marianne Spraggins, former adjunct professor at NYLS, was named by Governor Cuomo to a 17-member temporary state commission established under new legislation dealing with investments by life insurance companies.

Steven Tolman is pleased to announce the formation of the law firm of Levy & Tolman, specializing in litigation, located in New York City.

1977

Bruce Cholst, an associate at the New York law firm of Jaffe & Asher, married Judith Moldover, a senior lawyer in industrial relations at CBS Inc.

Martin Goldwyn has joined the firm of Tashlik & Associates, P.C., specializing in corporate and securities practice.

Joseph Rosenbaum has been promoted to senior attorney at American Express Travel Related Services Company, Inc. He has been appointed chairman of the International Computer Law Subcommittee of the American Bar Association.

Allen Turek of Schiff, Turek & Kakoyiannis will be teaching two courses, "Management Training for the Co-op Board of Directors," and "Financial and Legal Aspects of Buying a House, Co-op or Condominium," at Queensborough College. He also recently appeared on the *Ruth Jacobs Family Show* discussing cooperative and condominium conversions.

Daniel Varona was elected as vice president and general counsel of Ideal Mutual Insurance Company, Optimum Holding Corporation, and Optimum Insurance Company of Illinois.



1978

Marcy S. Cohen has been appointed vice president assistant general counsel of Bank Leumi Trust Company of New York.

David Dando was recently promoted to vice president and trust officer responsible for Trust Administration at the City National Bank of Miami.

Iris Darvin, attorney at law, has moved her offices to 186 Fifth Avenue.

Susan Erda announced the opening of an office for the general practice of law located at Fifth Avenue, New York City.

Robert Fraser has accepted the position of attorney in Merrill Lynch's Corporate Law Department. His duties will include responsibility for the Company's pension, health and welfare plans.

Carla Lowenheim, an assistant general counsel with the New York City Transit Authority, married **Peter Weinberg '81**, an associate with the firm of Kassel, Hoffman, Neuwirth & Geiger.

Elliot and Jill Lutzker announce the birth of their daughter, Stacey Melissa Lutzker, on June 28.

1979

Joan Azrack, an assistant United States attorney for the Eastern District of New York, married William Ballaine, a partner in the New York law firm of Siff & Newman.

Jamie Fishman's photography exhibit entitled "Textures, Shapes & Colors" was shown at the Modernage Gallery during July.

Michael Glovin is employed as an assistant county counsel in Passaic County.

Samuel Himmelstein has joined the law firm of Lonsner and Wendt as an associate.

Laurie Hutzler was a panelist at the New York State Bar Association's Continuing Legal Education program on "Attorney's Fees."

Jonah Triebwasser has been appointed vice-chairman of the Committee on Membership of the 35,000 member New York State Bar Association.

Peter Markley White, a tax lawyer for Lone Star Industries in Greenwich, Connecticut married Lee Freeman Fox.

1980

Martin Brandfon has established a solo general practice office in Burlingame, near San Francisco. He has also become an Independent Search Consultant, certified to help those persons who have been separated by adoption to search for and locate one another.

PHOTO CREDITS

Photos in this issue are credited to the editor, with the exception of New Faculty photos by Al Giese and private photos.

The law offices of **Jeffrey Jacobson** have moved into larger quarters at 150 Fifth Avenue. An office has also been opened in Washington, D.C. Mr. Jacobson practices entertainment law and has many clients in the music industry.



Richard MacLean has become a partner in the firm of DePanfilis & Vallerie of Norwalk, Connecticut.

1981
Karen Nemiroff has become associated with the law firm of Finkelstein, Kaplan, Gittelsohn and Tetenbaum.

Jeffrey Grant has formed a partnership with Adam Seiden; the law firm will practice under the name of Seiden & Grant with offices at Madison Avenue.

Walter Matystik has been named director of research at Manhattan College. Previously Mr. Matystik was president of the Mount Pleasant Central School District Board of Education.

Susan Lore is a marketing attorney with the JC Penney Co., Inc.

1982
Dennis D'Antonio is an associate with the law firm of Weg, Myers and Jacobson, P.C., specializing in first party insurance litigation.

Gordon Brunow has started a solo practice in Mattituck, New York, limited to non-criminal general practice.

Michael Buckley has become associated with the law firm of Corlett, Killian, Hardeman, McIntosh & Levi.

Robert Steingut, New York City Councilman-at Large, has been confirmed by the State Senate as a member of the New York State Workers Compensation Board. He will serve a seven-year term as the Board's Chairman.

Judith Goldenberg announces that she is now engaged in the general practice of law with offices at Main Street in Patterson, New Jersey.

Anthony Bisignano, an associate with the firm of Dougherty, Ryan, Mahoney, Pelligrini, Guffra & Zambito, married Kathleen Mooney.

Stewart Pinkerton has become assistant managing editor of the *Wall Street Journal*.

Carol Bast announces her recent association with the firm of Piersol, Boroughs, Grimm and Bennett.

1983
Ann Biebel has been awarded second prize in the International Association of Insurance Counsel's 1983 Legal Writing Contest, for her article entitled, "DES Litigation and the Problem of Proof of Causation."

Gary Brunjes is currently serving as research analyst for the Babylon Town Board.

Kenneth Lazaruk is an associate for Shea & Gold in the area of construction litigation.

Mario Mattei has been appointed assistant district attorney with the Richmond County District Attorney's Office.

Daniel McSwiggan joined the firm of Winthrop, Stimson, Putnam & Roberts as an associate.

Martha Rix has accepted a position of associate with the firm of Weil, Gotshal & Manges. Ms. Rix's article entitled "Rape Shield Statute—Sword or Shield" appeared in the *Women Lawyers' Journal* (Volume 69, Summer Edition.)

Stan Soocher is editor and publisher of *Entertainment Legal News*. The premier issue is slated for September, covering music, film, theater, production and related media arts.

David Hean Stone married Lisa Paige on August 13 at the Harvard Memorial Church.

Barbara Toop was married to **Joseph D'Avanzo '82** on September 17.

Congratulations to the following 1983 graduates who have received Judicial Clerkships:

Marna Brown has been selected to be a motions law clerk for the United States Court of Appeals for the Second Circuit.

Jay Damashek has begun a post-graduate clerkship with the 4th circuit Court of Appeals. He will be residing in Richmond, Virginia.

Wendy Hart is a law clerk for the Honorable Marie L. Garibaldi, Justice of the New Jersey Supreme Court.

Helen Horda is a law clerk for the Honorable David O'Brien, United States District Judge, District Court of the Virgin Islands.

Robin Eve Jasper has been selected to be a motions law clerk for the United States Court of Appeals for the Second Circuit.

Florence Kerner is law clerk for Magistrate Aaron Simon Chrein, Eastern District of New York.

Robert Koenig is law clerk for the Honorable Nicholas Walinsky, United States District Judge, Northern District of Ohio.

Jeffrey Levitan is law clerk for the Honorable Edward Ryan, United States Bankruptcy Court, Southern District of N.Y.

Michael Roffer is law clerk for the Honorable **Roger Miner '86**, United States District Judge, Northern District of New York.

David Hean Stone is law clerk for the Honorable James Crumlish, President of the Pennsylvania Commonwealth Court.

Christopher Souris is law clerk for the Honorable Constance Baker Motley, Chief Judge of the United States District Court, Southern District of New York.

David Burger is serving as law clerk to Judge Vincent Biunni, United States District Judge.

Kenneth Aron is serving as law clerk to U.S. Magistrate Washington.

Please direct information for Class Action to:
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New York, NY 10013

FACULTY AND ADMINISTRATION

Associate Dean Margaret S. Bearn was elected President of SCRIBES (the American Society of Writers on Legal Subjects) for 1983-4. SCRIBES is an organization dedicated to recognizing, encouraging and developing the art of sound legal writing.

Director of NYLS Communications Media Center, **Professor Michael Botein** appeared on the PBS television show, *All About TV* to discuss recent Senate cable television legislation. A week later, on June 3, the *New York Law Journal* (June 10, 1983) published an article by Professor Botein entitled "Drafting, Other Problems Seen in Cable TV Bill."

New faculty member **Marshall Breger** wrote an editorial for the *New York Times* entitled, "Reducing Lawyers' Fees," which appeared in the May 27 issue.

An analysis by **Professor Barbara Brodlieb** of signal piracy and the cable industry was printed in the July 15 *New York Law Journal*. Professor Brodlieb concludes that, "for greater protection (against unauthorized distribution of cable signals) industry must mount a substantial and continuing police action against the pirates."

Professor B.J. George Jr. has been reappointed as chairperson of the ABA Standing Committee on Association Standards for Criminal Justice. Professor George presented and defended the Committee's draft Mental Health Standards before the CJS Council at this year's annual ABA Convention.

Professor George has prepared two case notes in issue #1 of *Preview of the United States Supreme Court Cases, 1983-4 Term*. The *Preview* series now administered by the ABA, is distributed widely to media organizations.

Criminal Law: Cases and Readings, Fifth Edition (J. Hall, R. Force & B. George eds.) has been published by Michie Co., Charlottesville, Virginia.

Adjunct Professor Roger Jacobs is now a member of the adjunct faculty at the Rutgers Graduate Institute of Labor and Management Relations. Professor Jacobs, who has written extensively in the labor and equal employment area, recently had a series of articles published, one of which, "Time Limitations and Section 301: A New Direction From the Supreme Court," appears in the January 1983 *Labor Law Journal*.

Hon. Alfred Kleiman, adjunct professor, led a delegation of the New York County Lawyers Association to the First International Seminar on Sources of Contemporary Law held in Jerusalem, Israel in August. Acting Court Justice Kleiman was recently designated as Deputy President by the World Zionist Supreme Court, thus becoming the first non-resident of Israel to be elected to that office.

Professor Arthur Leonard spoke on "Jobs: Rights, Discrimination and Recourse" at the 8th International Conference of Gay and Lesbian Jews held in Miami on August 4-7. Professor Leonard was quoted on the subject of legal issues arising from the AIDS epidemic in the *American Bar Association Journal*, (August, Volume 69), and the *Boston Globe* (August 17); "There's not much rationality in the midst of hysteria . . . and unfortunately a lot of the disputes are going to end up in the courts."

Professor Roy Mersky has been appointed a member of the Committee on Facilities of the Law Library of Congress for a three-year term.

A 1983 *Supplement of The Supreme Court of the United States: Hearing and Reports on Successful and Unsuccessful Nominations of Supreme Court Justices by the Senate Judiciary Committee 1916-1982*, written by Professor Mersky and Myron Jacobstein, was published by William S. Hein & Co., Inc.

As part of the celebration of the 100th anniversary of the University of Texas and the Law School, a "Symposium on Law and Technology" was moderated on October 27 by Professor Mersky.

Adjunct Professor Robert Perry's letter to the editor, tagged "A gap toothed bill on two-way cable privacy," was printed in the June 23 edition of the *New York Times*. Professor Perry, who is special counsel to New York State's Legislative Commission on Science and Technology, maintains that the legislation now being considered by the U.S. Senate is "unfortunately, . . . not, the tough strict cable privacy law that is needed." Envisioning the day when cable TV operators become the providers of a whole range of services, such as home shopping and banking, medical alert, home security and smoke detector services, electronic polling and pay per view programming, Perry predicts that "each operator will have at its disposal a subscriber profile more extensive than anything available today." He concludes that cable privacy measures such as "S.66 may do more harm than good by creating a false sense of privacy among subscribers."

Professor David Rice presented a paper to the Communications Law Committee of the City Bar Association on "Recent State and Federal Statutory Developments in the Field of Cable Television."

Adjunct Professor Philip Ruffo has been appointed as the New York member of the New York/New Jersey Port Authority Employment Relations Panel. As the Authority is a bi-state agency, Professor Ruffo's appointment was approved by the governors of both states.

Adjunct Professor Henry Rothblatt's book *This Damned Lawyer* has been published by Dodd, Mead and Company. The book takes its title from an appellation the author acquired from the involved parties upon winning an acquittal for a doctor in an abortion death case: the doctor because of the fee, the judge because he regretted not holding Rothblatt in contempt and the jury because of Rothblatt's "self-confidence." In his preface to the book, famed attorney F. Lee Bailey describes Mr. Rothblatt as a "lawyer's lawyer."

In a *New York Times* op-ed piece of August 26, Dean Designate **Eugene V. Rostow** invigilates against a Cuban and Nicaraguan proposition to stop sending men and arms to promote the rebellion in El Salvador if the United States agreed not to help the Government put the rebellion down. Dean Rostow asserts that, "We should never again abandon the rules of international law that condemn aggression and uphold states' right of individual and collective self-defense. The most fundamental goal of our foreign policy—achievement of a just, stable world order will be beyond our reach until the rules on the international use of force are generally and reciprocally observed."

A treatise by **Professor Anthony Rutkowski** on the history and functions of the International Telecommunications Union was published in July.

A review of *Law, Medicine and Forensic Science*, 3rd Edition by William Curran and **Professor Donald Shapiro** appeared in *The New England Journal of Medicine* (Volume 309, August 11). According to the reviewer, Arnold Rosoff, of the Wharton School, with the publication of a refined and expanded third edition, the book "has attained the status of a classic but still remains fresh, relevant and a valuable resource." In his final synopsis, Mr. Rosoff points out that *Law, Medicine and Forensic Science* presents well-chosen and edited cases and a wealth of bibliographic references which make it a "useful reference book for anyone interested in the interface between law and medicine."

Adjunct Professor Ernest Stiefel lectured on the contribution of German jurists to the legal environment in the United States on June 23, at the invitation of the German Foreign Minister and the Law Faculty of Bonn University. After the lecture the Minister gave a champagne reception in honor of Professor Stiefel, which was attended by bankers, industrialists, parliamentarians and jurists.

ALUMNI REACH OUT TO STUDENTS

With concern about employment opportunities and economic forecasts escalating on campuses across the country, NYLS students are hardly exempt from job-finding anxiety.

Responding to the placement vacuum, the Alumni Association has formed a Committee on Placement and Career Counseling. Not content to caucus and philosophize, the Committee, chaired by Robert Gaulin '76, has already begun aggressively to pursue its objectives.

The first order of business for the Committee is to dovetail with Faculty efforts to locate and hire a new Head of Placement at NYLS. The members of the Placement Committee are convinced that this position must be filled by an experienced Placement professional, with an exceptional track record, who will occupy an important administrative position at the Law School.

Delineating the Committee's work, Chairman Robert Gaulin said, "We're trying to foster a network of alumni to provide career counseling and also to encourage alumni to promote the hiring of graduates in their own firms and companies."

Spearheading this effort, Mr. Gaulin appeared before a meeting of the Student Bar Association of NYLS on October 17. During his presentation, Robert Gaulin urged students to use the Alumni Association as an employment resource. He disparaged comments by a few students who despaired of ever finding jobs without membership in Law Review or the top ten percent of the Class. Gaulin, who is associated with the firm of Conboy, Hewitt, O'Brien and Boardman, specializing in entertainment law, pointed to his own career path, travelled without either of those academic accoutrements.

In order to bolster Alumni outreach to the students, the Placement and Career Counseling Committee is overseeing the preparation of a comparative study of NYLS to other non-Ivy League law schools in the area. The resulting statistics reflecting the caliber of NYLS and the students will give alumni additional incentive and ammunition for hiring NYLS students.

In Memoriam

It is with great sadness that the New York Law School community notes the passing of these distinguished alumni and friends.

1912

Charles R. Evans retired as a senior partner with the New York law firm of Delehanty, Hannon, Evans and Loughran in 1961. Although born in Brooklyn, he spent his youth on farms owned by his mother in Kansas. His parents intended their son to be a farmer, but he took correspondence courses to earn his high school diploma and college credits, with a dream of studying law. Leaving Kansas at the age of 20, he enrolled in the evening session of New York Law School.

1916

Honorable Michael Potter

1921

Saul S. Streit was a former New York State Assemblyman and a former Administrative Judge in State Supreme Court.

1927

Nicholas F. Delagi was a retired Criminal Court Judge in New York City and a former assistant district attorney in the Bronx.

Mortimer May

1938

David Ferdinand was Treasurer of the Alumni Association.

Harold Rosenfeld

1951

Oliver Sutton, former New York State Supreme Court Justice, resigned from the bench to accept the position of Group Chairman of the Inner City Broadcasting Corporation. The Judge was an active member and former vice president of the New York Branch NAACP.

1972

Peter Mangan was employed in private practice until his untimely death.

Faculty

Elliott Biskand, former adjunct professor at the Law School, was an author and legal writing columnist.

Meyer Scheps, former adjunct professor, was counsel to the firm of Meiselman, Boland, Reilly & Pittoni since 1973.



No, it's not a newly unearthed Rothko—it's what the Admissions Office looked like in October.

New York Law School In Brief

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BANNED BOOKS AT NYLS

In conjunction with Banned Books Week, NYLS Library Staff assembled its own salacious display of books that some people have considered dangerous.

The list of such banned books, as compiled by the American Booksellers Association, includes not only such works as *Lady Chatterly's Lover*, Joyce's *Ulysses*, and *Woman's Body: An Owner's Manual*, but also the *American Heritage Dictionary* and Lewis Carroll's *Alice's Adventures in Wonderland*.

Librarian Gretchen Feltes recommends as particularly interesting reading, *United States v. One Book Entitled Ulysses* by

James Joyce (72 F2d 705). In interpreting the intent of the relevant sections of the Tariff Act of 1930 under which a customs collector seized *Ulysses* and whereupon the United States filed a libel suit for forfeiture, Circuit Judge Augustus Hand concluded that "the book as a whole is not pornographic. . . . while in not a few spots it is coarse, blasphemous, and obscene, it does not, in our opinion, tend to promote lust." Morris Ernst, Class of 1912, and Alexander Lindey (Greenbaum, Wolff & Ernst) represented Random House Inc.