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From the Dean

Elections and Transitions

During the last couple of months, it was difficult to avoid seeing a lawyer on television or in the news. The election contest brought Florida and US Supreme Court deliberations and arguments into every home and automobile, and even on to desktops through the Internet. Given the collective energy of Cardozo's faculty, it will come as no surprise that many of them had much to say and write about the election. Cardozo professors appeared on television and were published in journals and newspapers locally and nationally—even internationally. Some of their thoughtful words have been reprinted later in this issue of Cardozo Life. Of course, no one had a bigger role than adjunct professor David Boies, whose representation of Al Gore took him through Florida's courts to the US Supreme Court.

Now that the election is over and the president is inaugurated, it is still easy to watch more legal wrangling either on Court TV or the likes of Law and Order, The Practice, and LA Law re-runs. Perhaps this media activity helps fuel the number of applications the Law School is receiving; but surely it impacts on the number of students who dream of litigating, whether defending or prosecuting.

Many Cardozo graduates go on to practice criminal law. They are at the Manhattan DA's office, the US Attorney's office, in private practice, at the Legal Aid Society, and elsewhere—in New York and around the country. Profiles of some of those who decided to follow their dreams are included in the pages that follow. Most of them received training in Cardozo's well-known Criminal Law Clinic and Intensive Trial Advocacy Program, both of which are supported by the Jacob Burns Ethics Center, which sponsors an annual lecture and courses in professional responsibility. Robert Bennett, President Clinton's lawyer, was this year's lecturer.

For myself, I am still here this semester as a dean waiting to be relieved of duty. Indications are that my successor will be chosen soon and I can return to the faculty and other activities. You should all have confidence, as I do, in the ultimate success of our transition process. Being Cardozo's dean has been an entirely satisfying experience for me personally and professionally. I look forward to giving my successor some suggestions and then getting quickly out of the way so the new regime can take hold.

Warm good wishes,

Paul E. Venturi



Features

Election 2000. 15

Almost a dozen Cardozo professors were featured on television news shows and were quoted in and wrote extensively for the local and national media as the election contest unfolded. Their varied opinions on the Florida and US Supreme Court decisions, the electoral college, and more are highlighted in a chronological, edited compilation.

Derrida on the Death Penalty 22

The famed philosopher and perennial visitor to Cardozo led a discussion that touched on cruelty, capital punishment, and Western philosophical tradition.

BY KYRON HUIGENS
PROFESSOR OF LAW

Ethics, Zealous Advocacy, and the Criminal Defense Attorney. 24

In the annual Jacob Burns Ethics Center Lecture, Mr. Bennett focused on the issues of ethics and morality and the tension created for practicing lawyers by the sometimes conflicting roles of officer of the court, good public citizen, and zealous advocate.

BY ROBERT S. BENNETT
PARTNER, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Making a Real Difference in Criminal Law 28

Almost one-quarter of those graduating from Cardozo decide to pursue a career in criminal law. Therefore, there are many hundreds of Cardozo graduates working in cities and states throughout the country at not-for-profit organizations, government agencies, and private firms defending and prosecuting cases. Mr. Storey, a student in the Criminal Law Clinic, met with a number of alumni and learned that their law school experiences and training helped them achieve their dreams.

BY JEFF STOREY '01



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news & notes ALUMNI

Tributes, a Wine Tasting, Seminars, and Reunions Add to Campus Life

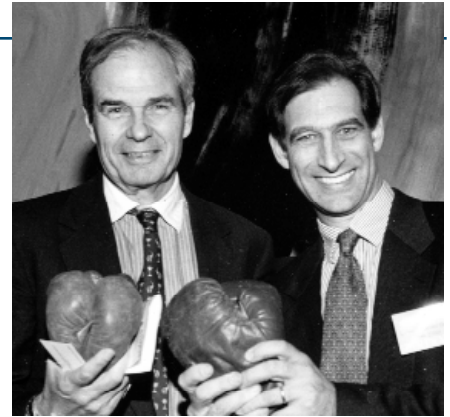
Alumni were back on campus this fall to serve as mentors to current students, see old classmates, and pay tribute to Cardozo's deans. A cocktail party held in October honored deans Paul Verkuil and Michael Herz for achievements during their tenures. The

theme, "Fighting for Cardozo's Future," was carried through with music from the film *Rocky* and antique English boxing gloves for each dean.

A holiday wine tasting and networking party at Union Square Wines in early December brought NYC alums together to sample nine wines. The event was so well attended that it was standing room only.

Laurence Gottlieb '93, Marc Mukasey '93,

Nikiforos Mathews '96, Joel Schmidt '96, Craig Warkol '99, and Susan Schwab '00 spoke to current students about their post-graduate clerkship experiences and encouraged them to pursue this rewarding opportunity. At a luncheon for students, Donald Scherer '93, CEO of Crossborder Solutions, discussed various



Dean Paul Verkuil and Dean Michael Herz

aspects of life at an Internet company and how the study of law provides a useful background for business.

Lieberman and Weiss Join Board

At the annual Board of Directors dinner new board members Mark Lieberman '84 and Stephen Weiss '90 were introduced. Chairman Earle Mack presented Dean Verkuil with a Baccarat crystal gavel to commemorate his tenure as dean. The highlight of the evening featured Prof. Larry Cunningham '88, who gave a preview of his new book, *How to Think Like Benjamin Graham* and *Invest Like Warren Buffett*.

Lisa Foy '93, Josh Sohn '97, and YU President Norman Lamm



Stephen Weiss '90, Rachel Warren '92, and Prof. Larry Cunningham '88



Chairman Earle Mack and Mark Lieberman '84



(From left) Vivien Naim '88, Howard Lieb '83, Melanie Leslie '91, Lisa Foy '93, Maxine Stein '94, Robert Bernstein '95, Tricia Pantzer '95, Dean Verkuil, Dean Herz, Lawrence Klein '94.

Alumni Association Chair Joshua Sohn '97 reserved the conference room, which was filled to capacity, at Piper Marbury Rudnick & Wolfe, L.L.P. for an alumni breakfast; Howard Abrahams '94 brought in Bradford Hildebrandt of Hildebrandt, Inc. to speak. Mr. Hildebrandt, who has been a consultant to many of the recent law firm mergers around the world, discussed significant aspects of law firm strategies, mergers and acquisitions, practice management, partner and associate compensation structures, and New York City real estate leases.

Three student organizations hosted their annual reunions this fall. BALLSA gave a cocktail party with live music. The Arts & Entertainment Law Journal held its annual dinner following the Tenzer Distinguished lecture, featuring Q. Todd Dickinson, under secretary of commerce for intellectual property and director of the US Patent

Office. The annual Law Review alumni party was held at the Manhattan Penthouse, bringing together professors, alumni, and current students.

New Alumni Director Starts



Barbara A. Birch was named director of alumni affairs and started at Cardozo on January 2.

For the past four years, she has been at Hofstra University School of Law, most recently as assistant dean for law alumni affairs. In that position, she had responsibility for alumni programming and the annual fund. She is currently studying at Hofstra for an MBA in marketing and anticipates graduating in May 2002. She holds a BA summa cum laude from State University of New York at Binghamton.

(From left) Aliya Nelson '01, Samuel Tsegaye '02, Michelle Ricardo '02, and John Potter '00 at BALLSA reunion.



(From left) Prof. Toby Golick, Rochelle Feder Hansen '79, Dean Verkuil, and Joel Strauss '92.

Graduates Direct Funds to Bet Tzedek

Two Cardozo graduates were co-lead counsel in a securities class action suit and have directed \$50,000 from the settlement to the Bet Tzedek Legal Clinic. Joel Strauss '92 of Kaplan, Kilsheimer & Fox LLP and Rochelle Feder Hansen '79 of Bernstein Litowitz Berger & Grossmann LLP repre-

sented plaintiffs/shareholders in an alleged stock market fraud. They were successful in negotiating a favorable settlement for the victims. After distributing the monies to class members at a rate of 110% of their losses there was money remaining in the settlement fund. According to the terms of the settlement, those monies would be distributed to consumer advocacy organizations in

United States Supreme Court Group Admission

Be admitted to the US Supreme Court with fellow Cardozo alumni. Join us in Washington, DC on March 27, 2001, for the swearing-in ceremony and to hear oral arguments. For more information and to make a reservation, call Barbara Birch, director of alumni affairs, at 212-790-0298. Space is limited.

accordance with the cy pres doctrine. “Rochelle and I discussed beneficiaries; we recognized the good work that Bet Tzedek does, and as alumni of Cardozo we thought this would be an appropriate organization,” said Joel. Toby Golick, director of the clinic, commented: “\$50,000 is a significant donation and can positively impact the work we do here. It means a lot to us that Cardozo alums are responsible for this donation.”

The Cardozo Alumni Association elected new officers in June 2000. They are Joshua Sohn '97, chair; Lisa Foy '93, senior vice chair; Stephanie Gayden '93, program vice chair; Tricia Cohen Pantzer '98, treasurer; Robert Bernstein '95, corresponding secretary; and Lawrence Klein '94, recording secretary. The Executive Committee is looking for volunteers to serve on the following standing committees: Career Development, Student Relations, Non-Legal Attorneys, and Outreach. To volunteer, contact the Office of Alumni Affairs at 212-790-0298.

Donna Costa '87 and James E. Schwalbe '93 have been named chairs for the 2001 Alumni Annual Fund. Special thanks to Stephen A. Weiss '90 and Christopher A. Seeger '90 for their superb leadership during the past two academic years. Alumni who want to assist with this year's annual fund should contact the Office of Alumni Affairs at 212-790-0298.

Letters

Another Tribute to Morris Abram

After reading [Dean Verkuil's] tribute to Morris Abram in the Summer 2000 issue of Cardozo Life (p.15), I wanted to share with you an encounter I had with Morris near the end of his life.

In the fall of 1999, I was invited by Morris's son and daughter-in-law to their home for dinner. Upon arriving, I was introduced to Morris, who was, according to his daughter-in-law, “also a lawyer.” Exhausted from a full day at work, and somewhat regretting having accepted a mid-week dinner invitation, I sat down with Morris in a corner of the living room and prepared to make small talk until dinner was served.

What followed was one of the most engaging and memorable conversations I have had with anyone (much less a brand-new acquaintance) in a very long time. In the span of a half-hour or so, we covered a wide range of topics, including the practice of law, classical music, and the influence of MTV on popular culture! When he learned I had graduated from Cardozo, Morris asked many questions about the current status of the school, its faculty, and my experience there.

I thought about my conversation with Morris for many days. Apart from the diverse and stimulating topics we covered, I felt privileged to have met one of the founding forces behind a school at which I spent three of the most challenging and enjoyable years of my life.

Perhaps for Morris there was a feeling as well of having come full circle. When I mentioned to Morris's son several days later how very much I had enjoyed talking with his father, his son replied that Morris had told him that his conversation with me somehow had made worthwhile all the effort he had put in to help establish Cardozo many years ago.

When I learned of his death, I felt both a deep pang of sadness and a gratefulness that I'd had the opportunity to meet such an extraordinary person, if only briefly. Reading your tribute to Morris revived those feelings for me and prompted me to offer a tribute of my own to a remarkable man.

—Jennifer Newcomb '97

Letter from Sarajevo

I'm a law clerk at an international court, The Human Rights Chamber, which was set up under the Dayton Peace Accord. It hears claims of human rights violations arising under the European Convention of Human Rights that have occurred since the signing of the Dayton Peace Accord (December 14, 1995) to the present. The court meets for one week every month and is made up of 14 judges: six are national (two Bosnian, two Croatian, and two Serbian) and eight are international, from all over Europe. Most of the cases involve property issues: People are trying to get their homes back. The court also hears cases regarding treatment of war criminals, frozen bank accounts, and religious property destroyed during the war, as well as ones involving labor rights, discrimination, fair trials, pensions, etc. The law clerks—about five international lawyers paid by our respective governments—prepare the cases and draft memoranda and decisions for the judges to review. We present the cases, they question us, discuss the cases, and then make decisions on them.

It is very interesting to watch the international community immerse itself so completely in the rebuilding of Bosnia and Herzegovina. It is particularly interesting for me to observe the international community's work in an area where there has been an extreme case of ethnic conflict resulting in what was essentially ethnic cleansing. One of the main objectives of Dayton is to reverse the effects of the cleansing. However, the country is divided between the groups—each with much local autonomy—and the federal government is very weak. Accordingly, it is an uphill battle.

The court has issued approximately 500 decisions in the five years it has been in existence and has about 4,500 cases pending. I guess the question remains whether it is really possible to impose consensus from the outside. I suppose only time will tell.

—Sherry Rosenberg '94

around CAMPUS

Dean Announces Joint Venture with Cal Press

Paul Verkuil announced recently that Cardozo has entered into a relationship with the University of California Press to publish Philosophy, Social Theory and The Rule of Law—an international and inter-institutional series of scholarly books. The series will be relaunched under the

auspices of the Jacob Burns Institute for Advanced Legal Studies.

Eric Smoodin, philosophy editor, University of California Press, said, “We are convinced that it will be a successful and ongoing series for us. The renewed interest that Cardozo has shown matches our own, and I’m especially impressed by the ideas and quality of scholarship among the Cardozo editors.”

Professors Arthur Jacobson and Michel Rosenfeld, who were among the series founders, will remain on the editorial board, which will be expanded to include Prof. Peter Goodrich and two members of the University of California faculty. Eight books have already been published, and plans call for publishing two or more books per year over the course of the five-year agreement. These edited

compilations introduce and make accessible European jurisprudence and philosophy to an American audience while providing a focus for people interested in the intersection of the three fields.

Professor Jacobson noted that this marks the first time that a law school has formalized a relationship with a university press. “It will be exciting for our students and important for

LL.M. Program Flourishes

In January, 18 students graduated from Cardozo’s LL.M. program and 15 more began their studies, joining 34 LL.M. candidates who entered in the fall. Approximately 60% of the students are studying intellectual property, and two-thirds come from abroad; all add to the growing diversity found on campus.

This year, students represent 30 countries, coming from Europe, Asia, the Middle East, South America, and New Zealand. The variety of interests and backgrounds among the LL.M. students is well shown by Victor Knapp and Elna Koci. Knapp is a criminal defense lawyer and an actor who recently appeared in a film, playing a ter-

rorist. Koci, who is Albanian, won a Ron Brown Fellowship to study intellectual property law and is known as Albania’s first specialist in the area of IP.

According to Toni Fine, director of graduate and international programs, several new programs were instituted

this year to enhance the graduate student experience and strengthen the bonds between LL.M.s and the larger Cardozo community. Among them are informal, weekly roundtables that feature invited guests speaking on topics of particular interest, an alumni mentoring program, and a system that pairs incoming students with those who are returning.



the faculty.” Future books will be printed with credits to the Jacob Burns Institute for Advanced Legal Studies, the Benjamin N. Cardozo School of Law, and Yeshiva University.

According to Dean Verkuil, “The University of California Press is, with Harvard, Yale, Princeton, and Chicago, one of the top university presses in the country.” He said that this publishing venture will attract scholars to and increase the intellectual reputation of Cardozo.

The book series will also provide a focus for promoting and publishing future scholarly conferences—one on Nietzsche scheduled for the spring may become the basis of a future book, as may one planned on Spinoza. Professor Goodrich said, “It adds to Cardozo’s huge reputation in interdisciplinary legal studies, creating an international dialogue in an area that is known to be insular—legal philosophical thought.”

In a separate but related agreement, University of California Press has agreed to publish Cardozo Studies of Law and Literature. According to Prof. Richard Weisberg, Cardozo will retain complete editorial control of the journal while “all of the business, marketing, and printing will be handled by this wonderful university press, which will help to build the field of law and literature.” The journal will be relaunched, with a name change, probably in the fall of 2001.

Professor Weisberg said

that a new editorial structure will be put in place so that he, Professor Goodrich, Michael Pantazakos, and Prof. Penelope Pether of Washington Law School at American University will be general editors each responsible for one number a year. “This expansion will further enrich the scope and content of our seminal journal.” Up to 10 student editors will continue to work on the publication, including the one chosen annually by the Law School as the Floersheimer Fellow in the Humanities.

Dickinson Gives Tenzer Lecture

The attorney examiners who review patent applications for the United States may be dealing with innovations that are “unimaginable,” but the spate of useful and novel inventions

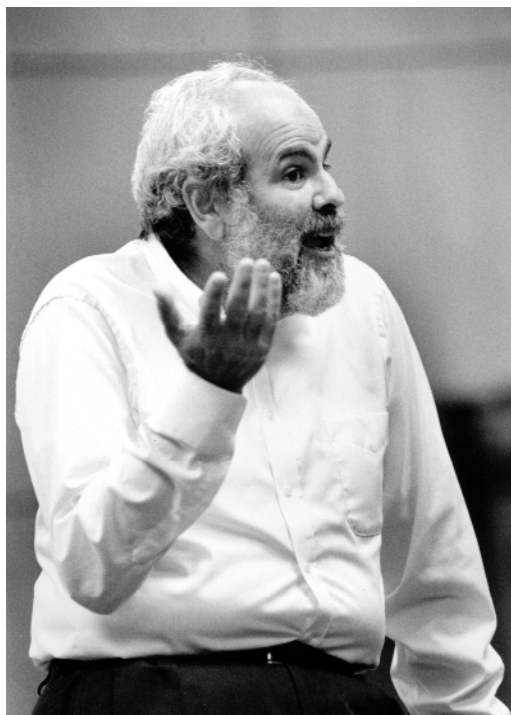
need not be “unmanageable.” In fact, the economy has been well served by an intellectual property system that “is strong by being flexible.”

That was the message from Q. Todd Dickinson, the Clinton administration’s point man on domestic and international intellectual property issues, when he gave the Annual Tenzer Distinguished Lecture in Intellectual Property. In addition to directing the United States Patent and Trademark Office, Dickinson was the Under Secretary of Commerce for Intellectual Property.

In “E-Commerce and Business Methods Patents: An Old Debate for a New Economy,” Dickinson said



that despite the controversy surrounding such patents there is nothing in the legal standards governing intellectual property that would deny limited property rights to their developers. A novel point-and-click method for ordering goods over the Internet deserves protection in much the way the cash register did in the 19th century. Dickinson added, however, that the Patent Office has revised its



Legal Aid President Talks on Public Interest Law

At the first lecture of the Access to Justice series, sponsored by the Jacob Burns Ethics Center, Daniel Greenberg, president and attorney in chief, Legal Aid Society, spoke about “Client Commitment and Curiosity: How to Think About a Career in Public Interest Law.”

procedures to control the number of business method patents it issues.

In areas such as the protection of databases that “can be pirated in the blink of an eye,” Dickinson said that his agency has tried to set a balance between protection of inventors’ property rights and the wide dissemination of innovation. As evidence of its success, he noted that this country’s biotechnology industry is healthier than those of its European competitors, resulting in research scientists moving to the United States. At the same time, there is a growing appreciation of intellectual property in once-skeptical developing countries.

The Patent Office has moved to make more than two million patents and registered trademarks and applications freely available on the Internet and to implement electronic filing of trademark and patent applications. This activity is taking place against a backdrop of increasing globalization and international legal norms for the protection of intellectual property. As a result, while officials ponder the effects of sophisticated computer networks, they also must develop effective global enforcement mechanisms to protect the folklore of traditional cultures.

Dickinson concluded that the US intellectual property system is well prepared for the challenges of the future. “We are not a typical government agency,” he said.



Avatar Records announced the donation of \$10,000 to the Innocence Project at a press conference held in the Jacob Burns Moot Court Room. The donation was made in advance of a January release of *Oz—The Soundtrack*, an all-star rap compilation from the HBO prison drama *Oz*. Avatar President Larry Robinson is shown here giving the contribution to Prof. Barry Scheck while some of the actors and rappers look on. A per copy royalty will be donated to the Innocence Project as well. Shown at back (from left) are *Oz* cast member Dean Winters, *Oz* musical supervisor Chris Terjeson, *Oz* creator and executive producer Tom Fontana, and sound track artist Pharoshe Monch.



Senior Associate Dean Stewart Sterk inaugurated a monthly bagel lunch to create a way for the entire Cardozo community to meet informally and to keep the lines of communication open. “First Wednesday” has been well-attended by students, faculty, and administration. David Tawil ’02, SBA senator, said, “Encouraging this kind of interaction is a great idea; it significantly boosts school morale.”

Conference Debates Cooperating Witnesses

A recent United States Supreme Court decision described how the story of a key prosecution witness evolved, under careful coaching, from “muddled memories,” to providing a very detailed and powerful account of a capital murder.

The FBI was rocked by revelations that key mob informants in Boston had used their relationship with federal agents to eliminate their competition while they continued to commit crimes, up to and including murder.

In Canada, the government of Ontario convened

a commission to examine the case of a young man who had been exonerated of murder charges 10 years after the testimony of jailhouse informants played a pivotal role in his conviction.

These and other cases were cited in an ambitious day-long conference at Cardozo on what organizers described as a troubling “conundrum”: Is justice obtainable in a system that increasingly relies on deals struck with “cooperating witnesses”—also known as “criminal informants” or “snitches”—who barter false testimony in exchange for lenient treatment by prosecutors of their own law-breaking? More than 150 prosecutors, defense attor-

neys, judges, and academics attended the conference, which Prof. Ellen Yaroshefsky, the conference organizer, said was the first opportunity for criminal justice system professionals to debate issues surrounding the use of informants. It was sponsored by the Jacob Burns Ethics Center and the Cardozo Law Review.

Professor Yaroshefsky said that most prosecutors are convinced that many significant cases could not be made without the help of cooperating witnesses. They also believe that vigorous cross-examination, careful corroboration, and other checks built into the system are sufficient to prevent wrongful convictions based on false testimony.

However, Professor Yaroshefsky and her colleagues indicated that false testimony was a factor in 21% of 77 wrongful convictions.

The whole problem is “grossly exaggerated,” said Shirah Neiman, deputy US Attorney for the Southern District of New York. She insisted that most informants signed up by her office tell the truth, and careful procedures catch mistakes before any damage is done.

Some prosecutors and investigators rely on “common sense” or their “gut” to ferret out informants who are lying. But Saul Kassin, a professor of psychology, argued that “as a general rule, we are terrible human lie detectors.” Studies indicate that most people’s ability to detect a falsehood is not significantly better than would be achieved by flipping a coin. “Experts,” such as FBI agents and judges, do not do much better.

Prosecutors and judges scoffed at Kassin’s research, suggesting that psychologists were looking for lucrative expert witness fees. Neiman said that psychologists “obfuscate” the issues of a trial and shade the truth to help their clients.

Judge Stephen S. Trott of the United States Court of Appeals for the Ninth Circuit, who gave the luncheon keynote and participated on one panel, said that prosecutors had to be very careful in working with informants. The screening system works pretty well, but “there are way too many individual



Cardozo professors were on the airwaves, in the press, on TV, and even online at dot.com news services. They were on hand at all hours of the day to help interpret for Americans and the world the complex and unprecedented legal developments in the weeks following the presidential election. Marci Hamilton, Michael Herz, John McGinnis, Leslie Newman, Monroe Price, David Rudenstine, Dean Paul Verkuil, and Ed Zelinsky were on CNN, CBS, NBC, MSNBC, NY1, National Public Radio, Fox News, and WPIX. They were quoted in the New York Times, USA Today, The Jerusalem Post, had op-eds published in the New York Post, and were consulted for background expertise for other media outlets. See p. 15.



Gerald Lefcourt, Esq., and Loretta Lynch, US Attorney, Eastern District of NY, were commentators at conference panel.

"Prosecutors are in a key position to do that." To help them do a better job, panelists offered a variety of suggestions. Among them were better supervision and training, fuller documentation of plea negotiations including the use of videotaping, beefed-up internal standards, additional court hearings to reveal "tainted" testimony, more detailed instructions by judges to alert juries to the problems of informant testimony, tougher punishment for informants who lie, and a restriction, if not outright ban, on the use of jailhouse snitches.

disasters where the justice goes haywire." Criminals understand that the best way to get out of trouble is to cut a deal with the government. "Frequently they tell the truth, but frequently they lie," he said.

Prof. H. Richard Uviler, Columbia Law School, said that prosecutors do not hesitate to revoke the "contracts" of witnesses who lie. But Prof. Bennett L. Gershman of Pace said that many prosecutors are motivated by a "conviction psychology" instead of a desire to "do justice." Witnesses have an incentive to tell prosecutors not the truth, but what they want to hear. This trait is encouraged by improper coaching of witnesses, "the dark, dirty secret of the American adversary system."

Traditionally, partisans of the adversary system have relied on cross-examination at trial to disclose if any witness is lying. New York attorney Gerald Lefcourt complained that prosecutors do not turn over enough information to facilitate effective questioning. "It's the policy to make sure that defense attorneys are not fully prepared," he said. Other speakers said

prosecutors may be reluctant to turn over more than the bare minimum of information because they think it would be used by the defendant, who has as much, if not more, incentive to lie as the informant.

In any case, US District

Judge Gerald E. Lynch, who sits in the Southern District, pointed out that since most cases are resolved through pleas, "95% of defendants never get any trial." Cross examination—"the great engine of truth"—may be irrelevant in such a system.

When all is said and done, however, "somebody has to tell who is telling the truth," said Judge Lynch.

Intellectual Property Program Launches Speakers Series

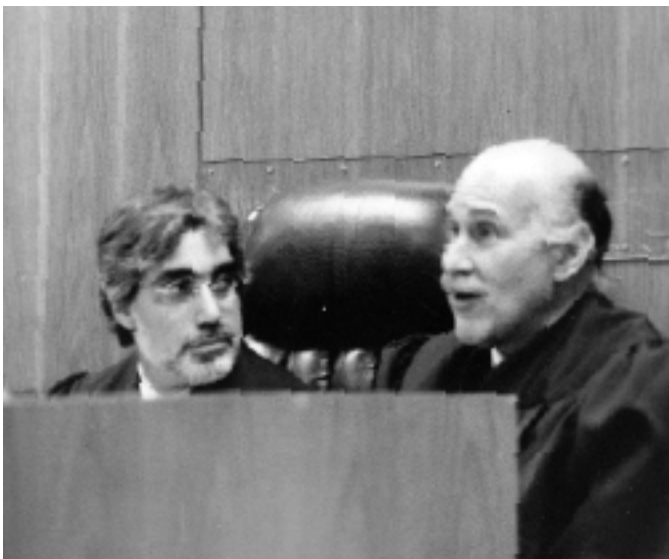
In the fall, the inauguration of the Law School's Intellectual Property Speakers Series was instituted to provide another forum at Cardozo for discussion of cutting-edge issues in the field. Students were invited to the colloquium following each faculty talk. Speakers included: Alfred C. Yen, associate dean for academic affairs and professor of law, Boston College Law School; Julie Cohen, associate professor of law, Georgetown University Law Center; and (pictured below) Peter Feng, associate professor of law and deputy head of the law department, University of Hong Kong. Speakers in the spring are: Michael Froomkin, professor of law, University of Miami School of Law; Robert Denicola, Margaret Larson Professor of Intellectual Property Law, University of Nebraska College of Law; Wendy Gordon, Paul J. Liacos Scholar-in-Law and professor of law, Boston University Law School; and Arti Rai, associate professor of law, University of San Diego Law School.



Moot Court Team Advances to Finals

Cardozo's Moot Court Honor Society won second place in the team competition for the Annual National Moot Court Competition for region II held at the New York City Bar Association. The team advanced to the nationwide competition held in January. Winning team members were Aglaia Davis '01, who also was a runner-up for Best Oralist; and Jason Halper '01 and Jennifer Loyd '01. The team also won Best Brief in region II. They argued whether it violates the first amendment to hold a newspaper civilly liable for obtaining information in violation of the federal violation statute.

Judges for the finals were (on left) Hon. Marty Schulman, NY State Supreme Court; Ira Glasser, executive director of the American Civil Liberties Union; and (not pictured) Dean Stewart Sterk.



The Paulsen Moot Court Competition, as is the tradition, wrestled with topical issues before the US Supreme Court—this year they argued about the constitutionality of police roadblocks and drug testing of pregnant women. The winner was Mary Alestra '01 and runner-up for Best Oralist was Scott Sisun '01. The other two finalists were Rachel Hirschfeld '01 and Aaron Kranich '02.



This year, orientation was extended to include a special luncheon in addition to the traditional boat cruise. Cardozo's First Annual New Students Luncheon was held at the recently opened Center for Jewish History, just a few blocks from Cardozo. A good number of faculty and current students were on hand to welcome members of the class of 2003. Shown here are Tran Smith '03 and Portia Downing '03.

This year, orientation was extended to include a special luncheon in addition to the traditional boat cruise. Cardozo's First Annual New Students Luncheon was held at the

Panel Explores Ways to Bring Technological Advantages to More Communities

The emergence of the Internet and new technologies has created a gap between those people and communities that make effective use of information technology and those that cannot because of lack of knowledge and/or access to hardware. This phenomenon is known as the digital divide. At "Bridging the Digital Divide: Equality in the Information Age," legal experts and consumer advocates discussed the social implications of this issue and ways in which various communities can engage in and be empowered by technology.

Panelists were Tracy Cohen, regulatory advisor, Internet Service Providers Association of South Africa, and research associate, Wits

University, Johannesburg; Mark Cooper, director of research, Consumer Federation of America; Mary Keelan, telecommunications advocacy consultant, Libraries for the Future; and Stefaan Verhulst, scholar-in residence, Markle Foundation, and director, Programme in Comparative Media Law & Policy,



University of Oxford. Peter Yu '99, executive director of the Intellectual Property Law Program and deputy director of the Howard M. Squadron Program in Law, Media & Society at Cardozo, moderated.

Students Organize ABA/ADR Chapter; Negotiation Teams Go to Finals

A dispute resolution section of the American Bar Association is encouraging the development of law school chapters: Cardozo's ADR Society, formed this fall, is one of the first such chap-

ters nationwide. Fifty students have already joined. Through a combination of lectures, symposia, competitions, and public service projects, Society organizers Cynthia Devasia '02 and Jonas Karp '02 hope to educate Cardozo students and the community about dispute resolution. "We intend to show our peers what an important tool mediation

is," said Ms. Devasia.

The Society's inaugural event, "All About ADR," was a presentation by Daniel Weitz '96, statewide ADR coordinator for the New York State Unified Court System. Among the activities planned is setting up or supporting peer mediation programs in K-12 schools.

The Kukin Program for Conflict Resolution hosted

the 12th Annual Cardozo/ABA Negotiation Competition. Two winning teams, Venus Sahwany '02 and Megan Weiss '02 and Alexandra Hochman '01 and Sima Saran '01, went on to represent Cardozo in the ABA Regional Competition held at Albany Law School, where the Sahwany/Weiss team advanced to the final round.

Budapest is Site of Summer ADR Program

This summer, Cardozo is launching an intensive international conflict resolution program set in the dynamic context of Central and Eastern Europe's emerging democracies. "Managing Conflict and Fostering Democratic Dialogue" will be taught at Central European University (CEU) in Budapest, Hungary, and is co-sponsored with Hamline University School of Law. Students from US and international law schools and graduate programs will learn side by side using multinational examples.

Prof. Lela Love, director of Cardozo's conflict resolution program, hopes to put critical negotiation skills in the hands of future lawyers. She notes, "In Eastern Europe there is not sufficient education about or awareness of mediation, but the need is great. Many of the students

who study with us may be among the next generation of leaders and scholars who will shape their countries' legal systems. Understanding alternative methods of conflict resolution can help establish responsive justice systems that support efforts to institutionalize the rule of law in new democracies."

Faculty in the program come from five countries and include leading professors and practitioners in ADR. The four-week ABA-approved summer program is taught in English and offers six credits. Through highly interactive classes, students will examine mediation theory and skills and the impact of culture and context and can choose to focus on labor disputes in emerging democracies or on international applications of conflict theory.



Cardozo's Strengths in IP and ADR Converge in Pioneering Panel

In October the Cardozo Online Journal of Conflict Resolution and the International Trademark Association cosponsored a symposium on "Using Alternative Dispute Resolution in Intellectual Property Cases." Participants explored the common ground between these two legal fields, addressing topics such as mediation and arbitration in patent, trademark, and copyright cases, as well as the future of alternative dispute resolution in intellectual property cases. "Both ADR and IP



Jim Davis of Howrey, Simon, Arnold & White (on left) and Thomas Creel of Kaye, Scholer, Fierman, Hays & Handler.

are hot legal areas today. Their confluence brings together two of Cardozo's highest ranked programs and is of great interest to students, mediators, and the practicing bar," noted Professor Love, director of

Cardozo's ADR program.

Panelists included Prof. Hal Abramson, Touro Law School; Thomas L. Creel, Kaye, Scholer, Fierman, Hays & Handler, LLP; Jim Davis, Howrey, Simon, Arnold & White, LLP; and

Bruce Keller, Debevoise & Plimpton. Moderators were Cardozo graduates Prof. David Korzenik '79, Miller & Korzenik, LLP;

and Marc Lieberstein '92, Ostrolenk, Faber, Gerb & Soffen, LLP. An edited transcript of the symposium will be available in the spring at the Online Journal's website: www.cardozo.yu.edu/cojer

Students Organize Events on Napster and Trademark

The Intellectual Property Law Society sponsored a panel to discuss the effects of the Napster decision on the music industry, recording artists, and fans. "Taking Sides on Napster" featured speakers (below from left) Michael Carlinski, Esq., Orrick, Herrington & Sutcliffe; Marilyn McMillan, chief information technology officer, New York University; Prof. Barton Beebe, moderator; Sam Kaplan, Esq., Boies, Schiller, Flexner; Whitney Broussard, Esq., Selverne, Mandelbaum & Mintz.

"Trademark 101," an open forum on anything and everything to do with trademark, was an opportunity for Cardozo students to ask what they really wanted to know about the field. Panelists on hand to answer their questions were Prof. Barton Beebe; Debbie Cohn, director of trademark examining operations at the US Patent and Trademark Office (USPTO); and Stewart Bellus, attorney, Collard & Roe, and former trademark examiner at the USPTO. The event was sponsored by the AELJ and Center for Professional Development.



Ethics, Zealous Advocacy, and the Criminal Defense Attorney



Robert S. Bennett
Partner, Skadden, Arps, Slate, Meagher & Flom LLP

Apart from being flattered, I am grateful to have been invited to address this distinguished gathering because it has caused me to focus on issues of ethics and morality that are daily companions of a practicing lawyer.

We are instructed by our codes of professional responsibility and told by professors, legal scholars, and mentors that we lawyers, as guardians of the law, play a vital role in the preservation of society, that we have an obligation to adhere to the highest standards of ethical and moral conduct, and that in our words and deeds we must promote respect for the law and our profession. We must deal candidly with others, and we should use our education, skills, and training to do public good. Finally, we are instructed to be zealous advocates on behalf of our clients.

I agree with all of this, and I have tried in 30-plus years of practice to honor these goals. But I would be less than candid if I said it was easy. At times, there is some moral conflict because these roles do not always work in harmony. The zealous advocate often speaks and acts in ways that to many are morally questionable, less than candid, and do not promote respect for the law in the eyes of the public.

I believe the legal profession has done a poor job of giving guidance to its members on how to resolve the tension among these sometimes conflicting roles. And we have done a miserable job in explaining our role to the public. We have avoided dealing with difficult ethical issues by using generic words in our disciplinary rules

and codes of responsibility and not dealing with the underlying problems. We act as if litigation is simply a “no holds barred” game and all you need to do is follow the rules to be morally and ethically pure.

This was most dramatically and forcefully stated by Lord Brougham in the 19th century when defending Britain’s Queen Caroline, who faced an attempt by her husband, King George IV, to obtain a divorce by charging her with adultery, thus ruining her name and putting at risk her fortune and position in society. Lord Brougham let it be known that in the queen’s defense he would prove that the king himself was guilty of adultery and had secretly married a Catholic, thus putting at risk his title to the throne. His tactics outraged many who felt he went beyond the bounds of ethical advocacy. He justified his conduct as follows:

“[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons... And in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion.”

A very strong case can be made that while Lord Brougham’s rhetoric was excessive, his actions on behalf of his client were appropriate. I am told that some years after the case was concluded, Lord Brougham attended a

EDITOR’S NOTE: This article is an edited version of the Jacob Burns Ethics Center lecture delivered by Mr. Bennett on February 8, 2000.

dinner at which the most respected Chief Justice Cockburn was speaker. Looking disapprovingly at Brougham, Cockburn stated that while it was appropriate to be a zealous advocate, a lawyer should not be an "assassin."

How do we, in our adversary system, reconcile our roles as officer of the court, role model, and public citizen with that of the zealous advocate? I think we can all agree that the defense attorney's obligation is to represent a client even if it means that the truth is undermined in a particular case. Defense attorneys are entitled to put the prosecution case to the test, and a defendant has a constitutional right to have his lawyer do so.

Our society has decided that a defendant must be free to be fully candid with his or her lawyer without suffering any consequences and that guilt is to be decided in the courtroom and not in the lawyer's office. Sometimes the public unfairly criticizes us for seeking the acquittal of one we believe to be guilty or vigorously representing one whose innocence is not clear. This is particularly true when the crime is heinous.

Unfortunately, the public, by and large, believes that as officers of the court our only goal should be the truth. The Bill of Rights and in particular the Fourth Amendment prohibition against unreasonable searches and seizures often are obstacles to reaching the truth. Sometimes, in our legal system, the truth must be sacrificed for more important principles.

Also, let us not forget that we allow, and the courts condone, the police to engage in deception and ruse by lying to suspects about the evidence against them in the hope that they will confess their guilt. Is it appropriate for one who is an officer of the court to present a false

and faulty logic. Some lawyers offer the questionable notion that the only "truth" in a criminal trial is what a jury tells us it is. Sometimes lawyers hide behind the assertion that it is the job of the jury and not the lawyer to decide the case, thereby evading the tough moral questions.

Because we give special meaning to terms in our codes of conduct, our narrow definitions often do not comport with their general and common-sense meanings or notions of fairness. This leaves us vulnerable to public attack.

A few years ago I participated on a panel with some of the country's best-known defense lawyers. To my astonishment, all of them said that they never tried to mislead or deceive jurors. Rightfully, there were snickers in the auditorium, including my own. These distinguished lawyers were not lying but giving very narrow and, I believe, insupportable definitions of the terms "misleading" and "deception."

If we are to be honest, we must acknowledge that first-rate trial lawyers work very hard at inserting their own credibility into a trial for the benefit of their clients and, when necessary, use that credibility to argue to the jury propositions that they know beyond any reasonable doubt are false. At times we use our training and skills to discredit truth-telling witnesses hoping to make them appear to be fools or liars.

Yet the prestigious American College of Trial Lawyers, whose membership consists of the elite of the trial bar, tells us in their Code of Trial Conduct that in our representation of our clients we should not engage in chicanery.

Sometimes, in our legal system, the truth must be sacrificed
for more important principles.

defense or to present evidence which supports such falsity? Is it appropriate for us to use every stratagem or device in an effort to lead the jury to reach a conclusion that the attorney knows is not the truth? How much maneuvering or, to put it more harshly, chicanery can we engage in without crossing ethical and moral boundaries? Can we be ethical lawyers and still engage in morally repugnant behavior?

One reason lawyers are criticized as much as we are is that rather than deal with the issues head-on, we often duck the hard questions by engaging in glib distinctions

Does such an admonition bear scrutiny? Doesn't a good lawyer regularly try to induce beliefs in juries that the lawyer believes to be false, and in doing so deceive the jurors? And in picking jurors, don't we often, where there is a strong case of guilt, seek out jurors who we believe, or at least hope, will disregard the evidence and return a verdict based on prejudice or passion? When we do these things, are we promoting respect for the law?

In his book *Ethics for Adversaries—The Morality of Roles in Public and Professional Life*, Arthur Isak Applbaum, associate professor of public policy at

Harvard University's Kennedy School of Government, asks, in a critical way, if lawyers can, simply because they are playing the role of a zealous advocate, describe a lie or a deception as something else and then claim the moral high ground for their actions. He compares us to Henri Sanson, the executioner of Paris during the French Revolution, who killed without moral concern because it was his professional job to do so. He tortured, beheaded, and mutilated people and argued that since his actions were performed in the fulfillment of his professional role, he was morally justified even if the same

ascertain or present the truth. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. More often than not, defense counsel will cross-examine a prosecution witness, and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. As part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth."

How much maneuvering or, to put it more harshly, *chicanery* can we engage in without crossing ethical and moral boundaries?

actions would be condemned if committed outside his profession. Defense lawyers don't execute people, of course, but have we, like the executioner of Paris, defined our role in such a way that we avoid confronting the difficult moral issues raised by our actions?

Let us assume that your client confesses to you that he mugged an elderly victim and before she got a good look at him he knocked off her glasses. Your client wants to testify and deny he was the mugger. It is clear that you cannot ethically allow your client to take the stand and commit perjury. Section 7-102 A.4 of the Code of Professional Responsibility in New York states that in the representation of a client, a lawyer shall not "knowingly use perjured testimony or false evidence."

On the other hand, as zealous advocate, am I not permitted to rip the elderly victim to shreds on cross-examination, and try to distort what I know to be the truth by suggesting that she didn't get a good look at the mugger, or that her sight was bad, or her recollection faulty because of age? Most would agree that such advocacy is considered ethically appropriate.

While the general public has great trouble with such actions by a defense attorney, there is solid support for such activity. One of the very best articulations of that role is found in a dissenting opinion by former Associate Justice Byron White—no liberal jurist to be sure—on rights of defendants in *United States v. Wade* (right to counsel in line-up) 388 U.S. 218 at 256–258. After pointing out that law enforcement has an obligation not to convict the innocent and must always be dedicated to reaching the truth, he says:

"But defense counsel has no comparable obligation to

I agree with Justice White's comments, and I believe it would be appropriate to cross-examine the elderly victim in the way described, because the government has the burden of proving its case. But should we not acknowledge that we are engaging in conduct that raises moral issues because we are trying to discredit a truth-telling witness and that seems to conflict with the high-sounding principles in our Codes of Professional Responsibility, such as promoting respect for the law, acting with candor, and not engaging in chicanery? We must acknowledge that at times there are differences between what is ethical and what is moral.

I have been faced with several ethical conflicts in my professional life; one happened a very long time ago. At my first meeting with a client who was nervous and concerned about how much he should tell me, I explained the criminal process and my role as defense attorney. I told him he could be fully candid with me because even if he had accepted the payoff he was charged with taking, it would make "no difference in my representing him." Apparently feeling comfortable with me, he promptly admitted his guilt.

As the trial approached, he told me he wanted to testify and deny his guilt. When I told him I could not ethically allow him to give perjured testimony, he reminded me that I said "it would make no difference." He was right. I unintentionally misled him. What I should have said is that it will make no difference as to "whether I represent you, but it could make a difference as to how I will do it." Fortunately, the matter was resolved before this issue had to be resolved.

In the preamble to the Code of Trial Conduct, the

American College of Trial Lawyers tells us that we have a specific responsibility to strive for prompt, efficient, and just disposition of litigation. In light of this, how do you feel about the zealous advocate who wants his client to avoid judgment and plays the system by continuing his client's case by playing fast and loose with the court's docket, making one excuse after another for a delay? As a result, the complaining witness is worn down and the case is not prosecuted. In such a situation, are we to totally disregard the rights of the victim and society by taking advantage of the deficiencies of the system and by

above-mentioned activities than a civil advocate or legal counselor might have. However, it does not wholly relieve us of moral responsibility for our actions.

Although I have some concerns—as I have been sharing with you—I have never regretted my decision to be a lawyer. There is no greater professional satisfaction than to guide a client from peril to safety and preserve his or her freedom, future, reputation, and, at times, life. While client relationships can be a great source of satisfaction, they do present pitfalls which you can and should safely avoid. To clients in trouble, the law is not

...have we, like the executioner of Paris, defined our role
in such a way that we avoid
confronting the difficult moral issues raised by our actions?

using trickery to delay and defeat a prompt and just disposition on the merits? While a defendant is entitled to a vigorous defense, is he entitled to game-playing with the court's docket?

Suppose a lawyer in a civil product-liability case were to follow Lord Brougham's rationale and effectively keep a defective and dangerous drug or product on the market by creating confusion and delay with aggressive litigating tactics. What if the advocate introduced into evidence a scientific report that said the product was safe but the attorney knew the report was based on faulty data? Could you use this as evidence?

In the 1990 case of *Lincoln Savings v. Danny Wall*, which dealt with the savings and loan crisis, U.S. District Court Judge Stanley Sporkin found that the Federal Bank Board acted properly in placing Charles Keating's bank in receivership because it was engaging in unsound business practices and skullduggery. The judge pointedly asked about the lawyers and accountants who reviewed or approved the bank's transactions: "Where were these professionals...when these clearly improper transactions were being consummated? Why didn't any of them speak up or disassociate themselves from the transactions? Where...were the...attorneys when these transactions were effectuated?"

These remarks and the lawsuits that followed against law firms raised serious questions about the duty of lawyers to their clients and the appropriate parameters of zealous representation. The fact that a criminal defendant is presumed under the law to be innocent and to have certain constitutional rights gives the criminal defense lawyer greater justification for many of the

about legal theory, morality, or ethics: It is about freedom, reputation, financial survival, and keeping what is theirs. Many clients don't care how their lawyer gets the results they want.

You will not be a good or responsible lawyer if you blindly follow a client's instructions. Sometimes, at the risk of losing a client, you must say you cannot do what the client wants you to do. As a lawyer you must constantly be attuned to the legal theory, ethics, or morality of a situation. They are your daily companions as a practicing lawyer.

And you must never become so close to your clients that you lose your independence, objectivity, or ability to do what is right. When you become a "player" with a personal interest, your objectivity will be clouded, your advice will be slanted.

The great Justice Oliver Wendell Holmes observed that the law is the witness and external deposit of our moral life and that the practice of it tends to make good citizens. But he goes on to observe that if you want to know the law and nothing else, you should look at it from the perspective of a "bad man." The bad man asks at what point, if I do something, does the public force come down upon my head? The bad man asks, where is the line I cannot cross without risk of punishment?

In your professional life you will run across those clients who view the law as a "bad man" does. Be careful. Your job is to get your client out of trouble, not get yourself into it.

And always remember that the most valuable asset you have is your reputation for honesty and integrity. Once lost, it can never be regained. ■

BENJAMIN N. CARDOZO SCHOOL OF LAW
JACOB BURNS INSTITUTE FOR ADVANCED LEGAL STUDIES
YESHIVA UNIVERSITY - BROOKLYN CENTER
33 FIFTH AVENUE
NEW YORK, NEW YORK 10003-4391

Cardozo Calendar of Events

MARCH 7

Intellectual Property,
World Trade and Global Elites

MARCH 12

Intellectual Property
Speaker Series:
Robert Denicola

MARCH 15-18

Cardozo/BMI Entertainment
and Communication Law
Moot Court Competition

MARCH 27

US Supreme Court
Swearing-in Ceremony

APRIL 2

Copyright Law as
Communications Policy:
Convergence of
Paradigms and Cultures

APRIL 23

Intellectual Property
Speaker's Series:
Wendy Gordon

APRIL 26

Privatization of our
Discourse II:
A Post-election
Conversation about
American Public Speech

JUNE 10

Benjamin N. Cardozo
School of Law
Commencement

BULK RATE
U.S. POSTAGE
PAID
PERMIT #172
PLAINFIELD, NJ 07060

ClassActions

Class of 1980

Steven S. Goldenberg is of counsel to Greenbaum, Rowe, Smith, Ravin, Davis & Himmel, L.L.P., and has been selected for inclusion in The Best Lawyers in America 2001-2002.

Class of 1981

Gail Markels is senior vice president and general counsel of the Interactive Digital Software Association, IDSA. Anthony L. Rafel joined Riddell Williams in Seattle as a principal. His practice focuses on real estate transac-

tions, condominium construction, and labor and employment issues.

Class of 1983

Nancy Kramer was a spokesperson for Cardozo in a New York Law Journal article about hiring trends. Naomi P. Meisels is counsel at the NYC office of Bryan Cave, L.L.P.

Class of 1984

Rabbi Steven Ettinger was a Scholar in Residence at Congregation Beth Shalom and is president of Machon L'Torah. Phyllis Kaufman is

an entertainment lawyer in NYC and organized and served as the artistic director of the Philadelphia Festival of World Cinema. Holly Kennedy Passantino was named of counsel to Whiteman Osterman & Hanna, where she joined the firm's corporate practice group.

Class of 1985

Dr. Adena K. Berkowitz gave birth to her fourth child, Alexandra Nicole.

Class of 1986

Mary James Courtenay, CEO of Mary's Games, LLC, based in Seattle, released a new board game called "Disorder in the Court." Merritt McKeon, a native of Laguna Beach, CA, was the featured speaker at the Leisure World Democratic Club and ran as the Democratic candidate for the 70th Assembly District. Richard Reice is vice president of human resources, labor, and employment law at Citizen's Communication in Stamford, CT. Peter Allen Weinmann married Amelida Ortiz on September 3 in Buffalo. He is in private practice, concentrating on eminent domain and tax assessment challenges for commercial properties.

Class of 1987

Yisroel Schulman, executive director of the New York Legal Assistance Group (NYLAG), was given the Attorney General's Award for

his work on behalf of the elderly and indigent. He has worked at NYLAG for 10 years and watched it grow into a 30-lawyer organization with a \$5 million budget. David Singer, vice president of Robison Oil in Mount Kisco, was elected to the board of directors of the Boys & Girls Club of Northern Westchester. He resides in Bedford Hills with his wife and three children. Joseph M. Vann is a member in the corporate reorganization and creditors' rights practice of Gratch Jacobs & Brozman, P.C.

Class of 1988

Lawrence A. Cunningham, a professor at Cardozo and director of the Samuel and Ronnie Heyman Center on Corporate Governance, authored a new book, How to Think like Benjamin Graham and Invest like Warren Buffett (McGraw-Hill). Lawrence Rosen was named general counsel for the American Society for the Prevention of Cruelty to Animals, Inc.

Class of 1989

Barbara Bracher Olson and her husband, Theodore, who represented George W. Bush in the US Supreme Court during the election, were recently featured in the "Public Lives" column in The New York Times, December 9. The article reads in part, "As the power couples of Washington come and go, the Olsons may have proven themselves in a class by themselves in the last eight years, becoming the



Alan Futerfas '87 may be the first Cardozo graduate to argue and win a case in the US Supreme Court, *Artuz v. Bennett*. After preparing for an oral argument that he described as "all-encompassing and exhaustive," he presented the case for his client, Tony Bennett, whose application for habeas corpus relief was dismissed by the district court on the grounds that the

application was untimely. Futerfas's firm successfully had that decision reversed by the US Court of Appeals for the Second Circuit, which then remanded it back to the district court. The Queens County District Attorney's office petitioned for certiorari, which was granted.

The question presented to the Supreme Court on October 10, 2000, was whether an application for state post-conviction relief, which contains claims that are procedurally barred, is "properly filed" within the meaning of section 2244 (d)(2) of Title 28 U.S.C., such that the time during which such state post-conviction relief is pending tolls the one-year limitations period within which a state inmate must ordinarily file his federal habeas corpus petition. On November 7, the unanimous decision, authored by Justice Antonin Scalia, agreed with Futerfas's interpretation of the statute and affirmed the decision of the Second Circuit.

most celebrated and acutely dedicated pair of conservatives who, with great conviction, have opposed and harried Clinton Democrats in the main capital arenas: the courts, the Congress, and the media." David B. Cohen and his wife, Gila, announce the birth of their first child, Sarah Morgan. Barry G. Margolis announces the formation of

Margolis Bergson L.L.P., in NYC. Lisa M. Peraza joined Hodgson Russ Andrews Woods & Goodyear in Boca Raton, FL, as a senior associate in the firm's immigration practice group.

Class of 1990

Howard Berglas and his wife, Judy, announce the birth of

twins Eitan Baruch and Ariella Zahava. Jan Louise Ulman is counsel to the planning board of the Town of Greenburgh, NY.

Class of 1991

Merrill Cohen was featured in a recent issue of New York Lawyer. She founded her own practice in 1994 after special-

izing in immigration law with several firms. She has handled asylum petitions for clients from Africa, China, Egypt, Rwanda, and Albania, some pro bono. Karen Fiszer Stern, a senior attorney for the Social Security Administration, Office of General Counsel in Manhattan, was married to Jeff Stern this summer.

GIVING

JULY 1, 1999 – JUNE 30, 2000

This was a notable year in Cardozo's giving history thanks to the emergence of a much wider range of support. Especially significant was a \$5 million gift from Dr. Stephen H. Floersheimer, parent of a 1993 alumnus, to establish a center for constitutional democracy. This is the single largest gift from an individual in the School's history.

Another milestone was achieved with Cardozo's first class-giving campaign.

Vsevolod (Steve) Maksin and Michael Pope organized the drive, which raised more than \$25,000 from the Class of 2000.

We are grateful for the increased support from board members, alumni, parents, friends, students, and foundations, bringing Cardozo's 1999-2000 philanthropic total to a new high of just under \$8 million.

Every effort has been made to ensure the accuracy of this list. If your name has been misprinted or omitted, please accept our apologies, and notify Debbie Niederhoffer, director of development, at 212-790-0288, so that our records may be corrected.

\$500,000–\$5,000,000

Jacob Burns Foundation
Dr. Stephen H. Floersheimer
Thomas H. Lee & Ann
G. Tenenbaum

\$100,000–\$499,999

Steven & Carol M. Antler
Shimmie & Alissa Hom
William K. Langfan
Overbrook Foundation
Stephen & Wendy Siegel

\$10,000–\$99,999

Hugh J. Andersen Foundation
Anonymous (2)
Ronnie & Samuel J. Heyman
Nathan Kacew '98
Kukin Foundation
L. Family Foundation
Carol & Earle I. Mack
Phyllis & William Mack
Sondra & David Mack
Tami & Fredrick Mack
Open Society Institute
Lawrence & Selma Ruben
Rose C. Stern
Irving Stern Foundation
Sy Syms Foundation

Stephen A. '90 & Debra Weiss '90
M & B Weiss Family Foundation
Norman & Rosita Winston
Foundation Inc.

\$5,000–\$9,999

Aeroflex Incorporated
Broadcast Music Inc. Charitable
Gift Fund
Dr. Melvin & Carol Ann Feiler
The Hammerman & Frisch
Foundation
The J. Paul Getty Trust
Griffon Corporation
Gilbert & Shelley Harrison
James Heller
Fred Hone
Joel & Hilda Karp
Samuel H. Kress Foundation
Mollie Parnes Livingston
Foundation
Jeffrey & Sivia Loria
Podell Rothman Banfield &
Schechter
Reed Foundation Inc
Barry K. & Sheryl Schwartz
Romie & Blanche Shapiro
Joseph F. Stein Foundation Inc.
Wildes, Weinberg, Grunblatt &
Wildes, P.C.
Siggi B. Wilzig

\$2,500–\$4,999

Anonymous
Aviva Appleman
Joseph Appleman
Karen Appleman
Shari Appleman
Tammy Appleman
Steve Field '00
Michael Pope '00
Andy Warhol Foundation For The
Visual Arts Inc.

\$1,000–\$2,499

Alex Altman
Altman Foundation
Tiffany Rosenhaus Berger
Andrew Berkowitz '00
Blau Kramer Wactlar & Lieberman
Gary J. Budy '90
Patrick G. Cadiz '00
Jenniffer Cannata '00
Covington & Burling
Simon & Annie Davis Foundation
Vincent J. Donnelly
Sanford Paul Dumain '81
Mark W. Floersheimer '93
Elsa Greenberg
Jack Byron Hartog '02
David Herman '93
Robert D. & Virginia Joffe
Ben Kaplan

Robin H. Kaplan '96
Meyer Z. Last '82
Loubess Foundation
Lela P. Love
Fo-Ching Lu '00
Vsevolod (Steve) Maksin '00
Marcraft Clothes Inc.
Marjorie Miller '84
Erin Naftali '00
Linda F Post '95
Beatrice Potter
Marnie H. Pulver '00
Joanna Raby '00
Franklin A. Rumore
Kurt M. Sanger '98
David Schieholz '00
Beatrice & Samuel A. Seaver
Foundation
Jacqueline B. Stuart '90
James H. Sullivan '00
Adrienne Toscano
David E. Tweten
Nancy Wolf '89
Mark Stuart Yagerman '79
Maki Yoshida '00

\$500–\$999

Jeffrey Blumenfeld
David R. Buchanan '93
Michael L. Bunder '93
Karen A. Coffey
Leslie J. Cowne '80
Sandra J. Feuerstein '79
Monroe H. Freedman
John L. Hanks
Michael Herz
Herbert Kronish
Adam S. Lurie '00
Valerie Mahoney '00
Peter J. McHugh '01
New York State Bar Association
Deborah J. Palfrey
Rabbi & Mrs. David M. Posner
PricewaterhouseCoopers
Leon Silverman
Andrew L. Sole '99
Edward & Regina Solomon
Marianne Spinelli '90
Janis Warren '79

\$100–\$499

Howard Abrahams '94
Wendy Adler '88
Lynn C. Amari '98
Keith H. Archer '82
Ruth H. Axelrod '90

Jerry Louis Barta '82
Eunice Becker '79
Renato Beghe
Roberta Benjamin '83
Sheila Berg
Lori-Ann Bernath '79
Adam Bernick '98
Kenneth K. Bezozo '80
Jeffrey F. Bier '97
Bluefield-Princeton United Jewish
Charities
Charles & Dolores Bradley III
Michael David Braff '82
Julie Marcus Brail '94
Marc Brick '82
Holly S. Brown-Weissman '83
Jean-Marie Brun '91
Orland Campell, Jr.
Ming Hwang Capio '93
Muriel Caplan '79
Carla Wise Chanin
Catherine Marie Cohen Topp '00
Tracey Simone Cosby '00
Susan Stein Danoff '87
Doreen Davidowitz '81
Susan K. Day
Walda M. Decreus '93
Tanis B. Deitch '93
Leslie Sarah Deutsch '88
Harold Eisenstein '86
Louis Epstein '83
Abbey Feiler '99
James Fink
Michael K. Fistel '89
Alan S. Fox '83
Lisa D. Foy '93
Myra L. Freed '80
Seth Freeman
Steven M. Friedland '99
Barbara L. Friedman '95
Robert F. Frier '80
Katherine H. Fritts '92
Alan Futterfas '87
Gary J. Galperin '80
Lawrence I. & Adina Garbus '95
Thomas R. Garland
Stephanie Y. Gayden '93
Julie K. Gershman '95
Lisa Post Gershon '91
Hal I. Gilenson '91
Robert Fred Giusti '80
Wendi Gail Glassman '80
Paula Knoll Gold '83
Andrea L. Greene Goldman '90
Barry Goldstein
Lila Goldstein
Toby Golick

Class of 1992

Rachel Warren, a member of Cardozo's Board of Directors, was made a partner at Davidoff & Malito L.L.P.

Class of 1994

Felicia S. Hoeniger was named Tax Legal Director of the Legal Division by the Commissioner of Revenue

Services in Connecticut. Tom Hroncich, Jr., co-founder of Gay Democrats of Suffolk County, was the only Democratic candidate to qualify to run for New York's 7th District Assembly race.

Class of 1995

Felicia Stacey Gordon joined the New York County

Lawyers Association, and chairs the Foreign and International Law Committee law student internship program. Catherine Larocca has joined Seltzer Caplan McMahon Vitek in their business insolvency and creditor's rights group in San Diego, CA. Y. David Taller wrote an article, "Proof of Recurring Conditions Can Satisfy Prima

Facie Requirement For Notice in Slip-and-Fall Litigation," which was published in the September 2000 New York State Bar Association Journal.

Class of 1996

Joshua G. Gerstin was appointed by the Florida Bar to serve on its Consumer Protection Law Committee. In

Alan Gotthelf '01
Kenneth W. Graham
Wayne M. Greenwald '79
Jonathan R. Gross '97
Eric J. Guber '87
Malvina Halberstam
Elissa Kahn Halperin '82
Joelle L. Halperin '83
Elaine M. Harrison '92
Robert Hart '99
David L. Heath '99
Nancy Heller '84
Ross Neil Herman '87
Mitchel Iban Herstic '81
Ronald S. Heymann '79
Miriam S. Higgins '95
Henriette D. Hoffman '79
Paul Indig '90
Arthur & Judith Jankolovits
Sarah Jane Jelin '79
Muriel B. Kaplan '80
Deborah Katz '86
Sharon D. Katz-Pearlman '84
Jeffrey L. Kinzler '84
Kirkland & Ellis Foundation
Arnold P. Kling '83
H. Albert Korn
David Kozenik '79
Judith B. Kunreuther '91
Nathan G. Lamm '00
Ellen & Jonathan Langemann
Lillian Joan Laserson '83
Judith Lebson '90
Stephan Robert Leone '88
Ilyse Levine & David Weinstein
Jeffrey I. D. Lewis '86
Lisa Z. Lissner '91
Sheri F. London '93
Harvey Lubitz
Marilyn Luneberg
Frederick A. Margolin
Stacey A. Marques '00
Kenneth Matthews '79
Stephen B. Meister '79
Gary S. Miller '88
Mary Millman '81
Peter Misener
Seth A. Moskowitz '97
Shoshana Myerson '89
Charles B. Neustein
Nik Nikci '01
Bebe E. Novich '90
Barbara S. Odwak '80
Mark M. Oh '98
Jason Okun '00
Paltrowitz Family Foundation
Robert Parker '00

Penny E. Paul '89
Martha P. Pierce
Harlan J. Protass '95
Craig S. Provorny '86
Vered Rabia '98
Jacob Raby
Lorraine A. Raggio '93
Peter Reinhartz '80
Leah Richter '93
Mark David Rolnik '79
Joshua Ronen
Michelle Leslie Roth '94
Harriet Rothfeld '79
Jamie Rothman '00
Lucille A. Roussin '96
Arleen Rubin '80
Adam J. Safer '94
Debra Samuelson '90
Glenn Scott Schattner '79
David Alan Schrader '88
Schreiber Family Foundation
Susan B. Schwab '00
Charles J. Schwartz
Martin E. Segal
Neel Shah '00
Jason K. Shames '99
Dana Ellen Shanler '87
Leon Shenker '00
Jonathan Lee Sheman '89
Warren Eliot Shimoff '82
Scott Douglas Silverman '83
Jeffrey S. Sinko '92
Jonathan E. Sirota '85
Skadden Arps Slate Meagher & Flom
Steven P. Skulnik '83
Steven Smedesman '79
Joshua S. Sohn '97
Sosnow & Freed
Neil Geoffrey Sparber '83
William W. Specht
Renato C. Stabile '97
Suzanne A. Staubach
Maxine Stein '94
Sheldon D. Stem
Jonathan D. Strum '84
Stephen Sultan
Susan Taigman '99
Michael J. Taubenblatt '88
The Jewish Welfare Fund Of Danville, VA
Carol E. Thurer '92
Daniel F. Titter '82
Douglas C. Turnbull '94
Karel Lee Turner '87
Stephen Alan Verp '87
Jason M. Vogel '99

Morton Wachspress
Beth A. Wahl '84
Joan G. Waks '85
Lisa Fishbone Wallack '93
David L. Wallen '85
Kate Wallen '85
Rachel L. Warren '92
Neal J. Weinreb
Paul H. Weinstein '80
Audrey Weintrob '84
Howard H. Weller '90
Pami G. Wexelman '96
Susan Whitehead '82
Jeffrey P. Wiegand '82
Karen Gantz Zahler '81
Ella Zarky
Laurie Zeligson '84
Edward Alan Zelinsky
Jay H. Ziffer '83
Peter B. Zlotnick '90

UNDER \$100

Adrienne B. Alexander '86
Elyse M. Allen
Carol Ash '94
Miriam A. Bacon '96
Bank Leumi Trust Co. of NY
Janet B. Barsky '85
Mathew T. Bergman '99
Michael B. Berman '84
Nancy E. Berman '91
Tzvi Benstein '84
Felicia Bieber '85
Phillip L. Billet '80
Elana Billig '96
Sharon Blau '80
Stephen H. Block '92
Nancy L. Bloomgarden '80
Nelson John Bogart '87
Shoshana Timima Bookson '82
Etzion Brand '79
Ira L. Brandiss '97
Sheryl L. Bregman '91
Andrew Brodnick '85
Rafael I. Castellanos '86
David Gary Cherna '83
Fed H. Cohen
Bruce David Cohen '81
Arlana S. Cohen '81
Charles De LaFuente '81
Ilene S. Deutsch '96
David B. Diamond '99
Howard Fred Dubs '79
Jacqueline G. Eckhouse '96
Kerry Marshal Elgarten '83
Charis Emley
Franklin Englander '93
Lawrence Falk '90
Sharyn F. Feinbloom '98
Steven Feldman '85
Andrew L. Feldman '86
Susan Feldman-Gordon '79
Richard M. Fierberg '98
Aviva Finkelstein '84
Robin A. Fleischner '80
Jessica Friedman '96
Patricia E. Fome '84
David M. Gellman '94
Titi E. Gennert '00
Charles Gershbaum '90
David J. Glauber man '86
Andrew M. Gold '86
Bruce Gold '80
Linda Gold '81
Lisa S. Goldberg '85
Seth Z. Goldberg '94
Marcia J. Goldstein '89
Ellen F. Gottlieb '85
William Geenblatt '82
David I. Greenbaum '98
Sami B. Groff '97
Susan Grossman '81
Benjamin R. Guberger '97
Ruth M. Gursky '80
Mitchell Floyd Guss '79
Debra E. Guston '88
Jeffrey S. Gutman '93
Paule Harris '86
Rebecca M. Heller '97
Sandra R. Holtz '85
James D. Horwitz '84
Jill B. Inbar '96
Morris J. Kaplan '85
Ilene Kass '79
Michael David Katz '94
Benjamin Yehuda Kaufman '88
Andrew C. Kirwin '92
Robert Knapp
Neil J. Koen '96
Jeffrey M. Kramer '87
Daniel S. Kriegsman '95
Roberta Kronheim '85
La Crosse Jewish Welfare Fund
Asher I. Labendz '92
Karen Landman
Lisa B. Landsman '84
Samanth J. Leventhal '96
Michelle S. Levitz '94
Victoria Li '94
Edner P. Louis
Barbara J. Mandel '84
Michael Mauro '99
Jed D. Melnick '99

Metropolitan Life Foundation
Kenneth Michaels '93
Esther Elkin Mildner '83
Robert Misthal
Valery Molot '85
Steven Monn '82
Mara B. Moradoff '88
Peter M. Nadler '82
Linda Krasnopsky Newman '86
Julie P. Passman '90
Ellen Radin '82
Jules S. Reich '79
Republic National Bank Of NY
Aubrey E. Riccardi '99
Karen C. Richmond
Philip Michael Roberts '80
Marc R. Rosen '98
Tova Rosenberg '02
Karen C. Rothman '91
Jeffrey Rubin '89
Allen F. & Ruth Schechter
Ronald B. Schlossberg
Jennifer A. Schneider '98
Eugene Schneur '98
Barbara Seider
Gary P. Shaffer '79
Menashe Yaakov Shapiro '00
Stephanie Thea Shatkin '79
Edward Daniel Siegel '79
R. Ellen Sigal '91
David F. Silver '83
Sherry L. Silver '91
Barbara R. Silverstone '91
Donald R. Simpson '90
Sisterhood Adath Israel
Lisa C. Spring '80
Jodi Lynn Bayrd Steiner '96
Teresa M. Stoeth '80
Mary Isabelle Swartz '88
Steven R. Tarasuk
Arthur M. Tasker '92
Diane M. Venezia '95
Angela M. Waithe
Michael I. Weiss '92
Michele Weissman '90
Judith Wildman '81
Douglas R. Wolf '91
Brian D. Yomtov '99
Amy J. Zeidman '90
Harry Zelcer '83
Ephraim Z. Zinkin '96
Andrew S. Zucker '99

addition, he was appointed by the Palm Beach County Bar Association to serve on its Community Association Law Committee. Jon Henes started a software company, BlazeVentures, that helps law firms and their clients manage documents and communicate instantly on a single secure Web-based platform. Shimmie Horn opened up a new restaurant, Triomphe, in his Iroquois Hotel on 44th Street in Manhattan. **Richard Horowitz** was interviewed by Investor's Business Daily about his work consulting on industrial espionage and other corporate security cases. **Jeff Marx** has written and sold over 4,000 copies of his recent book, *How to Win a High School Election*. **Ephraim Zinkin** announces the birth of a daughter, Tamar Sarah.

Class of 1997

Jacqueline Klosek is an associate in the corporate department of Goodwin, Procter & Hoar, L.L.P. Luca Palombo was recently married and has followed a four-generation family tradition by opening a new bakery in Co-op City.

Class of 1998

Yael Orkaby Aspir announces the birth of a son, Gabriel Noah. Daryl G. Berg is now director of business development, New Media, for EMI Recorded Music. Adam S. Bernick, an associate with Eizen Fineburg & McCarthy, L.L.P., in Philadelphia, authored an article in Pennsylvania CPA Journal, entitled "It's Never too Early to Save for College." **Theodore E. Froum** is an associate in the business and finance group of

Miller, Canfield, Paddock, and Stone, P.L.C., in their Ann Arbor, MI, office.

Class of 1999

Peter J. Bilfield has joined Littman Krooks Roth & Ball P.C. Lisa Dawson has joined Koenitsberg & Rubin, L.L.P., in NYC. Steven J. German practices at Terris, Pravlik and Millian, L.L.P., in Washington, DC, and was part of an eight-attorney team that litigated *Harris v. Florida Elections Canvassing Commission*, from the Florida state court all the way to the US Supreme Court. He represented a group of Florida voters in the overseas absentee ballot election contest cases. Ran Z. Schijanovich is a detention attorney with the Catholic Legal Immigrant Network and has worked since February at the Elizabeth, NJ, Detention Center. Daniel E. Schoenberg is an associate in the corporate and bankruptcy taxation practice of Gratch Jacobs & Brozman, P.C. Mary Kate Woods joined the Los Angeles firm of White O'Connor Curry Gatti & Avanzado, which specializes in media and entertainment litigation. Andrew S. Zucker is an associate in the litigation department of Norris, McLaughlin, & Marcus, P.A.

Class of 2000

Gregory M. Dell is an assistant state attorney in Broward County, FL. Jill Farbman is an associate in the governmental affairs group of Riker, Danzig, Scherer, Hyland & Perretti in Morristown, NJ. Erez Gilad is an associate and member of the financial restructuring department at the NYC office of Cadwalader,

Wickersham & Taft. David D. Kim joined the intellectual property department of Norris, McLaughlin & Marcus, P.A., in their NYC office. Sharon Steiglitz joined the corporate mergers and acquisitions department of Cadwalader, Wickersham & Taft's NYC office.

LL.M. ALUMNI

Class of 1999

Roberta Kraus is an associate at the Manhattan law firm Robin Blecker & Daley, where she practices trademark, copyright, and Internet law. Efrat Levi is a legal counselor in the Finance and International Activity Department of Bank Hapoalim B.M., the largest bank in Israel. She published "The Indenture Trustee: Does It Really Protect Bondholders?" in the U. Miami Bus. L. Rev. She and her husband, Zev, announce the birth of their second son, Gil, last January.

Class of 2000

Julia Bogudlova is at Lowenfeld & Associates in NYC, where she works on international copyright protection matters. She plans to take the patent bar in April. Isabel Feichtner is employed at Cravath Swaine & Moore as a foreign associate in the corporate department. She plans to return to Germany in August to pursue her Referendiat (practical training). Robert Greenberg continues as a professor of business law at Yeshiva University's Sy Syms School of Business. Angela Kirtlan returned to her native Australia, where she works on mergers and acquisitions and privatization matters in the

corporate department at Corrs Chambers Westgarth in Sydney. Zhi (Leon) Li returned to China after graduation to resume his law practice. With several Shanghai lawyers he will be starting a new law firm, Sinotimes Partners, which will serve high-tech companies. Ruth Metcalfe-Hay works as a contract administrator in the legal department of Computer Sciences Corporation in NYC.

IN MEMORIAM

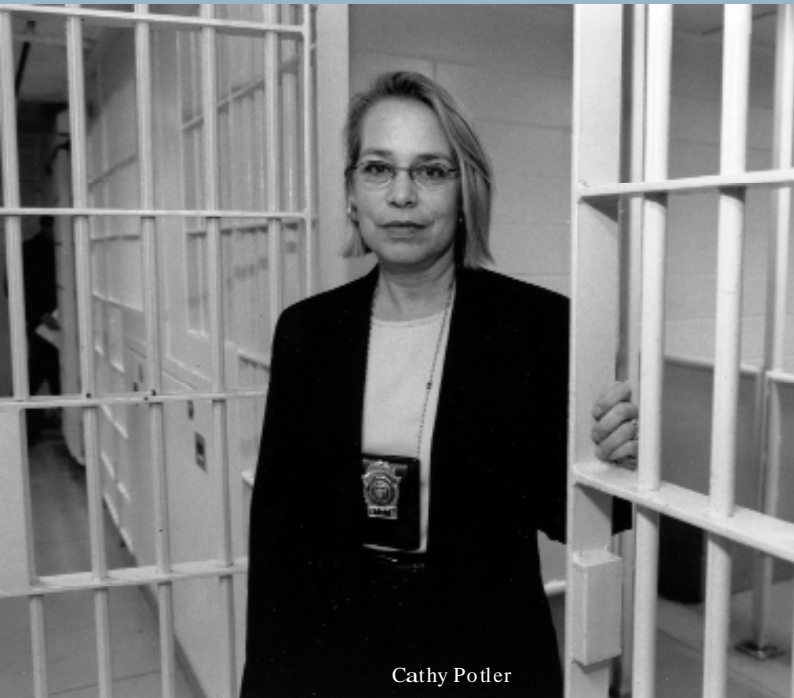
Judy Abrams '96 had been a former associate at Fried, Frank, Harris, Shriver & Jacobson and at Cardozo was a member of the Law Review. She is survived by her 15-year-old son.

Ravindra (Rav) Murthy '96 was a member of the Law Review and clerked for the Honorable Leonard Bemikow, US magistrate judge for the Southern District of New York, prior to practicing at Debevoise & Plimpton.

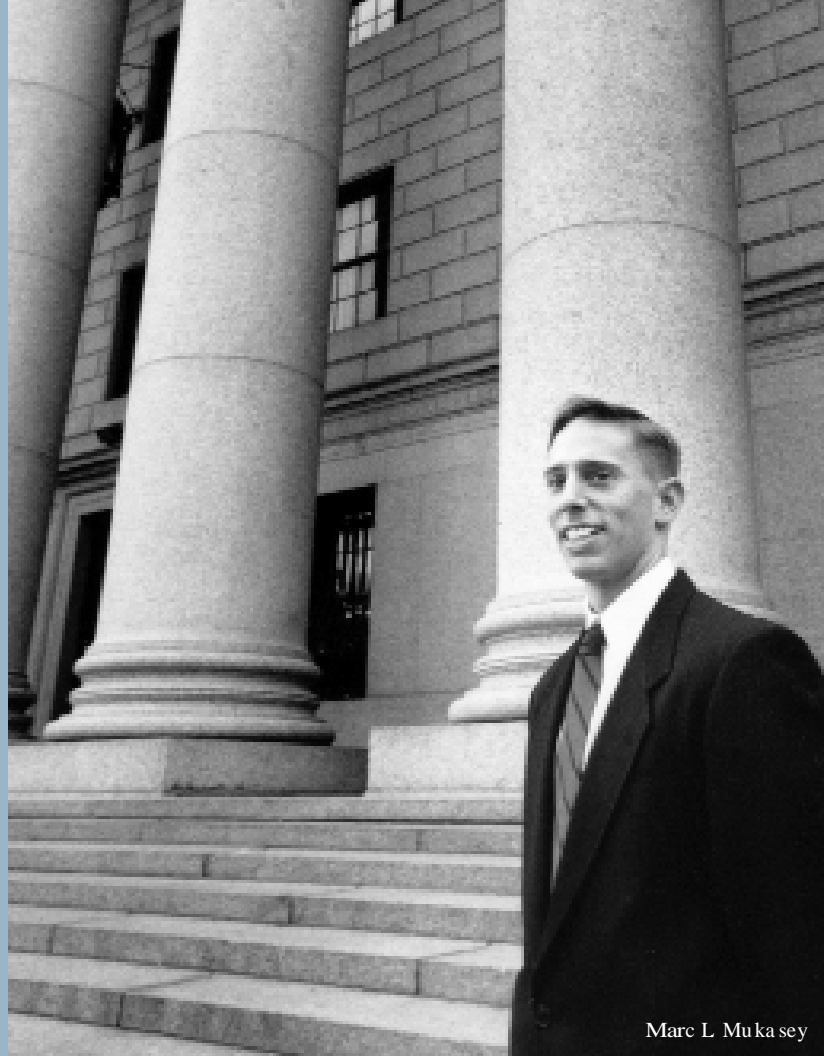
Pamela Vanderputten-Silvernagle '90 was an attorney with the Sussex County Public Defender's Office in the child guardian program. She is survived by her husband, Sean Mike, and her son, Sean Michael, Jr.

Ian A. Spetgang '82 was a member of Temple Judea of Bucks County, where he taught religious school. He is survived by his wife, Judith A. Gerber, and two children, Sarah and David Spetgang.

Laurie Beth Tobin '82 was an attorney in Woodbridge, NJ, and a member of the New Jersey State Bar. She was 45 years old.



Cathy Potler



Marc L. Mukasey



Jorge Santos



Daniel M. Felber

Making a Real Difference in Criminal Law

Jeff Storey '01

Rookies at big law firms may be pulling down six-figure salaries in posh surroundings, but many graduates of Cardozo opt instead for the grittier, less remunerative career of the criminal lawyer. They are holding demanding jobs where they are convinced they can “make a real difference”

Hundreds of graduates work as prosecutors and defense attorneys in a system committed both to individual rights and to the safety of society. Ethical prosecutors strive to “do justice.” Think Law and Order. Zealous defense attorneys work to protect their clients against the overwhelming power of the state. Think *The Practice*.

Prosecutors and defense attorneys sometimes disparage each other, but they have a lot in common, not least a bedrock idealism. They also frequently share a zest for courtroom competition, the thrill of going toe to toe with an adversary. And they take intense satisfaction from a calling that permits them to share the drama of people's lives.

The “right result” in this system is supposed to emerge from lawyerly battles of wits and facts, but the performance of the attorneys does not always approximate this high ideal. Cardozo is committed to the encouragement of high-quality criminal advocacy. With its extensive clinical program, the School seeks to inculcate both the dedication and the practical skills that students will need to survive in the high-stakes, high-pressure world of criminal law.

For example, students in the Criminal Law Clinic represent clients in Manhattan Criminal Court. Those in the appeals clinic write briefs for incarcerated inmates. Others sign up for internships at local and federal prosecutors' offices. An intense trial advocacy program gives students an opportunity to learn from real attorneys. Trial team competitions allow students to experiment with their techniques.

Following are examples of how some alumni are using their skills and how they regard their vocation.

MARC L. MUKASEY '93 guesses that only one percent of law school graduates ever get to try a case in court. But

the self-proclaimed “adrenalin junkie” has tried seven cases, six resulting in guilty verdicts, during his three and a half years as an assistant US attorney in the Southern District in New York.

In Cardozo's Criminal Law Clinic, the future prosecutor frequently disagreed with professors with a criminal defense bent, but “Barry [Scheck] and Ellen [Yaroshefsky] introduced me to how much fun it was standing in a courtroom arguing for your side.” They also “taught me a lot” about how to make those arguments—sharing skills from the advocates' tool kit such as how to tell a story effectively, use body language, and cross-examine witnesses.

“Cardozo turns out lawyers ready to go into the courtroom,” Mukasey says.



While growing up, Mukasey, 33, also had a mentor close to home. His father, Hon. Michael B. Mukasey, served in the US Attorney's Office with Rudolph Giuliani, for whom Marc campaigned in 1989. Michael Mukasey became a US district judge in 1988 and was named the chief judge of the Southern District this year. His son turns aside questions about following in his father's footsteps. “I'm not smart enough,” he jokes.

Before joining the US Attorney's Office, Marc Mukasey was a staff attorney for the Securities and Exchange Commission and served as a law clerk for I. Leo Glasser, a district judge in New York's Eastern District. As an assistant US attorney, he started in the General Crimes Unit before moving to Narcotics, where, among other cases, he prosecuted a ring that was allegedly dispatching sleek black limousines to deliver cocaine to professional offices and exclusive apartments.

Mukasey, who now prosecutes violent gangs, says he has “the best job in the country.” Surrounded by dedicated and intelligent lawyers and agents, he loves the work so much that he says he would do it for free.

“Where else can you argue for the right cause every single time?” Mukasey says.

But he insists that his job is to “do justice” rather than to pile up convictions. Justice Sutherland, in a 1935 US

Supreme Court decision, said that a US attorney “may strike hard blows” but not “foul ones.” Mukasey says that “it is a beautiful thing to live by that credo.” He gets great satisfaction from getting “bad guys” off the streets, but he says he also is happy when he can exonerate a suspect.

The courtroom is a competitive arena, and Mukasey enjoys the competition. However, he adds, “I wouldn’t get into the arena unless I was confident the defendant was guilty beyond a reasonable doubt, and I had the evidence to prove it.”

Attorneys like **GARY G. BECKER** ’83 are often asked how they can defend guilty people. To Becker, the question isn’t relevant. To him, the job of the defense attorney is to ensure that the defendant is treated fairly in an arena where the odds are stacked against him or her. “I stand up for principles,” he says.

Becker, 46, learned how to structure a legal argument in Cardozo’s Criminal Law Clinic. He also discovered that “I identified more with the individual than with the state.” Today, he works with Gerald Lefcourt, a prominent Manhattan defense attorney. A self-described “true believer,” he says he could never be a prosecutor.

“I’m not someone who gets up in the morning and assigns blame,” he says. “Prosecutors get to assign blame.” Prosecutors may get satisfaction from getting “bad guys” off the street, but Becker says that their definition of “bad guys” includes “everybody from people who blow up the World Trade Center to those who smoke marijuana in the privacy of their own homes.”

Becker believes that the line between “criminals and people like you and me is extremely blurry,” a position he illustrates by recounting an overheard conversation in which a presumably law-abiding woman told a companion that she had registered her car in Texas, where the rates are lower than in New York. That’s a crime, Becker says.

Butting heads with prosecutors who refuse to give an inch can be frustrating, but Becker enjoys the courtroom battle. He has deployed his advocate’s skills for a wide variety of clients, including a “human fly” who climbed the World Trade Center, a small-time bookmaker arrested under a big-time money-laundering statute that could have brought him a 20-year prison sentence, and a

woman whose settlement from a former husband the government sought to seize because the money allegedly had been earned through a crime. The question in such cases frequently is not one of out-and-out guilt or innocence but whether the draconian penalties sought by prosecutors represent “an appropriate use of the system.”

In one particularly “righteous cause,” Becker represented a former lawyer who had served a six-year prison sentence for dealing drugs. Becker persuaded a state court to restore the man’s right to practice law by telling a “story of redemption.”

“It was one of those cases where I felt like I made a difference,” he says.

Becker says that the financial rewards of his calling are not great. A first-year associate on Wall Street frequently earns as much as a veteran defense attorney. But Renato C. Stabile ’97 was glad to get a job at the Lefcourt offices. The office gets great cases, and “you really get to work with people in a personal way,” says Stabile, 29.

Stabile was a biology major in college and expected to study environmental law when he entered Cardozo. But he soon became fascinated with criminal law. He had several internships in the field and became a member of the school’s trial team. “You learned how to try a case,” he says. “You felt free to experiment because nobody’s liberty was at stake.”



Renato C. Stabile and Gary G. Becker

LAURIE MACLEOD lives on a farm in northwestern Massachusetts, two hours from Boston. But this beautiful rural area has its share of criminal violence. “You’d never imagine what goes on at night,” says Ms. MacLeod ’84, who runs a five-attorney state prosecutor’s office in Franklin County.

MacLeod, 45, grew up in Delaware and went to college in Massachusetts. After graduation and before enrolling in law school, she ran a restaurant and music hall in Northampton. She met her husband, Mark H. Bluver, at one of his performances as a professional clown, his business at the time. Bluver also went to law school at Cardozo, graduating a year after his wife. He works at a law firm in Springfield. “I don’t know whether it’s a step up or a step down” from his previous career, his wife jokes.

MacLeod participated in Cardozo's Criminal Law Clinic but handled civil cases for several years after she graduated. A clerkship with a New York State Supreme Court justice in Brooklyn reawakened her interest in criminal law. When she and her husband returned to Massachusetts, she signed up with a prosecutor's office. She has worked there for eight years, spending much of her time handling cases of domestic violence.

The job does not pay big-city wages—the current starting salary for a Franklin County prosecutor is \$35,000—but MacLeod loves the work. She likes being involved in “the drama of people's lives” and enjoys the feeling of “doing good.” She treats every case very seriously and won't go forward unless there is sufficient guilt to support a conviction. “That's an

honorable position to be in,” she says. However, she is occasionally frustrated by skeptical judges and juries. Proving guilt beyond a reasonable doubt is “a very, very high hurdle.”

Many prosecutors eventually become defense attorneys, but MacLeod says she would have a hard time defending people like the ones she has prosecuted.

She recalls one case in which a husband viciously beat his wife while their young children (8, 5, and 2) looked on. He hit her with a beer bottle and banged her head on the dashboard of their car before throwing her and the kids from the vehicle. “She couldn't forgive herself because the kids saw it all happen,” MacLeod says.

On the day of his scheduled trial, the husband bolted from the courtroom. By the time he was apprehended, the victim had moved to Florida, one witness had died, and another could not be found. Still, MacLeod secured a conviction. “I couldn't even tell the victim how it turned out,” the prosecutor says. “But I felt like I did right for her.”



Defense attorney **JORGE SANTOS** '89 says prosecutors have a tough job and he won't criticize them. But he doesn't think he could do the job either. He sometimes imagines himself in the role of a prosecutor listening to a defense attorney argue for low or no bail. “I can see myself saying to the

judge, ‘you know, he's right,’” he says.

Santos, the son of Cuban immigrants who grew up in Queens, became interested in the law when he wandered into the courthouse during the Howard Beach bias murder trial. After a few years with Legal Aid, he started a solo practice, sharing space with a few other attorneys. He does cases in Manhattan and Brooklyn in addition to Queens. Most of his clients are Hispanic. They



Barry Scheck and Laurie MacLeod

range from serious drug dealers to businessmen harassed by the city's quality-of-life campaign; he recently journeyed to Washington to participate in a federal death penalty case.

Santos's own parents had a small clothing business in their home and were sometimes bothered by police, he says. That sealed his intention to become a lawyer and “to go up

against the system.” Santos, 38, says he still is passionate about people's rights, but he has become more realistic. His clients certainly have a pragmatic attitude. “They want to know how they can get off,” he says.

Facing powerful prosecutors and judges, “you have to make concessions to get what you want,” Santos adds.

MARCY CHELMOW '97 showed up wearing sensible pumps for her first arraignment shift as a prosecutor in Manhattan night court. Before too long, however, pain was shooting up her legs. By the end of the evening, after eight hours on her feet, “I was draped over the podium,” she says.

Working as an assistant district attorney in New York County has been a revelation for Chelmow. She discovered that the job can be very tiring and that it is hard to stop people from lying. Occasional discomfort notwithstanding, Chelmow loves her job. She has finished her initial three-year commitment but doesn't have any plans to take another job. Anything else would be too dull, she says.

Chelmow, 43, worked in the data processing department of an insurance company before going to law school. At Cardozo, she had an internship with the United States Attorney's Office and participated in the School's mediation clinic.

Even as a young prosecutor, Chelmow has a lot of power and responsibility. She sometimes feels bad when her actions give somebody a felony record. “But then I

start thinking. Wait a minute—I'm not the one who sold the drugs." All in all, she believes that "doing justice is a better goal than the defense attorneys' goal of 'getting my guy off.'"



At first, **DANIEL M. FELBER '83** wasn't sure he wanted to go to law school. He worried that its formalistic, fact-driven reasoning "tends to inhibit the creative process." But there are compensations. For one thing, Felber found, "Goliath can be slain in a court of law." And Cardozo helped teach

him how to bring down the giants.

One of the "Goliaths" slain by Felber and his partner Robert Balsam was the Chicago-based legal behemoth Baker & McKenzie. After several very lean years, during which Felber and Balsam devoted most of their resources to the case, they convinced the state Division of Human Rights that the firm had fired Geoffrey F. Bowers '82, a well-regarded legal associate, because he had AIDS. Bowers died in 1987, shortly after testifying at administrative hearings, but the state agency awarded his estate compensatory damages of \$500,000. The law firm eventually dropped its appeal after negotiating a confidential settlement with the Bowers family. A confidential settlement was also reached in the Bowers family's suit against the creators of *Philadelphia*, a hit movie starring Tom Hanks that resembled Bowers's real-life story.

Felber honed his advocacy skills under the tutelage of Barry Scheck at Cardozo's Criminal Law Clinic; he continued to work with the Clinic for several years following his graduation. Today, he is the litigation specialist in the four-lawyer "boutique" firm of Balsam, Felber & Goldfeld. His cases range from criminal to contract law, and he has started dabbling in personal injury law, which employs the same basic trial concepts as criminal law. The only difference is that the winner in a criminal trial gets a not-guilty verdict, whereas the winner in a personal-injury case gets a lot of money.

Most of his clients still are "Davids" like Geoffrey Bowers; Felber frequently takes on megafirms that have virtually unlimited resources. His own resources are not unlimited, so he has to be pragmatic in the way he approaches cases. That only makes "the victory all the sweeter." However, after 18 years of courtroom battles, Felber says that confrontation no longer holds the allure it once did, so he has become more interested in mediation. Whatever the method, he says that it is an honor and a privilege to defend people whose rights are threatened.

The biggest Goliath of them all is the US Department of Justice. The government was Felber's adversary when

he was assigned to represent one of the confederates of Sheik Abdul Rahman, who was charged with conspiring to blow up public buildings. Felber, who had to leave the case when his client decided to cooperate with the prosecution, says that "allegations were horrific," but he never really believed in the conspiracy. Still, he found the atmosphere of the trial, with its grim prosecutors and tight security, to be somewhat intimidating.

"I felt in many respects that I was trying this case in some other country," Felber says.

To succeed, a defense lawyer like **STACEY RICHMAN '91** must be ready to go to trial. But an attorney's work frequently is done far from the courtroom. Richman worked for a year to convince a prosecutor to reduce a misdemeanor charge against a client to a violation. A criminal conviction would have cost the man, a banker, his career.

"That's a great day," says Richman. "That guy is very happy, and I am very happy."

Richman, 34, also has represented more glamorous clients. After graduating from Cardozo, the daughter of Bronx attorney Murray Richman wanted to go to a place "where nobody knew me and I got treated like everybody else." In Los Angeles, she worked as an entertainment lawyer, representing, among others clients, Jon Voight and Ivana Trump.

But she loves New York and always planned to come back and work with her father. She recently was mentioned in a New York Post article about hot new attorneys. According to the Post, she and a colleague, St. John's Law School graduate Renee Hill (pictured above), have handled high-profile cases involving the rap and hip-hop artists Jay-Z, DMX, and Shyne, the alleged gunman in the nightclub shooting that involved Sean "Puffy" Combs. Her father was quoted as saying that the two are "the Dream Team of the Future."

Stacey Richman jokes that "entertainers are often criminal and criminals are often entertaining." But she says that each and every case, whether or not it involves a celebrity, is challenging because "you get so involved with people's lives." Moreover, criminal law is one of the few fields in which you can still experience victory. "It's very powerful," Richman says.

Richman works with two other Cardozo graduates at her father's office.

Andrew M. Horn '92 gets 75 percent of his business



Stacey Richman

from criminal law cases. A lawyer can make more money writing contracts or shepherding mergers and acquisitions, but to Horn, "it seemed more appealing to do something involved with people's liberty." Not to mention the visceral excitement trial work produces.

ADAM M. JAFFE '97, who was a debater at Syracuse University, likes that excitement; he has done 12 trials since January 1998. "I'm not defending my clients," he says. "I'm defending their rights." Horn agrees that "guilt really isn't the issue at all." He says that we have a good system because "it is tested every day."

Richman does not approve of crime either, but she says it is not her job to judge her clients. She says many prosecutors, with their holier-than-thou attitudes, don't see defendants as individuals and frequently overcharge them. Once suspected criminals are in the correctional system, "they are treated like animals," Richman adds.

For the solo practitioner trying to make a living, criminal law involves a lot of hustle. Richman, who is frequently in court all day, often meets clients at night. "You must meet clients when they are available," she says. Jaffe is frustrated that some judges are openly critical of attorneys. "They don't understand that we are trying to build a business and the way we are treated in front of the client is very important."

A good defense attorney must be well prepared and pro-active. Winning is all in the details, Richman says. In one recent murder case, a witness insisted he had seen one of Richman's clients fleeing the scene. Furthermore, he said he had been only 15 feet away. She measured the area and found that he could not have been closer than 300 feet. "Juries want to do a good job," she says. "They're paying attention, so you'd better be paying attention."

CATHY POTLER '81 was touring an upstate prison in the early 1980s when she encountered a closed and locked door. "You don't want to go in there," her guide said.

The room was being used to isolate prisoners with AIDS from other inmates and prison staff members. Inside, Potler found emaciated men who were receiving little medical treatment; they had, in fact, been abandoned by the criminal justice system. "Nobody was really focusing on medical care in the way this population needed," says Potler, who helped to change that by researching and writing one of the first studies of AIDS in New York State prisons.

Today, Potler, 47, uses her legal training to address issues at the back end of the criminal justice system, focusing on what happens after the other lawyers have



done their work. "We live in such a punitive society," she says. "All we hear about is locking people up and throwing away the key. Our public officials forget that people are coming out of prisons daily, often less prepared to take on the hardships of life than before they were locked up."

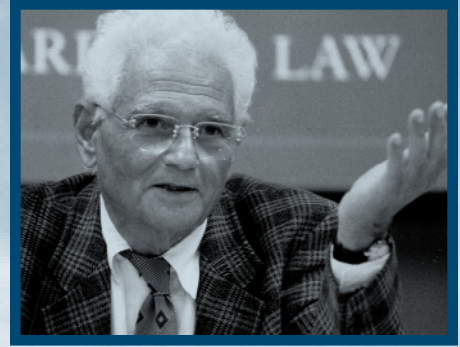
Potler studied anthropology and archaeology in college. She then got a job monitoring police patrols in Philadelphia and New York, where she saw "all sorts of illegal activities." That eye-opening experience convinced her to attend law school. "I wanted to know more about criminal law and the US Constitution," she says. After graduating from Cardozo, she was hired by Nassau County Legal Aid to fight sex discrimination at the county jail.

Although she participated in Cardozo's Criminal Law Clinic and loved going into the courtroom, Potler turned to policy because litigation seemed to take so long. But law school provided a jump start for her policy efforts. Moreover, she found that she could combine her legal training with her anthropology background to conduct investigations.

Potler worked for the not-for-profit Correctional Association of New York for eight years, focusing on issues like the care of prisoners with AIDS, mental illness, and other conditions. She currently is the deputy executive director of the New York Board of Correction, a non-mayoral city agency independent of the Department of Corrections that writes legal standards and monitors conditions at 15 city jails currently holding about 15,000 inmates. One of Potler's jobs is to investigate all suicides and unusual deaths to identify problems that need to be corrected.

The small agency, which the Giuliani administration unsuccessfully sought to abolish a few years ago, recently determined that inmates were not receiving proper medical care under an HMO-type contract that gave the health care provider a flat fee for each prisoner. Prodded by the Board, the city eventually tightened its oversight. It soon will shift to a new jail health contract with a new vendor using a fee-for-services approach. "Until the city gets it right, it is difficult to walk away from this kind of work," Potler says.

Potler likes her work, and she is hopeful that officials eventually will conduct a serious public debate about alternatives to incarceration and the social conditions—such as poverty, substance abuse, and mental illness—that produce crime. For the moment, however, few people are aware of what goes on inside jails and prisons. "When I bring people into jails, it really changes their attitudes," she says. "People don't understand what deprivation of liberty means until they walk out and the gates clang shut behind them." ■



Derrida on the

Eleven years ago, the French deconstructionist philosopher Jacques Derrida participated in a conference at Cardozo on “Deconstruction and the Possibility of Justice.” He delivered an address on “The Force of Law,” which was later published in the *Cardozo Law Review*. Since then, Derrida and Cardozo have maintained a relationship that has brought him back to Cardozo on an annual basis, a relationship that he has described as “precious to me.” In October, Derrida returned to Cardozo once again, this time to lead a discussion on the death penalty. The event, which filled the largest of the Law School’s lecture halls to capacity, was sponsored by the Jacob Burns Institute for Advanced Legal Studies as part of the annual Law and Humanism series sponsored with the New School University.

Derrida described his ongoing seminar on the death penalty, of which this appearance was a continuation, as focusing on several threads, including the cruelty of execution, the nature of sovereignty in relation to capital punishment, the death penalty in the Western philosophical tradition, and the world political trend toward the abolition of capital punishment. Derrida graciously encouraged the audience to participate in the discussion, reiterating that he conceived of the event as a seminar rather than a lecture.

The issue of cruelty was one of the first that Derrida introduced, noting that the US Constitution bans cruel and unusual punishments. The word cruel comes from the Latin word meaning blood, and Derrida argued that the word carries connotations of making another suffer for suffering’s sake, or even taking pleasure in another’s suffering. The audience for the most part did not pursue this point, and this was a lost opportunity. The implica-

tions of Derrida’s observation run, fascinatingly, in two different directions. Punishment is customarily defined as hard treatment imposed because of a violation of legal rules. If so, then does this mean that execution as a punishment is never cruel, because it is not merely the imposition of suffering for its own sake? Or does it mean something entirely different? Capital punishment has been justified on the ground that it is cathartic for the victim’s family. But is an execution for this reason really anything more than the infliction of suffering for suffering’s sake? If so, then this reason cannot be a justification for punishment. Punishment is the infliction of pain for good reasons. It may be that execution, being cruel, can never be a genuine punishment.

The issue of capital punishment in the Western philosophical tradition received greater attention. Derrida began with the surprising but true observation that no philosopher in the Western tradition argues against the death penalty, while many of the most prominent, notably Immanuel Kant, advance arguments in favor of it. Prof. Scott Shapiro picked up this point, suggesting that the reason is the difficulty in distinguishing logically between death and other punishments. The strongest arguments against the death penalty are emotional ones: Executions are unpleasant; they create anxiety because we can never be certain of guilt; and executions are likely to be sought and supported by many people we do not respect. These are not the kind of arguments that philosophers make. Derrida concurred, and expanded the point to suggest that perhaps there is no pure philosophical argument against the death penalty. The question can be resolved only in political discourse, not philosophical discourse. In that case, the abolition of the death penalty in any given society is always a contingent

Death Penalty

Kyron Huigens
Professor of Law

thing. It might be brought back at any time, depending on the state of political consensus.

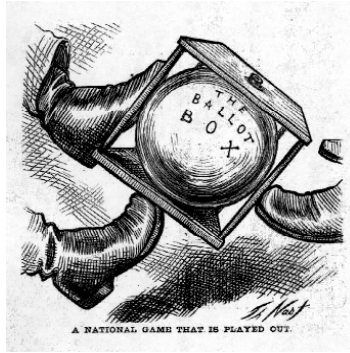
Derrida also suggested the complexity of this political problem at several points. Prof. Peter Goodrich, who moderated the conversation, observed that war is a manifestation of the death penalty, and that it may be impossible to abolish the death penalty without first abolishing war. Derrida agreed. He noted that there is a hypocrisy in the abolition of capital punishment in that it occurs within and is undertaken by a nation-state, while the nation-state preserves itself by killing external enemies. By doing so, it legitimates the idea of killing enemies of the public—which would seem to include the criminal. In his opening remarks, Derrida observed that it is impossible to separate political sovereignty from the power over life and death. For this reason, the Universal Declaration of Human Rights states exceptions to its ban on capital punishment. In order to maintain an essential aspect of its sovereignty, the state must reserve the right to impose the penalty of death, at least in exceptional cases.

Perhaps for these reasons, Derrida noted, the progress that has been achieved in the abolition of capital punishment around the world has come about as

a result of relations between sovereigns. The European Community demands the abolition of capital punishment as a condition of membership, a condition that played a role in France's abolition of the penalty and one that might lead Turkey, which seeks membership in the Community, to do so as well.

Derrida described his own participation in the debate in these terms. Given that no knock-down philosophical argument exists, the most one can do is to make small contributions to building political consensus. Derrida plans to continue to do this, in books, essays, and seminars such as this one. It is likely, on the evidence of this event, that his contribution eventually will not be a small one at all. ■





Election2000

IT WAS AN ELECTION THAT HAD INTRIGUE, HELD INTEREST, AND CAPTURED the imagination. Precedent-setting court cases were being decided as personalities surfaced and became household names and the brunt of late-night television jokes. New words like “Votomatic” and “chad” became part of our everyday conversations, and the election process and its photo-finish ending seemed to grip the country. It provided one of the most wonderful of civics and legal lessons. For the first time, people became fascinated with the ins and outs of the electoral process and the laws that governed it. And who better to explain what was happening and make the process understandable to us than a law professor?

Because of the nature of the election and the daily—if not hourly—twists and turns it took during the five weeks of counting and recounting votes, legal contests and arguments, appeals and more arguments, the media sought advice and information from legal pundits nearly 24 hours a day. Beginning late in November through the Supreme Court’s final ruling on December 12, Cardozo professors were quoted and appeared on television every day from 6 a.m. right through the 11 p.m. news. Even several days after Gore’s concession, Prof. Monroe Price appeared on a Sunday morning show to discuss, “Can George Bush lead after this election process?” The following articles and letters, which were edited for inclusion here, were among those that Cardozo professors wrote during this historical moment.



December 1

US Supreme Court hears arguments on Bush appeal that says Florida Supreme Court improperly extended the November 14 deadline for certification of vote.

...

December 4

The US Supreme Court orders the Florida Supreme Court to clarify its ruling on the extended certification date.

...

December 8

The Florida Supreme Court orders an immediate manual recount of all ballots in the state where no vote for president was machine-recorded.

...

December 9

On Bush appeal, US Supreme Court halts the manual counting.

...

December 10

Lawyers file briefs with the Supreme Court.

...

December 11

US Supreme Court hears arguments.

...

December 12

Supreme Court overturns the Florida Supreme Court. Florida House votes to appoint electors for Mr. Bush.

...

December 13

Vice President Gore concedes.

December 7

A FINE MOMENT FOR FEDERALISM

MARCI A. HAMILTON

THOMAS H. LEE PROFESSOR OF PUBLIC LAW

The Supreme Court's decision ... is, at its heart, a tribute to the political restraint of the justices, and to their remarkable respect for the role of the states in our federal system. Indeed, [the] decision was perhaps the finest moment of federalism yet reached in this country's history.

The justices stood at a crucial point in history, at the apex of their potential influence, with the ability to grasp the power to determine the outcome of the election if they so chose. The media kept billing the Court's decision as though it were the endgame; the pollsters kept asking about it that way; and indeed, if the Court had simply held that the manual recounts were invalid, an endgame it would have been (checkmate: Bush).

But the justices chose unanimously to take another path, and to follow their entrenched rule of deferring to state supreme courts on the meaning of state law. Thus, they asked the Florida court—in a brief opinion and in moderate tones—to explain its decision to extend the deadline for certifying the election, in the context of the federal principles the Court laid out.

The opinion aimed to ensure that the Florida Supreme Court acted within its proper sphere, consistent with constitutional federalism. At the same time, it also exemplified the US Supreme Court's acting within its proper sphere, consistent with constitutional federalism. It made clear that overreaching—on either the state or the federal level—would not, and should not, occur.

Appeared on Findlaw.com and CNN.com

December 10

DRIVEN BY POLITICS

PETER LUSHING

PROFESSOR OF LAW

To the Editor:

If the United States Supreme Court justices vote along ideological lines based on their view of federalism, it is understandable and historically in accord with how justices perform their work.

But for the five prevailing justices to be driven by politics to the extent that they are willing to disavow the

states' rights ideology that their voting records reflect is disastrous to both the court and the country.

The public can now justifiably view the United States Supreme Court, and especially its majority, as a political clubhouse.

reprinted from The New York Times

December 14

A JUST & WISE ACTION: TWO SIMPLE PRINCIPLES OF THE SUPREME COURT RULING

JOHN O. MCGINNIS
PROFESSOR OF LAW

The Supreme Court's decision Tuesday [Dec. 12] will be read as long as our nation survives. In the short term, it is sure to be the subject of much abuse—but in the long run we can hope that it will be understood for what it is: a clearly reasoned judgment rooted in fundamental law that was also an act of statesmanship of high order.

Knowing that they would be attacked as political partisans by undoubted partisans, particularly in the press and the legal academy, the majority nevertheless followed the law and prevented a constitutional crisis. In a city where leaders often try to dodge accountability for major decisions, the justices accepted responsibility in full recognition of the consequences.

Commentators have already confused the public by suggesting that the decision was complex. In reality, it rested on two simple and lucid propositions:

First: The recount ordered by the Florida Supreme Court violated the Equal Protection Clause of the Constitution because it lacked any assurance that two physically identical ballots would be counted alike.

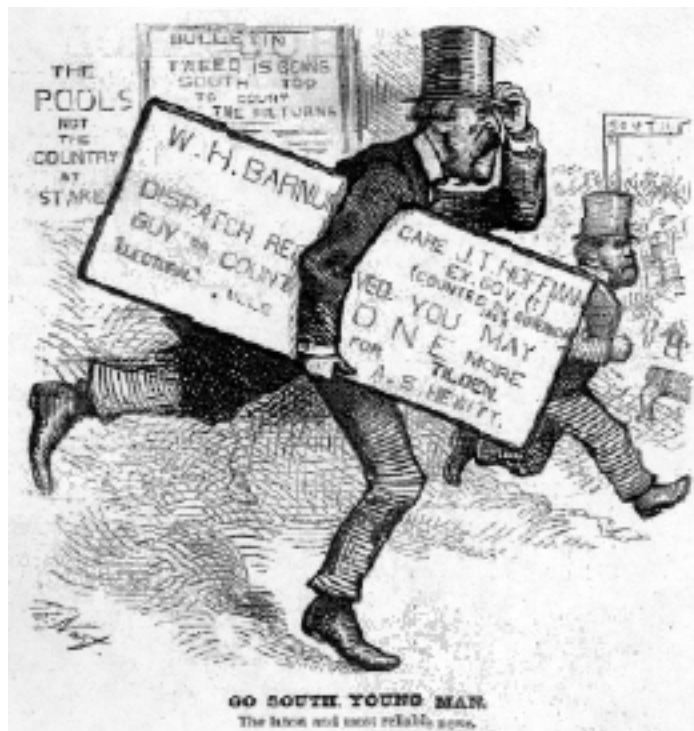
Second: No constitutional recount could be finished by Dec. 12, the day the state court consistently read as the drop-dead date by which Florida law had contemplated resolving a presidential election....

Finally, despite Justice Breyer's claim that no individual rights were involved in this case, individual rights were at its heart—the right of each voter to have his or her vote count equally. What is the court for, if not to resolve questions of individual rights claims when they are presented by a candidate who had himself been hauled into court against his will?

The alternative of judicial abnegation would not have served the country well. If the count had gone forward with constitutional infirmities, it would have been subject to subsequent challenge in the courts. Florida legislators would have named their own slate.

Instead of starting January with a Congress ready to address national problems, we would have started with a constitutional imbroglio created by a count that seven justices believed unconstitutional. The decision yesterday thus was not a reckless intervention by the court but a defensive act protecting political stability.

From Virgil's Aeneid to Shakespeare's Henry V, many of the great works of literature have focused



EDITOR'S NOTE Election 2000 was not the first election that gripped the public or whose outcome was disputed. The election of 1876 involved an Electoral College controversy that political cartoonist Thomas Nast illustrated in the pages of Harper's Weekly. The images used here are from the Rutherford B. Hayes versus Samuel J. Tilden election and reflect some of the parallels with our most recent election including Florida playing a central role in the controversy, disputed election returns, and different winners of the Electoral College and the popular vote. When the election could not be called a month after it took place, Mr. Nast placed himself at the center of his own cartoon, preparing his pencil for the work ahead. The cartoons are published here courtesy of HarpWeek LLC, and all of those that were published in Harper's Weekly during the election of 1876 can be seen on the World Wide Web at HarpWeek.com.

on the burdens that leaders must assume. Good leaders must cast aside many personal considerations, particularly the desire for universal affection, because paradoxically that affection is often won at the expense of the public's well-being.

When the partisan bitterness of this season has long been forgotten, this decision may well be remembered as a just and wise action by leaders themselves worthy of celebration.

reprinted from the New York Post

December 15

THE US ELECTIONS, STATE BY STATE

EDWARD A. ZELINSKY
PROFESSOR OF LAW

At the moment, it indeed appears that Governor Bush will have a razor-thin victory in the electoral college, while Vice President Gore carried the popular vote. However, the implications of this discrepancy are more problematic than...[some] suggest.

On one level, the popular vote is an undeniable mathematical fact, derived by adding together the votes each presidential candidate receives in each of the state contests. However, on another level, the United States does not have any national popular vote since it actually has 51 separate elections, each conducted under its own rules. It is not clear whether the combined results of these separate state elections produce the same outcome as would a truly national contest held under one set of uniform procedures.

Consider, for example, the case of Oregon, which conducted its entire election by mail ballot. The vote was narrowly divided between Governor Bush and Vice President Gore, and had one of the highest participation rates in the United States. Suppose that Texas, a Bush stronghold, had used the Oregon system. Would the Texas voter participation rate have increased under the Oregon rules?...

We don't know...and can, at best, speculate. But without those answers, it is questionable whether we can add

together the Texas and Oregon totals and call them a unified "popular vote."

Or consider the differences in state laws concerning absentee ballots. Some states effectively encourage such ballots; others do not, relegating the absentee ballot to its traditional role of permitting those unable to be physically present at the polls to vote. Again, without a uniform national standard for voting procedures, it is possible that the popular vote plurality actually reflects one candidate doing disproportionately better in the states with more liberal absentee voting rules.

When ... elections are as close as was this presidential contest, comparing vote totals under different state electoral processes, if not quite comparing apples and oranges, is at least comparing oranges and tangerines.

Accordingly, we should not invest great normative weight in the concept of the popular vote, as it does not represent a national total determined under uniform rules

Reprinted from The Jerusalem Post

December 15

VOTING RIGHTS, RULES, AND EQUAL PROTECTION

MONROE E. PRICE
JOSEPH AND SADIE DANCIGER PROFESSOR OF LAW

For most people reading the bombshell Supreme Court case of *Bush v. Gore*, what was extraordinary was its defining significance in ending the 2000 presidential election. My reaction was more personal, almost nostalgic. It was about a little-remembered decision and its lessons concerning continuity, judicial tradition, and the taming and absorption of radical new doctrine.

The almost forgotten case was *Carrington v. Rash*, decided by the Court in 1965, and it involved an unusual voting rights rule from Texas.

The Texas constitution had prohibited "any member of the Armed Forces of the United States" who moves his home to Texas during the course of his military duty

“The decision yesterday thus was not a reckless intervention by the court
but a defensive act protecting political stability.” —MCGINNIS

**“The United States does not have any national popular vote
since it actually has 51 separate elections, each conducted under its own rules.” —ZELINSKY**

from ever voting in any election in that state “so long as he or she is a member of the Armed Forces.” The provision and its implementing regulations were designed to protect Texans from being swamped by military personnel at a base, particularly a base near a thinly populated town.

The challenge to the Texas rule came to the Supreme Court when I was a law clerk to Justice Potter Stewart, and after argument and the conference of the justices, the case was assigned to him to write for an almost unanimous Court.

Justice Stewart, in a brief and characteristically elegant opinion, held the statute unconstitutional. The ground he used was similar to the one employed by seven of the Court’s justices in the historic Florida case. It was the Equal Protection Clause. It all seemed so simple.

But, as a law clerk researching the questions, I had been amazed to discover that the Equal Protection Clause had never been invoked by the Supreme Court—or hardly any other court—in a similar circumstance, namely to hold unconstitutional state voting eligibility provisions. And I wasn’t the only one to make this discovery.

The august, formidable, learned Justice John Harlan forcefully dissented. The fact that he was alone in dissent never detracted from his authoritative, thundering judicial voice. “Anyone not familiar with the provisions

of the Fourteenth Amendment, the history of that Amendment, and the decisions of the Court in this constitutional area, would gather from today’s opinion that it is an established constitutional tenet that state laws governing the qualifications of voters are subject to the

limitations of the Equal Protection Clause. Yet any dispassionate survey of the past will reveal that the present decision is the first to so hold.”

As Justice Harlan put it, commenting on the striking down of the Texas voting restrictions: “While I cannot express surprise over today’s decision after the reapportionment cases, which though bound to follow I continue to believe are constitutionally indefensible, I can and do respectfully, but earnestly, record my protest against this further extension of federal judicial power into the political affairs of the States.”

Now, the descendants of Justice Harlan, in *Bush v. Gore*, have enunciated as unproblematic what he considered to be heresy.

The justices of the per curiam decision in *Bush v. Gore* tried to hem in the radical implications of the constitutional doctrine they were announcing. In a sentence that will be the subject of hundreds if not thousands of cases and legislative inquiries, the Court said, famously, that it was not deciding “whether local entities, in the exercise of their expertise, may develop different systems for



“Now, the descendants of Justice Harlan, in *Bush v. Gore*,
have enunciated as unproblematic what he considered to be heresy.” —PRICE

implementing elections.” Instead, much more narrowly, it was “presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards.”

But there is a relevant lesson in *Carrington v. Rash* and the reapportionment cases before it. Great and radical doctrine, broad understandings of justice, cannot be easily cabined. Whether the Court stumbled, reached, or consciously entered the world of meticulous measuring of actual voting practices, the outer reaches of its decision-making can hardly be measured.

The little case of *Carrington v. Rash*, then, has been forgotten. But it is a distant ancestor of *Bush v. Gore*. *Carrington* newly empowered a few thousand soldiers at bases in Texas. *Bush v. Gore* will change voting practices throughout the land.

December 18

WHEN “INTERPRETATION”
BECOMES “CHANGE”

RICHARD H. WEISBERG

WALTER FLOERSHEIMER PROFESSOR OF CONSTITUTIONAL LAW

An interesting outgrowth of our ongoing political process this year is a debate about the way words work. The predominating view still seems to be that the meaning of language is objective and can be grasped through an automatic response by listeners or readers. So, for example, the Florida Supreme Court needed only to read the State Legislature’s statutory language. From there to explaining what the legislators meant involved, in many people’s minds, a process no more complex than, say, a voting machine’s reading of a ballot.

This “majority” view of the step from utterance to understanding was articulated by Joseph P. Klock, Jr., the secretary of state’s attorney before Florida’s high court. “But Justice Lewis,” he argued, “there’s just so much baggage the word ‘interpretation’ can carry on its back before it becomes more of a change than it is an interpretation.” Capitalizing on the US Supreme Court’s own skepticism about the way Florida’s justices were explaining the voting procedures of that state, Mr.

Klock seemed to be stating the obvious.

A lawyer, especially, should know better. Many times in our history, the meaning of important words has shifted dramatically, and lawyers and judges are usually the responsible parties. About a century ago, for example, the phrase “equal protection” was interpreted to mean separate but equal. Did the Klocks of that era ever contemplate the 180° shift in meaning that finally occurred in *Brown v. Board of Education*?

When the Supreme Court decided that the Equal Protection Clause could not permit so-called “separate but equal” facilities, was it interpreting the clause or was it changing it? When the current conservative-leaning justices read the 10th and 11th Amendments to enhance States’ rights against individuals attempting to sue under federal law, are they carrying too much linguistic baggage or are they merely doing their job of interpreting? And what about their own election-closure interpretation of the Equal Protection Clause itself; was this extraordinary stretch regarding the local standards for vote-counting “interpretation” or “change”?

Judges have the sober task of interpreting legislative (and sometimes constitutional) language. Those who accuse them of changing that language really mean that they do not agree with the interpretation. We should not let these advocates degrade the work of judges by misstating our common understanding of the way language works. And so the United States Supreme Court finally displayed its greatest cynicism in *Bush v. Gore* not so much by playing politics as by deliberately distorting the way judges work with words.

December 18

THE SUPREME COURT IN REAL TIME

MICHAEL HERZ

PROFESSOR OF LAW

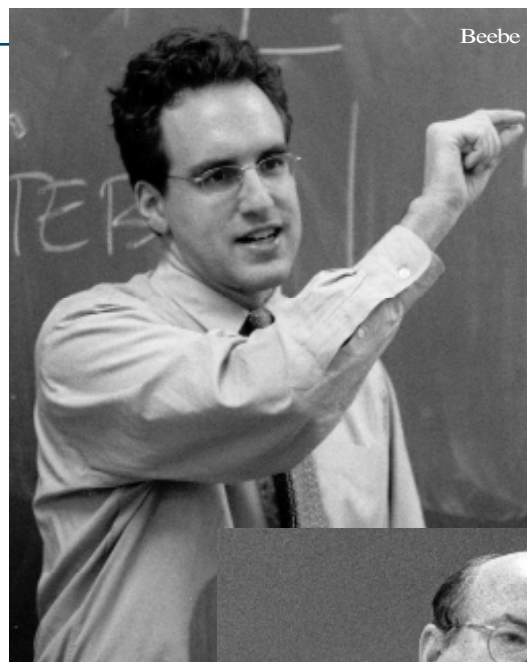
The post-election legal proceedings had their moments of humor. The oral argument in *Bush v. Gore* may have produced the most guffaws as Joseph Klock struggled to correctly identify the Justices of the Supreme Court. But if one finds humor in the absurd, the comic highpoint came 34 hours later

FACULTY briefs

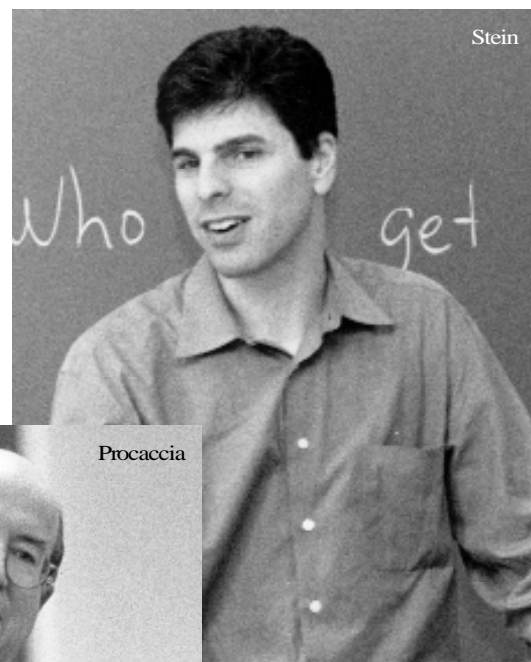
Stein Joins Faculty; Two Academics Visit for the Year

Prof. Edward Stein, who has a three-year appointment as associate professor of law, comes to Cardozo with a distinguished background in academia. Before earning his law degree from Yale Law School, he studied philosophy at Massachusetts Institute of Technology and Williams College, where he earned a Ph.D. and B.A., respectively, receiving academic honors from all three schools. Professor Stein said that he loved teaching and studying philosophy, but in recent years he has seen his interests shift to ethics and the law. He noted, "The audience for some of my philosophical work was rather small. I wanted to bring my intellectual ability to bear on issues that make a difference in people's lives."

Professor Stein taught Family Law in the fall. He said he tries to give the class a theoretical disposition and an interdisciplinary character and asks his students to think deeply about such questions as: "What is a family in the eyes of the law? What are parents' duties? How do



Beebe



Stein



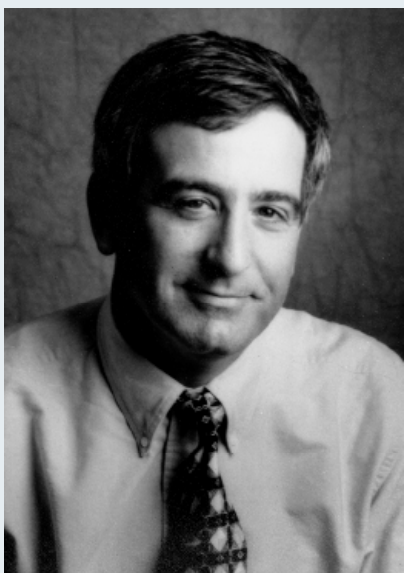
Procaccia

these questions apply to a civil union between people of the same sex?" He remarked that his students like the theoretical approach but also keep "their eyes on the bottom line." He noted many are doing internships and bring to the classroom their hands-on experiences, keeping theory in check with real world concerns. In the spring term, he will teach Sexual Orientation, Gender and the Law, as well as Evidence. He is a prolific author and has written dozens of articles and three books—the most recent is

The Mismeasure of Desire: The Science, Theory and Ethics of Sexual Orientation published by Oxford University Press in 1999. He is working on several articles and has an idea percolating for a book on family law. He will begin a one-year clerkship with Judge Dolores Sloviter, Third Circuit Court

of Appeals, after which he will return to Cardozo.

Like Professor Stein, Barton Beebe pursued other postgraduate studies before going to Yale University to study law. He earned a Ph.D. in English from Princeton University and a B.A. from the University of Chicago, where he won prizes for his essays in literary criticism. At Yale, he was senior editor of *Yale Law Journal* and articles editor of *Yale Journal of Law & the Humanities*. He noted that while he was studying literature, his intellectual inquiry turned to the study



El Zelinsky, who lives in Connecticut, works at home, and commutes to New York to teach, is taking on New York State tax law. In a case before the New York State Division of Tax Appeals, an administrative law judge ruled that Zelinsky owes taxes on his income in both Connecticut and New York.

Calling the doctrine “technologically obsolete in an era of telecommuting,” Professor Zelinsky is appealing the decision and will fight on the basis that under the Due Process and Commerce clauses of the Constitution, there should be apportionment based on where the taxpayer works. Zelinsky and his wife are

requesting a tax refund from New York. New York has a “source theory” of taxation, basing its claim to tax Zelinsky’s income on the fact that it came from a New York employer. Connecticut bases its income taxation on where the income is earned, and gives a credit for income tax paid for work in another state.

The case, for which Zelinsky is appearing pro se, has earned a tremendous amount of press attention, especially in the legal trade publications in New York and Connecticut.

for a number of years as dean of the Faculty of Law. No stranger to Cardozo, he first met members of the faculty in Israel during the Summer Institute, and then was invited to teach a short course here on the Economics of Property Law. This term he taught Corporate Law and Corporate Accounting.

Professor Procaccia, the author of numerous books and law review articles, has devoted many years to the task of crafting—from scratch—a brand-new corporate code for the State of Israel. It was finally adopted by the Knesset in 1999, the largest legislative project in the history of the country in the area of private and commercial law. The theoretical foundations of this project were laid down in his book *Corporate Law: Policy and Reform*, published in 1989. The original draft bill underwent an extensive process of review by committees of experts, government regulators, and finally the Knesset, where it was heavily lobbied by opposing factions representing industry, labor, profes-

of law in the context of culture. Intellectual property, which is his field, was an obvious choice, he said, because of its concern with cultural property and its embracing of high and low culture.

Along with enjoying New York, the intellectual property capital of the world, he is also happy at Cardozo, where the IP faculty is open to different views and where no particular bias dominates. In addition, he said, “The students are highly motivated to study IP, because they see it all around them.”

Professor Beebe, who is visiting Cardozo, has several projects in the works and

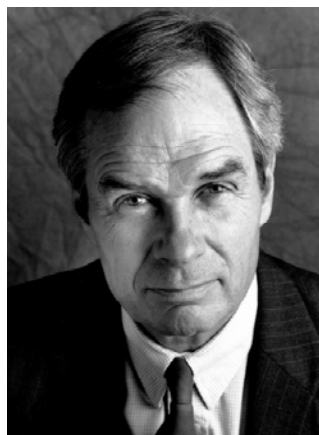
is researching the consumer as concept in trademark law. He is especially enthusiastic about his plans to create with a colleague, Prof. James Boyle of Duke Law School, an intellectual property textbook to be published on a CD-ROM.

“The CD will put the emphasis on problem sets rather than on cases. There will be a lot of hypothetical questions.” Significantly, Professor Beebe intends to make the CD available at no cost. He said, “Our hope is to release it under an ‘open source’ copyright scheme. Most of the information in conventional casebooks is public domain anyway. It may be an

experiment in seeing how much more influential ideas can be when they’re given away for free.”

Prof. Uriel Procaccia is visiting Cardozo from The Hebrew University of Jerusalem, where he served

Verkuil



Brickman



sional associations, and regulatory agencies. "The final product," observes Professor Procaccia, "differs in some important respects from the original proposal, but happily maintains its spirit and main regulatory philosophy." He adds, "This lengthy experience was certainly a revealing lesson to me in the reality of the political process, and in what really makes legislators and other interested parties tick."

Professor Procaccia, a graduate of The Hebrew University and the University of Pennsylvania, has extensive experience in representing hundreds of publicly traded corporations, all major Israeli banks, the government of Israel, the Jewish Agency, and organized labor. He also led a sustained struggle of the Kibbutz movement against the banking industry in the largest civil dispute in Israel's legal history.

His current research topics include corporate law, uniform legislation, law and economics, and law and culture.

PROFESSIONAL HONORS

Toni Fine became a founding member and a member of the board of trustees of the Global Justice Foundation, organized to develop and provide for the education and training of public-minded business lawyers and to encourage economic development, international human rights, and democratic accountability. In November, she was a visit-



Halberstam

ing professor at the University of Palermo and the University of Udine, both in Italy. Closer to home, she spoke on "The Globalization of Legal Education" at the International Law and Trade Group of the Harvard Club of NY. Her article "Dialogues Between Coordinate Branches and Stories of their Failings" was published by the NYU Review of Law and Social Change

On January 25, the New York State Association of Criminal Defense Lawyers honored Barry Scheck and Peter Neufeld with their Hon. Thurgood Marshall Award for Outstanding Practitioner. In November, Professor Scheck made a presentation at the Judicial College, New Jersey's annual mandatory training conference for all state judges. He urged greater use of DNA evidence to prevent wrongful convictions.

Peter Tillers was named editor of the new journal Law, Probability and Risk, to be published quarterly by Oxford University Press. The first issue is scheduled



Huigens

for January 2002. He was also named senior research associate at Yale Law School for 2001-02. This fall, he spoke on the "Architecture of Reasoning about Factual Issues in Legal Proceedings" at the Peter Wall Institute for Advanced Studies in Vancouver.

Paul Verkuil is serving as chair of the ABA advisory board on judicial independence.

BOOKS PAPERS PANELS

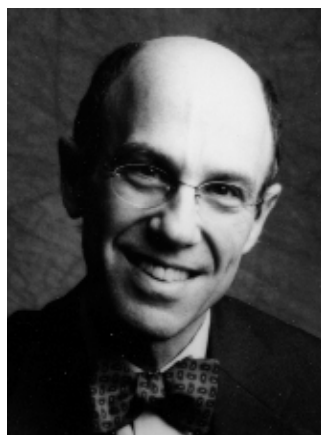
Rabbi J. David Bleich spoke on "The Clergy Privilege and Conscientious Objection" at the Colloquium on Law and Religion,

Faculty of Law, University College, London, and on "Constructive Agency in Execution of Religious Divorce" at the 11th Biennial Conference of the Jewish Law Association, held in the Netherlands. His article "The Whiskey Brouhaha" was published in Tradition.

Lester Brickman was a panelist this fall on "Current Ethical Issues in Class Actions" at the ABA National Institute. At Ethics 2000, held in New Orleans last summer, he testified at the ABA Commission on Evaluation of the Rules of Professional Conduct, just after having been a panelist at a conference on Excessive Legal Fees, held by the Hudson Institute, US Chamber of Commerce, and the Federalist Society.

Malvina Halberstam moderated "Designation of Foreign Terrorist Organizations: The Impact on Foreign Policy, International Law and Constitutional Law," held at the New York County Lawyers Association. The panel was coorganized by Felicia Gordon '95.

Jacobson



Love



Kyron Huijens spoke to the faculty of the University of Minnesota Law School and the Law Librarians of New England on the restructuring of the penalty phase of death penalty trials according to principles drawn from the theory of punishment. His article "Rethinking the Penalty Phase" was published by the Arizona State Law Journal.

Weimar: A Jurisprudence of Crisis, edited by **Arthur Jacobson** and **Bernhard Schlink**, was published by University of California Press.

Lela Love participated in a panel on "To War or ADR? Choosing the Right Path in Matrimonial Disputes" held this fall at the Association of the Bar of the City of NY and at a workshop on "Training Mediators for the 21st Century" held at the Society of Professionals in Dispute Resolution International Conference.

Monroe Price, who is spending a year at the Institute for Advanced Study in Princeton, NJ, gave two talks there this fall: "The Newness of New Technology" and "Toward a Foreign Policy of Media Structures." He also spoke on "Global Transformations in Public Service Television" at a conference at New York University. His book *Television, The Public Sphere and National Identity*, published in Hungarian in 1998, was published in Russian this year by Moscow State University Press. His

Programme in Comparative Media Law and Policy was named UNESCO Chair in Communications Policy in the United Kingdom.

Edward Stein's book *The Mismeasure of Desire: The Science, Theory, and Ethics of Sexual Orientation* was the subject of a "special session" of the American Philosophical Association's Eastern Division Conference held in New York. Professor Stein responded to the panelists' comments.

Richard Weisberg has been involved in recent negotiations in Washington, DC, to resolve claims by victims of the Holocaust in Vichy, France, against various French banking and insurance organizations. *Partisan Review* recently called his book, *Vichy Law and the Holocaust in France*, a leading work about the period. He was an invited guest at the Emory University Law and Religion Program's symposium on Holocaust denial and the victory of Deborah Lipstadt in the libel case against her in the United Kingdom.

ADJUNCT PROFESSORS

Yassin El-Ayouty '94 edited with Kevin J. Ford and Mark Davies *Government Ethics and Law Enforcement: Toward Global Guidelines*, which was published this summer by Praeger. The book has a prologue by NYC Mayor **Rudolph Giuliani**. Professor El-Ayouty directs Cardozo's International Law Practicum.