Breaking the Code

New Faculty Member Michael Graetz Has an Innovative Plan for Revamping America’s Tax Code

Talking Telecom:
Tim Wu Chats with Jeffrey Toobin

Scotus Analysis: From Blasi, Briffaульт, Greenawalt, Hamburger, and Persily
The Future of Diversity and Opportunity in Higher Education: A National Forum on Innovation and Collaboration

December 3-5, 2008

During the first week in December, university presidents, provosts, and academic innovators will gather for an historic conference focused on new ways of narrowing the opportunity gap in higher education. Panels will discuss how to build the architecture to sustain institutional change, develop institutional collaborations, and leverage new networks across disciplines, fields, and institutions.

For more information on the conference and its various panel discussions, go to www.futurediversity.com
Columbia Law School Center on Israeli Legal Studies Ignites Intellectual Collaboration

COLUMBIA LAW SCHOOL’S Center on Israeli Legal Studies will host visiting Israeli faculty and scholars throughout the coming year. The Center will sponsor lectures, seminars, and conferences, create fellowship opportunities for LL.M. and J.S.D. students, and develop exchange opportunities for Law School students to pursue research or internships in Israel.

The underlying purpose of the Center is to bring Israeli and U.S. legal scholars and practitioners together to explore cutting-edge legal issues the state of Israel has grappled with in recent years, such as: How should personal liberty be balanced against national security in the battle against terrorism? What legal and business conditions are needed to nurture a burgeoning hi-tech sector? What influence, if any, should religion have on the state?

Columbia Law School is well positioned to embark on such a landmark venture, in part because of its successful track record of similar regional centers, which have sparked international dialogues and attracted experts and scholars to the Law School campus. Those centers include the European Legal Studies Center, the Center for Japanese Legal Studies, the Center for Korean Legal Studies, and the Center for Chinese Legal Studies.

The foreign law centers at Columbia Law School have garnered stellar reputations in large part because of the elite experts at each helm. The new Israeli Center will be no different, benefiting from the presence of Professor Zohar Goshen, an Israeli who is one of the world’s leading scholars in business law. Goshen has a permanent half-time appointment at the Law School, where he spends every fall semester. Each spring, he teaches at Ono Academic College School of Law in Israel. Goshen also has extensive connections in the Israeli legal academy, the business community, and the elite Israeli bar.

Professor Christina Duffy Burnett Addresses Puerto Rican Myths at Florida Panel

COLUMBIA LAW SCHOOL Associate Professor Christina Duffy Burnett addressed some basic facts and common myths in the debate over the future of Puerto Rico during a recent panel discussion in Fort Lauderdale titled “Campaigning in the Colonies: Puerto Rico and the Presidential Primaries.”

The panel, organized by the Puerto Rican Bar Association of Florida, addressed the status of the island territory in the context of this year’s hard-fought race for the Democratic presidential nomination. Puerto Rico’s primary, held on June 1, received much attention when it became clear that the island had the potential to serve as a tie-breaker between Hillary Clinton and Barack Obama. Although she ultimately lost to Obama, Clinton came out ahead in the Puerto Rican primary.

In the discussion, Burnett, who specializes in legal history, noted that the 4 million U.S. citizens who live in Puerto Rico do not have any representation in the federal government, despite being subject to U.S. sovereignty, nearly all federal laws, and plenty of federal taxes. They cannot vote for president, senators, or representatives. Their one voice in government is a single, non-voting resident commissioner, who sits in the House of Representatives.

Puerto Ricans are not content with their current situation, Burnett said, and are currently debating whether their future status should be statehood, independence, or an enhanced version of the status quo. What most agree on, she noted, is the need for some kind of change.
IN THE CASE of Boumediene v. Bush, the Supreme Court ruled 5-4 that the prisoners at Guantanamo Bay have a constitutional right to challenge their continued detention by filing lawsuits in federal court. Helping to secure that ruling was Columbia Law School Professor Sarah Cleveland.

The case centered on an incident that occurred in 2002, when Lakhdar Boumediene and five other Algerian natives were seized by Bosnian police as suspects in a plot to attack the U.S. embassy in Bosnia. The men were classified as enemy combatants in the war on terror and detained at Guantanamo Bay in Cuba. Boumediene filed a writ of habeas corpus, claiming violations of the Constitution’s Due Process Clause, as well as violations of other statutes and treaties. Thirty-six other Gitmo detainees joined him.

In 2006, Congress passed the Military Commissions Act, which denies combatants a number of rights and relegates their appeals to military commissions rather than civilian courts. The Supreme Court ruling declared unconstitutional a provision of the act that stripped the federal courts of jurisdiction to hear detainees’ habeas corpus petitions challenging their combatant designations.

Cleveland, the Law School’s Louis Henkin Professor of Human and Constitutional Rights, wrote part of an amicus curiae brief on behalf of the petitioners in Boumediene v. Bush.

One month after the Supreme Court ruling, Columbia Law School Professor Matthew Waxman told the U.S. Commission on Security and Cooperation in Europe that the U.S. detention center at Guantanamo Bay should be closed. Waxman noted that, “negative impressions abroad about Guantanamo . . . undermine our ability to promote principles of justice, rule of law, and good governance, which are tied to our success in combating violent extremism.”

COLUMBIA LAW SCHOOL Professor Jeffrey N. Gordon recently was named a European Corporate Governance Institute fellow. The international nonprofit association provides a forum for debate among academics, legislators, and practitioners. It has already enlisted two other Law School professors: John C. Coffee, the Adolf A. Berle Professor of Law, and Ronald J. Gilson, the Marc and Eva Stern Professor of Law and Business.

Gordon, the Alfred W. Bressler Professor of Law, joined the Law School faculty in 1988. He specializes in corporations, mergers and acquisitions, and foundations of the regulatory state. Gordon also serves as co-director of the Law School’s Center for Law and Economic Studies.

THE GREEN BAG, a journal that publishes noteworthy legal scholarship, has honored Columbia Law School Professor John Fabian Witt for his exemplary legal writing in 2007.

Witt’s winning article, titled “Anglo-American Empire and the Crisis of the Legal Frame (Will the Real British Empire Please Stand Up?),” reviews four books on the law of Anglo-American empires over the past three centuries. Witt’s piece was one of 20 that the journal recognized as exemplary.

Joining Witt as a fellow honoree was U.S. Supreme Court Justice Ruth Bader Ginsburg ’59, who was recognized for her dissenting opinion in Ledbetter v. Goodyear Tire & Rubber Co.

THIRD COLUMBIA LAW PROFESSOR NAMED ECGI FELLOW

Law School Professors Address Guantanamo Bay Controversies

COLUMBIA LAW SCHOOL
Alumni Named Most Influential Minority Lawyers

IN COMPLING ITS recent list of the “50 Most Influential Minority Lawyers in America,” The National Law Journal asked readers to nominate candidates who “have demonstrated the power to change the law, shape public affairs, launch industries, and get big things done.” Among the attorneys who made the cut were Edward Fernandes ’83, Eric H. Holder Jr. ’76, and Jeh C. Johnson ’82.

Fernandes, a partner at Akin Gump Strauss Hauer & Feld in Austin, Texas, emigrated from the Cape Verde islands off the west coast of Africa when he was a child. Today, he manages the firm’s litigation team and represents some of the country’s largest companies in complex litigation involving trade secrets, international banking transactions, and intellectual property.

Holder, a partner at Covington & Burling in Washington, D.C., was the first African-American man to serve as U.S. Attorney for the District of Columbia and as deputy attorney general. At his firm, Holder specializes in complex civil and criminal cases, domestic and international advisory matters, and internal corporate investigations.

Johnson became the first black lawyer to be named partner at Paul, Weiss, Rifkind, Wharton & Garrison’s New York office back in 1994 and remains a partner with the firm today. Prior to that, he was a federal prosecutor in New York and general counsel of the U.S. Air Force.

The National Law Journal associate editor Michael Moline notes that 5.4 percent of partners at U.S. law firms are members of minority groups. For women of color, the figure is less than 1.7 percent. “But what an amazing group of people those numbers represent,” Moline says, “and what a payoff for the firms, law schools, and corporations that invested in diversity.”

ROBERT E. SCOTT NAMED TO COLLEGE BOARD OF VISITORS

VIRGINIA GOV. Timothy M. Kaine has appointed Columbia Law School Professor Robert E. Scott to a four-year term on the College of William and Mary’s Board of Visitors.

Scott, the Law School’s Alfred McCormack Professor of Law, has an extensive history at William and Mary. He received his J.D. from the William and Mary School of Law in 1968 and served as a professor there until 1974. Currently, Scott is the director of Columbia Law School’s Center for Contract and Economic Organization. He has co-authored five books on contracts and commercial transactions.

Alumni Return to Campus for a Weekend of Reunions

DURING THE FIRST weekend in June, about 1,100 Columbia Law School alumni and guests descended on the Morningside Heights campus for two days of socializing and reminiscing at the annual alumni reunion. Graduates gathered from as far away as Istanbul to participate in the festivities, which included lectures and panel discussions, as well as face-painting and cotton candy for the kids. The weekend united alumni from the classes of 1963, 1968, 1973, 1978, 1983, 1988, 1993, 1998, and 2003, in addition to the class of 1958, which celebrated its 50th reunion. The classes of 1953, 1948, and 1943 also joined in the festivities on Friday.

Above: (Back row, left to right) Steven Epstein ’68, Clarence Olmstead ’68, Dean David M. Schizer, Allen Brill ’68, and Deborah Epstein. (Front row, left to right) Lee Kuntz ’68, Wendy Schreiber, James Schreiber ’68, and Kathleen Heenan. Middle left: Stephen Thomas ’78 and Jeffrey Golden ’78. Middle right: Connie Sawyer ’03, Ofoe Canaco ’03, and Joshua Ruthizer ’03. Bottom: Members of the class of 1958 celebrated their 50th reunion at Columbia Law School in June.
**Professor Nathaniel Persily Files Amicus Brief in Supreme Court Redistricting Case**

COLUMBIA LAW SCHOOL Professor Nathaniel Persily wrote and filed an amicus brief in the 2008 U.S. Supreme Court case of Bartlett v. Strickland. At issue is whether a racial minority group must be able to constitute a majority of a single member district in order to bring a vote dilution claim under Section 2 of the Voting Rights Act. Persily’s brief argues that the Court must understand the drawbacks of available population data and the many factors that affect the ability of minorities to elect their preferred candidates.

The case will have important implications for the 2010 round of congressional redistricting and the ability of parties to challenge legislative districting plans, says Persily, who is an expert on election law and voters’ rights issues. He filed the brief on behalf of himself and other political scientists who have been appointed by courts to draw legislative districts.

“Judicial interpretations of the Voting Rights Act ought to account for the practical realities that confront experts drawing redistricting plans or testifying in redistricting cases,” Persily wrote in the brief. “One of those realities concerns the variety and limitations of statistics to describe minority population percentages.”

Persily has been a court-appointed expert for redistricting cases in Georgia, Maryland, and New York. He has also served as an expert witness or outside counsel in redistricting cases in California and Florida.

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**Professor José Alvarez Addresses Council of World Leaders**

FORMER WORLD LEADERS recently looked to Columbia Law School Professor José Alvarez to address contemporary challenges facing nation states in the realm of international law, especially given concerns over the interplay between the rule of law and the war on terror.

Alvarez, who is the Law School’s Hamilton Fish Professor of International Law and Diplomacy, and the director of the Center on Global Legal Problems, was invited to speak before the InterAction Council, a group of former heads of governments around the world.

The meeting focused on whether international law is a constraint or a boon to national sovereignty. It also addressed the reasons some states fail to comply with their international legal obligations, the interplay between the national and the international rule of law, and ways to improve legal compliance. Alvarez was the only academic, and one of just three U.S.-based international law experts, invited to advise the council.

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**Professor Suzanne Goldberg Named Public Interest Faculty of the Year**

PROFESSOR Suzanne Goldberg recently was recognized with Columbia Law School’s Public Interest Faculty of the Year Award. Columbia Law students selected Goldberg, a clinical professor of law, as the award recipient for the support and inspiration she has brought to the Law School’s public interest law community. Goldberg, who directs the Sexuality and Gender Law Clinic, accepted the award at a dinner hosted by the Center for Public Interest Law and Social Justice Initiatives.
Leading Prisoners’ Rights Advocate Joins Columbia Law School Faculty

RECENTLY, Dean David M. Schizer announced that Brett Dignam, a leading prisoners’ rights attorney and a clinical professor of law at Yale Law School, will be joining the Columbia Law School faculty.

Dignam has been a member of the Yale Law School faculty since 1992. While there, she has led Yale’s Prison Legal Services, Complex Federal Litigation, and Supreme Court Advocacy clinics.

“Professor Dignam brings remarkable talent to bear in her advocacy and teaching,” says Schizer. “She will add extraordinary strength to our thriving clinical programs.”

Dignam, an award-winning teacher, has supervised students in a broad range of litigation matters through the clinics she directs at Yale. Those clinics have allowed Dignam and the students to represent inmates in habeas corpus, individual, and class-action suits involving immigration issues, sexual assault, and the Prison Litigation Reform Act. The combined student-professor efforts have resulted in successful claims in federal court. Dignam has also participated in major litigation in more than 30 federal and state cases in the area of prisoners’ rights.

Dignam’s inmate advocacy dates to her days at the University of Southern California’s Gould School of Law, where she served as student director of the USC Prison Law Project. Following graduation, Dignam clerked for Judge William H. Orrick at the U.S. District Court in San Francisco. She then moved to the East Coast, serving as an associate at two Connecticut law firms before branching out on her own. In her independent litigation practice, Dignam specialized in prisoner representation.

Dignam followed her foray into private practice with a stint as an attorney in the Criminal Appeals and Tax Enforcement Policy Section, Tax Division, in the Department of Justice, from 1990 to 1992. Her Columbia Law School appointment begins in July 2010.

Program in the Law and Economics of Capital Markets Launches New Project

THE COLUMBIA LAW SCHOOL Program in the Law and Economics of Capital Markets recognized a scholarship gap in the field recently and decided to fill it with a brand-new project that could help define the area of capital markets.

Professors Merritt B. Fox and Lawrence R. Glosten, co-directors of the program, noticed that the available legal literature concerning capital market regulation was sparse. To supplement the lack of information, the program has established a three-part project, jointly based at Columbia Law School and Columbia Business School. First, it is developing a course, jointly listed at the two schools, devoted to the important legal and economic issues associated with capital markets. Second, the program will conduct a series of events featuring speakers who are experts in the law and economics of capital markets. Third, the program is developing a textbook on the subject that could be used as a teaching tool for similar courses at other universities and as a standard reference book for practitioners, regulators, and academics.

Law School Moves Past the Halfway Mark in $300 Million Campaign

WITH ANOTHER YEAR—the third straight—of record support from alumni, students, and friends, Columbia Law School’s capital campaign is more than halfway to its $300 million goal. In 2007-08, philanthropic support reached a record $37.9 million. Reunion giving soared to a record $13.3 million. Gifts to the Annual Fund exceeded $5 million for the first time in the School’s history, and an unprecedented 83 percent of the graduating class of 2008 contributed to the Class Gift.

The campaign, which will conclude in 2011, has raised more than $170 million as of press time. This fund-raising effort, part of a university-wide goal of $4 billion, is the most ambitious in the School’s history. The Law School extends its deepest gratitude to all our generous donors who are partnering with us to shape a very bright future for Columbia Law School.
Columbia Law School Professors Commemorate Constitution Day

A PANEL of five Columbia Law School professors celebrated and dissected the U.S. Constitution during a lively panel discussion to a standing room only crowd.

“It’s a document, in spite of all its flaws, that I love,” said Professor Theodore Shaw ’79, echoing the criticism-tinged admiration of the Constitution offered by several of his fellow faculty members. “There is nothing more important for a lawyer to do than to breathe life into it.”

The panel discussion, moderated by Ellen Chapnick, dean for Social Justice Initiatives, marked the 221st anniversary of the Constitution’s signing in 1787. A 2004 Congressional provision spearheaded by U.S. Senator Robert Byrd, who carries a copy of the Constitution in his pocket, requires all schools and other institutions that receive federal funding to teach or discuss the document on Constitution Day, which is held each September on the anniversary of the Constitution’s adoption.

“For those of us who teach constitutional law, this is our vindication day,” said Professor Trevor Morrison ’98, who joined the faculty this year. “You don’t see ‘Torts Day.’ There must be a reason for that.”

The Constitution Day panel drew a big crowd as the professors showed how interpretation and application of the centuries-old document remains critical to many of today’s most pressing and politicized issues. Morrison, for instance, explored the role of constitutional law at the U.S. military prison in Guantanamo Bay, Cuba, where many prisoners have been denied habeas corpus. But as Morrison explained, applying the Constitution’s single and opaque mention of habeas corpus to something like this country’s ongoing war on terror can be tricky.

“What, if any, constitutional right do non-citizens have as enemy combatants outside the conventional United States?” Morrison asked.

Professor Katherine Franke, director of Columbia Law School’s Gender and Sexuality Law Program introduced the idea that hot-button issues are often argued under liberty precepts promised in the Constitution.

“The Constitution not only doesn’t mention sex or sexuality or gender, it doesn’t mention race,” said Shaw. “It doesn’t mention slaves.” Yet several professors said many of these issues are often viewed as being constitutional in nature. That’s in large part because the Constitution has become something bigger and broader than the document itself, Professor Jamal Greene argued. “When we talk about the Constitution in political campaigns, kitchen tables, and panels like this one, it’s often assumed that we’re all talking about the same thing, namely a piece of parchment that was signed by 39 men in Philadelphia 221 years ago, amended 27 times since then,” said Greene, who joined the Columbia Law School faculty this year. “What we’re really talking about is a set of understandings, perhaps established by the text of that parchment, but subsequently worked over, kneaded, sometimes flipped entirely through political contests, judicial interpretation, social upheaval,” Greene continued. “After all of that, the Constitution we’re left with is not precisely a document, but a set of understandings, a figment of our collective imaginations grounded in but not limited to that written document. And I want to suggest that we’re all the better for it.”

Professor Philip Bobbitt agreed. “That part of the Constitution isn’t on paper,” he said. “That part of the Constitution, it can’t be erased by courts or diminished by presidents; that part, that’s in you.”

After the panel, several students said that they were certainly the better for having attended. “I was very impressed,” says Michael Brazaitis, 22, a first-year law student from Maryland. “It was interesting that they all had the same attitude that the Constitution was a living document. The applications of the Constitution, trying to extend it beyond what the text actually says, that’s really interesting. That’s exactly how I think of it.”

Theodore Shaw Delves into the Supreme Court Docket

COLUMBIA LAW SCHOOL
Professor Theodore Shaw recently joined a journalist, an attorney, and a few of his fellow professors in reviewing the major decisions of the October 2007 Supreme Court term. The panel was part of the American Bar Association’s Annual Meeting in New York. Shaw, one of the nation’s leading voices in civil rights law, analyzed such cases as Baze v. Rees, which upheld Kentucky’s method of lethal injection, and Crawford v. Marion County Election Board, which upheld Indiana’s voter identification laws. Joining Shaw on the panel were former New York Times writer Linda Greenhouse, attorney Thomas C. Goldstein, Stanford Law Professor Kathleen M. Sullivan, and Harvard Law Professor Mark V. Tushnet, who moderated the panel.

The group also discussed some of the cases awaiting argument during the October 2008 term. That lineup includes FCC v. Fox Television Stations, which deals with Federal Communications Commission rules regarding vulgar expletives, and Altria Group, Inc. v. Good, which involves the right to sue tobacco companies over the marketing of light cigarettes.
MICHAEL DOYLE ELECTED CHAIRMAN OF THE BOARD OF THE UNITED NATIONS DEMOCRACY FUND

COLUMBIA LAW SCHOOL Professor Michael W. Doyle has been elected chairman of the board of the United Nations Democracy Fund (UNDEF). The fund supports projects around the world designed to increase popular participation in civil society, to ensure that people can exercise their democratic rights, and to develop pluralistic media.

As chair, Doyle said he plans to “work with the board to further refine the fund’s criteria for selecting projects, improve its methods of assessing projects after they have been funded, and enlarge the group of United Nations member states that donate to the fund.” Past UNDEF ventures have included the formation of human rights commissions in Kenya and Nigeria to address election-related violence, and a network of lawyers in Tajikistan to help journalists deal with the legal body regulating media activities.

Doyle came to Columbia Law School in 2003 as a scholar well known for explaining “democratic peace,” which is the tendency of liberal democracies to maintain peace with each other. From 2001 to 2003, he was U.N. assistant secretary general in the executive office of then Secretary General Kofi Annan.

From Ivy to Olives: Sesquicentennial Conference Unites American and Israeli Academics

COLUMBIA LAW SCHOOL and the Anti-Defamation League teamed up recently to create an academic conference in Tel Aviv. The “From Ivy to Olives Academic Symposium in Israel” attracted 22 American academics, including eight Columbia Law School professors, to participate in a discussion on issues related to freedom of speech and corporate governance. Dean David Schizer gave the conference’s welcome address in Hebrew.

The two-day event was the brainchild of Professor Zohar Goshen, chairman of the Israel Securities Authority and professor of law at both Columbia Law School and Ono Academic College in Israel. Goshen’s extensive connections in Israel helped to attract Israeli lawyers, students from Ono Academic College and Hebrew University (where Goshen received his law degree), a former justice of the Israel Supreme Court, and the director general of Israel’s Ministry of Finance, among others. Goshen led the conference’s “Business Groups and Corporate Governance Standards” panel. Professors George Fletcher and Kent Greenawalt participated in a panel titled “Liability for Speech?” Professors John C. Coffee and Harvey Goldschmid, and Senior Research Scholar and Lecturer-in-Law Meyer Eisenberg, discussed corporate governance on the “Governance and Enforcement” panel. Coffee summarized his recent article, “Law and the Market: The Impact of Enforcement,” which appeared in the University of Pennsylvania Law Review.

“In America, we usually learn lessons as a result of scandals, such as Enron and WorldCom,” said Eisenberg, who discussed the ethics provisions of the Sarbanes-Oxley Act. “That’s when you get reform in the U.S. The conference was a way to say, ‘You don’t have to do what we do. You don’t have to go through the same kind of trauma we did. Take the pieces of reform we implemented that you think fit into your market.’”

Professors Curtis Milhaupt and Katharina Pistor also participated in the conference, sitting on a panel titled “Corporate Governance and Sovereign Wealth Funds.” Milhaupt discussed a Stanford Law Review article he co-wrote with Professor Ronald Gilson titled “Sovereign Wealth Funds and Corporate Governance.” Pistor expanded on the causes of the recent growth in sovereign wealth fund investments and presented her paper, “Global Network Finance: Reassessing Linkages between Sovereign Wealth Funds and Western Banks.”

Professor Goldschmid brought the conference to a close by presenting his paper on “Corporate Governance Reforms in the United States during the First Years of the 21st Century.” Goldschmid explained that the Sarbanes-Oxley Act and the SEC’s efforts to implement and build on that act had dramatically improved U.S. law in terms of disclosure, corporate governance, SEC enforcement, and the accounting profession itself.
Conference Examines Efficacy of International HR Courts

THE 34TH ANNUAL FRIEDMANN CONFERENCE, titled “Reform and Challenges Confronting Regional Human Rights Regimes,” examined the issues facing two regional human rights courts.

The conference compared the Inter-American Court of Human Rights (ICHR) and the European Court of Human Rights (ECHR). The ICHR, which is headquartered in Costa Rica, is dedicated to interpreting and applying the American Convention on Human Rights and other related treaties. The ECHR, which is headquartered in Strasbourg, works to maintain the human rights and fundamental freedoms outlined in the European Convention on Human Rights.

Professor Lori Damrosch, the day’s luncheon speaker, said the two regions’ human rights systems affect the United States, despite the fact that Washington is party to neither court. For example, the U.S. Justice Department and federal courts have leaned on ICHR and ECHR findings in their efforts to thwart terrorism, said Damrosch, the Henry L. Moses Professor of International Law and Organization. “We need to pay attention to regional human rights systems, whether or not we are in the system,” she noted.

Professor Sarah Cleveland, co-director of the Law School’s Human Rights Institute, led a panel examining the structure and reform of the ICHR. The court has proved effective in some cases regarding political disappearances and massacres in Latin America, but problems remain. Budgetary constraints prevent the court from taking more than a handful of the thousands of petitions it receives. In addition, many courts have abstained from participating, and the court’s rulings often go unenforced.

Olivier De Schutter, a visiting professor at the Law School, spoke on the European human rights regime, which he called “a system of crisis.” He cited a backlog of 103,000 cases, an average of six years to resolve a case, and a legitimacy issue stemming from the fact that some applicants receive a dismissal notice with no legal reasoning attached.

Capping the conference on a more upbeat note was the keynote speaker Judge Cancado Trindade, who focused on the great strides human rights courts have made in the past four decades. Trindade was honored with this year’s Wolfgang Friedmann Memorial Award for his tireless work on behalf of international peace and justice.
Rubin Lecturer Tackles Conflicts with Trade Linkages

The battle between nations that favor trade linkages and those that find them discriminatory may be heading for a World Trade Organization showdown, according to Christopher McCrudden, a professor of human rights law at Oxford University who discussed the potential confrontation during the 34th annual Rubin Lecture held at Jerome L. Greene Hall.

That battle, McCrudden noted, could have broad implications for the future of trade.

Governments have long set conditions on the nations they trade with in order to advance their own social goals, which range from affirmative action to fair labor standards. In recent years, however, the practice, known as linkage, has conflicted with international trade agreements. Now, even those conditions created to address past discrimination can be challenged for violating anti-protectionist and corruption rules.

“My primary interest is: Where should the balance be struck?” said McCrudden, whose research focuses on the intersection of law, politics, and economics. His book, Buying Social Justice: Equality, Government Procurement, and Legal Change, closely examines the issue.

The conflict almost came to a head in the WTO court in the late 1990s, when lawmakers in Massachusetts enacted a policy that banned the state from procuring goods and services from any company doing business with Myanmar (formerly Burma). The intent was to protest Myanmar’s human rights and labor policies. In 2000, the U.S. Supreme Court ruled that the Massachusetts law impinged upon the power of the U.S. president. Had that decision not occurred, the case probably would have ended up in an international court for violating the WTO, McCrudden said.

McCruden also predicted that the WTO dispute settlement process will likely be called on to address that issue in the future.

Professor Peter Strauss wins Cudahy Writing Competition

Columbia Law School Professor Peter L. Strauss won the inaugural Richard D. Cudahy Writing Competition on Regulatory and Administrative Law, a new competition designed to reward scholarship that shows a keen grasp of legal doctrine. The American Constitution Society for Law and Policy presented the award to Strauss, Columbia’s Betts Professor of Law, in recognition of his George Washington Law Review article titled “Overseer or ‘The Decider?’ The President in Administrative Law.” In it, Strauss wrote that, “absent actual congressional delegation of decisional authority to the president, his role is limited to executive oversight [of government agencies].” Referring to numerous Bush-administration actions aimed at expanding presidential power over domestic agencies, Strauss noted that “recent years have witnessed presidential blurring of the distinction.”
MANY of the problems Professor Susan Sturm focuses on sound disturbingly similar to issues that dominated public policy debates in the 1960s—race- and gender-based exclusion, disparities in education and housing, and America’s bulging prison population, for instance. Addressing those problems in modern-day America has proven surprisingly difficult. Important debates about how to create social change have been overshadowed by an increased focus on the economy and Iraq. Meanwhile, efforts at lasting change have been slowed by an institutional tendency for organizations to compete rather than cooperate.

For Sturm, the harsh realities that tend to delay change signaled a need for innovation. So comes the Center for Institutional and Social Change, a Columbia Law School–based think tank directed by Sturm that seeks to unite diverse networks of experts tasked with finding new solutions to lingering problems.

“There’s an urgency right now to deal with a pressing set of public problems,” says Sturm. “And the only way [change] is going to happen is by creating environments that enable a full range of participation—not just by leaders in education, business, and the law, but by the impacted communities themselves.”

Formed in 2007 with support from the Law School, the NAACP Legal Defense and Educational Fund, the Ford Foundation, Columbia’s Institute for Social and Economic Policy and Research, and others, the new center has already launched programs around low-wage work issues and inclusion in housing and education. Each program brings together academics, policy-makers, and local advocates. “This is an historic moment,” says Sturm. “It was clear that someone needed to develop a way not just to research problems, but to apply sustainable solutions.”

Sturm has been at the forefront of social change movements since her undergraduate days at Brown. Since arriving at Columbia Law School a decade ago, she has been the “go-to” professor for advice on conflict resolution and strategies for social change. She was instrumental in organizing a cross-university group of faculty that lobbied successfully for the current administration to fulfill its own promises of diversity.

In person, Sturm, who won the Law School’s award for outstanding teaching in 2007, is modest and shies away from accolades. But as a motivator, she has few peers. Part of the inspiration for Sturm’s approach dates back to 1993, when she taught a course on race at the University of Pennsylvania Law School with Lani Guinier. The two professors became close colleagues and subsequently collaborated on a Web site, Racetalks.org, and many publications. “Susan simply has a fantastic ability to synthesize divergent views—or disparate versions of a single view—into a coherent analysis,” says Guinier. “She can hear not only what people say, but what they mean to say.”

Sturm is also that special brand of scholar whose intense engagement breathes inspiration into others. Howard Gadlin, the ombudsman at the National Institutes of Health, notes that, “[In conversation,] Susan elevates the quality of your own thinking.”

Sturm attributes much of her drive and reserve to her father’s experience at Dachau at the beginning of World War II. “The Holocaust, that history, said so much about the risk of abuse of power,” she says. “He was a very hopeful person who believed in the great goodness and beauty of human beings. I pay attention to the locations of deep possibility—one of the themes that keeps coming up in the research we’ve already done. The passion you feel among people who are transformative leaders is in itself personally rewarding, and it drives the kind of collaboration that we know makes change possible.” Her hope, of course, is that the Law School’s new center will help translate that collaboration into lasting, impactful change.

“It was clear that someone needed to develop a way not just to research problems, but to apply sustainable solutions.” —PROFESSOR SUSAN STURM

FRANK GIBNEY JR. is a writer, editor, and consultant based in New York City.

SETTING THE BAR: COLUMBIA LAW SCHOOL INNOVATIONS

CHANGING THE GAME

WITH THE CENTER FOR INSTITUTIONAL AND SOCIAL CHANGE, PROFESSOR SUSAN STURM AND COLUMBIA LAW SCHOOL PROMOTE INNOVATIVE APPROACHES TO TACKLING OLD PROBLEMS

By FRANK GIBNEY JR.
MAKING A CASE

PROFESSOR JEFFREY FAGAN USES SOCIAL SCIENCE RESEARCH AS A POWERFUL TOOL FOR LEGAL CHANGE

By BRUCE SHENITZ

IN THE PAST DECADE, the study of law has become increasingly interdisciplinary, as the law spreads its influence over nearly every profession and facet of society. For Professor Jeffrey Fagan, the increased overlap of disciplines could not be more welcome. Fagan, who holds a joint appointment at both the Law School and the Columbia University Mailman School of Public Health, brings a unique body of knowledge and skill set to Columbia as one of the nation’s foremost experts on the use of social science research to spur change in the judicial and policy realms.

Over the span of 30 years, Fagan has studied a broad swath of issues—gun control, the death penalty, racial profiling, the treatment of juveniles in the court system, and drug control, to name a few. What connects these wide-ranging areas, he says, is “the interplay between social sciences and law.” Research on these often controversial topics can have a major impact on both policy decisions and on court opinions, which frequently cite Fagan’s social science findings.

He notes that in the recent Supreme Court case of District of Columbia v. Heller, which held that a Washington, D.C., handgun ban violated the Second Amendment, the dissent tried “to engage the empirical research” on gun violence, “but didn’t find it conclusive.” To Fagan, this signals that there may be room for movement in future cases. “Courts change, as do the facts,” says the professor, who was elected as a fellow of the American Society of Criminology in 2002. “I see this as a challenge to strengthen the evidence, and, as in other matters before the Supreme Court, to pursue these issues within the states and cities to affect law change and policy.”

The story of how Fagan went from earning a civil engineering Ph.D. at the University at Buffalo to analyzing Supreme Court rulings as a leading voice in the social sciences and the law field is filled with twists and turns. Initially, his career path was altered as a result of the Attica prison riots of 1971 in upstate New York. When prisoners’ defense attorneys later developed a challenge to the racial composition of predominantly white jury pools, Fagan was drafted into doing jury research.

From there, Fagan headed to the San Francisco Bay area, where he worked in private research institutions for 13 years before deciding that he could have more impact in an academic setting. Following teaching stints at John Jay College and Rutgers University, Fagan came to Columbia’s School of Public Health, where he created the Center for Violence Research and Prevention. After working closely with Columbia Law School Professor James Liebman on a very influential report on error rates in death penalty cases, Fagan proposed teaching courses on law and social science, as well as courses on criminal justice and criminology, to law students. That resulted in a three-year visiting appointment beginning in 1998, and a joint appointment to the Law School and the School of Public Health in 2001.

Fagan, who served on the National Research Council for six years and has testified before Congress and numerous state legislatures, was recently appointed to the New York State Governor’s Task Force on Juvenile Justice. With respect to juvenile justice, he notes that a key battle line for policy-makers and legislators is over “where to draw the line between juvenile and adult. Who should draw the boundary, and who should exercise discretion over which kids cross the line?”

Those questions, like many of Fagan’s research interests, place him at the crossroads of some immensely important and far-reaching decisions about how the nation’s system of criminal justice functions. Even when research does not appear to immediately affect judicial and policy outcomes, as in the Supreme Court’s gun control decision, Fagan remains optimistic. “Gun control proponents may not win this case,” he says, “but the evidence will become stronger and unavoidable in other cases down the road.”

BRUCE SHENITZ is a writer and editor in New York. He has worked as a reporter for Newsweek and as executive editor of Out.
THE ROLE THAT chance has played in the life of Columbia Law School Professor Alex Raskolnikov is, in his word, “incredible.” Asked why he decided to give up a career in chemistry to study law, Raskolnikov credits luck as much as conscious planning.

“It was all just a series of accidents,” recalls Raskolnikov, who co-chairs the Law School’s transactional studies program. “They were happy ones, but still just accidents.”

The Russian-born professor admits he never loved chemistry, but as a young man he avoided “politically charged” fields like law and looked for a discipline that offered an exemption from fighting with the Soviet Army in Afghanistan. Chemistry fit the bill.

Despite lukewarm feelings for the field, Raskolnikov graduated with highest honors from Moscow’s Mendeleev University of Chemical Technology in 1988. Three years later, at age 25, he left Russia to join his father, who had immigrated to Michigan. There he worked as a metallurgist until a minor fender-bender changed his life. Facing a $160 traffic ticket—“a very large fine by my standards at the time”—Raskolnikov asked the police officer how he could fight the citation.

The officer told him about traffic court, and the rest, as they say, is history. “This is a great country,” Raskolnikov says, recalling the hearing. “I got to thinking about what I could say, and how I would convince the judge. And I thought, ‘My God, this is kind of fun!’” The ticket was dismissed, and a future lawyer was born.

Raskolnikov, who at the time wasn’t confident in his social skills, went on to Yale Law School, and sought a field where “substantive expertise is more important than interpersonal skills.” He settled on tax law, and after graduating in 1998, joined the firm of Davis Polk & Wardwell in New York. There, Raskolnikov asked a former colleague at the firm to look over an article on tax law he was drafting. That colleague was Columbia Law School tax professor, and now dean, David Schizer. Schizer saw teaching and scholarship potential in the young attorney, and in 2004 Raskolnikov accepted an invitation to join the Law School faculty.

He has found it a wonderful fit, and Raskolnikov continues to contribute influential tax law scholarship while teaching. His most recent paper, “Relational Tax Planning Under Risk-Based Rules,” appeared in the University of Pennsylvania Law Review earlier this year. The paper examines the risks related to informal securities sales and buy-backs between friends. Such informal deals, called counterparty transactions, take advantage of tax loss laws without shouldering market risk.

New rules are needed for counterparty risks, he says, adding that he’s not interested in theoretical tax administration, “but in what people actually do.”

And Raskolnikov, who has read every Harry Potter book with his son, Dima, now a senior at Cornell, says he delights in working with Columbia Law students. “When you think about the impact you’re making on the world realistically, research and writing is little,” he admits. “But when a student says I’ve affected their life, that’s a much more immediate impact . . . and that gives a lot of satisfaction.”

Facing a $160 traffic ticket, Raskolnikov asked the police officer how he could fight the citation. Soon the ticket was dismissed, and a lawyer was born.
At the U.S. Attorney’s office in Trenton, N.J., last year, Adam Bernstein ’09 researched a variety of issues for the assistant U.S. attorneys and watched them argue cases live in court. In one instance, he sat in the courtroom and witnessed the jury convict the accused; the man’s guilt, Bernstein says, seemed clear. Then he watched the man receive a sentence of 30 years in prison. Bernstein was surprised to discover that such an outcome was difficult for him to bear. “It was a very sobering experience,” he says. “As much as you’re happy that you won the case, you realize it’s not really an occasion to celebrate.”

The case brought a glimpse of reality to an oft-romanticized job, but it didn’t deter Bernstein. In his position at the U.S. Attorney’s office, he learned to appreciate the intricacies of both the civil and criminal sides of federal prosecution. His criminal work included examining issues related to conditions for supervised release and weapons charges. In his civil experience, Bernstein conducted research for a Title VII employment discrimination suit that ultimately formed the basis of his student note, which will be published this fall in the Columbia Journal of Law & Social Problems.

Bernstein recently worked as a summer associate with Paul, Weiss, Rifkind, Wharton & Garrison in New York, where the majority of his assignments were in the firm’s litigation department. He follows that placement with an externship in the U.S. Attorney’s office for the Southern District of New York beginning this fall. “In five years,” Bernstein says, “I do hope that I can be in the U.S. Attorney’s office and really trying cases.”
Gabriel Gershowitz

Getting Them Talking

When Iranian President Mahmoud Ahmadinejad spoke at Columbia University last year, Gabriel Gershowitz ’09, then student senate secretary, and his fellow senate members opted not to take a substantive position for or against the visit. Instead, the senate put together a panel of constitutional law experts to discuss the event, allowing different people to express differing opinions. A lot of people criticized that choice, Gershowitz says, believing instead that the senate should have taken a stronger stance against the visit. But Gershowitz stands by the decision. “I think facilitating the free flow of information was the best thing we could have done,” says Gershowitz, who serves as executive editor of the Columbia Business Law Review and spent May through August in the New York City office of Weil, Gotshal & Manges. “We try to speak for everyone, but when we can’t, we try to provide an opportunity for people to speak for themselves.”

Gershowitz, who now serves as development director of the nonpartisan, student-run voters’ rights organization IMPACT, has also promoted open political and social dialogues in Columbia Law School’s Jewish student community. As last year’s Jewish Law Students Association co-president, he helped to organize a debate between Jewish Democratic and Republican groups. He also orchestrated panels and lunchtime lectures and recruited high-profile speakers, like journalist Ari Goldman and author Rabbi Joseph Telushkin. “We tried to reach out to a broader spectrum of students than we had in the past,” he says, “and I think we were successful in that.”
One morning last spring, amid cat calls from inmates and a swirl of ordered activity, Jantira Supawong ’10 sat in a Monmouth, N.J., jail, interviewing a slew of detained illegal immigrants. Not yet through her first year of law school, Supawong had joined three attorneys from the Legal Aid Society working to select those detainees most in need of legal assistance. Supawong, who has also participated in the Law School’s Tenants’ Rights Project and Domestic Violence Project, has been involved in volunteer work for as long as she can remember. “There’s no overarching theme to the projects that I do,” she says. “It’s just important to be involved.” Her humanitarian inclinations come from her mother, who works full-time but always puts a priority on supporting several nonprofit causes.

Supawong plans to continue her public interest work while practicing corporate law, and she has become a strong advocate for balancing billable hours with pro bono work. She recently served as a summer associate with Lovells in New York, assisting on three pro bono cases while also gaining experience on the corporate side. As public interest chair of the California Society, an organization representing the Law School’s population of Californians, Supawong plans to bring a host of successful attorneys to campus to speak about the importance of blending career goals with philanthropy.

“I would like [students] to understand what else they can do,” says Supawong. “And I’d like to get them motivated to do it while they’re in school.”
Columbia Law School’s newest faculty member, Michael Graetza, has decided to make the move from New Haven to Morningside Heights. Now if he could just convince the nation that its tax code needs an overhaul. By Daniel Gross
In the early 1980s, soon after he began teaching tax law at Yale Law School, Michael Graetz was audited by a young Internal Revenue Service agent. When they disagreed over the deductibility of certain medical expenses, the IRS agent opened his copy of the Internal Revenue Code and pointed to language on contemporaneous records. Graetz, who knew the section, noted that it referred to travel and entertainment costs, not medical expenses. “It says ‘travel and entertainment,’” the agent replied, “but it means everything.” The professor, who projects an air of preternatural calmness, recalls with a laugh that “I was afraid I might kill him.” The next year, Graetz, who has represented plenty of clients in tax matters, hired an accountant to spare him the annoyance of dealing with the IRS.

When the prospect of preparing his own taxes drives one of the nation’s leading federal tax experts to potentially homicidal distraction, you know there’s a problem.

The Internal Revenue Code, 1.4 million words long and growing, is overflowing with special-interest provisions, bizarre penumbrae, and economically inefficient nooks and crannies. Economists, politicians, and policy wonks from across the political spectrum agree that it’s a disgrace. And yet, to paraphrase Mark Twain’s pithy comment on the weather: Everybody complains about it, but nobody does anything about it.

With his most recent book, 100 Million Unnecessary Returns: A Simple, Fair, and Competitive Tax Plan for the United States (Yale University Press: 2007), Graetz argues for scrapping the Byzantine system in favor of a value-added tax and an income tax that would fall only on upper-income individuals. In other words, drawing on wisdom gained from a 40-year career in public service and legal teaching, Michael Graetz has shouldered the responsibility of doing something about the problem. And, importantly, he’ll now be continuing those efforts at Columbia Law School.

Last June, Graetz announced he would leave Yale and join the Columbia Law faculty in the summer of 2009. “Professor Graetz is a sensational addition to our intellectual community,” says Dean David M. Schizer. “He brings extraordinary insight and eloquence to the most important and difficult problems in taxation, and his work has had profound impact on a broad audience, ranging from legal academics and economists to practicing lawyers, government officials, and lay readers.” Graetz is one of 22 professors to join the faculty since 2004. And in addition to the excitement about the hire in Law School circles, members of the Columbia

Michael Graetz
IN PRINT  |  2008
New Columbia Law School Professor Michael Graetz brings with him an impressive roster of published works.

Current Publications

- The Decline (and Fall?) of the Income Tax (Norton: 1997)

“The Law School is great, the city is marvelous, and the number of people within a few city blocks who are interested in the kinds of things I’m interested in overwhelms the numbers in New Haven.” —Professor Michael Graetz
community beyond Jerome Greene Hall are looking forward to his arrival. “Speaking as an economist, we tend to think that lawyers are about the trees, and we’re about the forests,” says R. Glenn Hubbard, dean of the Columbia Business School, who worked with Graetz in the first Bush administration. “But Michael is much more interested in the big picture, and he has such deep institutional knowledge. I find him to be an enormously helpful resource.”

Graetz, a native of Atlanta, was drawn to Columbia, as so many others are, by a desire to live and work in New York. “I’ve been at Yale for 26 years, and I had been thinking about making a change,” he says. With the youngest of his five children, twins, graduating from high school in 2010, Graetz and his wife, Brett Dignam, a clinical professor of law at Yale, are preparing to trade their view of Long Island Sound from quiet Milford, Conn., for a view of the lower Hudson from somewhat-less-quiet Broadway. “The Law School is great, and the city is marvelous,” he notes. “And the number of people within a few city blocks who are interested in the kinds of things I’m interested overwhelms the numbers in New Haven.”

Graetz’s curriculum vitae is stocked with the usual accoutrements of a distinguished academic: degrees from Emory University and the University of Virginia, authorship of several books and textbooks, articles that number in the three digits, and stints in two presidential administrations. “If you wanted to list the best three tax professors in the country, he’s in that group,” says Alex Raskolnikov, professor of law at Columbia. “But it’s not the volume of his scholarship that impresses, it’s the significance.” Graetz is comfortable with economic models, the intricacies of tax theory, and the minutiae of tax law. But he’s best known for his popular books on big-picture tax policy issues (The Decline (and Fall?) of the Income Tax) and on the unlikely repeal of the estate tax (Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth). More recently, he’s laid out a practical and fundamental rethinking of the nation’s increasingly obsolete and ineffective tax system in 100 Million Unnecessary Returns.

Starting next fall, Graetz will teach a regular course load at the Law School, including the introductory federal income tax course. He says he also prefers to teach at least one seminar a year that “isn’t just about taxation.” This attitude betokens a comfort in crossing the boundaries that separate academic disciplines. His willingness to do so has made his name recognizable not just among the small fraternity of tax academics, but also in the larger universe of tax policy mavens and political junkies. “They really like him on Capitol Hill, because he’s more entertaining than most people who testify,” says Len Burman, director of the Washington, D.C.-based Tax Policy Center. “He’s got a way of making stuff that is ordinarily just mind-numbing and boring really engaging.”

That mindset is evident in the 2005 book Graetz co-authored with Yale political scientist Ian Shapiro on the estate tax. In the wake of the 2001 law
They really like him on Capitol Hill, because he’s more entertaining than most people who testify. He’s got a way of making stuff that is ordinarily just mind-numbing and boring really engaging.” — Tax Policy Center Director Len Burman

Lessons we took was that the proponents of repeal had created a morality tale that made the tax look very unappealing,” says Graetz. “And the people on the other side, to the extent there were people on the other side, never developed a counterargument.”

In his most recent book, Graetz has developed his own narrative to argue for more far-reaching tax reform. 100 Million Unnecessary Returns is part morality tale, part a brief for American competitiveness, and part a warning about unsustainable tax and fiscal policies. From Graetz’s perspective, there are a few major problems with the tax system. First, there’s a huge and growing gap between the government’s obligations and the revenues the current tax system raises. (This fiscal year, taxes represent about 18.5 percent of gross domestic product, while spending is about 20.5 percent.) As the population ages and health care costs rise, the gap will widen further. Second, America’s 20th-century tax code, an analog system in a digital world, needs to be updated for the 21st century. In the post–World War II era, when the U.S. had essentially no foreign competition, Graetz argues that it didn’t matter much what kind of tax system the U.S. had. “But we’re no longer dominant, and we’re no longer insular;” he says. “We need a system that works well internationally.” The expense of compliance crowds out other more useful investments. And the high statutory corporate tax rate of 35 percent (the actual rate that companies pay after deductions is substantially lower) is holding back the American economy. Third, it’s too complex.

Graetz opposed the estate tax cut reduction on grounds of fairness. “Theodore Roosevelt campaigned for the estate tax on the ground that an inherited aristocracy was contrary to American values,” he says. In recent years, with massive cuts in marginal income tax rates, on dividends and capital gains, and the estate tax, the tax code has increasingly favored the wealthy and contributed to massive unequal distribution of wealth. Graetz notes that the average tax rate paid by the top 400 individual taxpayers has fallen from 28 percent in the mid-1990s to 18.3 percent in 2005.

His attitudes about taxes are ones Graetz has come by professionally and naturally. His father, a defense contract auditor for the Navy, viewed paying
income taxes as a great honor—as the price to be paid for living in a civilized society. But today, Graetz notes, the complexity and special-interest provisions have engendered widespread cynicism. And for good reason. Rather than regard the tax code as the proper means for ensuring sufficient levels of revenue to fund government operations, Graetz says Washington politicians of both stripes “use the tax law the way my mother used chicken soup—as a cure-all for every social and economic ill the country faces.” (In addition to possessing an encyclopedic knowledge of tax policy, Graetz has a wry sense of humor. “Tax law and life are very funny,” he says.) Think of a popular and desirable goal—alternative energy, retirement saving, paying for college, you name it. The tax code has multiple provisions to encourage it. “Republicans have never seen a tax cut they won’t vote for, so they vote for all these credits,” he says. “And the Democrats have found that the only way to provide for domestic spending is through a tax cut.”

For Graetz, addressing the big problems plaguing the federal tax system entails implementing fundamental changes. “The big difference between the U.S. and every other developed country in the world is that we don’t have a national tax on the purchase of goods and services,” he notes. 100 Million Unnecessary Returns thus makes a reasoned case for the adoption of a value-added tax (VAT), currently in use in some 150 countries around the world. The VAT, which is collected as a percentage of sales at every step of the production chain and is passed on until it reaches the consumer, effectively becomes a broad-based consumption tax. While many Americans have encountered the VAT in Europe, Graetz notes that it is in fact an American idea. (It was invented by Yale economist Thomas Sewell Adams in the 1920s.) “We shouldn’t mimic Europe by combining a high value-added tax with high taxes on income,” says Graetz. “But designing the structure of a tax system today is just the wrong place for American exceptionalism.”

His plan would institute a VAT of between 10 and 14 percent and would sharply scale back the income tax so that it contracts to a 25 percent tax applied only to income greater than $100,000. The result: 100 million households would be spared the cost and annoyance of filing income tax returns. Low-income workers and the elderly would receive credits that would effectively shield them from the tax. And the increased revenues would allow the U.S. to lower the corporate tax rate from 35 percent to 15 percent.

It sounds relatively simple. But there are significant objections. Consumption taxes like the VAT are regressive, and tend to fall hardest on those who spend most of their money on goods and services. As Robert Kuttner wrote in a critical review of Graetz’s book in The American Prospect, “for all his erudition, Graetz doesn’t bother to compute just how much more regressive the resulting system would be.” In addition, 70 percent of U.S. economic activity derives from consumer spending. Taxing that activity would undoubtedly affect such behavior,
which would be bad news for retailers of all stripes. Graetz’s answer? A slowdown in consumption is overdue. “We have huge budget deficits and virtually no private savings,” he says. “We’ve got to get our house in order. We have to import less and consume less.”

The biggest obstacles to implementation of Graetz’s plan are likely to be political. Pushing for the adoption of a VAT would require a great deal of nitty-gritty Washington politics, a long march of the type he and Shapiro outlined in Death by A Thousand Cuts. Graetz, who sports a neatly trimmed gray beard, admits he has neither the temperament nor the desire to get involved in the type of partisan politics that have come to dominate tax law reform efforts. Although he’s been a political appointee in two Republican administrations, he seems rather out of step with current Republican orthodoxy on fiscal matters. “I’m not a favorite of [Republican tax firebrand] Grover Norquist,” he notes. Some policy types on the left assume he’s a Republican, while many on the right seem to think he’s a Democrat. “I wouldn’t bet any money on who he votes for in presidential elections,” says Len Burman.

Still, it’s not his lack of overt partisanship that’s holding back Graetz’s big idea. Economists notwithstanding, there just isn’t much of a constituency in Washington on either side of the aisle for a VAT. Liberals have long feared it as excessively regressive, and conservatives feared it would raise too much money. Lawrence Summers, the former Harvard president and Treasury secretary, has joked that when liberals figure out the VAT is a money machine and conservatives figure out it’s regressive, they’ll have a deal. “I don’t think the prospects are very good,” says Bruce Bartlett, a former Treasury Department economist who favors a consumption tax. “There hasn’t been any evidence that the main thing people hate about taxes is filing returns.”

Graetz isn’t particularly sanguine about the immediate prospects for significant reform. He notes that both major presidential candidates, Barack Obama and John McCain, have promised the kinds of tax cuts that will increase rather than decrease the deficit and mostly want to just tinker with the existing system. Ian Shapiro notes that one of the main lessons of Death by a Thousand Cuts is that fundamental change in tax policy is possible. But it might take a few decades. “In some ways, I think a VAT is inevitable,” says Graetz. “It’s just a question of when, and what the money is used for.” He hopes the when is sooner rather than later, and the what is for reforming the income tax. But, he hastens to add, “I’m not foolishly optimistic.”

Daniel Gross is a senior editor at Newsweek, where he writes the “Money Culture” column. He also writes the “Moneybox” column for Slate.
Telecommunications expert and Columbia Law School Professor Tim Wu talks with Jeffrey Toobin about the rise of network TV, the birth of the Internet, and what the media jungle might look like five years from today.
There are always a handful of law professors whose influence transcends the academy. Tim Wu, who joined the Columbia Law School faculty in 2006, is one of those rare few, and he practices and studies in perhaps the hottest legal field of all—the fast-changing law of telecommunications. Wu’s latest project takes a look back at how the law has shaped the technologies of the past and present, and in this conversation, we look ahead to new paths for the future.

JT / You are working on a new book. Tell me about it.

TW / It’s an intellectual history of communications systems in the United States. It’s the story of the 20th-century birth of film, radio, the telephone, and the laws and ideas that shape what the media becomes.

Very roughly, these media are born into chaos, and then become highly concentrated empires by the 1930s—in line with the economic principles dominant in those times. That lasts until the 1970s, when the first attacks come from things like cable television, and then all hell breaks loose in the 1990s and 2000s.

TW / That’s the central puzzle in the book. Is it destiny, or is it our ideas that shape the future? I am firmly of the view that the ideas drive the history of the media—that the technology made it easier, but that the ideologies of the time shape the way Americans end up communicating.

You can see this clearly in the 1920s and ’30s. That is an age where centralized systems are seen as the ideal—whether the Ford Motor Company, or the planned economy of the Soviet Union. The thinking is that you really have to consolidate everything and plan things from the center. The Bell System—a government-supported monopoly—becomes the perfect, shining example of what a centrally controlled communications system looked like.

I think that what people see as the future has an enormous influence on what they design in the present. The future was to be one of perfect, centralized corporations and even economies, and so we built our media in that image.

JT / Is it your view that technology caused the communications networks to be built the way they were, or were they more an act of will by the people who were running them?

TW / In the book, I say that a country’s communications system varies by being more or less centralized—that’s one of the central themes. What you’re calling the “phone model” is the Bell System, one of the most centralized systems of mass communications ever designed. It is exceeded, however, by the network TV and radio models at their height. At its high point, in the
mid-1950s, for instance, 83 percent of American TV households were tuned into an episode of The Ed Sullivan Show. Even Barack Obama or the Super Bowl cannot match that.

TW / I think it’s the same things that caused the socialist state to break down, and some of what caused some of the welfare state to break down, and the same things that caused a lot of giant U.S. companies to run into trouble. The truth is that you lose as well as gain with massive centralization. Friedrich Hayek, the economist, understood this best: When decisions are made from the center, you lose the benefits of local information.

When the Soviet Union would decide exactly how much grain would be produced, the central bureaucracy was not in a good position to know everything. In the media world, it was just a guess that all Americans actually wanted to see I Love Lucy, and a pretty rough guess. And if you just have one centralized person deciding all of that, your decisions are often off. So that’s the problem of centralized systems.

TW / Much changed in the ’60s and ’70s. There was an enormous backlash against centralized commercial systems. In my book, it is the invention of cable, the birth of independent film, and, of course, the mass Internet that begin the great challenge to the media empires of the 20th century.

Cable, to take one example, is a more interesting story than you might think. There was a time in United States history when intellectuals believed cable was the hope for the future, with the potential to liberate the nation. It’s sort of funny to think that in the 1960s a certain type of intellectuals thought of Playboy and cable TV as two beacons of a new age. That sense seems to have receded somewhat.

TW / The reaction to centralized media was more than that. There was a movement that believed something had gone wrong with this whole system of centralized organization that everybody had fallen in love with from the ’20s through the ’60s or so. In the media world, it led to things like PBS and NPR, but also cable television, the invention of the Internet, and the beginnings of independent film. I see it as all connected.

“GOVERNMENT SHOULD BE INTERESTED IN MAKING THE MEDIA WORLD AS OPEN AND COMPETITIVE AS POSSIBLE. THE WAY TO DO THAT IS TO MAINTAIN VERY BASIC, LOW-KEY ANTI-DISCRIMINATION RULES ON THE INTERNET. THAT’S WHAT NET NEUTRALITY IS ALL ABOUT. WHAT I’M PROPOSING IS CONSUMERS ACTUALLY DECIDE WHAT APPLICATIONS AND CONTENT SURVIVE AND THRIVE. BELIEVE IT OR NOT, THAT’S A RADICAL PROPOSITION.”—PROFESSOR TIM WU
**JT /** So cable comes in, and then what happens?

**TW /** Cable is kind of a halfway revolution in a sense. It doesn’t fully deliver on this promise of being the medium that connects the people to the people. It’s sort of like a bigger version of network news. That’s what’s interesting about the Internet: It’s trying, at its best, to be something that is a medium connecting people, everybody. So it’s a much more radical experiment.

**JT /** As you were talking about the difference between cable and broadcast, I was thinking ahead to the Internet, which does sound like a fairly complete next step in that direction. But one thing you have often written about and talked about is that even the Internet is subject to these forces of centralization.

**TW /** In an almost Hegelian fashion, just as centralized systems sow the seeds of their own downfall, the most radically decentralized systems, like the Internet, create a pressure toward centralization. Let me explain. Let’s say you’re interested in Olympic weightlifting. The irony is that the best way to search for diverse content on weightlifting is to consult Google, a highly centralized search engine. Another example is Wikipedia—there is just one Wikipedia, but millions of people work on it. There is a strange way in which a certain type of centralized figure can create radically decentralized content.

**JT /** Well, one version of what you’re saying is that there is something about capitalism that pushes all technologies toward decentralized markets. Is that a fair take?

**TW /** My point is a little different. It’s more that I’m trying to capture, or describe, a long cycle of centralization and decentralization that I see in the media industries.

We think we live in the era of great media diversity. But turn the clock back to 1914: There were, on average, 11 movies made every day.

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**What’s Next?**

Professor Tim Wu previews some potential law and technology developments over the next 20 years.

- Super-powered versions of Google search technology get turned into law enforcement tools.
- Internet 2.0: Hollywood and AT&T create a new, trusted version of the Internet, banning all non-approved sites.
- Copyright infringement becomes among the most prosecuted white-collar crimes.
- Personal computers are barred from the Internet.
- AT&T buys out Apple and creates an integrated Internet/iPhone/Mac platform.
- Copyright is amended to make copying without permission legal—unauthorized distribution remains illegal.
- After an antitrust lawsuit, Google is forced to spin off everything but its search engine.
"WE THINK WE LIVE IN THE ERA OF GREAT MEDIA DIVERSITY. BUT TURN THE CLOCK BACK TO 1914: THERE WERE, ON AVERAGE, 11 MOVIES MADE EVERY DAY. THERE WERE ALMOST A THOUSAND THEATERS IN NEW YORK CITY.”—PROFESSOR TIM WU

JT / Eleven movies every day?

TW / Yes, and they were all kinds of movies. They had anarchist movies. There were movies meant for black-only theatres. They had Irish movies. It was a little bit like an early YouTube era. And it had that characteristic of being radically decentralized. It wasn’t a Paramount in the 1940s, with control over distribution. It was all completely a big, giant mess. And there were almost a thousand theaters in New York City. In other words, if you see some of what the current Internet media environment looks like, you see an echo of 1914.

JT / Let’s turn the discussion toward the future. You’ve got these models working. But which model is ascendant right now?

TW / The big question in the book, for me, is this: We’re in the age of obvious chaos and decentralization, where no entity can claim more than some tiny fraction of the American public as an audience. And the question is whether we have, right now, reached the peak of that. Let me sketch two possible futures.

In the first, we see a giant media crash in five years, where almost everybody goes bankrupt. Out of the wreckage emerge only a few giant consolidated media firms—Google, AT&T, and, say, GE/NBC/Universal, or something. We then enter an era of unprecedented centralization that makes the 1950s look like relative anarchy. For example, even in the 1950s, you still

"WE’RE IN THE AGE OF OBVIOUS CHAOS AND DECENTRALIZATION, WHERE NO ENTITY CAN CLAIM MORE THAN SOME TINY FRACTION OF THE AMERICAN PUBLIC AS AN AUDIENCE. AND THE QUESTION IS WHETHER WE HAVE, RIGHT NOW, REACHED THE PEAK OF THAT.”—PROFESSOR TIM WU
JT / Is there anything the government can do to make sure that the latter and not the former happens?

TW / Yes. The government has always been picking winners in the media world because it hasn’t really wanted it to be a free market.

Raising the Bar

Advances in technology continue to revolutionize the practice of law, and Tim Wu sees more changes on the horizon. Below, Wu anticipates a few developments that could impact your practice in the coming years.

> Free law sites like altlaw.org will begin to take market share from Westlaw and Lexis.

> Full remote video trials will become the default.

> Global positioning logs on cell phones will begin to play a far greater role in civil and criminal cases.

> Artists and authors will use the Web to help redefine contracting in entertainment (one current resource is keepyourcopyrights.org).
Why do you say that? I think a lot of people would be surprised by that comment.

So should government continue to do this—to pick winners?

What does net neutrality—a phrase you invented—have to do with how the government should establish rules?

So it sort of all comes back to net neutrality, which is a signature issue for you.

Since the beginning, government has had more than a thumb on the scale, but rather a very visible hand, if you'll forgive the mixed metaphor. In the 1920s, the goal was to have a “good” communications system, so it was all about the government choosing “winners,” like RCA, NBC, or AT&T, that it hoped would do a good job. In legal terms, this happens by licensing and franchising: You can’t be in these markets without the licenses. So it’s never been an open market.

No, I don’t think so, but that doesn’t mean I don’t think the state has a role. It may sound contradictory, but my belief is that government action can create an environment where winners emerge based on merit as much as possible. That may sound like a contradiction, but it’s not.

Net neutrality stands for the idea that very basic anti-discrimination rules—common carriage is another word for it—are the foundation of an open media. My suggestion is that government should be interested in making the media world as open and competitive as possible. The way to do that is to maintain very basic, low-key anti-discrimination rules on the Internet. That’s what net neutrality is all about.

My idea may sound reasonable, but it has run into lots of resistance. One reason, perhaps, is that common carriage is actually only a tradition in the telephone world—it has never made it to television, radio, film, or anywhere else. In those worlds, discrimination—choosing what content makes it, and what doesn’t—has been an industry standard.

What I’m proposing is consumers actually decide what applications and content survive and thrive. Believe it or not, that’s a radical proposition.

I guess it does. This book was inspired by my involvement in the contemporary net neutrality debate. I wanted to understand the big picture, and the long cycles in the structure of the media industries.

Jeffrey Toobin is a staff writer at The New Yorker and the senior legal analyst for CNN.
Two Columbia Law School professors take aim at a key problem swirling around the multitrillion-dollar world of sovereign wealth funds

By Peter Coy
AS THE WORLD’S LARGEST DEBTOR, the United States, like Blanche DuBois, depends on the kindness of strangers. But does that mean the U.S. should embrace all foreign investments, even if they come with strings attached to potentially unfriendly governments? Is it possible to keep other nations from exercising undue influence without cutting off the flow of much-needed capital from abroad?

Columbia Law School Professors Ronald J. Gilson and Curtis J. Milhaupt ’89 are trying to crack at least part of that conundrum. Their idea is aimed at sovereign wealth funds—those huge, government-controlled pools of investment money that are pouring billions into the likes of Citigroup and Merrill Lynch. The two scholars argue that sovereign wealth funds should be denied voting rights on the shares they acquire. Under their plan, voting rights would revert to the shares if the funds sell them later to investors that aren’t government-controlled. The intent is to diminish the funds’ influence and stave off a clash between what the professors call “the two systems of capitalism”—private versus state-owned. In “Sovereign Wealth Funds and Corporate Governance: A Minimalist Response to the New Mercantilism,” the article that introduced the proposal in the March 2008 issue of the Stanford Law Review, Gilson and Milhaupt write: “If vote suspension reduces the risk of a protectionist response, it will allow the global capital markets to demonstrate that, in the long run, governments make ineffective capitalists, especially where innovation is the ultimate currency.”

If nothing else, Gilson and Milhaupt’s idea is well-timed. Lawyers and the general public have just begun to realize that “SWF” can mean something other than “single white female.” Over the past year, funds from the wealthy Gulf oil state of Abu Dhabi have bought big stakes in Citigroup, Advanced Micro Devices, and the Carlyle Group, while a Dubai fund bought into Sony, and Singapore’s Temasek Holdings took a big stake in the struggling Merrill Lynch. The International Monetary Fund recently predicted that within five years, sovereign wealth funds’ assets could reach $6 trillion to $10 trillion, versus $2 trillion to $3 trillion currently.

The professors are quick to admit that their idea is no panacea. Sovereign wealth funds with trillions in assets can’t be tamed by one act of Congress. Still, the sheer simplicity of their concept, like a swift slice through a Gordian knot, has gained it a good deal of attention from experts in the field. A brief essay drawn from the work is part of a forthcoming volume commemorating the 150th anniversary of Columbia Law School.

What irked Gilson and Milhaupt, and served as an impetus for their article, was that policy-makers seemed to be throwing up their hands at the issues raised by sovereign wealth funds. The federal government has a stringent mechanism for reviewing cases in which national security is at stake and in which foreigners gain controlling interests in U.S. companies, via the inter-agency Committee on Foreign Investment in the United States (CFIUS). But CFIUS doesn’t review investments in which national security is not at stake. And CFIUS ignores non-controlling investments, which is what sovereign wealth funds usually take. For its part, the International Monetary Fund has pressed sovereign wealth funds to be more transparent, on the assumption that openness discourages bad behavior. It launched an effort earlier this year to help the funds learn to “run sound organizations, with good governance structures, robust risk management frameworks, and appropriate transparency.”

Gilson disparages the transparency initiatives as ineffectual Kabuki theater. The issue, he says, deserves more attention from policy-makers. “[The emergence of sovereign wealth funds] raises in really stark fashion the question of what role government plays, and how much intrusion into the economy is appro-priate,” he adds. “That’s not something that we should sweep under the rug.” Gilson and Milhaupt have thought about the law long enough to recognize a futile gesture when they see one.

LAWYERS AND THE GENERAL PUBLIC HAVE JUST BEGUN TO REALIZE THAT “SWF” CAN MEAN SOMETHING OTHER THAN “SINGLE WHITE FEMALE.”

Gilson, the Marc and Eva Stern Professor of Law and Business, is an expert in corporate governance who joined the Columbia Law School faculty in 1992. He teaches at Columbia during the fall and at Stanford Law School in the spring semesters. Milhaupt, a fluent speaker of Japanese who is the Fuyo Professor of Japanese Law and Professor of Comparative Corporate Law, joined the Columbia Law faculty in 1999. His academic specialties include corporate governance and the importance of legal institutions to economic growth.

Gilson and Milhaupt concluded that public commitments by sovereign wealth funds to do the right thing are worthless because the funds are, after all, sovereign and therefore free to change their minds at any time. It is impossible to judge from words alone which funds really are passive investors and which might abruptly turn statist.
That’s where the voting-rights suspension comes in. If a sovereign wealth fund truly cares only about financial returns, the professors say, it shouldn’t much mind losing voting rights. Funds that want to preserve the intervention option would be put off by the loss of voting rights and might go elsewhere. Thus the voting-rights suspension causes the two types of funds—passive and active—to reveal their concealed differences. In game-theory terminology, the gambit produces a “separating equilibrium”—an idea from the field of information economics that won a Nobel Prize in 2001 for Columbia’s Joseph E. Stiglitz, Stanford’s A. Michael Spence, and the University of California at Berkeley’s George A. Akerlof.

Gilson believes Columbia Law School is a perfect place for the kind of interdisciplinary work exemplified by his and Milhaupt’s mash-up of information economics and corporate law. “You can have schools that are a bunch of silos, and you can have schools where ideas grow,” Gilson says. “Both the quality of work and the quantity grow dramatically with the Columbia model. More than any other place I’m aware of, there’s a pattern of people collaborating,” Milhaupt agrees. “A lot of sparks fly around here,” he says. “The Columbia students are extraordinary. They’re not only smart, but they’re incredibly worldly.” One inspiration for the paper was a seminar the professors team-

“[THE EMERGENCE OF SOVEREIGN WEALTH FUNDS] RAISES IN REALLY STARK FASHION THE QUESTION OF WHAT ROLE GOVERNMENT PLAYS, AND HOW MUCH INTRUSION INTO THE ECONOMY IS APPROPRIATE. THAT’S NOT SOMETHING THAT WE SHOULD SWEEP UNDER THE RUG.”

—PROFESSOR RONALD J. GILSON

BIG BUCKS

THE TOP 10 SOVEREIGN WEALTH FUNDS ARE FUNNELING MONEY INTO INVESTMENTS AROUND THE GLOBE.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Fund Name</th>
<th>Estimated Assets</th>
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<tr>
<td>1.</td>
<td>Abu Dhabi Investment Authority (United Arab Emirates)</td>
<td>$875 billion</td>
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<tr>
<td>2.</td>
<td>Government Pension Fund-Global (Norway)</td>
<td>$380 billion</td>
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<tr>
<td>3.</td>
<td>Government Investment Corporation (Singapore)</td>
<td>$330 billion</td>
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<tr>
<td>4.</td>
<td>Saudi Arabia (no designated SWF name)</td>
<td>$289 billion</td>
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<tr>
<td>5.</td>
<td>Reserve Fund for the Future Generations (Kuwait)</td>
<td>$250 billion</td>
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<td>6.</td>
<td>China Investment Corporation</td>
<td>$200 billion</td>
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<td>7.</td>
<td>Reserve Fund (Russia)</td>
<td>$125 billion</td>
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<tr>
<td>8.</td>
<td>Temasek Holdings (Singapore)</td>
<td>$108 billion</td>
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<tr>
<td>9.</td>
<td>Australia Future Fund</td>
<td>$54 billion</td>
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<tr>
<td>10.</td>
<td>Libyan Investment Corporation</td>
<td>$50 billion</td>
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<tr>
<td>11.</td>
<td>State Reserve Fund / Stabilization Fund (Qatar)</td>
<td>$50 billion</td>
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SOURCE: INFORM

PETER COY is economics editor of BusinessWeek.
the supreme court is set to decide whether nicole richie can say sh*t on national television. and, believe it or not, the case could result in one of the court’s most important first amendment decisions in decades.

TO COUNT THE WAYS that FCC v. Fox Television Stations is unlike any other case on the Supreme Court’s upcoming docket, start with single-name singers Bono and Cher. Add über-celebrities Paris Hilton and Nicole Richie. And throw in the likelihood that the F-word will reverberate off the Court’s stately marble columns, possibly from the lips of the justices themselves.

But the case over the government’s ability to ban “fleeting expletives” uttered over the airwaves is about more than celebrity. It holds the potential for a sea change in the Court’s First Amendment jurisprudence.

It has been 30 years since the Court considered the afternoon radio broadcast of the late comedian George Carlin’s “Filthy Words” monologue and decided that the government can police the nation’s airwaves without violating the First Amendment. In FCC v. Pacifica Foundation, the Court ruled that because of its “uniquely pervasive presence in the lives of all Americans,” broadcasting has “the most limited First Amendment protection,” and government has the right to restrict broadcast material in order to protect children who might be watching and listening.
But now the networks are arguing that not only is the Federal Communications Commission's enforcement arbitrary and capricious, even the premise of the Court's 1978 decision is no longer valid. Decades of Court-sanctioned government restrictions, the networks argue in briefs filed with the Court, rest on “moth-eaten foundations” in an age of hundreds of cable channels, the unlimited resources of the Internet, and the parent-empowering V-chip, capable of blocking broadcast programs.

“The ultimate constitutional question is enormously important, no question about that,” says Vincent A. Blasi, the Corliss Lamont Professor of Civil Liberties at Columbia Law School. The case before the Court, he notes, “frames the issue pretty nicely.”

The current controversy started with Cher. In accepting an award at the 2002 Billboard Music Awards (broadcast on Fox), she first thanked all her supporters. “I’ve also had critics for the last 40 years saying that I was on my way out every year,” she continued. “Right. So fu*k ‘em. I still have a job, and they don’t.”

The live awards show blunders kept coming. Bono was so thrilled with his award at the 2003 Golden Globe Awards (broadcast on NBC) that he proclaimed it “really, really fu*king brilliant.” It was at the 2003 Billboard Awards that Richie, star of The Simple Life, told the audience it is “not so fu*king simple” to get “cow sh*t out of a Prada purse.”

For years, the FCC had let such one-time use of obscenities slide. But organizations such as the Parents Television Council, which makes filing a complaint as easy as clicking on the group’s Web site, stepped up the pressure, and the FCC responded in 2004 by adopting more strict rules prohibiting fleeting expletives. Congress stepped in to increase the potential fine to $325,000 per violation.

A panel of the U.S. Court of Appeals for the 2nd Circuit struck down the new rules. It said the FCC had violated the Administrative Procedures Act by failing to “articulate a reasoned basis” for the policy change. And while it did not decide the networks’ First Amendment challenge, the majority said it was sympathetic to arguments that the FCC’s indecency test was “undefined, indiscernible, inconsistent and, consequently, unconstitutionally vague.”

The government asked the Supreme Court to reverse the lower court’s ruling, contending the commission adequately justified its change in policy. The government also maintained that there was no need for the Court to take up the undecided constitutional issue.

But Fox’s lawyer, Carter Phillips, in his brief to the Supreme Court, asserted that the “regulation of ‘indecent’ speech necessarily implicates core First Amendment values, and the administrative law analysis simply cannot be divorced from the constitutional one.”

Tim Winter, president of the Parents Television Council, says the networks’ questioning of the constitutional basis for FCC regulation shows “they not only want to push the boundaries; they want to obliterate them.”

Blasi thinks it is possible the Court will decide only the administrative law question and send the case back for a fuller hearing on the constitutional issues. But either now or in the future, it is likely the Court will confront whether broadcast regulation arising from Pacifica makes sense in an age when more than 85 percent of households watch television on cable, which is not regulated by the FCC.

“Pacifica does seem to me increasingly anachronistic,” says Blasi. “I doubt any serious proponent of indecency regulation really thinks that broadcast is uniquely threatening to children.”

More likely, he adds, is a feeling that even in a fragmented society, “there’s still a reason to not want to legitimate the use of these words in this mainstream medium. It seems to me that’s the best defense of these regulations and probably the impetus for the regulation.”

Whether that argument satisfies the Constitution is another matter.

“If broadcast really isn’t very unique, certainly in any material harm, such as exposure to children, if it’s only unique in that it has a kind of mainstream aura to it,” that might not be enough for justices worried about the First Amendment, Blasi says. “They might think, ‘Well, that’s a pretty dangerous rationale, when government starts proscribing individual word choice.’”

Roberta Barnes has covered the Supreme Court extensively as a staff writer for The Washington Post.
On July 1, 2005, the day Justice Sandra Day O’Connor announced that she was stepping down, Professor Nathaniel Persily told a newspaper reporter that hers was “arguably the most significant retirement in the history of the Supreme Court.” Her replacement, Persily said, would become the swing vote on a few critical issues, notably the regulation of the role money may play in politics. Justice O’Connor had provided the fifth vote to uphold several campaign finance laws, and she was the co-author of the 2003 decision that upheld the major provisions of the Bipartisan Campaign Reform Act, often called the McCain-Feingold law.

Three years later, Richard Briffault, the Law School’s Joseph P. Chamberlain Professor of Legislation, confirmed what Persily had predicted. Assessing a Supreme Court decision striking down a law meant to level the playing field in elections involving rich candidates who pay for their own campaigns, Briffault told The New York Times that the Court had become “increasingly hostile to campaign finance reform.” The reason was straightforward, he said: Justice O’Connor had been replaced by Justice Samuel A. Alito Jr., who is notably more skeptical about campaign finance regulation.

The two professors have made Columbia Law School an important center of scholarship on election law in general and campaign finance law in particular. They approach the issue from different perspectives. (“Nate is more empirical,” Briffault says. “I’m more doctrinal.”) But they share a fascination and engagement with a subject that is simultaneously technical, complex, and tremendously important.

“How we pay for our democracy is crucially significant for how it’s going to operate,” Briffault says. “It’s something we all have a stake in.”

Before Justice O’Connor’s retirement, Persily says, “there were five votes on the Court to generally defer to Congress and state legislatures when it came to regulating campaign contributions and expenditures by corporations and unions.”

But the Court’s approach changed rapidly with Justice Alito’s arrival.

“There has been a really sharp shift since she left,” Briffault says.

In all three campaign finance cases considered by the Court since Justice O’Connor’s retirement, Justice Alito voted with the majority to strike down laws regulating money in politics. Indeed, in the first of the three cases, Justice Alito indicated that he might be willing to reconsider Buckley v. Valeo, the cornerstone of modern campaign finance law. That 1976 decision upheld limits on contributions but struck down limits on expenditures by or on behalf of candidates.

In the first decision, Randall v. Sorrell, in 2006, the Court reaffirmed Buckley’s ban on campaign spending limits. But, for the first time, it struck down a contribution limit.

“The Court said the contribution limits were so low as to prevent candidates from running an effective campaign,” Persily says of Vermont’s caps, by far the lowest in the nation.

The next year, in Federal Election Commission v. Wisconsin Right to Life, Inc., the Court opened a significant exception to its 2003 decision on the McCain-Feingold law. The earlier case had upheld a provision of the law against a facial First Amendment challenge. (The provision prohibited corporations and unions from paying for broadcast advertisements mentioning the names of federal candidates shortly before elections, and many observers had considered the matter settled.)

But the 2007 decision, an as-applied
challenge by an anti-abortion group that had sought to run ads urging viewers to contact two senators about President Bush’s judicial nominees, ruled that the law violated the First Amendment in many settings. The decision, Persily says, “drives a truck through the expenditure limitations.”

And in June, in Davis v. Federal Election Commission, the Court struck down a part of the McCain-Feingold law that loosened contribution limits for candidates facing rich opponents paying for their own campaigns.

“The case on its own terms is not terribly significant,” Persily says. “It’s important, if at all, in what it tells us about where Roberts and Alito are.” Chief Justice John G. Roberts Jr., who was in the majority in all three cases, replaced Chief Justice William H. Rehnquist, who was also wary of campaign finance regulation.

The trend, both professors said, is clear. “The Court is no longer moving in the direction of approving campaign finance regulation,” Briffault says. “The ship has stopped in the ocean.”

Persily notes that the ship may in fact be turning back.

“You will find a slow erosion of Buckley v. Valeo,” he says. “The Court seems to like these cases, and there are many of them in the pipeline.”

Adam Liptak is the national legal correspondent for The New York Times.

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When is a monument more than a monument? Among the many questions the Supreme Court faces about religion and free speech, perhaps this is the most persistent.

The Court will take up the issue once again this fall when it hears Pleasant Grove City, Utah v. Summum, a doozy of a case involving a Ten Commandments display in a public park and a little-known religious group that lays claim to a different sort of Mosaic wisdom. Not only are the facts a tangle, but so, it seems, are the legal issues at stake: free speech versus government speech, the public forum doctrine, and, lurking in the background, the First Amendment’s Establishment Clause, which prohibits the government from favoring one religion over another.

The story behind the case begins in 1971, when the Fraternal Order of Eagles donated a Ten Commandments monument to the town of Pleasant Grove. Since then, a few other monuments have been displayed in a Pleasant Grove city park, including a 9/11 memorial sponsored by the Boy Scouts.

In September 2003, the leader of a religious group known as Summum petitioned the city to erect a monument displaying its “Seven Aphorisms.” Summum believes these principles were inscribed on the tablets given to Moses on Mount Sinai. The city turned down the request, arguing that the proposed monument had little connection to the community or the city’s history. When Summum filed suit alleging a violation of its free speech rights, Pleasant Grove countered that the existing Ten Commandments monument in the park was government speech and therefore did not trigger heightened scrutiny for new monument proposals under the First Amendment. The 10th Circuit Court of Appeals disagreed. The court examined the case using strict scrutiny analysis and ultimately decided in favor of Summum, ruling that the city park was a “traditional public forum,” and that the Ten Commandments monument was the private speech of its donor.

Those legal conclusions are not without skeptics. With respect to what constitutes government speech—a facet of
speech in which the government has a freedom to espouse its views—Philip Hamburger, the author of Separation of Church and State, raises doubts about the circuit court’s conclusion. “At a certain point, one has to recognize that the government has control of its property and has to decide which messages it wants to espouse,” says Hamburger, who sees the Ten Commandments monument in Pleasant Grove as probably an example of government speech. “This monument does not belong to the Eagles; it belongs to the government. It’s just a donated piece of property.”

As to whether the park is a public forum for the purpose of this type of monument, Hamburger is skeptical there, too. The point is important because if a space qualifies as a traditional public forum, the government cannot restrict speech unless it is able to show that the regulation is narrowly tailored to serve a compelling state interest—a very high standard.

“One has to pause and wonder whether or not this doctrine, as one stretches it out and follows it through, gets more and more brittle,” Hamburger says. “The danger is, if you take it too far, it will collapse under its own weight, and this case is a lovely illustration of that . . . . This case looks like it’s defending the public forum doctrine, but it actually endangers the doctrine because it stretches it so thin as to make it implausible.”

When Pleasant Grove City comes before the Supreme Court this fall, observers may draw comparisons to a closely watched case from 2005. In Van Orden v. Perry, the Supreme Court ruled that a 6-foot Ten Commandments monument could remain on the grounds of the Texas Capitol. In that case, however, the question under consideration was whether the monument violated the Establishment Clause. In Pleasant Grove City, Summum is using the Ten Commandments monument to make a free speech argument under the First Amendment, yet the question of whether one religion should be granted favored treatment still casts a shadow on this debate.

“Establishment Clause questions are lurking in the background of all of these decisions,” says Caroline Mala Corbin, a former research fellow at Columbia Law School whose published work has explored the various ramifications of the Establishment Clause.

Pleasant Grove City, she contends, must be seen in light of a string of decisions by the 10th Circuit involving Ten Commandments displays, especially Anderson v. Salt Lake City Corp., a 1973 decision holding that a Ten Commandments monument on the grounds of the city courthouse did not violate the Establishment Clause. Since then, Corbin believes the Court, and those arguing before it, have tried to use the free speech clause to address Establishment Clause questions that had purportedly been settled by Anderson.

Establishment concerns also played a role in Duchesne City, Utah v. Summum, the companion case to Pleasant Grove City, says Kent Greenawalt, a long-time professor at the Law School. There, Duchesne sought to transfer the property on which a Ten Commandments monument sat to a private group.

“They undoubtedly did that to avoid the Establishment Clause worry,” says Greenawalt. “By selling the property, they’re doing more than implying it’s not government speech. They’re actually saying it isn’t on government property at all. It’s very hard for [Duchesne] to say, ‘Well it’s not on government property, but it is government speech.’”

Seen from one angle, Pleasant Grove City opens up a Pandora’s box of constitutional questions. For that reason, it is likely to be among the most carefully watched decisions rendered by the Court this fall. From another angle, though, one that acknowledges the role of the Establishment Clause, the case becomes less tangled and more straightforward. Although the Establishment issue will not be addressed by the Court, in the end, Corbin believes, “it’s not an invisible issue.”

“If you allow the Ten Commandments, and you don’t allow the seven principles, you’re violating the First Amendment one way or the other,” she asserts. “If it’s government speech, then you’re probably violating the Establishment Clause. And if it’s private speech, it doesn’t matter what forum it is, because you’re discriminating based on viewpoint.”

maurice timothy reidy is online editor of America magazine.

“This case looks like it’s defending the public forum doctrine, but it actually endangers the doctrine because it stretches it so thin as to make it implausible.” —PROFESSOR PHILIP HAMBURGER
**Health care law specialist **Steven Epstein ’68, a trailblazer in the field, has perfected the art of doing well by doing good

By Jennifer V. Hughes

**STEVEN B. EPSTEIN** was working as a Wall Street lawyer in the early 1970s when he got an intriguing phone call from a friend.

“He asked me to come down and help out in Washington with some health care issues,” recalls the 1968 Law School graduate. When Epstein replied that he didn’t know anything about health care law, his friend had a ready-made response: “No one knows anything about health care on the legal side.”

Epstein did some research on the subject but came up empty, and the fact that it was an entirely new field of law made the offer more enticing. He spent a year working for what was then the U.S. Department of Health, Education, and Welfare, traveling to 30 states encouraging lawmakers to pass legislation allowing health maintenance organizations to organize. In addition, he helped write the landmark 1973 U.S. law that promoted HMO formation.

That year, Epstein’s success in the field also led him to found his own firm, Epstein Becker & Green, with a health care focus. The firm has 400 lawyers in 10 cities, representing a broad swath of clients on an ever-expanding range of issues—everything from mergers and acquisitions to new patient privacy laws to the FDA approval process to Medicare and Medicaid regulations.

More than 35 years after that fateful telephone conversation, Epstein is a legend in the field. The rankings group Chambers USA once called him the “father of the health care industry,” an honorific that is not hyperbole, says Stephanie Kanwit, who graduated from the Law School the same year as Epstein and serves as special counsel to two health care trade associations.

“He’s very practical and very perspicacious,” she says. “He can look at a hugely complex set of facts and see immediately what the common thread is.”

Epstein, who lives in Washington, D.C., with his wife, Deborah, and has four children, says he fell in love with health care law almost immediately.

“Here was a brand-new field that needed solutions to difficult problems,” he says, “and there were no laws to deal with it.”

Even as a boy, Epstein says he wanted to be an attorney.

“Maybe it was Perry Mason,” he quips. His father earned a law degree but never practiced, working instead in the garment industry. And Epstein says he was drawn to the law not as a winner-take-all proposition but as a businessman.

“Negotiation to me was always like a puzzle,” he says. “If you saw what the problem was and understood your clients’ needs, most of the time you could come to a solution that worked for both sides. I was always disappointed when I saw lawyers pounding the table and demanding everything.”

Epstein balances his professional passions with a healthy dose of charity work. He serves as chairman of the Columbia Law School Board of Visitors, as well as on the boards of Tufts University and the Shakespeare Theatre Company in Washington, D.C. And his firm helps underwrite and provides free space for a leadership program for young African-American men.

Additionally, Epstein has had the honor of receiving distinguished alumni awards from both his undergraduate university, Tufts (in 1999) and Columbia Law School (in 2007). In February, he will be awarded Columbia’s Medal for Excellence—the Law School’s most prestigious award.

Looking forward, Epstein says the country must focus on the millions of uninsured Americans.

“One initial way to address this complex and difficult issue would be to arrange for the universal provision of catastrophic care,” cases of major illness or injury, Epstein says. “Most people can deal with issues related to going to the doctor for nominal amounts of money, but if they end up with something really serious . . . there is no way those people can afford to pay for it, and we all get stuck with the bill, ultimately.”

He is also passionate about wellness programs and serves on the board of a South African health care company that gives members rewards for staying healthy.

“It can be hard to get employers, unions, and managed care companies to focus on wellness when basic health care coverage can be so expensive,” Epstein says. “But, eventually people will come to realize that keeping people healthy through wellness programs will ultimately save millions of dollars and millions of lives.”

Jennifer V. Hughes is a freelance journalist who writes regularly for The New York Times.
Over the last two years, attorney Anne Cohen hasn’t had the luxury of working for more than a few days at a time in her Manhattan office—a sprawling corner space on the 47th floor of a high-rise with views of the Chrysler Building and Rockefeller Center. Cohen, a partner in Debevoise & Plimpton’s litigation department, has spent much of the past 20 months in Germany (with brief stops in Beijing and Shanghai), where she is one of the chief lawyers managing an internal investigation for a major company headquartered in Munich.

In her 22 years at Debevoise, Cohen has also worked stints in Istanbul and London, as well as Miami and Mississippi, using her expertise in “big mess” litigation to counsel clients like Coca-Cola and Occidental on issues ranging from products liability to the Alien Tort Statute to the Foreign Corrupt Practices Act. Hers is a life that frequently transcends time zones. It often calls for high-pressure negotiations with multinational conglomerates and strategy sessions about how to analyze thousands of cases.

But Cohen is quick to point out that one of the elements of her career that she enjoys most is something most would find absolutely mundane: visiting the manufacturing plants of the companies she represents.

“My favorite is the Remington factory in upstate New York,” says Cohen, who served as outside counsel to the country’s oldest long gunmaker for 12 years. “I used to love to see the robotics making rifle barrels, picking up the pieces of steel and putting them in a forge. A few yards away, a guy wearing a pair of heat-resistant gloves would be using a 1920s forge to make a specialized barrel. I loved the industrial history, the fact that I knew the products, and I knew the people.”

Her office is decorated with mementos that hint at her adventurous career: a crash test dummy doll (a gift from her mother), a photograph of Cohen at the periscope of a nuclear submarine, and a black-and-white portrait, taken by her father, of Cohen at age 2, wearing a cowboy hat and waving a toy six-shooter. “I didn’t want to be Dale Evans,” she explains. “I wanted to be Roy Rogers.” Cohen, who is petite and stylish, and has a whip-smart sense of humor, started out as a journalist. While reporting for a weekly paper in her native Cincinnati, she helped cover Larry Flynt’s first obscenity trial for The New York Times. Her work landed her a job with the Cincinnati Post. In the midst of hiring freezes, she won a Ford Foundation fellowship for reporters to Yale Law School, then moved on to Columbia Law School. “Columbia was very good for me,” she says. “I had to think about the next steps [in making an argument] with more rigor than I ever had to before.” Still, she credits her reporter days as well with helping craft a solid case.

“Both litigation and daily journalism are about figuring out how something happened and how to present it,” she says. “I’m a facts girl. I love figuring out who the people are and why events occurred the way they did, and that’s been the way of my practice.”

Her travels have given Cohen an opportunity to explore her interest in photography. She often takes shots from moving cars and trains with her Leica M8. Her spare time is also devoted to serving on the board of New York’s Citymeals-on-Wheels. A

In Cohen’s office, there is a black-and-white portrait of her at age 2, wearing a cowboy hat and waving a toy six-shooter. “I didn’t want to be Dale Evans, I wanted to be Roy Rogers,” she says.

JENNIFER ITZENSON is a freelance writer in New York whose work has appeared in Condé Nast Portfolio and the New York Observer.
“MOST PEOPLE THOUGHT we were completely off our rockers,” Roland W. Betts says as a sailboat glides past the windows of his vast office at Chelsea Piers on a sun-drenched afternoon in late July. Betts, 62, is recalling the consternation that greeted his 1991 decision to transform the then-dilapidated 1.2 million-square-foot pier complex on the west side of Manhattan, where the Titanic was heading in 1912 when an iceberg intervened.

Betts’ investment turned out to be highly successful, crowning an already impressive business career.

In 1983, guided by his Columbia Law School education and a four-year stint in entertainment law at Paul Weiss, he founded Silver Screen, a company that raised more than $1 billion from 140,000 investors to finance and produce about 75 feature films with The Walt Disney Company, including Pretty Woman and Good Morning Vietnam.

In 1989, at the urging of his Yale fraternity buddy George W. Bush, he assembled a team of investors to acquire the Texas Rangers. They sold the team in 1998 for a handsome sum that yielded the future U.S. president (Betts’ junior partner in the deal) a profit of $15 million. It was a 2,500-percent return on Bush’s $600,000 investment.

Bush and Betts, a staunch Democrat, remain best buddies.

At Chelsea Piers, Betts transformed a languishing eyesore into a hive of commerce. For the past decade, the Piers have attracted 4 million visitors a year, about the same number received by the Metropolitan Museum of Art and the American Museum of Natural History, where Betts serves on the board.

Spread across 28 acres, the complex’s amenities now include a golf club, two ice skating rinks, gymnastics and event spaces, a health club, a spa, rock climbing walls, soccer fields, basketball courts, a marina, several restaurants, dining cruises, a toddler adventure center, and TV studios that are home to Law & Order.

Betts ascribes much of his prodigious success to his legal training. “I’m very indebted to Columbia Law School,” he says. “The teaching was first rate. I use my legal education every day.”

And three decades after graduation, Betts maintains close ties with Columbia. He serves on the Dean’s Council (a group of senior advisors to the Law School), and in 2006 the Law School bestowed on him its Lawrence A. Wien Prize for Social Responsibility, in recognition of his efforts to deploy his legal skills for the public good.

These days, he devotes about 75 percent of his time to not-for-profit activities. He is currently the chairman of the trustees at Yale and serves on the boards of the Memorial Sloan-Kettering Cancer Center and the Kennedy Center in Washington, D.C., where he is treasurer.

“PRESIDENT BUSH CALLS ME THE ‘SECRETARY WITHOUT PROTOCOL,’ WHICH MEANS I CAN TALK TO HIM ABOUT ANYTHING, ANYTIME. SOMETIMES HE LISTENS TO ME; SOMETIMES HE DOESN’T.” —ROLAND BETTS

Best friends of U.S. presidents usually wind up being appointed to prestigious ambassadorships, but Betts has resisted such opportunities, preferring to focus on his business and philanthropic interests.

“He calls me the ‘Secretary Without Protocol,’” Betts says, referring to Bush, “which means that I can talk to him about anything, anytime. Sometimes he listens to me; sometimes he doesn’t.”

As for how he can be both a staunch Democrat and the best friend of George W. Bush, Betts seems to anticipate the question.

“Firstly, I would say that media description is not the Bush I know,” he says. “Secondly, I don’t disagree with the president that much on terrorism and foreign policy. But domestically . . . .” His voice trails off, diplomatically.

“I can try to convince him,” he says. “But nobody’s perfect.”

CHRISTOPHER MASON is a New York City–based writer and a frequent contributor to The New York Times.
Because of a heavy focus on Loving and marriage, important Supreme Court decisions granting constitutional protection to nonmarital sexual relationships remain largely underappreciated.

By Ariela R. Dubler, Professor of Law

In 1962, Dewey McLaughlin and Connie Hoffman were arrested in Miami and charged with violating a Florida law that made it a crime for “[a]ny negro man and white woman, or any white man and negro woman, who are not married to each other” to “habitually live in and occupy in the nighttime the same room.”

McLaughlin and Hoffman claimed they were innocent because they were married to one another at common law. They were not permitted to raise this defense at trial, however, because another provision of Florida law prohibited marriages between “white and Negro persons.” Through the combination of its marriage laws and its laws regulating nonmarital sex, Florida effectively marked the sexual union between McLaughlin and Hoffman as indelibly illicit. Like couples of the same race, it was illicit for them to have sex outside of marriage. But, unlike couples of the same race, McLaughlin and Hoffman could not marry and avail themselves of the “marriage cure” as a way to cross the illicit–licit sexual divide.

In 1964, in McLaughlin v. Florida, the Supreme Court struck down Florida’s interracial cohabitation law as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The court explicitly declined to rule on the constitutionality of Florida’s race-based marriage restriction. McLaughlin gets short shrift in standard historical accounts of the legal regulation of race, sexuality, and interracial intimacy—accounts that revolve around Loving v. Virginia. Some have noted McLaughlin’s significance for what the Supreme Court did not do—that is, it did not strike down bans on interracial marriage. But few dwell on McLaughlin’s significance for what the court did do—that is, strike down as unconstitutional a state prohibition on interracial cohabitation. For the first time, this holding extended the court’s equal-protection jurisprudence into the deeply socially fraught realm of interracial sex.

What difference might it make to legal understandings of the constitutional protection of sex if McLaughlin took a more prominent place in our collective memory? No doubt McLaughlin is not heralded as a landmark case at least in part because, unlike Loving, it struck down a law regulating not marriage, but rather intimacy outside marriage. While lawyers and courts have long understood the right to marry as constitutive of a certain kind of equal-citizenship status, the right to order one’s intimate life outside marriage has not been understood to implicate the same status or equality concerns.

Perhaps it is time, though, to reorient our perspective on McLaughlin’s significance by untethering the case from a narrative focused almost exclusively on the expansion of the right to formal marriage. We should recognize the case as historically significant not only because the court dodged the question of interracial marriage, but also because the court, for the first time, granted some form of constitutional protection, however minimal, to the sexual union of an unmarried, interracial couple. This shift in perspective—that is, from viewing McLaughlin as a failed right-to-marry case to viewing it as a case about the constitutional status of nonmarital intimacy—might function as a limited corrective to the law’s generally myopic view of marriage as the only form of sexual intimacy tied to one’s place in the public, constitutional order.

To be sure, for people who wanted to structure their intimate lives outside of marriage, McLaughlin was an inadequate constitutional resting place. After all, even after McLaughlin, unmarried people in sexual relationships in Florida and elsewhere risked criminal prosecu-
tion for their still-illicit behavior—albeit, importantly, under laws that could not impose added penalties for interracial sex. While McLaughlin was a major victory for the constitutional jurisprudence of racial equality, then, it could just barely be labeled a partial victory for the constitutional jurisprudence of sexual expression.

After McLaughlin, one of two legal changes was needed for Hoffman and McLaughlin to be able to transport their relationship across the illicit–licit line: Either Florida’s marriage laws had to change to permit interracial marriage, or Florida’s fornication and cohabitation laws had to change to permit unmarried couples to live together licitly. Only the former path captured the imagination of lawyers and commentators in the mid-1960s. And, sure enough, three years later, the court decided Loving. Implicitly, this understanding of McLaughlin as the precursor to Loving was also part of a narrative that accepted the ability of states to prosecute couples like McLaughlin and Hoffman if they did not marry. Marriage remained the only licit form of sexual union.

This is no longer the case. Unlike McLaughlin, the court’s 2003 opinion in Lawrence v. Texas transported some forms of nonmarital sex across the illicit–licit divide. Nonetheless, these two cases about the legal regulation of very different forms of nonmarital sex share a striking similarity: in both cases, the court extended some measure of constitutional protection to two people having sex outside of marriage without extending to those two people the constitutional right to marry. Nonetheless, in the aftermath of each decision, commentators across the political spectrum understood each case as a precursor to allowing the couples in question to marry. Two opinions explicitly not about marriage have been received as two opinions about marriage.

But there is a cost to understanding Lawrence exclusively as a stepping-stone to the Supreme Court same-sex marriage case to be named later—however much I and others hope that courts and legislators will protect the right of same-sex couples to marry. If cases like McLaughlin and Lawrence are understood exclusively as points on the long road to marriage, we lose sight of the possibility that, for some people, the right to engage in sex outside of marriage might be as significant as the right to enter into a legal marriage. In this respect, McLaughlin and its lost legacy might usefully be understood as a cautionary tale for those thinking expansively about the unfolding legacy of Lawrence.

Lawrence might actually be the starting point for two different strands of constitutional jurisprudence. Perhaps, as many have predicted, it will eventually constitute a critical precedent for extending the right to marry to same-sex couples. Or, perhaps, Lawrence will be seen as the beginning of the extension of constitutional protection to a range of sexual practices that do not fall within monogamous marriage. Or, perhaps, as I hope, it will spawn both. At the very least, both options should be explored, for while many people undoubtedly want to build their homes along the road to marriage, the legal map of sexual intimacy should chart alternative constitutionally protected roads.

Transnational Tribulations

Should supranational tribunals have the power to review binding federal and state court decisions?

By Henry Paul Monaghan
HARLAN FISKE STONE PROFESSOR OF CONSTITUTIONAL LAW

The rapidly emerging transnational legal institutions, both legislative and adjudicatory, have generated widespread interest in various branches of American law. Sharp controversy clearly exists with respect to institutions, such as the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), that exercise legislative-like authority and generate rules designed to have internal effect within the United States. These new legislative institutions are a far cry from the international order familiar to the Founding Generation—a world of alliances and trade agreements, but not one of multinational institutions that independently formulate binding norms. American critics of this development have voiced loud concerns over the loss of both American national sovereignty and democratic accountability.

There has been an equally significant parallel development: the emergence of supranational adjudicatory tribunals, both courts and arbitration panels. Salient examples are, of course, not only the arbitration process created by NAFTA, but also the even more elaborate arbitral mechanism embodied in the WTO. Here, too, criticism along sovereignty and accountability lines has emerged.

Criticism to the side, at the very least the role of supranational adjudicatory tribunals has caused sizeable puzzle-ment within the American legal community. Some examples: “To say I was surprised to hear [at a dinner party] that a judgment of this court was being subjected to further review [by a NAFTA arbitration panel] would be an understatement,” said Chief Justice Margaret Marshall of the Supreme Judicial Court of Massachusetts in a telephone interview with New York Times reporter Adam Liptak for his article, “Review of U.S. Rulings by NAFTA Tribunals Stirs Worries.” The chief justice was referring to Mondev International Ltd. v. United States, in which a binational NAFTA panel ultimately rejected a NAFTA-based challenge to a breach of contract decision by the Supreme Judicial Court. Chief Justice Marshall’s misgivings seem widely shared. “There are grave implications here,” said the chief justice of the California Supreme Court: “[I]t’s rather shocking,” he said, “that the highest courts of the state and federal governments could have their judgments circumvented by these [NAFTA] tribunals.” U.S. Court of Appeals Judge Abner Mikva, a former congressman and himself a NAFTA arbitration-panel member, agreed: “If Congress had known that anything like this [was] in NAFTA . . . they would never have voted for it.” A great deal is at stake, says Temple Law School professor Peter Spiro, a well-respected commentator: “[I]t points,” he says, “to a fundamental reorientation of our constitutional system. You have an international tribunal essentially reviewing American court judgments.”

On this topic, I recently published “Article III and Supranational Judicial Review,” which appeared in the 107 Columbia Law Review 833 (2007). The article inquires whether Article III itself imposes limits on the extent to which Congress or the treaty makers (i.e. the president and the Senate) can bypass Article III courts in favor of adjudication by international arbitration panels. My
focus was on NAFTA, particularly Chapter 19, which effectively substitutes a binational arbitration panel for Article III courts to determine whether American administrative agencies have violated American, not transnational, law in applying certain aspects of American trade law. The article also considered the extent to which American courts should attach preclusive or at least great deferential effect to International Court of Justice judgments, in cases in which the United States was a party.

Scholarship about the emerging supranational legal order warrants a few comments. At least at the beginning, two very different schools have emerged: the internationalists and the “constitutionalists.” Of course, wide variation exists within each group. But the polar positions are intriguing. Many international-law and foreign-affairs scholars seldom display any real grasp of the relevant American constitutional-law materials. In fact, many simply do not care about them. Crowell v. Benson not only means nothing to them, but they also do not want to be told that domestic constitutional law, such as Article III, precludes certain kinds of transnational arrangements that they deem desirable.

I can illustrate this from my own faculty. When discussing any question about the Constitution and foreign affairs, one of my colleagues clearly sees the issues only from the international perspective, and any discussion is framed only in terms of the value of such a perspective. If you think I am exaggerating, let me quote the acknowledged doyen of the field of international relations—the reporter of the restatement of foreign relations, the author of a well-known text on the constitution and foreign relations—my colleague Louis Henkin. In his text, this is what he has to say:

It is difficult to accept that United States participation in contemporary forms of multinational cooperation should depend on “technicalities” about “delegation,” “judicial power,” and “case or controversy,” and on forms and devices to satisfy them.

Quite plainly, my recent article on Article III and supranational judicial review would strike him as no more than addressing “technicalities” about the nature of “judicial power.”

On the other hand, one should be chary of people who would cloak themselves with the vestments of “constitutionalists,” or the like. We are all constitutionalists, I would have supposed. The question is: What does that mean? Most self-proclaimed constitutionalists, so far as I can see, also might be described as unilateralists, nativists, or America firsters. As I said, there is a wide diversity within this group of writers. But it is fair to say that the wellspring of their interest in the particular aspects of American domestic constitutional law is a deeply held conviction that, despite their basis in treaty and statute, the emerging supranational legal order is a threat to American sovereignty and democracy. Yale Law School professor Jed Rubenfeld, for example, characterizes the very existence of NAFTA and WTO panels as “a threat to [American] self government.” Thus, these writers are united in their suspicion about the impact of supranational norms on American domestic law.

We can look forward to some very interesting scholarly exchanges as the new transnational legal order continues to take shape. 😄

This essay was reprinted from the recently published Sesquicentennial Essays of the Faculty of Columbia Law School.
Do calls for broad regulatory changes to address the competitiveness of U.S. securities markets go too far?

By Merritt B. Fox

MICHAEL E. PATTERSON PROFESSOR OF LAW AND CO-DIRECTOR OF THE CENTER FOR LAW AND ECONOMICS

The U.S. share of the world’s public equity offerings and secondary market stock trading has been declining. Some commentators point to this decline as a signal that we have too much “regulatory intensity.” Unless we lighten this regulatory intensity for both U.S. and foreign issuers alike, they argue, the United States risks losing its capital markets.

Regulation may well be playing a significant role in this decline, though the case is not clear. But even assuming it is, these commentators’ prescription, by including U.S. issuers, is too broad. Public offerings and secondary trading abroad of U.S. issuer shares are not significant in dollar volume terms. If regulation is causing competitiveness problems, the source is the application of regulation to foreign issuers, not to domestic issuers. Reforming regulation of U.S. issuers may well be advisable, but proposals to do so should stand or fall on their own merits, not hide behind concerns about competitiveness.

Just because only the application of U.S. securities regulations to foreign issuers, not to U.S. issuers, may cause competitiveness problems does not, of course, automatically suggest that foreign issuers should be treated more lightly. Strict environmental regulations, for example, may deter some foreign companies from building factories in the United States, but few would argue that we should exempt foreign companies in order to attract more foreign investment. The dirty air they would create would be just as noxious to Americans as that created by U.S. companies. Securities regulation, however, is very different: the United States has much less interest in the disclosure behavior of established foreign issuers than in that of issuers with their economic center of gravity in the United States. U.S. residents, we will see, are ultimately not greatly affected if an established foreign issuer discloses at the wrong level, even one whose shares are traded or offered in the United States.

The social benefits and costs of issuer
Disclosure are best viewed in terms of the effects of such disclosure on the real economy, i.e., on the production of goods and services. Additional issuer disclosure produces social benefits by improving how proposed new investment projects in the real economy are selected for implementation and the way existing projects are operated. When an issuer contemplates implementing a new project by means of a new offering of stock, the disclosure-induced increase in the accuracy of the price at which the shares will be sold will bring the firm’s cost of capital more in line with the social cost of investing society’s scarce savings in the contemplated project. By increasing the effectiveness of several of the devices that reduce the agency costs of management, disclosure-induced improvements in price accuracy also produce benefits when an issuer is not offering new shares. Among other things, additional disclosure increases the threat of hostile takeover when managers engage in non-share-value-maximizing behavior by making a takeover less risky for potential acquirers and by reducing the chance that a value-enhancing acquisition will be deterred by the target having an inaccurately high share price. Also, by reducing the risk associated with holding an issuer’s stock in a less-than-fully diversified portfolio, additional disclosure increases the use of share-price-based management compensation and makes it a more precise reward.

Disclosure entails social costs as well, of course, in terms of both the out-of-pocket expenses that an issuer incurs for such items as lawyers, accountants, and printing, and the staff time required to produce the needed information. As a result of these benefits and costs, an issuer’s level of disclosure affects the real returns it generates: an issuer has a socially optimal level of disclosure, the level at which the marginal social benefits just equal the marginal social costs.

In an efficient market, an issuer’s share price takes into account the effect of the issuer’s particular disclosure regime on its future expected cash flow. At the same time, because globalization makes capital relatively mobile internationally, competitive forces push capital toward receiving a single, global, expected rate of return (adjusted for risk).

Thus, investors in all the world’s issuers tend to get the same risk-adjusted expected return even though issuer disclosure practices may vary widely from one country to the next. The higher real returns that result from a country’s issuers disclosing at their optimal level, therefore, go largely to the suppliers of the issuers’ less mobile factors of production: the country’s entrepreneurs, who will get higher prices when they sell shares in the firms they founded, and its labor, who are likely to enjoy higher wages in an economy where capital is allocated and used more efficiently. Thus, the persons in the world who primarily benefit from higher real returns when a country’s issuers disclose at their optimal level are the country’s entrepreneurial talent and labor, who are residents of the country, not the investors in these issuers. The application of U.S. regulation to U.S. issuers will have its real economy effects largely concentrated in the United States, whereas its application to established foreign issuers will have its real economy effects largely abroad.

The application of U.S. regulation to U.S. issuers will have its real economy effects largely concentrated in the United States, whereas its application to established foreign issuers will have its real economy effects largely abroad.

...and hence their optimal level of disclosure is lower. Some established foreign issuers can increase their value by voluntarily opting to bind themselves to the U.S. disclosure system, and our capital market competitiveness benefits from their being allowed to do so. Applying it to the rest, however, will deter them from entering U.S. capital markets for no good reason.

This essay was reprinted from the recently published Sesquicentennial Essays of the Faculty of Columbia Law School.
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COLUMBIA LAW SCHOOL
Every so often, an idea comes along that transforms how we understand the world. Columbia Law School Professor Michael Heller has discovered a free market paradox—and he writes about it in The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation, and Costs Lives.

Usually, private ownership creates wealth, but too much ownership has the opposite effect—it creates gridlock. This market dynamic is at the center of Heller’s book. When too many people own pieces of one thing, cooperation breaks down, wealth disappears and everybody loses.

Gridlock surrounds us. “Constructing 25 new runways would eliminate most air travel delays in America. Why can’t we build them?” asks Heller. “There are 50 patent owners blocking a major drugmaker from creating a cancer cure. Why won’t they get out of the way? American cell phone service falls further behind Japan’s and Korea’s while 90 percent of our broadcast spectrum sits idle. Why are we wasting our airwaves? And 98 percent of African American-owned farms have been sold off over the last century. Why can’t we stop the loss?”

These puzzles sparked Heller, the Lawrence A. Wien Professor of Real Estate Law, to write the book. “I realized that all these problems are really the same problem, one whose solution would jump-start innovation, unleash trillions of dollars in productivity, and help revive our slumping economy,” he says.

“Today, the leading edge of wealth creation requires assembly. From drugs to telecom, software to semiconductors, anything high-tech demands the assembly of innumerable patents,” Heller writes. “Also with land, the most socially important projects, like new runways, require assembling multiple parcels. Innovation has moved on, but we are stuck with old-style ownership that’s easy to fragment and hard to put together.”

Even in writing the book, Heller faced gridlock: He couldn’t assemble rights to images he wanted to use. Sometimes he couldn’t find counterparts to bargain with; other times people asked for payment based on long-shot claims. To reproduce his Quaker Oats “Big Inch” deed, a central metaphor for gridlock, Heller negotiated a “no objection letter” from PepsiCo because no one was sure who owned the rights.

Heller uses his Big Inch deed to show how gridlock can arise. In the late 1950s, Quaker Oats subdivided 20 acres in the...
Klondike into 21 million square inch parcels and put the deeds into cereal boxes. Imagine square inches of land with toothpicks as fence posts. “If oil were found underground,” Heller notes, “then negotiating for drilling rights would have been impossible.” Too many owners means too little prosperity.

In the book, Heller offers a lively tour of gridlock battlegrounds, from medieval robber barons to modern-day broadcast spectrum squatters, from Mississippi courts selling African American family farms to troubling New York land confiscations, and from Chesapeake Bay oyster pirates to today’s gene patent and music mashup outlaws.

With simple policy tweaks and innovative business practices, Heller shows, many gridlock dilemmas could be solved. “Nothing is inevitable about gridlock,” he said. “It results from choices we make about how to control our most valued resources. We can unlock the grid once we know where to start.”

RETHINKING JUVENILE JUSTICE
Elizabeth S. Scott and Laurence Steinberg
(Harvard University Press: 2008)

In their new book, Rethinking Juvenile Justice, Columbia Law School Professor Elizabeth S. Scott and Temple University Professor Laurence Steinberg begin with the story of Lionel Tate, a 12-year-old boy from Florida who killed his 6-year-old neighbor, Tiffany Eunick. Tate was charged as an adult and, upon conviction, was sentenced to life in prison without parole. The story is a powerful introduction to a discussion on the juvenile justice system and the professors’ ideas for reform.

Scott, the Law School’s Harold R. Medina Professor of Law, and Steinberg, a Temple psychology professor, examined the system standard and discovered that charging adolescent offenders as adults puts a strain on state budgets and, ironically, increases crime. Their book offers a new way of moving forward by utilizing the most up-to-date developmental research, which shows that adolescence is a growth phase and does not equate to full adult maturity. The professors do not advocate treating young offenders as children, but make a strong case against treating them on par with responsible adults. As a middle ground, they suggest developing laws and policies based on the science of adolescence. This could help save juveniles from a future plagued by crime and spare the American legal and prison systems a significant burden.

THE LAW AND ECONOMICS OF CONTINGENT PROTECTION IN THE WTO
Petros C. Mavroidis, Patrick A. Messerlin, and Jasper M. Wauters
(Edward Elgar Publishing: 2008)

In their new book, The Law and Economics of Contingent Protection in the WTO, Columbia Law School Professor Petros C. Mavroidis, Sciences Po economics professor Patrick A. Messerlin, and White & Case attorney Jasper M. Wauters discuss the contingent protection instruments the World Trade Organization uses most frequently, namely anti-dumping, countervailing measures, and safeguards. The authors draw on academic expertise and ample practical experience to expound on the significance of each specific instrument.

“The authors form an unparalleled triumvirate who successfully draw on their complementary legal-economic experiences, from policy-making, practitioner expertise, and academic scholarship, to comprehensively examine contingent protection,” says Chad P. Bown, associate professor of economics at Brandeis University. “In a single book, they manage to explain the economics to the lawyers, the law to the economists, and the increasing importance of contingent protection policies to everyone.”
ABA GUIDE TO EUROPEAN UNION ADMINISTRATIVE LAW
George A. Bermann, Charles H. Koch Jr., and James T. O’Reilly, eds.
(American Bar Association: 2008)

ADMINISTRATIVE LAW of the EUROPEAN UNION

Introduction

In this interconnected world, the impact of administrative processes in other countries transcends national boundaries, affecting U.S. citizens, U.S. economic interests, and U.S. regulatory choices. In particular, the European Union’s (EU) legislative and regulatory initiatives acutely affect U.S. trade and investment. Yet, most U.S. lawyers and businesses have little knowledge or understanding of the EU or its regulatory systems and processes. They possess even less knowledge of how to effectively participate in EU administrative proceedings or how to comply with EU regulatory directives. Moreover, the mutual lack of understanding about each other’s system has led to barriers in cooperation and communication between the U.S. and the EU, as well as exacerbated trade tensions and hindered commercial activity.

In 2001, at a meeting of the Section of Administrative Law and Regulatory Practice of the American Bar Association (ABA), then Supreme Court Justice Sandra Day O’Connor noted the substantial impediment caused by unfamiliarity with the EU administrative systems among U.S. lawyers and legal scholars. She suggested that the ABA develop an extensive report about EU administrative and regulatory law for use by U.S. private practitioners, government lawyers, and scholars to overcome the barriers created by this unfamiliarity. The ABA moved on Justice O’Connor’s suggestion and formed a team of experts led by chief reporter, Professor George Bermann ’75 LL.M. Working with him were U.S. and EU scholars and practitioners, divided into sections responsible for writing reports on adjudication, rulemaking, judicial review, transparency, and oversight. The Columbia Betts Professor of Law Peter Strauss led the team responsible for writing the volume on rulemaking.

APPEALS MECHANISM IN INTERNATIONAL INVESTMENT DISPUTES
Karl P. Sauvant
(Oxford University Press: 2008)

In his new book, Appeals Mechanism in International Investment Disputes, Columbia Law School Lecturer-in-Law Karl P. Sauvant unites the leading voices in academia, law, and government in a discussion on international investment. The topic is particularly timely in a climate marked by rising international capital flows and a push toward international regulation, which could ultimately lead to a disconnect between the rules established by different parties. Sauvant, who is the executive director of the Vale Columbia Center on Sustainable International Investment, compares and contrasts the experts’ analyses and arguments. The authors also propose ways to implement a more streamlined, efficient process that brings the benefits of free trade and investment flows to both developed and emerging countries.
DEFENDING HUMANITY: WHEN FORCE IS JUSTIFIED AND WHY
George P. Fletcher and Jens David Ohlin
(Oxford University Press: 2008)

In their new book, Defending Humanity: When Force is Justified and Why, Columbia Law School Professor George P. Fletcher and Jens David Ohlin attempt to answer a question that plagues the public consciousness, especially in a time of war: When is war justified? The question becomes particularly nuanced when other uses of force come into play, such as preemptive attacks, preventive wars, and intervention in genocide.

Their book offers a new interpretation of Article 51 of the United Nations Charter and the international law of self-defense. It also analyzes humanitarian intervention, aggressive war, and the doctrine of preventive war. Fletcher and Ohlin argue that Article 51’s provision on self-defense should be interpreted to include the “legitimate defense” of third parties under attack. The authors use this novel interpretation as a legal basis for justifying humanitarian intervention.

“With its elegant distinctions and provocative theories, Defending Humanity offers a much needed rethinking of the disparate justifications for war,” says Kimberly Ferzan, professor at Rutgers University School of Law. “But at least as importantly, it is methodologically diverse, presenting a rich tapestry of comparative, criminal, and international law.”

RELIGION AND THE CONSTITUTION: VOLUME 2: ESTABLISHMENT AND FAIRNESS
Kent Greenawalt

Religion and the Constitution: Volume 2: Establishment and Fairness is Columbia Law School Professor Kent Greenawalt’s second volume addressing the turbulent relationship between religion and the Constitution. In the book, Greenawalt focuses on the First Amendment’s Establishment Clause and addresses prayer and the teaching of intelligent design in public schools, the use of “under God” in the Pledge of Allegiance, and religious representations erected on public property.

Greenawalt argues that there is no one-size-fits-all approach to dealing with Establishment Clause controversies. Instead, he advocates accommodating the maximum expression of religious conviction that still maintains a constitutionally mandated fairness and respect for public welfare.

“This is the most important work on the Establishment Clause in the literature,” says Steven H. Shiffrin, professor at Cornell University Law School. “And it will remain so for a long time to come. Virtually every chapter breaks new ground.”
LAW AND CAPITALISM:
WHAT CORPORATE CRISSES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD
Curtis J. Milhaupt and Katharina Pistor
(The University of Chicago Press: 2008)

In their new book, Law & Capitalism: What Corporate Crises Reveal About Legal Systems and Economic Development Around the World, Columbia Law School Professors Curtis J. Milhaupt and Katharina Pistor seek to contradict the prevailing assumption that a U.S.–style rule of law is vital to a successful economy. To bolster their argument, the scholars analyze recent high-profile corporate scandals around the world—from Enron in the United States to Yukos in Russia to Livedoor in Japan. Milhaupt and Pistor also argue that a wide variety of mechanisms—both legal and non-legal—have supported economic growth.

“The standard approach assumes there is a single optimum model, but there are many systems out there, and each has its own strengths and vulnerabilities,” notes Pistor.

Milhaupt says that the book’s core argument has potentially far-reaching ramifications for such global economic policy players as The World Bank, which often gauges the potential success of other countries’ systems on their assimilation to the U.S. legal and regulatory system. “We’ve lost the perspective that the U.S. legal system has evolved tremendously over time in response to specific events and crises,” Milhaupt says.

Why should we assume that countries at a different stage of development and with a different institutional starting point should require the same set of laws to support economic growth?”

Policy-makers, business leaders, and scholars should not think so rigidly, the authors argue. Law and markets evolve together in a rolling relationship based on events on the ground, and that calls for a more dynamic conception of how legal systems promote healthy economies. Law & Capitalism provides such a conception and applies it to six countries at different stages of legal and economic development.

TRADE MARKS AND BRANDS:
AN INTERDISCIPLINARY CRITIQUE
Edited by Lionel Bently, Jennifer Davis and Jane C. Ginsburg
(Cambridge University Press: 2008)

In their new book, Trade Marks and Brands: An Interdisciplinary Critique, Columbia Law School Professor Jane C. Ginsburg, University of Cambridge Professor Lionel Bently (BNL visiting professor at Columbia Law School, spring 2008), and Wolfson College at the University of Cambridge Lecturer Jennifer Davis have compiled essays examining the current state of trade marks and brands from several disciplines, including linguistics, sociology, philosophy, geography, and economics. The book places essays by both attorneys and specialists from other fields side by side, allowing each commentator to critique his or her counterpart. The varied interpretations are meant to enlighten and enrich both academics and practitioners in order to promote the development of positive law.
José Álvarez, Hamilton Fish Professor of International Law and Diplomacy

- “Foreword: Progress in International Law?” in Progress in International Law (Russell A. Miller and Rebecca M. Bratspies, eds.) (2008)
- “What Lawyers Want to Know” (Karl Sauvant, ed.) forthcoming in Global Players in Emerging Markets (2009)

Mark Barenberg, Professor of Law

- “Toward a Democratic Model of Transnational Labor Monitoring” in Regulating Labor in the Wake of Globalization (Brian Bercusson and Cynthia Estlund, eds.) (Hart Publishing: 2008)

Vivian Berger, Nash Professor Emerita of Law


George A. Bermann, Jean Monnet Professor of EU Law, Walter Geilhorn Professor of Law, and Director of European Legal Studies

- Introduction to French Law (with E. Picard) (Kluwer: 2008)
- “The Allocation of Jurisdiction between Arbitrators and Courts” (festschrift for Pierre Tercier) (Montcrefien: 2008)
- “La concertation réglementaire transatlantique” (festschrift for Helene Gaudemet-Tallon) (Daloz: 2008)

Michael W. Doyle, Harold Brown Professor of International and Public Affairs, of Law, and of Political Science

- “Liberalism and Foreign Policy” in Foreign Policy: Theories, Actors, Cases (Steve Smith, Amelia Hadfield, and Tim Dunne, eds.) (Oxford University Press: 2008)
- “Fostering Ethical Globalization: An Interview with Michael Doyle” (by Sacha Tessier-Stall) in Policy Innovations (2008)

Christina Duffy Burnett, Associate Professor of Law


Elizabeth Emens, Associate Professor of Law


Jeffrey Fagan, Professor of Law and Public Health


Robert Ferguson, George Edward Woodberry Professor in Law, Literature, and Criticism


George Fletcher, Cardozo Professor of Jurisprudence


Philip Genty, Clinical Professor of Law


Ronald Gilson, Marc and Eva Stern Professor of Law and Business


Jane C. Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law

• 2008 Supplement to Trademark and Unfair Competition Law (with Jessica Litman and Mary L. Kevlin) (Foundation Press: 2008)
• “Of Mutant Copyrights, Mangled Trademarks, and Barbie’s Beneﬁcence: The Inﬂuence of Copyright on Trademark Law” in Trademark Law and Theory: A Handbook of Contemporary Research (Graeme B. Dinwoodie and Mark D. Janis, eds.) (Edward Elgar Publishing: 2008)

Suzanne B. Goldberg, Clinical Professor of Law

Harvey Goldschmid, Dwight Professor of Law

Kent Greenawalt, University Professor

C. Scott Hemphill, Associate Professor of Law
• “Network Neutrality and the False Promise of Zero-Price Regulation” in the Yale Journal on Regulation (2008)

Benjamin Liebman, Professor of Law, Director of the Center for Chinese Legal Studies
• “Reputational Sanctions in China’s Security Markets” (with Curtis Millhaup) in the Columbia Law Review (2008)

Gillian Metzger, Professor of Law

Eben Moglen, Professor of Law
• Information concerning Professor Moglen’s publications and other activities can be found by consulting wikipedia.org.

Trevor W. Morrison, Professor of Law

Nathaniel Persily, Professor of Law

Alex Raskolnikov, Associate Professor of Law, Co-Chair, Transactional Studies Program
• “Columbia Law School Professor Suggests Derivatives Be Subject to Mark-to-Market Regime” in Tax Notes Today (2008) (Published version of testimony at the hearing of the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Select Revenue Measures (March 5, 2008))

Daniel Richman, Professor of Law

Chuck Sabel, Maurice T. Moore Professor of Law

Carol Sanger, Barbara Aronstein Black Professor of Law

Karl Sauvant, Executive Director of the Columbia Program on International Investment
• “Chinese Direct Investment in the United States: The Challenges Ahead” (with Clarence Kwan) in Location USA (2008)
• “Fair Contracts for Poor Countries” in at least 19 papers in seven languages around the world (Project Syndicate: 2008)

Peter Strauss, Betts Professor of Law
• “Overseers or The Deciders—The Courts in Administrative Law” in the University of Chicago Law Review (2008)
• Legal Methods: Understanding and Using Cases and Statutes 2d edition (Foundation Press: 2008)
malcolm s. mason has published a new book, Philosopher in a Flivver. The book is focused on the thoughts of a philosopher driving a Model T Ford and is available at major bookstores.

daniel friedman, senior circuit judge of the United States Court of Appeals for the Federal Circuit in Washington, D.C., celebrated his 30th year on the bench this spring. Friedman has authored more than 500 opinions since his appointment to the federal bench in 1978.

albert momjian, chair of the family law department at Schnader Harrison Segal & Lewis in Philadelphia, was honored as a 50-year member of the bar at the Quarterly Meeting and Luncheon of the Philadelphia Bar Association on June 30. The publishers of Super Lawyers also recently named Momjian one of the top 10 attorneys in Pennsylvania.

thomas d. kent and his wife, Ann, recently moved from Seabrook Island, S.C., to a continuing care retirement community just north of Philadelphia. In anticipation of the move, the couple has joined the Merion Cricket Club, where their “geographically stable” child and his family are also members.

joseph f. cunningham recently published an article in the Brooklyn Journal of Corporate, Financial, and Commercial Law titled “Attorneys’ Fees Dispute in Cases Involving Covered and Uncovered Claims: Who Pays?” In the article, Cunningham, principal of trial and appellate firm Cunningham & Associates, discusses the apportionment of defense costs when some but not all claims against an insured generate a defense by a carrier. Cunningham and his wife, Andrea, recently traveled to Thailand, where the couple paid a visit to a tiger park.

ira s. novak has been selected for inclusion in the health care section of New Jersey Super Lawyers 2008. He is a member of Norris McLaughlin & Marcus in Somerville, N.J.

robert s. blanc has been named to Texas magazine’s 2008 list of Houston’s top lawyers. Blanc is of counsel in the bankruptcy group of Gardere Wynne Sewell in Houston.

arnold d. fleischer has been a bluegrass and old-time Appalachian-style banjo player for more than 45 years. Since he retired from the New York attorney general’s office in 2003, his musical activities have increased dramatically. He books artists for one of the longest-running bluegrass concert series in the country and has performed at the Thomas Point Beach bluegrass festival in Maine.

michael garrett has joined Executive Coaching Group in New York as a senior consultant and executive coach. Garrett also serves on the Columbia Law School Association Board of Directors.

peter brown has joined Baker & Hostetler as a partner in the New York office, where he will serve as the national leader of the firm’s technology law practice. Previously, he was a founding partner of Brown Raysman Millstein Felder & Steiner. Brown currently serves as chair of the Commercial and Federal Litigation Section of the New York State Bar Association.
GREGORY HO ’77
KEEPING A PROMISE

When Gregory Ho ’77 turned 45, he remembered a promise he’d made to fellow Columbia Law School classmate Christopher Smallwood ’77. He swore that upon the arrival of his 45th birthday, he would quit whatever he was doing and try something new. Not wanting to go against his word, Ho submitted his resignation to McKinsey & Company, the international management consulting firm where he’d worked as chief financial officer. During his 16-year tenure at McKinsey, he grew the firm from 900 employees in 13 countries to 9,000 employees in 40 countries. He logged 2 million miles on American Airlines in the process. “There are two ways to see the world: Join McKinsey or join the Marines,” he says. “It was really quite a bit of fun.”

After stepping down, Ho spent the initial three years with his wife and young daughter, Julia. When Julia started school, he decided to tap into his business side and finally do “the financial thing” in New York.

In 2001, Ho partnered with John L. Steffens, the former vice chairman of Merrill Lynch, and J. Ezra Merkin to form Spring Mountain Capital, a SEC-registered investment advisory firm specializing primarily in hedge funds, private equity funds, and venture capital. “Spring Mountain Capital is a very private investment firm,” says Ho, who serves as SMC’s president and chief operating officer. “We manage about $3.5 billion and have almost 40 employees.”

1972

joseph j. fleischman, of Norris McLaughlin & Marcus in Somerville, N.J., has been selected by his peers for inclusion in the business section of New Jersey Super Lawyers 2008.

j. anthony manger, head of the health care division at Norris McLaughlin & Marcus in Somerville, N.J., was selected for inclusion in the health care section of New Jersey Super Lawyers 2008.

1973

mark d. alpert will assume the presidency of the Tufts University Alumni Association from 2008 to 2010.

david s. gordon was selected to appear in the Chambers USA 2008 register of America’s Leading Lawyers for Business. Gordon is a shareholder at Wilentz, Goldman & Spitzer in Woodbridge, N.J. He is a member of the firm’s commercial real estate team, the land use and environmental subteams, and the redevelopment strategic business unit.

1974

william e. walters iii is currently serving as president of the Colorado Bar Association. Walters is an attorney with Kelly Garnsey Hubbell & Lass in Denver, where he advises nonprofits and for-profit businesses, as well as trade and professional associations.

ken thomas macdermotroe, who went by Ken Thomas during law school, retired from practicing law and lives with his wife, Bonnie, and children, Marchand, Dolley, and Conor, in Old Greenwich, Conn. He hosts the radio series “History Counts,” which is broadcast on Connecticut’s WPKN and other stations. The series is archived at Historycounts.org.
When Thomas Rogers ’79 joined TiVo as president and chief executive officer in 2005, the company was ailing. Its revolutionary television set–top boxes stormed the market in the late 1990s and spawned the digital video recording craze, making TiVo one of the world’s most recognized brands—and its own verb. That momentum petered out as cable companies launched their own versions of the TiVo system.

“When I got to TiVo, I think many people had counted TiVo out,” says Rogers, former CEO of Primedia, as well as president of NBC Cable, NBC executive vice president, and the network’s chief strategist. “[It was] a pioneer that many felt had been commoditized.”

Rogers, who has been interested in media since he got hooked on Leave it to Beaver reruns as a child, seized on his appointment to company head and launched a three-part re-emergence strategy. At the end of April 2008, TiVo reported a record net income.

In addition to significantly enhancing the set-top boxes that made TiVo famous—by, for instance, making available right to the TV set millions of songs and videos, and thousands of movies and TV shows not available on cable or satellite—Rogers has also directed the company toward developing software to bring TiVo to the average cable DVR. Comcast, the nation’s largest cable company, is now rolling out TiVo to its subscribers, and Cox, the nation’s third largest cable provider, will begin doing so at the end of the year.

TiVo launched its latest innovation, a “product purchase” feature, in July. This feature stems from a partnership with online retailer Amazon.com and allows TiVo users to purchase advertised products right off the television. “The idea of buying things with your remote control is not that new,” Rogers says. “What we came up with is a way that makes it really easy for television viewers.”

1976

Eric H. Holder Jr. was recently named one of The National Law Journal’s “50 Most Influential Minority Lawyers in America.” Holder, a partner in the firm of Covington & Burling in Washington, D.C., is a national co-chair for the Barack Obama presidential campaign. He is an emeritus member of Columbia Law School’s Board of Visitors, on which he served from 1995 to 2003. Holder previously served as U.S. Attorney for the District of Columbia and was the first African-American to serve as deputy attorney general.

1979

William Barbeosch is the chief fiduciary officer of GenSpring Family Offices and chairman of Teton Trust Company, the firm’s trust company affiliate. Prior to joining GenSpring, he was managing director and chief fiduciary officer of Citigroup Trust. Barbeosch has also served as managing director with JP Morgan Chase, where he was responsible for a variety of estate planning services and trust administration for private bank clients worldwide.

1978

Sue Ellen Dodell is general counsel at the New York City Campaign Finance Board. Dodell helps enforce New York City’s landmark campaign finance law. The board provides public matching funds to candidates who agree to limits on contributions and expenditures. It also publishes a Voter Guide and administers a debate program.

1980

Harlan Levy, a litigation partner at Boies, Schiller & Flexner in New York, recently published an article on expert witnesses at trial in the American Bar Association journal Litigation. The article, “Making Experts Matter,” was then selected for publication in a compilation of the best articles from various ABA magazines and journals.
Edward Fernandes was recently named one of The National Law Journal’s “50 Most Influential Minority Lawyers in America.” Fernandes, whose family emigrated from the Cape Verde islands when he was a child, now manages the litigation team in the Austin, Texas, office of Akin Gump Strauss Hauer & Feld. He represents some of the country’s largest companies in complex litigation involving trade secrets, international banking transactions, and intellectual property. Fernandes has served as a director of the State Bar of Texas and has been an adjunct professor at the University of Houston Law Center.

Z. Jill Barclift was recently named associate professor of law at Hamline University School of Law. Barclift was previously an assistant professor of law at Hamline.

Maria Patterson recently accepted a senior counsel position at Diamond McCarthy in the firm’s New York office. Previously, Patterson had spent more than 15 years as senior counsel at the Bank of New York, where she also served as acting head of litigation.

Matthew Eilenberg has been an in-house lawyer/legal consultant with Watson Wyatt Worldwide, a global human resources consulting and actuarial firm, since 1999. His oldest son is a pitcher for the University of Massachusetts Amherst baseball team, so Eilenberg and his wife, Helene Santo, have become sandlot connoisseurs, travelling to baseball fields all over the country.

Gay Crosthwait Grunfeld, a partner at Rosen, Bien & Galvan in San Francisco, recently settled a major class action lawsuit granting due process and Americans with Disabilities Act rights in parole revocation proceedings to thousands of juvenile offenders in California.

One commentator described the rights guaranteed by the settlement as the most historic development in California juvenile law in the past 30 years.

Kelly Crabb, a partner in the Los Angeles office of Morrison & Foerster, has been named to the Operation Kids National Advisory Board. The mission of Operation Kids is to support a community of children’s issues through qualified and measurably effective charities and programs.

Richard H. Kreindler was recently elected to the Board of Advisors of the German Society of International Law, as well as to the Board of Advisors of the Heidelberg Center for International Dispute Resolution.

Mary Ellen O’Connell, a legal academic, recently published a book titled The Power and Purpose of International Law (Oxford University Press). O’Connell’s book deals with the theory and practice of international law at a time when it has come under attack by legal scholars.

Daniela Weber-Rey, LL.M., joined the Advisory Board of BNP Paribas, Paris, one of the leading banks in Europe. In July, Germany’s Federal Ministry of Justice appointed Weber-Rey to become a member of the prestigious German Corporate Governance Commission.

Letitia Jane Accarrino is a vice president/senior analyst in the Asset-Backed Commercial Paper group at Moody’s Investors Service. Accarrino has five stepchildren with her husband, Frank, and the couple also has a 2-year-old daughter named Charlotte. Accarrino’s major philanthropic interest lies with the Monmouth County SPCA, where she is sponsoring a maternity ward for dogs and cats.

Gregory C. Smith has written his first novel, A Matter of Choice, which is scheduled to be published this fall. Smith has spent the last 20 years at Skadden, Arps, Slate, Meagher & Flom, and he currently serves as a corporate partner in the firm’s Silicon Valley office. Smith spends most of his free time doing the job he truly loves, being father to Olivia, 6, and twins Evelyn and Sebastian, both 3.
EVE BURTON ’89
FIRST AMENDMENT FREEDOM FIGHTER

When San Francisco Chronicle reporters Lance Williams and Mark Fainaru-wada broke the baseball-tainting BALCO steroid scandal, a federal grand jury issued subpoenas demanding that the reporters reveal their confidential sources. As vice president and general counsel for the Hearst Corporation, the Chronicle’s parent company, Eve Burton ’89 was tasked with keeping those sources secret. “After 450 accurate stories and dozens of motions and meetings with the federal government, along with litigation that went to the 9th Circuit, all of which was handled in house, we were successful in protecting our sources,” says Burton, who has been with Hearst since 2002.

Burton first developed an interest in First Amendment rights at Columbia Law School, where she devoured the endless debates that Professors Vincent Blasi and Henry Monaghan conducted on the topic. After graduation, she joined Weil, Gotschal & Manges in New York and became the primary lawyer handling legal matters at the New York Daily News. “It was ultimately that experience that led me to more fully understand the vital importance of the First Amendment to a free and open society,” says Burton, whose husband of 25 years, John Finck, is a journalist. “The First Amendment is the legal backbone by which most great news and media companies are built.”

Burton next assumed the role of vice president and chief legal counsel at CNN, where she led a successful effort to secure audio access in the Supreme Court case Bush v. Gore.

1989
rajesh vallabh recently joined the New York office of Axiom, a new model professional services firm focused on the high-end legal market. Vallabh was previously a principal at the Boston IP Law Group, where he counseled clients on all aspects of domestic and foreign patent protection, patent procurement strategies, and patent enforcement and defense.

1992
andrew cameron has been appointed group senior vice president, general counsel, and secretary of The PMI Group Inc. in Walnut Creek, Calif. In that position, Cameron will be responsible for managing all legal affairs for the company.

1993
sheila s. boston, a partner in the litigation department at Kaye Scholer in New York, was recently honored by the Metropolitan Black Bar Association as the “2007 Lawyer of the Year.”

1994
francine e. tajfel, an associate at Wilentz, Goldman & Spitzer in Woodbridge, N.J., School of Law. LaCombe has been an immigration lawyer for her entire legal career, beginning as a solo practitioner, then moving to in-house counsel. For the past eight years, she has been in the Michigan office of the world’s largest immigration law firm, Fragomen, Del Rey, Bernsen & Loewy.

regina ciccone macadam has joined the health care providers industry team in the Rochester office of Harris Beach. MacAdam, who specializes in the health care regulatory and compliance fields for both nonprofit and for-profit entities, will serve as senior counsel.

1992
michael p. sandonato, a partner at Fitzpatrick, Cella, Harper & Scinto in New York, and Kristin (Blemaster) Hogan ’05, an associate at the firm, won a 2008 Burton Award for Legal Achievement in recognition of their National Law Journal article titled “High Court to Rule on Territorial Reach of Patents.”

1993
kai larson recently joined the New York office of Axiom, a new model professional services firm focused on the high-end legal market. Larson previously served as general counsel for Tapestry Pharmaceuticals.

1994
alexandra lacombe recently became an adjunct professor at the University of Detroit Mercy School of Law. LaCombe has been an immigration lawyer for her entire legal career, beginning as a solo practitioner, then moving to in-house counsel. For the past eight years, she has been in the Michigan office of the world’s largest immigration law firm, Fragomen, Del Rey, Bernsen & Loewy.
Julie Spellman Sweet ’92 juggles an international law practice, a long-distance marriage, and a growing family.

Sweet, a partner at Cravath, Swaine & Moore in New York, recently gave birth to her second daughter, Abby, who now plays little sister to first-born Chloe. Her husband, whom she met while working in Hong Kong, is currently serving as chief of staff for Secretary of Homeland Security Michael Chertoff in Washington, D.C. “You have a good partnership with your husband, and you just make it work,” says Sweet, who specializes in private equity matters.

In 2007, Sweet landed on the cover of The American Lawyer for her work representing the underwriters in the $5 billion initial public offering of KKR Private Equity Investors. The transaction culminated in 2006, and it made Sweet the magazine’s dealmaker of the year. “At the time I got into [practicing private equity law], it was kind of at the beginning of the wave of equity,” Sweet says. “I have been fortunate to work on various large, complicated, and sometimes unusual transactions over my career as a partner at Cravath.”

Francisco, Calif., is dedicating his race to raising funds for Vitamin Angels, an international nonprofit organization that provides vitamins for malnourished children and families.

Robert A. Leuthner, LL.M., follows his experiences as associate and partner with various Austrian law firms by establishing his own firm, Mondl Leuthner Attorneys at Law, in Vienna, Austria.

Jennifer C. Friedman was named director of the new Public Interest Law Center at Pace Law School. For the past 10 years, Friedman served as the founding director of the Courtroom Advocates Project, which offers pro bono advocacy to domestic violence victims petitioning for orders of protection in New York City’s family courts.

Angelica Dickens joined the American Civil Liberties Union and the ACLU Foundation as corporate counsel.
BRAD MELTZER ’96 BESTSELLING AUTHOR IS BACK WITH THE BOOK OF LIES

Brad Meltzer ’96 recently released a new novel, The Book of Lies, which unites the biblical murderer Cain with the heroic comic book character Superman. The juxtaposition of good and evil is certainly nothing new, but that’s not Meltzer’s slant.

The idea arose when Meltzer realized that, in the case of the first documented murder in the history of the world, there is no known murder weapon. The Bible is silent on the issue, Meltzer notes, and that made him think.

Then Meltzer learned that the father of famed Superman creator Jerry Siegel had been murdered. The cause of death was most likely a gun shot wound to the chest. The crime was never investigated, the criminal never brought to justice. It seemed that Siegel created Superman to be the bulletproof man his father wasn’t. “The book is about us,” says Meltzer, who is also a comic book author. “These stories, the Bible and Superman, are the great stories of modern times.”

Meltzer’s book, which debuted in September, follows a string of six consecutive bestsellers, including The Zero Game and The First Counsel. The writer, who completed his first bestselling novel, The Tenth Justice, at Columbia Law School, never practiced law. But the discipline gave him a new world to embrace, something he knew he needed after his first novel, which was based on his life in college, resulted in 24 rejection letters. That experience is a fond memory now, and the manuscript still sits on his shelf. Just the other day, he picked it up to take a look back in time. “It was like reading your diary,” Meltzer says. “What I love about the book, it has all the passion of someone falling in love with writing. It’s a giant, hysterical mess—but it’s my mess.”

1999
dalia (osman) blass was awarded the Federal Bar Association’s Manuel F. Cohen Award (Outstanding Young SEC Attorney) 2007.
gervasio colombres, ll.m., co-founded Oría, Colombres & Saravia Abogados in Buenos Aires, Argentina, with Jorge Oría ‘04, ll.m., and Francisco Saravia ‘06, ll.m. The practice focuses on general corporate and business matters, such as capital markets transactions, mergers and acquisitions, finance, banking, real estate, and general contractual issues.

2000
mochamad fachri, ll.m., was promoted to partner at Hadiputra, Hadinoto & Partners, the affiliate of Baker & McKenzie in Jakarta, Indonesia. Fachri is a member of the firm’s tax and trade practice group.

michael holland recently accepted a position at Morgan Joseph in Miami as vice president of investment banking.

hillary schwab, a partner with Pyle, Rome, Lichten, Ehrenber & Liss-Riordan in Boston, was recently named one of 25 rising stars of the bar in the Up & Coming Lawyers edition of Massachusetts Lawyers Weekly. The section highlights attorneys who have been members of the bar for 10 years or less and who have distinguished themselves from their peers. Schwab recently scored two big victories in tip litigation for restaurant wait-staff in Massachusetts.

dylan willoughby has joined the faculty of UCLA School of Law. He also recently received a residency fellowship from the Yaddo artists’ colony in Saratoga Springs, NY. In addition, Chester Creek Press has just published a book of his poetry. His poem, “Dusk at St. Mark’s, as seen from Dunkin’ Donuts,” appeared as the poem of the day on the Verse Daily Web site.

2000
mochamad fachri, ll.m., was promoted to partner at Hadiputra, Hadinoto & Partners, the affiliate of Baker & McKenzie in Jakarta, Indonesia. Fachri is a member of the firm’s tax and trade practice group.

steven j. ferguson has joined Bryan Cave as an associate in the firm’s New York office. Ferguson specializes in real estate acquisitions and development projects covering multiple asset classes.

marc j. jones, the assistant attorney general in Boston, was recently named one of 25 rising stars of the bar in the Up & Coming Lawyers edition of Massachusetts Lawyers Weekly. The section highlights attorneys who have been members of the bar for 10 years or less and who have distinguished themselves from their peers. In his current position in the Massachusetts attorney general’s office, Jones has participated in two prominent cases, including a trial in which he secured one of the toughest sentences ever imposed in a white-collar crime case in Massachusetts.
2001

Erica Beecher-Monas, J.S.D., '95 LL.M., was recently selected as a Fulbright Scholar to China. Beecher-Monas is a professor at Wayne State University Law School, where her areas of expertise include corporations and evidence. She will be assigned to a city in China, beginning in February 2009.

2003

Mattia Colonnelli de Gaspieris, LL.M., has joined the partnership of the Italian independent law firm Lombardi Molinari e Associati. He advises international clients on mergers and acquisitions, finance and capital market transactions.

2004

Carol Michelle Mann recently became an associate in the Austin, Texas, office of Jackson Walker. She specializes in corporate finance and general corporate transactional matters.

Mario Victor Leonen, LL.M., has been elected dean of the University of the Philippines College of Law. Leonen’s work has a particular emphasis on the environment, indigenous peoples’ rights, and sustainable development.

2005

Jorge Oría, LL.M., co-founded Oría, Colombres & Saravia Abogados in Buenos Aires, Argentina, with Gervasio Colombes ’99, LL.M., and Francisco Saravia ’06, LL.M. The practice focuses on general corporate and business matters, such as capital markets transactions, mergers and acquisitions, finance, banking, real estate, and general contractual issues.

2006

Francisco Saravia, LL.M., co-founded Oría, Colombres & Saravia Abogados in Buenos Aires, Argentina, with Gervasio Colombes ’99, LL.M., and Jorge Oría ’04, LL.M. The practice focuses on capital markets transactions, mergers and acquisitions, finance, banking, real estate, and general contractual issues.

VICKY L. BEASLEY ’99
ENSURING ELECTION PROTECTION

This year, Vicky L. Beasley ’99, an attorney with Patton Boggs in Washington, D.C., was a fixture at the presidential primaries in Ohio, Pennsylvania, South Carolina, and Virginia. The trips weren’t for firm business; Beasley attended each primary as an advocate for voters’ rights. She trained lawyers, helped with polling operations, and assisted with any legal issues that arose.

Beasley first got involved in election law after the presidential campaigns of 2000. Thanks in part to the Help America Vote Act and increased awareness about potential polling issues, many states have made positive strides in this area since then. “[But] there are still challenges,” Beasley notes. “The election process is very much driven by humans, and there is room for human error.”

The 2004 presidential election marked the apex of Beasley’s efforts to secure voters’ rights. She left her job at a corporate law firm and dedicated herself entirely to the issue. Beasley served as the legal director for the People for the American Way Foundation, a major partner in the nonpartisan 2004 Election Protection program, which is a national coalition dedicated to protecting voters and their rights. Her efforts earned her the National Bar Association’s Presidential Achievement Award in 2005.

After the election, Beasley decided to return to corporate law and joined Patton Boggs, where she works on mergers and acquisitions, as well as corporate finance. Her pro bono work, both election-related and otherwise, continues with the firm. “It’s been a fun ride,” she says.
Let us know

Were you recently named partner? Have you joined a new firm? Climbed a mountain? Published an article? Or have a new member of the family to announce?

Well, we want to hear about it.

Class Notes Submissions
Please e-mail your news to magazine@law.columbia.edu with the heading “Class Notes Submission” in the subject line. Please be certain to include your year of graduation in the e-mail. Photo attachments are welcomed, but due to space limitations the magazine cannot guarantee publication of submitted photographs.

Class Notes submissions may be edited for clarity and space. Columbia Law School Magazine cannot guarantee the publication of all items.
Doris (Larson) Wechsler ’58

MARCH 27, 2008

DORIS (LARSON) WECHSLER ’58 was the second wife of the prominent late Columbia Law School Professor Herbert Wechsler ’31 and a major patron to the Law School. She passed away on March 27, 2008, at the age of 92.

Mrs. Wechsler grew up in Orange, N.J., and received her bachelor’s degree from Douglass College at Rutgers University in 1937. The daughter of a lawyer who discouraged her from attending law school, Mrs. Wechsler chose to pursue a legal path later in life, enrolling at Columbia Law School in 1955 after the death of her first husband, Edward Klauber. She married Columbia Law School Professor Herbert Wechsler in 1957 and practiced law for five years after graduating in 1958. Thereafter, she retired from the law to travel with Professor Wechsler, who also directed the American Law Institute, which was then housed at Columbia Law School.

Mrs. Wechsler assisted her husband in research for the seminal 1964 Supreme Court case of New York Times v. Sullivan, which he argued and won on behalf of the Times. The case, a landmark victory for freedom of the press and First Amendment rights, established the actual malice standard for libel cases involving public figures.

Mrs. Wechsler generously supported Columbia Law School both before and after her husband’s death. She donated Professor Wechsler’s extensive collection of legal papers and correspondence to the Law School’s Arthur W. Diamond Law Library. The donation included his work as chief technical advisor to the American judge at the Nuremberg trials. Mrs. Wechsler also supported the Law School in its fund-raising efforts, donating, with Professor Wechsler, more than $250,000, including gifts to the Annual Fund, the Human Rights Fund, the Dean’s Fund, and the Barbara Aronstein Black Law Professorship.
Abraham Abramovsky ’76, J.S.D., ’71, LL.M.  

JULY 23, 2007

ABRAHAM ABRAMOVSKY ’76 was a professor and internationally renowned criminal defense attorney who earned a reputation as a tireless advocate for the rights of the accused. He passed away at home in New York on July 23, 2007, at the age of 60.

Abramovsky earned his bachelor’s degree from Queens College and his law degree from the State University of New York at Buffalo before completing his legal education at Columbia Law School. He joined the Fordham Law School faculty in 1979 and taught there until his death. He was the long-time author of a column in the New York Law Journal, and his article on depraved indifference homicide, titled “Depraved Indifference Murder Prosecutions in New York: Time for Substantive and Procedural Clarification,” recently was cited by the New York Court of Appeals in an opinion that cautioned against overuse of the charge.

A native of Israel, Abramovsky was also an expert in Jewish law. His father, one of the best known criminal lawyers in Israel who passed away when Abramovsky was 8, ultimately inspired him to pursue a criminal law career.

Abramovsky is survived by his four children, who carry on his dual passions for education and the law. His daughter, Aviva, is an assistant professor at Syracuse University College of Law. His sons Dov and Abba (“Bucky”) both graduated Fordham Law School in 2007, and his son Ari is pursuing a master’s degree in education.

Sarah McLean ’33  

JAN. 30, 2008

SARAH MCLEAN ’33 was one of the first female graduates of Columbia Law School. Her law career spanned almost 40 years. She passed away in Washington, Conn., on Jan. 30, 2008, two months shy of her 100th birthday.

Born in New York City, McLean was the granddaughter of Brig. Gen. Nathaniel C. McLean of the Union Army and great granddaughter of U.S. Supreme Court Justice John McLean, who wrote the dissenting opinion in the Dred Scott v. Sanford case in 1856. Her father, Marshall, was a prominent attorney and conservationist. Her mother, Helen, became a U.S. singles tennis champion in 1906.

McLean worked with her mother during World War II in the Motor Corps of the Army. After graduating from Vassar College in 1930 and Columbia Law School in 1933, McLean joined her father’s firm of McLean, Ferris, Ely & Fian. She left the firm in 1940 to become the law secretary to Judge Albert Conway of the New York Court of Appeals. In 1944, McLean joined the Equitable Life Insurance Society as assistant counsel, a position she held until her retirement in 1970.

McLean worked to ensure the success of future generations of women through her work with the National Association of Women Lawyers and as the charter president of the Soroptimist Club in Bronxville, NY. 

in memoriam
The Columbia Law School community extends its deepest sympathy to the loved ones of recently deceased alumni.

Please e-mail In Memoriam notifications to magazine@law.columbia.edu with the heading “In Memoriam” in the subject line.

As part of this e-mail, please be certain to include the full name of the deceased, the year of graduation from the Law School, and the approximate date of death.

Milton T. Prager ’33
MARCH 3, 2008

James Heller ’34
JAN. 31, 2008

John Post ’36
MARCH 9, 2008

Joseph B. Ullman ’36
MAY 30, 2007

Earl H. Hornburg ’37
MAY 21, 2008

Alvin J. Burnett ’39
MAY 8, 2008

Florence J. Shuman ’40
2007

Austin Wehrwein ’40
APRIL 29, 2008

Morton Hollander ’41
APRIL 17, 2008

Edward R. Loomie ’42
OCT. 26, 2007

Frank O. Fredericks ’47
MAY 14, 2008

Carl A. Jonson ’47,
APRIL 13, 2008

Newell G. Alford ’48
DATE OF DEATH UNKNOWN

Edward S. Corwin ’48
APRIL 6, 2008

Willard Hatch ’48
JUNE 7, 2008

Sherwin A. Rodin ’48
JAN. 28, 2008

Norman Bristol ’49
JUNE 16, 2008

Thomas J. Sweeney ’49
MAY 11, 2008

Robert E. Zang ’49
DEC. 29, 2007

Harmon H. Ashley ’50
JAN. 26, 2008

George W. Cooper ’50
MAY 22, 2008

Marian Hogue ’50
APRIL 18, 2007

Ned J. Parsekian ’50
JUNE 9, 2008

Thomas A. Comstock ’52
JUNE 19, 2008

William Warner ’52
DATE OF DEATH UNKNOWN

Felix C. Ziffer ’55
APRIL 2, 2008

Henry J. Wimmer ’56,
FEB. 17, 2008

Arnold M. Sheidlower ’57
MARCH 2008

Paul J. Sternberg ’57
MAY 1, 2008

Rafael Antonio Dominguez ’61
MARCH 22, 2008

Marcus N. Lamb ’61
OCT. 18, 2007

John C. Wagner ’61
OCT. 27, 2007

Hiram A. Bingham ’63
MARCH 31, 2008

W. Garrett Flickinger ’68
APRIL 25, 2008

Lawrence Krackov ’68
MAY 3, 2008

Werner A. Rechtsteiner ’73,
JUNE 2007

Ferdinand Charles Mauet ’78
APRIL 22, 2008

Leonard E. Collins ’80
MAY 25, 2008

James F. Wing ’80
FEB. 8, 2006

Douglas M. Ely ’85
MARCH 2, 2006

Joseph R. Egan ’86
MAY 7, 2008
A Subway Series of Events

Jack B. Weinstein ’48 finds that, in a pinch, it’s good to be the judge

United States District Judge for the Eastern District of New York Jack B. Weinstein ’48 spoke this summer at a reception for senior federal judges. An edited version of his remarks follows.

Senior judges are constantly feeling—and trying to look—younger than our age. But with this event, Chief Judge Ray Dearie has put it straight publicly: You’re old!

This is in line with Ray’s policy that honesty is always best. When you meet an elderly person, the normal greeting is, “You’re looking great,” omitting the phrase, “for an old one.”

Not Ray. He regularly says, “Jack, you’re not looking so good this morning. Drink a cup of coffee to help get you through your calendar.” And he insists that we show up for coffee each morning.

We don’t know what Ray puts in the drink, but if you see a senior judge jumping up and down, he’s probably had two cups.

Way back before I had even tasted coffee, 75 years ago, when my mother could scrape together a quarter and my father had a free pass to Luna Park, I’d be given both and head for a day at Coney Island. We lived in Bensonhurst on the Sea Beach Line. Subways then had names, not numbers and letters.

Ten cents would buy a round trip. Fifteen would buy a Nathan’s hot dog. And a pass would let you wander enthralled all day through the New World’s Tivoli Gardens.

There were only two rules. First, “get back in time for supper,” when we’d all listen to Lowell Thomas on the radio, eat good food, and discuss the day’s events around the kitchen table; and second, “give up your seat to any older person or child.”

The rules were not burdensome. I’d rather stand and swing on a pole as the car rocked—knowing one day I’d be tall enough to reach the overhead straps.

Recently, I’ve noticed all kinds of people, young and old, male and female, offering me a seat. Last week I boarded the number 2 train at Clark Street headed for New York. There were no seats, but I was enjoying swinging from one of the overhead bars. (I can reach them now.)

Suddenly, halfway down the car, an attractive young woman in her late 70s waved her red lacquered cane at me and got up, motioning to take her seat. A Mamie Eisenhower haircut, brown with red highlights, light-purple eyeliner and everything in between nice, down to black stockings and plush-colored pumps with two-inch heels. A split-second later, another attractive young female in her early 80s, carrying a steel adjustable cane with four rubber grippers, seated opposite the first one, also stood—Gloria Swanson upsweep, blue-white rinse. But who notices? Not I.

“I saw him first,” said the one waving her steel cane. “Yes, but I offered him a seat before you,” said the one with the red cane. The women glared at each other.

Both began advancing toward me. Obviously they were intent on dragging me towards a seat. The train careened, speeding under the East River.

This was serious! All three of us could end up in a heap on the floor of the car. What to do?


So I looked about the subway car for help. No one appeared to have noticed what was going on. Passengers were reading the advertisements or newspapers, studying their shoes, looking the other way, or had closed their eyes. There wasn’t a rescuer among them.

Cardozo had failed me.

And then, suddenly, the solution occurred to me.

“Stop,” I shouted at them. “I can’t take your seat. I am an Article III federal judge. We are barred from receiving anything from anybody. Return to your seats, ladies, before you commit a federal crime.” (Females over 75 years old can be called ladies.)

Startled, they retreated and sat down. And I stayed erect, sans seat, contentedly swaying with the train as we hurtled towards New York.

Chief judge, even if we have to keep drinking your coffee, we’re not giving up our Article III status. It has too many perks—including the right to stand in the subway.