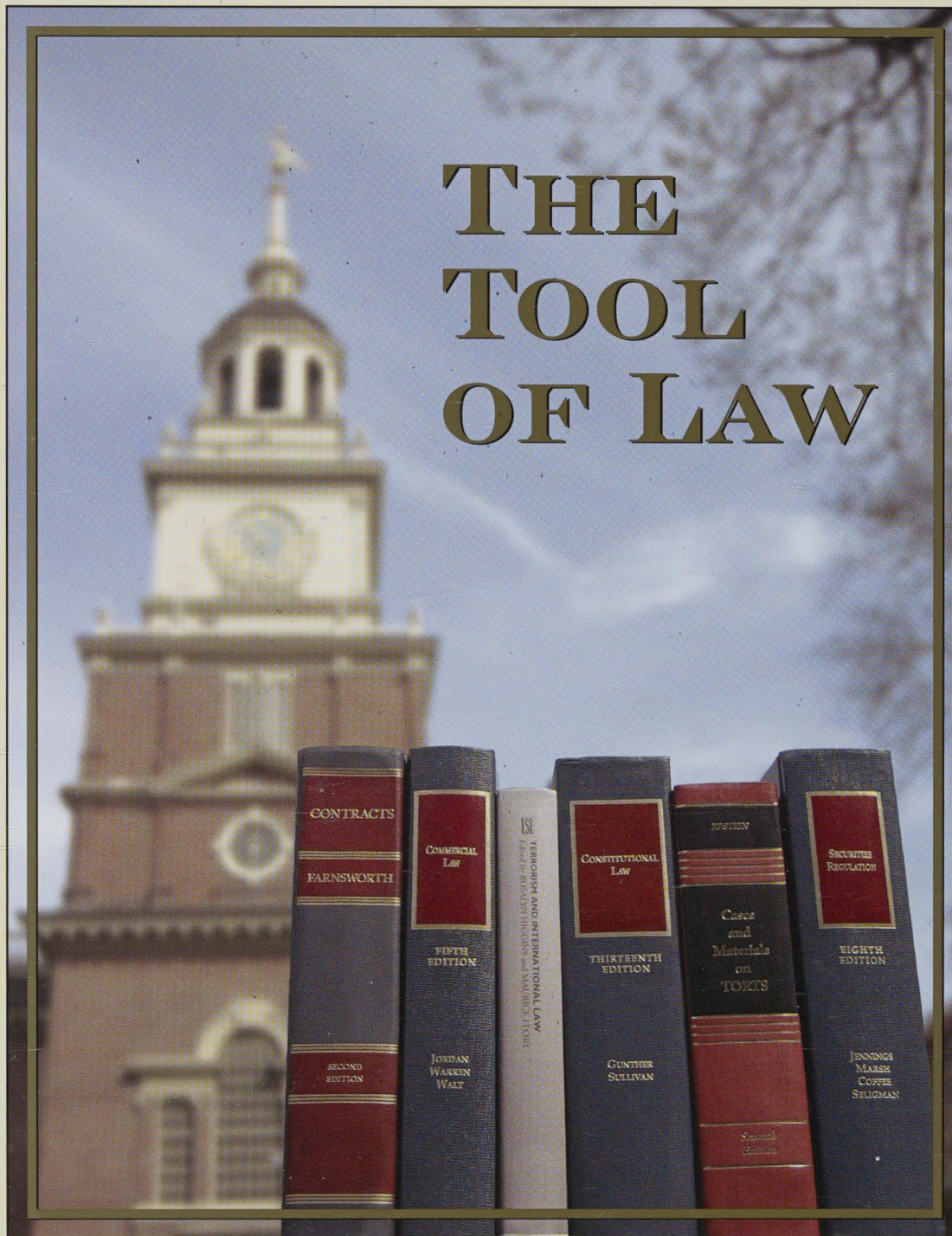


# Penn Law Journal

UNIVERSITY OF PENNSYLVANIA

VOLUME XXXV NUMBER 1

SPRING 2002



PAGE 31

*The Roles of Law in the  
Fight Against Terrorism*

PAGE 36

*David Boies  
Addresses Penn Law*

PAGE 45

*Clyde Summers'  
60 Years of Labor Days*



**FEATURES**

**The Tool of Law** ..... 14

A crisis was visited upon the United States in November 2000 – who would be our president? The election crisis pales in comparison to the carnage that was delivered upon the nation on September 11, 2001. When the smoke cleared in New York City, Washington, D.C., and Shanksville, Pennsylvania, there was an urgency to repair the damage wrought that day, and to take action to protect our nation. In each case the legal framework helped guide the hard decisions that needed to be made.

**The New Protracted Conflict: The Roles of Law in the Fight Against Terrorism** ..... 31

by Professor Jacques deLisle

An excerpt from the journal *Orbis*

**The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America** ..... 36

by Professor Sarah Barringer Gordon

An excerpt from the legal historian's book published in 2001

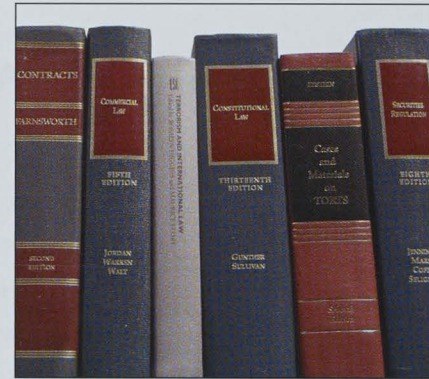
**Clyde Summers' 60 Years of Labor Days** ..... 45

by Jennifer Baldino Bonett

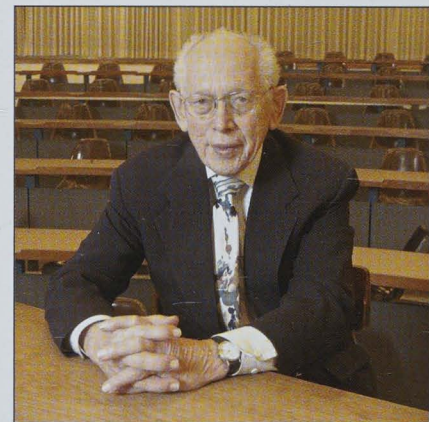
In 1935, the U.S. government passed the Wagner Act, the landmark law protecting the rights of organized labor. That same year, the man who would become "Mr. Labor Law" left his family farm in Montana with a suitcase and \$70 in his pocket and headed for the University of Illinois. There, Clyde W. Summers, a would-be preacher, found his true calling.

**Mille Gracie, Signor Carano!** ..... 53

Frank Carano C'30, L'33, the Philadelphia immigration trial lawyer, endows a new professorship at Penn Law School



**The Tool of Law/14**



**Clyde Summers/45**



**Making A Lawyer/10**



**Remembering Sylvan M. Cohen (1914-2001)/71**

**DEPARTMENTS**

A Message from the Dean ..... 3

Symposium of Law School Events ..... 4

Faculty Activities & News ..... 49

Alumni Activities & News ..... 56

Alumni Briefs ..... 58

In Memoriam & In Tribute ..... 70

End Page ..... 72

# L A T E • B R E A K I N G • N E W S

## PENN LAW RANKS 7<sup>TH</sup> IN 2002 U.S. NEWS POLLING

The University of Pennsylvania Law School moved up three positions in the latest rankings published by U.S. News & World Report.

This ascent comes one year after the Law School rose two positions in the 2001 rankings.

Despite their necessary subjectivity, in the last decade the rankings have emerged as an influential factor in the decision-making process of prospective students.



### EDITOR

*Sally C. Benner*

### DESIGN

*Mark G. Higgins*  
*Professional Creative Services*

### WEB DESIGN

*Marc Lewis*

### CONTRIBUTING WRITERS

*Ejim P. Achi*  
*Jennifer Baldino Bonett*

### PHOTOGRAPHY CREDITS

*Sally C. Benner*  
*Greg Benson*  
*Maureen Helwig*

### EDITORIAL ASSISTANT

*Ejim P. Achi*

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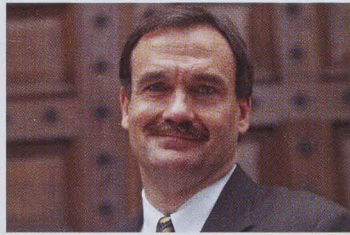
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send news and photos by traditional mail and e-mail to the attention of the Editor.

Every effort has been made to ensure accuracy in this *Journal*. We offer our sincere apologies for any typographical errors or omissions. Please forward any corrections to the attention of:

Sally C. Benner, Editor, Penn Law Journal  
University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, PA 19104-6204  
Telephone (215) 898.1513 • Fax (215) 573.2020  
Editor e-mail: [alumnijournal@law.upenn.edu](mailto:alumnijournal@law.upenn.edu)  
Law School website: [www.law.upenn.edu](http://www.law.upenn.edu)

# MESSAGE FROM THE DEAN



*Michael A. Fitts*  
*Dean and Bernard G. Segal Professor of Law*

To the Penn Law School Community:

We're marking history with this issue of the Penn Law Journal.

It has been 60 years since Professor Clyde Summers began his teaching career. Today he continues to contribute to the intellectual life of the University of Pennsylvania Law School through his teaching in the classroom and in the field of labor law. In "Sixty Years of Labor Days" we learn that in his youth Professor Summers set out from Montana to become a preacher but became a law teacher instead. The rest, as they say, is history. Some six decades later, though his title bears the 'emeritus' distinction, Professor Summers is anything but retired. I know of no other law professor in the country who has as long and active a scholarly career.

Frank Carano C'30, L'33 has remained just as active in the practice of law. Regarded as one of the deans of the Philadelphia Bar, Mr. Carano has served the Bar for over 50 years, has been an informal ambassador to the country of Italy, and has improved the lives and opportunities for countless immigrants that have arrived in America since the Great Depression. This Fall this dear friend of the Law School decided to give back to his *alma mater* as well, endowing a chaired professorship. "Mille Gracie, Signor Carano" introduces this modest lawyer and reveals what inspired him to make such an extraordinary gift to the Law School.

History of a more formal sort is revisited in an excerpt from Professor and Associate Dean Sarah Barringer Gordon's new book *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*. Set against the backdrop of the expanding western U.S. territories, Professor Gordon's history documents a debate that went to the U.S. Supreme Court between the Latter-day Saints of Utah and defenders of the Constitution over the terms of religious freedom.

Finally, we examine the history that's being made today. The events of September 11, 2001 shook us to our core. We surveyed the alumni body to learn of the work that you are doing to repair the damage that was wrought that day. The stories in "The Tool of Law" are compelling. We are proud that so many of you are mining your legal experience, and reviving the spirit of public service, to help our society navigate the unfamiliar terrain upon which we find ourselves.

As the trees bud with new growth at the onset of Spring we recall the hope that comes with new beginnings. On behalf of the University of Pennsylvania Law School I extend best wishes for peace to you, and encourage you, as always, to keep in touch with your classmates and your law school. As the world changes around us, we understand more than ever before the importance of the people and institutions that helped make us – and serve as our own history.

Pax Vobiscum,

*Michael A. Fitts*



# SYMPOSIUM

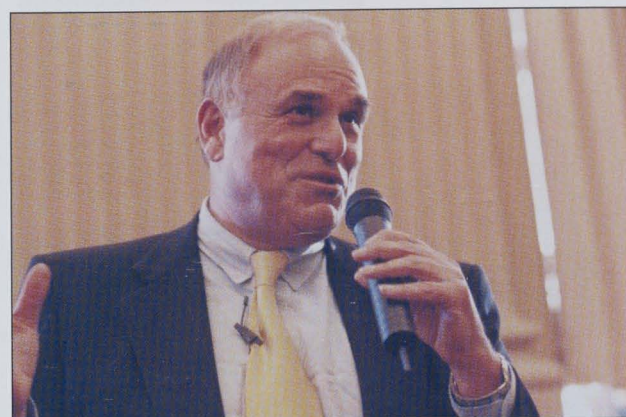
## Former Philadelphia Mayor Addresses SPORTS AND THE CITY

by Ejim P. Achi

Ed Rendell finally made his way into Penn Law School – as the featured speaker in the Institute for Law & Economics' *Law and Entrepreneurship Lecture Series* delivering "The Economics of Sports Franchises in Cities." Now a partner at the Philadelphia law firm of Ballard, Spahr & Ingersoll, and running for the Democratic party nomination for governor of Pennsylvania, the former Philadelphia Mayor joked, "Isn't it great to come speak at a [law] school that rejected me?" Joking aside, Rendell has enjoyed a rich relationship with Penn Law School over the years, most recently speaking at Commencement ceremonies and at the opening of the Journal of Constitutional Law offices in the late 1990s.

A 1965 graduate of the College, Rendell was introduced by Dean Fitts as a "quintessential political entrepreneur; a quintessential Philadelphian and urban sports fan." An audience of over a hundred law students and faculty were in attendance at his lecture. Rendell asserted that "the direct economic benefit of sports franchises in the City of Philadelphia is considerable." The value of a franchise, its size in terms of how many workers it employs, and the amount of tax revenue it supplies to the city's coffers demonstrate the value of a given franchise in any major city. Using the Philadelphia Eagles as an example, Rendell reasoned that every Eagle earning about \$1.6 million pays the wage tax paid by about 50 city factory workers, each of whom earns an annual salary of about \$33,000. Sports franchises also produce new revenue streams: as Mayor, he tried to increase revenue without raising taxes, so his administration constructed a plan wherein opposing teams would pay taxes for money earned in the games they played in Philadelphia. "The city reaped about \$2.1 million a year from the plan."

Rendell also pointed out that the impact of sports franchises on almost every aspect of the hospitality industry demonstrates the pervasive economic benefits for city businesses. "For example," he said, "People buy food before and during games. The sales tax on food and liquor alone is a small part of the tremendous multiplier from economic benefits of franchises."



Regarding the controversial topic of new stadiums, Rendell responded to critics of state-assisted stadium construction plans that siphon money away from education and other cash-strapped programs, by pointing out that "you can finance new stadiums without denting your operating or capital budget monies. You can raise car rental taxes for instance, and funnel the revenue to the new stadium construction."

Rendell also fielded questions from the audience, deferring franchise-specific questions to Phillies and Eagles representatives who accompanied him, among them David Montgomery, President of the Phillies, and Fred Shabel, Vice Chairman of Comcast-Spectacor. Responding to a suggestion that the new Phillies stadium be built in Center City given all the economic benefits its presence portends for city businesses, Rendell agreed but noted that Mayor John Street's proposal for a stadium site at 12<sup>th</sup> and Vine Streets had generated considerable uproar among Center City residents. In addition, such a large-scale construction would take a long time to complete in Center City, and the Phillies had expressed an unwillingness to wait a long time to get a new stadium operational.

The presence of sports franchises in a city also provides a platform for equal, continuing social discourse. **"The richest man in Philadelphia can have a conversation about sports with a shoe shiner, and the shoe shiner's opinions will be every bit as important, because it gives them a sense of place; a common bond that is wrought by a common love for the city's sports franchises."**

Rendell concluded by noting that the importance of sports franchises to the livelihood and sustenance of cities is not limited to their contribution to the financial security of cities, and the thriving of clusters of businesses and their auxiliaries. "For a city to have continued vitality," he said, "the city has to have an incredibly high and diverse quality of life. Sports franchises are an essential part of that quality of life."

*The Law & Entrepreneurship Lecture series was established by the Ronald Rutenberg Fund.*

# BOIES WILL BE BOIES

## Famed Litigator Addresses the Limits of Law as Segal Lecturer

by Ejim P. Achi

Celebrated lawyer **David Boies** of *United States v. Microsoft* and *Bush v. Gore* fame delivered the 2001 Irving R. Segal Lecture in Trial Advocacy entitled "The Limits of Law" in November.

In his introductory remarks to a University-wide audience gathered in the Zellerbach Theater of the Annenberg Center, Dean **Michael A. Fitts** noted the selection of Boies as continuing in the tradition of renowned oral advocates speaking as the Segal Lecturer at the Law School soon after the litigation of national controversies – Ted Olsen, F. Lee Bailey, Arthur Liman, and Martin Lipton among the most memorable.

**Paul Verkuil**, Visiting Professor at Penn Law School, and former dean of Cardozo Law School and Tulane Law School, introduced Boies, recalling their days in the 1960s as colleagues at the "legal sweatshop" of Cravath Swaine & Moore. Verkuil extolled Boies for his seminal performance as a trial lawyer in the 1982 *CBS v. Westmoreland* case, calling him a classic risk-taker. "David Boies is now among a small handful of lawyers in America about whom when people are really in trouble they say 'Get David Boies!' He's that kind of lawyer."

In his lecture, delivered extemporaneously front and center of the stage, Boies stated that trials are "inherently unpredictable," but that the ruling tendencies of judges have more impact on the ruling than does the appellate law. Noting that "lawyers practice facts more than [they] practice law," he said creative lawyering – analyzing, molding, and presenting the law – is at the heart of trial advocacy. The ability to effectively diagnose a case as one more suitable to pursue settlement or litigation, and the ability to identify and define themes during a trial are of utmost importance. In trial advocacy, Boies noted, the crux is finding themes that you can sustain. These themes enable a trial lawyer to decipher the facts that support his case and the facts that do not. A lawyer must be flexible with those themes and reevaluate them if they become unsustainable, because, especially in long trials, waiting too long to reevaluate themes that have become insupportable could cost a lawyer credibility with the judge and jury.

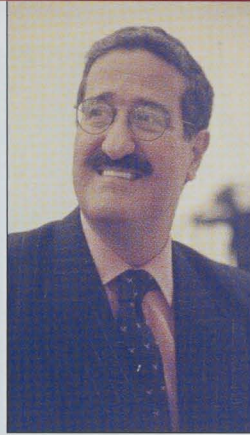


Regarding *United States v. Microsoft*, a case in which he prosecuted anti-trust charges against the software giant, Boies said that the opposition's themes kept changing, and they could not sustain the themes they ended up with. **He called Microsoft Chairman Bill Gates' deposition the second toughest he ever had. "Westmoreland was the toughest because at 30-years old, and as a civilian lawyer, I had to prove to the jury that Westmoreland was a liar. That was hard."**

Speaking briefly about the Florida recount, Boies pointed out that the speed of the process was an important factor in *Bush v. Gore*. This was because after clearing the potential hurdles of Judge Sauls taking too long to rule the case, or the Florida canvassing board taking too long with the recount, it was the Supreme Court that slowed down the process. They took too long to decide the case and left no time for any more recounts to meet the constitutionally mandated deadline. He agreed with Justice Souter's dissenting opinion, stating that the Supreme Court should not have taken the case because it overstepped its bounds in attempting to decide a presidential election. Noting that the equal protection argument promulgated by the majority of the justices was flatly inconsistent with their application of its holdings in other cases, Boies quipped, "I hope this newfound affinity for the equal protection clause is not transient."



Edward B. Shils



Robert H. Mnookin

## Robert Mnookin Encourages Lawyers To **CREATE VALUE THROUGH NEGOTIATION**

As the featured speaker in the 9<sup>th</sup> Annual *Edward B. Shils Lecture on Arbitration and Alternative Dispute Resolution*, Robert H. Mnookin, *Samuel Williston Professor of Law* at Harvard, promoted the themes of his new book *Beyond Winning: Negotiating to Create Value In Deals and Disputes* (co-authors, Scott Pepper and Andrew Tulumello) (Harvard University Press, 2000). Throughout his lecture, “How Lawyers Can Create Value Through Negotiations,” Mnookin encouraged lawyers to be problem solvers. “Lawyers best represent their clients by creating value and by increasing the size of the pie rather than fighting over the slices.” He identified tensions between creating value and distributing value; between empathy and assertion; and between principals and agents, that make a lawyer’s job a challenge. He addressed the challenge of legal culture which he stated “doesn’t really support problem solving.” In conclusion, Mnookin stated that he wanted to explode three myths, as he defined them: to those who would suggest that there is no relevant theory for negotiations he would tell them to look to the social sciences, specifically economics, cognitive psychology, and social psychology. That lawyers simply learn from experience – “we develop habits or standard operating procedures that we don’t learn from and cause us to blame the other side.” Finally, he believes it is a myth that negotiation cannot be taught. “I see it like being a track coach – help people to soar with their strengths and manage their weaknesses.” The *Edward B. Shils Professorship* was established by friends, family, and colleagues of Dr. Shils, the *George W. Taylor Professor Emeritus* at the Wharton School, and holder of six earned degrees from the University of Pennsylvania, including a J.D. (1986), an LL.M. (1990), and an S.J.D. (1997).

## RENOWNED PHILOSOPHER SPEAKS ABOUT LOSS as Gruss Lecturer in Talmudic Law

“According to the laws of the Talmud the period of death is full of controversy.” So began the first of a two-part lecture series, *The Caroline Zelaznik Gruss and Joseph S. Gruss Lectures in Talmudic Civil Law*. For the second year, Moshe Halbertal, a Visiting Professor at the Law School from Hebrew University where he is a Professor of Jewish Thought and Philosophy delivered these thoughtful and timely talks. Entitled “Facing Loss: Laws of Mourning in Jewish Law,” Professor Halbertal delivered two lectures along this theme to the Law School community: “Before Burial: Death and Law,” and “Law and Grief.” “Death upsets order,” he said at the first lecture. “It causes anarchy and disorder. It’s an equalizer.” In support of his argument, he referred to Maimonides’ Laws of Mourning, which give specific rules for how to deal with the death, with the mourner, and with the community. Noting that it is “not a therapeutic manual but a list of prohibitions,” he continued, **“The way we honor death mirrors the way we value life.”** As the second lecture, Professor Halbertal identified the stage after burial as the time when mourning really begins. He characterized it as “a cathartic period of sadness. There’s a gradual diminishing of grief as one moves from one stage to another.” There are rituals prescribed in the laws that isolate the mourner, and isolate the deceased as a way “to bring them into the world.” The Grusses established the lecture, a chaired professorship for a visiting scholar, and contributed a collection of scholarly materials on Talmudic law to the Biddle Law Library in 1987.



Moshe Halbertal





## Guido Calabresi Advocates for **INDEPENDENCE ON THE BENCH**

"Penn was the school I came closest to teaching at other than Yale, which I chose to make my home," began the Honorable Guido Calabresi, the famed and beloved former dean of Yale Law School. If only for an evening, the University of Pennsylvania Law School opened its doors to make the judge feel at home for his delivery of the annual *Owen B. Roberts Lecture*.

The subject of his talk was "The Current, Subtle – and Not So Subtle – Rejection of an Independent Judiciary." Judge Calabresi, who sits on the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit in New Haven, said, "I want to talk about ways we have seen courts move away from being independent decision makers." He stated that he was inspired to speak on this subject by the lecture's namesake, Owen B. Roberts C'1895, L'1898 (U.S. Supreme Court Justice, Dean of Penn Law School from 1948 to 1952), who remains known as a dissenting voice in the *Korematsu* case (U.S. Supreme Court, 1944) and as the "switch in time that saved nine."

Throughout his talk, Judge Calabresi built an argument to demonstrate "ways we have seen courts move away from being independent decision-makers" to institutions dependent on the immediate needs of society today. This has happened incrementally over time. With regard to sentencing, there was a desire to have greater equality, so sentencing guidelines were created. He questioned whether the goals have been achieved, or have judges turned over the power for deciding sentencing to prosecutors?

The second point he made concerned the influence of expert witnesses. "As our society becomes more complicated, experts become more important," he stated. Conceding that it is sensible for judges to defer to experts, he pointed out that in deferring to their opinions, a judge may be turning over the power to make the decision to someone who is dependent on the outcome of the case; who may have an interest in the outcome of the case.

Thirdly, Judge Calabresi outlined the role of federalism and how it troubled him. He stated that decisions are being taken from the federal courts, which he defined as relatively independent, to state courts whose judges are elected by a majority. Judges who are dependent on the election process may be less likely to make waves in their decision-making because they want to retain their position.

Fourthly, with regard to appeals, Congress has given us instructions that prisoners must exhaust every opportunity to remedy their situation before coming to the courts. So fact-finding is done by prison officials, who "are subject to pressures that we (the Appeals Court) are not," rather than by independent courts.

Finally, Judge Calabresi noted that courts have become career ladders for jurists aspiring to higher benches. "Most judges on the Appeals Court have come from district or state courts. **If judges think about promotion they're going to be very careful about making waves. If they are afraid of making decisions because it may hurt their chances for promotion, this affects an independent judiciary.**" Also, in this day and age, judges have become dependent on administrative support to handle the heavy docket of cases they carry. "This dependency on those who decide their budgets is circular. It doesn't impact the decisions they've made, but it does whittle away at the judge's independence." In conclusion, Judge Calabresi made an analogy to the Victorian-era houses that one-by-one were torn down in New Haven, Connecticut where he lives. It was not until the sum total of the destruction was seen that New Haven realized what was lost. Now only two Victorian houses remain. As with an independent judiciary, "you put these reasons together and you see a significant change in the judiciary."



Professor Edward B. Rock with Dr. Judith Rodin and Saul A. Fox

## Professor Edward B. Rock Featured as Inaugural Fox Lecturer

As the newly-named *Saul A. Fox Distinguished Professor of Law* Edward B. Rock, also the co-director of the Institute for Law and Economics, delivered the inaugural *Saul A. Fox Lecture*, “How I Learned to Stop Worrying and Love the Pill.” Rock presented a working paper that he is writing in collaboration with NYU Law Professor Marcel Kahan that looks at the Poison Pill, a financial instrument crafted in the 1980s. “Our disquiet

comes from the fact there hasn’t been anything new written about the Pill in 20 years,” Rock stated. He provided a history of this era, beginning with the merger and acquisitions heyday of the 1980s that gave rise to the innovation that arose out of *Moran v. Household International* in 1985, a case which went to the Delaware Supreme Court. In the period he identified as post-*Moran*, specifically citing *Paramount v. Time* (1989), the initiation of hostile takeovers declined by 90%. Bringing the subject into the present, Rock spoke of the increase in offering stock options to CEOs, and a change of climate in which the world adjusted to the Poison Pill, and shareholders “learned to live with it, though not love it.” The article will be published in a forthcoming issue of the *University of Chicago Law Review*. The *Saul A. Fox Distinguished Professorship in Business Law* and the associated *Saul A. Fox Endowed Research Fund* was established by the Winding Way Foundation in 2001 in honor of 1978 Law School graduate Saul A. Fox, Chief Executive of private equity investment firm Fox Paine & Company of Foster City, California.

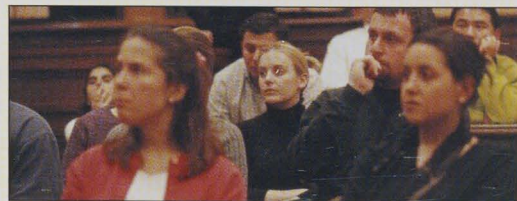
## A Delaware Jurist in a Rogue Litigant’s Court



The Hon. Jack B. Jacobs

Delivering the annual Distinguished Jurist Lecture sponsored by the Institute for Law and Economics, the Honorable Jack B. Jacobs, Vice Chancellor of the Delaware Court of Chancery presented “Fee Shifting as a Control Against the Rogue Litigant.” Judge Jacobs has served as Vice Chancellor of the Delaware Court of Chancery since October 1985, after having practiced corporate and business litigation in Wilmington, Delaware since 1968. The Delaware Court of Chancery is a non-jury trial court, consisting of five judges, that serves as Delaware’s court of original and exclusive equity jurisdiction. The Court adjudicates a wide variety of cases involving trusts, real property, guardianships, civil rights, and commercial litigation, and it has also evolved into a nationally known specialized court of

corporation law. Vice Chancellor Jacobs has written more than 500 judicial opinions in many diverse legal areas. The fiduciary obligations of corporate directors have been a frequent topic of these opinions. Recent opinions have arisen from challenges to the “dead hand” and “no hand” forms of Poison Pill, (*Carmody v. Toll Brothers*, Del. Ch., 723 A.2d 1180 (1998) and *Mentor Graphics Corp. v. Quickturn Design Systems, Inc.*, C.A. No. 16584, Jacobs, V.C. (Dec. 7, 1998), *aff’d*, Del. Supr., 721 A.2d 1281 (Dec. 31, 1998).



## Institute for Law & Economics Bankruptcy Roundtable

In early December the Institute for Law and Economics hosted an off-the-record roundtable discussion on the topic of bankruptcy for its affiliated faculty, members of its board of advisors, and invited participants. The initial academic panel focused on “Bankruptcy as a Business Address: The Growth of Chapter 11 in Practice and Theory,” a paper delivered by Penn Law Professor David A. Skeel, Jr., author of the recently published *Debt’s Dominion: A History of Bankruptcy Law in America*. An additional presentation included “Norms in Private Insolvency: The ‘London Approach’ to the Resolution of Financial Distress,” delivered by John Armour, Research Fellow, ESRC Centre for Business Research at the University of Cambridge. The day concluded with a panel discussion on “Corporate Bankruptcy: Delawarization and Beyond” moderated by the Institute’s co-directors Michael L. Wachter *William B. Johnson Professor of Law*, and Edward B. Rock *Saul A. Fox Distinguished Professor of Law*.



## Gittis Clinic Secures Residences for Young Adults with Autism

This past Fall, David Drachler 3L, a student in the Small Business Clinic of the Gittis Program for Clinical Studies at the Law School, worked on a project that set up a unique residential model for adults with autism. Autism is a complex developmental disability that typically appears during the first three years of life, the result of a neurological disorder that affects the functioning of the brain that has been estimated to occur in 1 in 500 individuals.

Only in the last few decades has autism been more accurately diagnosed in children. Today, with appropriate services, training, and information, most families are able to support their son or daughter at home. Many of these children have been raised outside of institutions and are now of age to live semi-independently.

But a residential model has been hard to find, until now. Abler LLC was established in Pennsylvania by the parents of two adult children with autism for the purpose of acquiring and managing a piece of real estate that will become the home for their children to live semi-independently. Under the supervision of Small Business Clinic Director Dina Schlossberg, Drachler drafted the operating agreement for the LLC, reviewed the bank loan documents for Abler's acquisition of the house, and attended the closing. He didn't have a background in real estate

before undertaking the project, which prompted Schlossberg to give him the opportunity to learn quickly in a hands-on setting. "For me **it was my ideal of what clinical work would be,**" says Drachler. "A benefit is that I helped people accomplish what they wanted to accomplish."

A similar project undertaken by the Small Business Clinic involved Autism Living and Working (ALAW), a non-profit, tax-exempt advocacy organization founded in 1998 with a mission to help adults with autism form and sustain households, hold jobs and contribute to community life, through individual support and accommodations. With the funding that ALAW has received they would like to support the future development of independent households, such as that set up by Abler LLC. ALAW mediates between parties interested in setting up an LLC such as Abler, and as a network for parents of autistic children. The Small Business Clinic is helping ALAW establish policies and procedures that will allow them to pursue grant and loan activity.

Roy Diamond L'78, GCP '79, a Philadelphia real estate development consultant in the arena of affordable housing, has a 12-year old son with autism. Diamond sits on the board of ALAW. "The reason why ALAW is important and unique is that the first generation of individuals with autism who were not institutionalized, who were educated in the community and lived at home, are maturing. My son would be the next generation, and knowing he will be in a safe environment matters the most to me and my wife." Group homes, assisted apartment living arrangements, or residential facilities offer more options for out-of-home support. "One of the complexities we face is there is no systematic financing devices for these homes," says Diamond. "There are private families that have the money to put down on the houses, but we're trying to get the Commonwealth involved with public financing for families that can't afford to do it on their own."

With improved diagnosis of the disability in only the last two decades, there are not enough self-determined living options in place to assist the growing number of individuals who have been diagnosed with autism. The work that the Small Business Clinic and ALAW is doing to help LLCs like Abler establish a working model will be copied in the coming years as increasing numbers of children with autism reach maturity. Diamond continues, "Dina (Schlossberg) and the law students have thought through matters such as disposition while drafting the documents to create these LLCs. We have to think about what would happen to the children if one of the housemembers leaves some day – who gets the house?" He comments as an aside, "This has been the most profound experience I've had as a professional. I see things from both sides, as a client and as a housing developer."

# Making a Lawyer

by Dorsey Heine 3L

*During on campus recruiting my second year at Penn, I had an interview with an alumnus who summed up his law school experience. "You can learn about the law anywhere," he said. "But Penn was where I learned about how to be a lawyer." As I finish up my last semester of law school I have come to recognize the truth of those words.*

After graduating from Yale in 1996, I worked as a teacher and social worker for three years. In applying to law school, my primary goal was to eventually work on behalf of disadvantaged children and families and correct the injustices I had witnessed during my work in East Harlem and Nicaragua. I came to school bursting with ideals and passion.

I was also very apprehensive about returning to school. Would I survive life as a 1L? At first, being at Penn was a little reminiscent of being in high school. We were each given a locker, assigned to classes and seats, ate in the cafeteria and had all of our classes in one building. The upper classmen who spoke to us at Orientation seemed to have an infinite body of knowledge that I never thought I could attain. During our "small group" meeting on the first day, a 2L told us that the students at Penn were very generous and open to helping each other. "Don't worry, people will always send you copies of their outlines," she assured us. "What's an outline?" I thought, beginning to panic.

There was little time for hysterics as I was swept along by the tidal wave of first year. We were divided into sections of eighty students each. Slowly we got to know each other, although often only by our last names. It was not uncommon to hear comments such as, "Wow Ms. Morrow made a stellar comment in Torts," or "Mr. Johnson and Ms. Harris really went at it today!" The required curriculum opened my eyes to different types of law that I had not even known existed, much less thought would be interesting. Contracts, which I had assumed would be a dry subject, was one of the most animated classes of my first semester. While learning about consideration and promissory estoppel, we also had debates about surrogacy, child abuse and libertarianism.

Soon enough, I figured out what an outline is (the summary of an entire course packed into fifty to eighty pages that law students use as their bibles for an exam) along with many other phrases (like "holding" and "stare decisis") that had seemed so foreign that first day. I began to feel as if I had tapped into the secret language of lawyers. For example, lawyers do not seem to like to say words of more than one syllable, shortening class names to such abbreviations as "crim," "con law," "civ pro," "con lit," or "con crim pro." At Penn, I began to learn about both the intellectual and technical aspects of law, quickly forgetting that non-lawyers don't hold the same procedural fascination. For example, when I try to explain where I'll be clerking next year, the details of the court system make a non-lawyer's eyes immediately glaze over and I just say quickly, "it means I'm helping a Judge."

**As I progressed through my first year, a strange thing began to happen. I began to question the ideals and passions that I had taken for granted.**

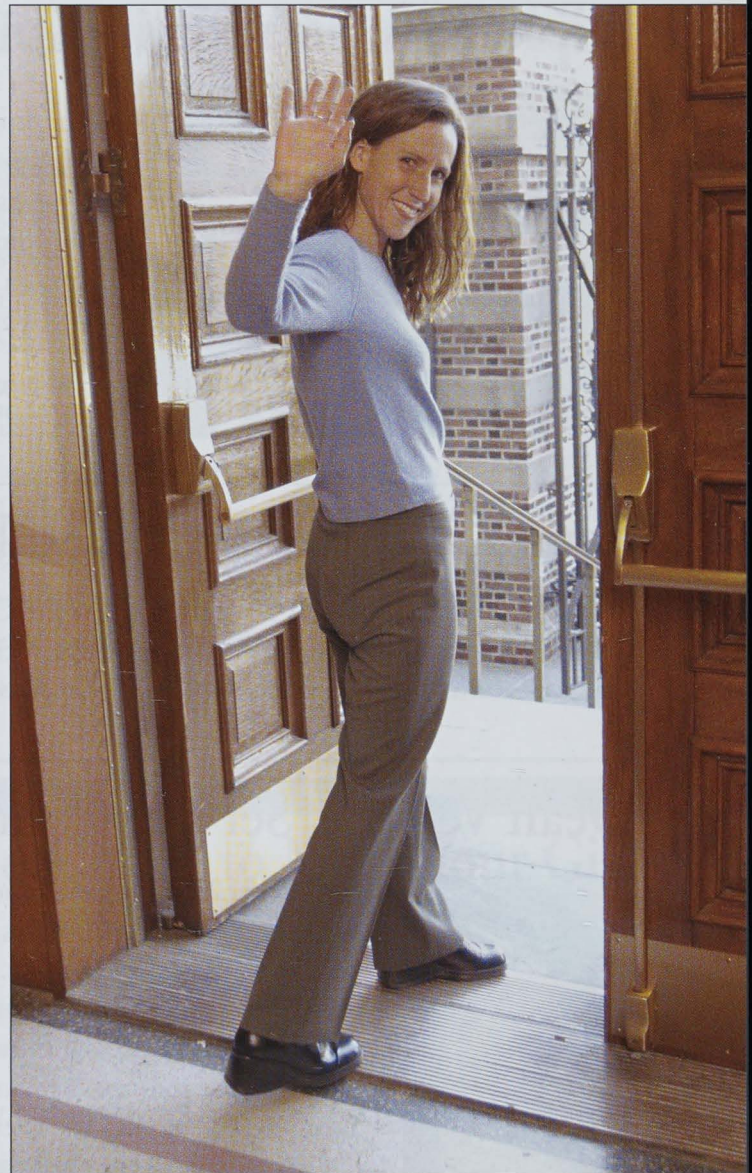
One day in Constitutional Law I got into a debate with another very liberal student over the policies of interracial adoptions in the context of *Loving v. Virginia*. Passions were high. However, the professor acted as moderator and asked us both a series of questions, forcing us to justify exactly why we believed as we did. It turned out that neither of our knee jerk reactions was adequate to make a legal argument. In Civil Procedure I read *World Wide Volkswagen* and agreed that the car dealership should not be held liable in Oklahoma when it had only conducted business in New York. Suddenly I realized I was siding with the international corporation over the individual plaintiff. What was happening to my sense of justice?

What was happening was that I was becoming a lawyer. The public service program, journal symposia, debates and fascinating lectures have all created constant dialogue and exchange of ideas. In most of my classes, the professors created classroom environments that have bridged the gap between the intellectual and the practical aspects of law. For example, in Constitutional Litigation, my professor facilitated discussions about the Article III roots of sovereign immunity as well as problems with finding an adequate plaintiff for a civil rights lawsuit. **Most professors at Penn teach not only for the academic value of the subject, but also because they expect their students to go out and change the world.**

In many ways, most of what I have learned in law school has come from my peers. Students at Penn are encouraged to debate and challenge each other, both in and out of the classroom. At the same time, most of the students maintain a good-natured sense of humor and appreciation for the intellectual exercise. The school's small size fosters a unique community where almost everyone knows and looks out for each other. Students share outlines, books, notes and advice freely and with little thought of competition. During on-campus recruiting, where 2Ls traditionally interview with law firms for summer jobs, students openly rooted for and commiserated with each other. We have all been watched over by the registrar, Gloria Watts, who reminds us to set our clocks ahead for daylight savings, and Assistant Dean (Gary) Clinton, who writes us poems prodding us to bring our IDs to school.

During the tragic events of September 11<sup>th</sup>, the Law School was where many found solace and strength. All morning and afternoon of that day, students gathered ten deep in front of a TV that had been set up in the "clock" common area. People cried, hugged, and were comforted by each other's presence. Although classes were cancelled and the school was closed, the building remained open, and many students who had been at home came to the Law School specifically to be among friends.

*After graduation, Dorsey Heine will clerk for the Honorable Arthur L. Alarson, U.S. Court of Appeals, Ninth Circuit in Los Angeles. Subsequently she will join the litigation department of Howard, Rice, Nemerovski, Canaday, Falk & Rabkin in San Francisco.*



Dorsey Heine 3L

The Penn Law community has provided a nurturing environment in which I could challenge myself and take intellectual risks. For me, law school was a long process of deconstructing and rebuilding how I understand and analyze the world. As a legal writing instructor I have seen the world again through the eyes of my 1Ls and realize how much I have learned in the last three years. In some ways my ideals have come full circle. I am as committed to justice and social reform as I was when I began law school. However, I now have the tools to harness those passions to use in my career. I am ready to become a lawyer.

## Diplomacy Stressed in Times of War



HENRY PEACOCK '31 AND  
AMBASSADOR O'KEEFE

The International Law Society of the Law School was host for an off-the-record talk delivered by U.S. Ambassador to Kyrgyzstan John O'Keefe in January. He spoke on "**War and Diplomacy in Afghanistan.**" A senior representative of the foreign services, O'Keefe has served in Russia, the former Yugoslavia, the Philippines, and Norway.

## Penn Law School Comes Together to Aid 9/11 Fund

Motivated by the events of September 11<sup>th</sup>, the Council of Student Representatives (CSR) organized a fundraising drive at the Law School. **Students, faculty and staff gave over \$7,500 to the Penn Law Fund that was contributed to the *New York Times* Neediest Cases 9/11 Fund.**

## Dean Verrier's Service Commended with Expanded Role



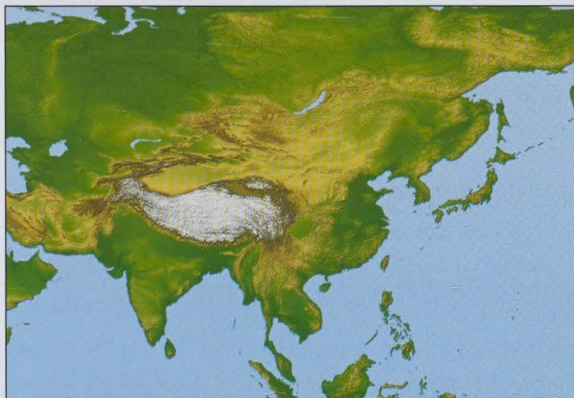
In October 2001 **Jo-Ann Verrier L'83**, Assistant Dean for Career Planning and Placement, took on the additional duties of the newly created position of **Vice Dean for Student Services** at the Law School. In making the appointment, Dean Michael A. Fitts announced, "Jo-Ann has done a superb job for the past eight years managing career planning and placement for our students. The department is widely viewed as one of the very best run career planning offices in the country. During her tenure in career planning, Jo-Ann has also been extremely helpful in conceptualizing and implementing a number of new programs within the school, especially in the areas of the Internet and communications. In her new role, she will continue to head the career planning office,

but also will undertake significant new duties as Vice Dean. Her new position, which will unite the administration of the offices of admissions, student affairs and counseling, registration, curriculum, public service, and graduate admissions, is designed to provide greater levels of communications, coordination, and continuity between the various departments that offer student services."

## Public Service Program Ranks High

The University of Pennsylvania Law School's **Public Service Program made an Honor Roll of the nation's best public interest programs** published by *The National Jurist* magazine (Jan. 2002). Penn Law was among the first schools to make mandatory a public service requirement in order for students to graduate. Since 1989, second- and third-year students complete 70 hours of public service with organizations ranging from the IRS-VITA Project to the NOW Legal Defense Fund, from the Philadelphia District Attorney's Office to the Clean Air Council. In 2000, the American Bar Association honored the Law School with the *Pro Bono Publico* Award in recognition of this trailblazing initiative. This was the first time a law school had been honored with this award that historically had been given to law firms.

## Legal Reform in China in a Post-WTO World



Law Professor **Jacques deLisle**, a Senior Fellow with the Foreign Policy Research Institute, took part in a panel discussion entitled “People’s Republic of China: Law Reform, Politics, and Trade in a Post-WTO World” at the Law School in November. Sponsored by the China Law Committee of the American Bar Association Section of International Law and Practice, the panel discussed various legal and political issues with respect to the PRC and specifically in light of China’s accession to the World Trade

Organization. Fellow panel participants included Eric Orts, Professor at the Wharton School, Michael E. Burke of Perkins Coie, LLP, John Cobau, Senior Legal Counsel, U.S. Department of Commerce, and Chuanshui Zhong, First Secretary, Commercial Office of the Chinese Embassy. James M. Zimmerman, a Partner with Coudert Brothers in Beijing and Chair of the ABA China Law Committee moderated the discussion.

## Now Go Online to Make Your Gift to the Law Annual Giving Fund

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[www.law.upenn.edu](http://www.law.upenn.edu)

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Law Annual Giving provides unrestricted support for Penn Law that enables us to take advantage of all of the unique opportunities available to the School. These include providing students with much needed financial aid, recruiting and retaining outstanding faculty, supporting faculty research, and keeping pace with rapidly advancing technology.

The success of Law Annual Giving demonstrates in a very concrete way the commitment of our alumni to the school and its future.

***Thank you for placing Penn Law at the forefront of legal education.***

*For information: Beth Grillet (215) 898-9425*

# THE TOOL OF LAW

by Sally Benner

A crisis was visited upon the United States in November 2000 – who would be our president? Lawyers parsed the Constitution and presented arguments before the U.S. Supreme Court. A sophisticated nation, and the world, turned to a document drawn up by inspired theorists over 200 years before to find the answers to the election quandary. The U.S. Constitution was the blueprint for the experiment called democracy.

The election crisis pales in comparison to the carnage that was delivered upon the nation on September 11, 2001. When the smoke cleared in New York City, Washington, D.C., and Shanksville, Pennsylvania, there was an urgency to repair the damage wrought that day, and to move to protect our nation. In each case the legal framework helped guide the hard decisions that needed to be made.



Because of the Law School's location in Philadelphia we were surrounded by events taking place directly north, south and west of our location. Yet, in the center of Philadelphia stood Independence Hall and the Liberty Bell, symbols of the democracy we would be defending in our response to the attacks.

We can be inspired by patriotic symbols, but we need the law to fight this war. So far, our laws have not failed us. They have proven to be strong and resilient in addressing the unprecedented attacks on the continental United States. We turn to them to define for ourselves what is just and fair in restricting civil liberties, punishing the offenders, conducting the war, and gathering intelligence to protect the nation against additional terrorist acts. Violence has been brought home after decades of witnessing such barbarism from a seemingly safe distance.

We asked faculty and alumni of the University of Pennsylvania Law School to address these questions: In your experience, how have the events of September 11<sup>th</sup> changed the legal landscape? How is the law being used as a constructive tool to respond to the initial terrorist attacks on September 11<sup>th</sup>? How is the law being used to restore national security?

Some of our full-time and adjunct faculty live in New York and Washington and were able to provide students with firsthand testimony of the events on that day. They are teaching Penn Law students how to identify the laws that will be used to fight the war. What follows is an account of how Penn Law graduates and teachers have used their positions as lawyers to rebuild the nation in the six months since September 11<sup>th</sup>.

## SEPTEMBER 11<sup>TH</sup> AND THE DAYS AFTER

**Students were in their finest attire, portfolios under their arms, in the throes of Early Interview Week at the Law School** while other students were finally breathing more freely having endured their first two weeks of law school. Soon after 9:00 A.M. on September 11<sup>th</sup> all routine ground to a halt. The Clock lounge in Nicole E. Tanenbaum Hall filled with students, faculty, and staff who stood and sat in silence watching history play out before their eyes on TV. Some were motivated to leave the school immediately to volunteer at emergency sites like the American Red Cross in Center City. Others stayed at the Law School to offer comfort, consolation, and strength to each other.

Two days later, **Dean Michael Fitts** assembled a panel of law faculty who presented an open forum to discuss what we were facing. Professors **Kim Lane Scheppelle**, **Jacques deLisle**, Senior Fellow **David Rudovsky**, adjunct lecturer **Harry Reicher**, and Gruss Visiting Professor **Moshe Halbertal** presented a program that was both challenging and moving. At the time, it seemed to offer a salve for the wounds inflicted on the 11<sup>th</sup>. In retrospect, it demonstrates how, in the immediate aftermath, we were trying to sort out September 11<sup>th</sup> without a comparable event to guide us. Some predictions have played out, whereas others reveal the unknown terrain on which we have been since that portentous day. Dean Fitts noted that for his generation the defining moment was the assassination of John F. Kennedy, and for this generation September 11<sup>th</sup> would be the day that defined theirs.

Professor deLisle began, "In the Pentagon situation room today advisors are talking about what response would be lawful. As absurd as I find this to be, I also find it heartening." He continued, "The saddest irony is in the name of the target - the 'World Trade Center.' This is globalization getting back at us as an open society."

Moshe Halbertal, visiting from Hebrew University in Jerusalem where he is the Professor of Jewish Thought and Philosophy commented, "This act is not like the Basque or the IRA – organizations that have an aim. It's a metaphysical apocalyptic grievance. There is nothing to negotiate with because there is no aim." He noted that in living with the psychological condition of no front or no enemy would turn fear into panic and anxiety into angst. "We have to reverse the totality of the act," he said. "You have to take the invisible and make it visible. Make the total particular on all levels. Turn panic into caution, and angst into fear. We can't fall into the trap of responding to totality with totality."

Professor Scheppele, a constitutional law scholar and international law expert commented, "As a legal matter we're at sea. We have a president who has declared war against an enemy we can't identify. What we're seeing on TV in polls of the people is a drumbeat for revenge or retribution. We have to engage in public discourse to get other points of view out there."

"Many countries, ours included, show we don't do well with civil liberties in times of war," said Professor Rudovsky. "Abe Lincoln suspended habeas corpus. During World War I, diminishing First Amendment rights silenced voices of protest against conscription. In World War II, the U.S. incarcerated 120,000 Japanese-Americans. McCarthyism emerged during the Cold War. During the Vietnam era there was a war against dissenters. With the war on drugs – Fourth Amendment rights were violated. Who knows what will happen in reaction to the events this week?"

In the months since the panelists gathered for this discussion, many of these scenarios posited by the faculty have played out. With the benefit of their wisdom, many in the audience that day have been actively vigilant about the law in evaluating the U.S. response to what should have been an ordinary Tuesday in the beginning of Academic Year 2001-2002.

**To tell you the truth, when the buildings collapsed my instinct was to go down to the site to start looking for survivors,"** says **Daniel R. Gardonick L'00**. "But I couldn't do that. Being a lawyer was what I was qualified to do so that's what I did."

Garodnick was clerking for the Honorable Colleen McMahon on the U.S. District Court of the Southern District of N.Y. on September 11<sup>th</sup>. The former Editor-in-Chief of the Law Review was looking forward to a break before joining the law firm Paul, Weiss, Rifkind, Wharton & Garrison in New York.

Instead, Garodnick consulted [www.probono.net](http://www.probono.net), a virtual community that connects public interest lawyers with *pro bono* opportunities, to find out how he could assist others. Through this clearinghouse he began working with the surviving family of a worker who was killed in the collapse of the second tower, a widow with three young children.

Most of his work so far has been akin to social work – finding counseling services for the family, making sense of workers compensation and insurance claims – rather than legal work. But that promises to change in the future. When he joined Paul Weiss, the firm allowed Garodnick to bring the family on as a *pro bono* client of the firm.

"It's very humbling work," he says. "It really adds to your appreciation for life and what you have."

**Alix R. Rubin L'96 was one of many more Penn Law graduates who answered the call of the profession.** A litigator with Lowenstein Sandler P.C. in Roseland, New Jersey, she volunteered at Liberty State Park on the Hudson River in Jersey City, New Jersey where emergency services were immediately set up by the American Red Cross and coordinated by the State of New Jersey, the Department of Public Law and Safety of the New Jersey State Attorney General's Office, and law enforcement agencies.

“The Attorney General’s office wanted to set up the equivalent of one-stop shopping so the victims’ families wouldn’t have to run around,” Rubin explains. After receiving training from the Attorney General’s Office based on the New York City Corporation Counsel’s model, she volunteered once a week for six weeks in a trailer where family members would come to begin the paperwork trail that the law required. She took their affidavits with the goal of having death certificates issued to commence payment of survivors’ benefits.

Rubin was astonished by the speed with which the legal response was coordinated and delivered. This was remarkable especially because New York City’s legal offices had been rapidly relocated to Brooklyn from their former space in the Ground Zero area. “The death certificate process usually takes years and it was taking a couple of weeks.”

After more training Rubin and fellow firm members at Lowenstein Sandler became legal facilitators available to help families navigate a legal system until then unfamiliar to them. A number of the attorneys in the firm each have one *pro bono* client whom they are helping through the process.

“I bought a case of saline solution and socks for the rescue workers and I gave blood when the Red Cross could take it again. They needed a stadium to store all the donations,” Rubin recalls. “By going to Liberty State Park at least you felt like you were doing something – even by helping one family. There are times I feel what I’m doing is so little, just a drop in the bucket. But the people we’ve helped have been so appreciative.”

Right after the attacks occurred **John Opar L’80**, a partner in the real property group at Shearman & Sterling in New York, went to the firm’s *Pro Bono* Attorney, Saralyn Cohen, and volunteered his group’s services for whatever requests came in. The firm used the facilitator model established by New York Lawyers for the Public Interest and the Association of the Bar of the City of New York to



September:  
Donations pile up outside the Armory on Park Avenue

focus their relief efforts and most efficiently deliver *pro bono* legal services to those in need. According to Cohen, as of December almost 200 lawyers at the firm had provided *pro bono* legal assistance to victims of the September 11<sup>th</sup> tragedies.

The Bar of the City of New York set up a Small Business Assistance Center in Chinatown where agents from the Small Business Administration and the Federal Emergency Management Administration (FEMA) were available. The City Bar asked New York City firms to send lawyers to the Center to help out business owners in need of emergency legal advice.

There was the owner of a Chinese restaurant located in the “red zone” where the building in which they operated was destroyed but the landlord was asking for a rent payment nonetheless, and then evicted the business for non-payment. Citizens who had lost their apartments in the destruction came to them, as well as residents of nearby Battery Park City who were seeking rent abatements because of the uninhabitable conditions that immediately overtook the once placid riverfront development. The Shearman & Sterling property group helped at least twelve businesses directly affected by September 11<sup>th</sup>.

## Responding to Terrorism

On September 13, 2001 a hastily assembled symposium sponsored by the School of Arts & Sciences drew a standing room audience of exhausted and worried students, faculty, and administrators to Irvine Auditorium on Penn's campus. The panel comprised Penn's finest faculty researching and teaching on the subject, including the Law School's Professor **Seth Kreimer**, and was moderated by University President Dr. Judith Rodin. Dr. Rodin introduced the panel: "We thought under the circumstances that it would be useful to bring some of the collective wisdom of the faculty to bear on the critically important events of the week." Professor Kreimer was joined by Brendan O'Leary, a Visiting Fellow at Penn who is Professor of Political Science and Chair of the Department of Government at the London School of Economics and Political Science, who has written extensively on hostilities in Northern Ireland; Arthur Waldron, *Lauder Professor of International Relations* in Penn's Department of History, who focused on international military and diplomatic issues; Ian Lustick and Robert Vitalis, Professors in the Department of Political Science who focused on Middle Eastern politics in an international context. In his introduction, Professor Kreimer said, "My hope... is to raise with you the concern, rooted both in my commitment to our constitutional values and in my study of our constitutional history that America's defense should not come at the cost of the very ideals that make it worth defending. Let me briefly address three sets of concerns arising out of our commitments to equality, to liberty, and to individual dignity." For the complete text and audio recording of Professor Kreimer's remarks, and those of his academic colleagues, visit <http://www.upenn.edu/almanac/v48/n04/Terrorism.html>

"The law is not as favorable to residential tenants as one might expect," Opar says. "The rights of tenants are limited, and the events of September 11<sup>th</sup> were beyond the control of landlords. The law envisions damage to buildings, but not damage of this magnitude."

To resolve conflicts, the real property group of Shearman & Sterling, as well as many other lawyers at the firm, provided advice and counsel. Some tenants were able to work out deals with their landlords. Some were allowed to terminate their leases in buildings downtown if they signed a lease in another building owned by the same, or a related, landlord. For many other residential tenants, those whose apartments didn't suffer damages from the attacks but as individuals they suffered psychological trauma, the law is not on their side. Opar forecasts that any changes that might be made in the law to favor tenants' rights would come not through legislation but through action in the courts.

Law professor and historian **Bruce Mann** finds that in the search to identify a situation comparable to the events of September 11<sup>th</sup>, "the Pearl Harbor analogy is overdrawn, but it is the only other example within people's memories of a surprise attack with large-scale casualties. Other events with many fewer casualties also had a galvanizing effect – the sinking of the *Maine* in Havana as a trigger of the Spanish-American War, and John Brown's raid on Harper's Ferry, which helped radicalize the slave-holding South."

The swell of patriotism, some might say nationalism, took many by surprise. It may be the ebb and flow of support for the war, but only time will tell. Mann identified the Vietnam War as an example of another time in history when the nation was supportive of a war effort but lost faith in it, eventually turning the support to opposition. Recent Congressional criticism of the Bush administration's intention to expand the war on terror beyond the Taliban in Afghanistan may foretell how the climate will alter in the coming months.



## LOOKING TO LEADERSHIP

It took a lawyer to understand the complexity of what happened to New York City on September 11<sup>th</sup>. And Rudolph Giuliani, a former federal prosecutor, and now former Mayor of the City of New York provided leadership for New York and the nation. Despite his own harrowing experience trying to find an escape from the scene of the attacks, Giuliani was a general in charge. From the site of a hastily comprised emergency command center over the next few weeks he took pains to make sure the evidence of the crime was carefully preserved for a future criminal trial. Under strictest instructions he told rescue workers and demolition experts to handle the materials with great care. He expedited the legal process so families of the victims could file the necessary paperwork to declare their loved ones deceased. He worked with the Bar of the State of New Jersey to overcome administrative obstacles between the two states.

On the national front, overcoming a chaotic day when he was shuttled from Florida to Louisiana to Nebraska to Washington D.C., President George W. Bush found his footing and struck the right tone by the time of his televised address to a Joint Session of

Congress on September 20<sup>th</sup>. In the intervening days intelligence was compiled so that the President could address the nation, and the world, to attempt an explanation of what happened, who was behind it, and what we were going to do about it. The eloquence of his address prompted some observers to refer to it simply as The Speech.

In the case of these two men, historians have noted that it is typical that the nation turns to its leaders and projects onto them the qualities they wish they possessed. The U.S. presidency is very much a symbolic role. Since President Bush has enjoyed high approval ratings, including an 85% approval rate among African-Americans, though they did not support him in the election, according to a December 2001 New York Times poll, one wonders what George W. Bush symbolizes that inspires Americans to support him.

Dean **Michael A. Fitts** spent much of his academic career as a scholar of the role of the president and the law. He notes that “too often lawyers locate the power of the presidency in its formal levers of influence – the veto and appointments power.” In contrast to popular understanding, Dean Fitts believes that the power lies beyond those actions.

“I and others have always recognized that the presidency’s greatest source of influence derives from its informal ability to persuade and mobilize the country. It is hard to imagine a better example than the events after September 11<sup>th</sup>. In times of crisis, nations need to be focused on collective ends and mobilized towards those goals. The presidency is the best position to perform that role, as the public and other institutions, at least temporarily, cede informal authority to the office.”

After President Bush’s televised address to the Joint Session of Congress and the world on September 20<sup>th</sup>, the psychic and material mobilization began.

# The Struggle Against Global Terrorism



Professor  
Jacques deLisle

In early November the Law School was the setting for a panel discussion by distinguished academics trying to explain "The Struggle Against Global Terrorism: Means and Ends – Defining a Just War." **Jacques deLisle**, Professor of Law, was a discussant along with Professor Richard Waldron of Penn's History Department, following a

presentation by Professor Richard Falk of Princeton. Professor Falk was introduced as one of the foremost authorities on international law, having played a role as author or editor of 47 books on the subject, and is a member of the Council on Foreign Relations. Falk began by remarking that the "apocalyptic terrorism" which we witnessed and suffered on September 11<sup>th</sup> justified a response from the U.S. "The globality of this undertaking creates a special challenge to the normal framing of conflict," he said. "The attacks engaged a right of self defense on the part of the U.S. that involves doing whatever is appropriate to restore safety to the world." Falk argued that, at that point, the U.S. had crossed the line from fighting a war necessary to restore safety to the world to an unjust war that was punishing beyond the events of September 11<sup>th</sup>. In response, Professor deLisle offered a definition of a just war as one that has "moral underpinnings and has limits to how it will be fought. A legal war is fought in self defense with the international community behind it, and one that does not violate how we treat civilian citizens." He questioned the point of U.S. bombing – are we punishing or are we deterring terrorism? "The traditional war paradigms don't work in this case." Professor Waldron disagreed with Falk's characterization of the threat as apocalyptic terrorism. "This is not without comparisons to our bombing of Dresden and Japanese cities." He continued, "We face a threat now that is not going to go away. They're going to come at us again. We have to get rid of them and the question is, 'how do we do this?' We have to fight this war to win or the world will become a far more unsafe place." The event was co-sponsored by the Law School, the Middle East Center, Wharton School, the Solomon Asch Center for the Study of Ethnopolitical Conflict, the International Relations Program, and Connaissance.

## A PLAN FOR WAR AND DEFENSE OF THE NATION

The terrorist attacks of September 11<sup>th</sup> immediately implicated the international law of self defense," says **Harry Reicher**, Adjunct Lecturer of Law, who teaches International Law, and Law and the Holocaust at Penn Law School. "International law has long recognized a right to self defense. At its heart, this right is based on, and grows out of, the first and most basic human instinct, namely that of self-preservation. From this, in turn, grows perhaps the most fundamental obligation of the government, to protect its citizens from attack. Unequivocal recognition of this by international law is attested to by the Charter of the United Nations, which enshrines an 'inherent right' of self defense."

Americans were especially unnerved by the reality that the hijackers were living among them. Though the U.S. military, with the support of its international allies, have had success in ousting the Taliban from Afghanistan, in the majority, Americans feel certain that there will be another terrorist strike on our soil. Although given high marks for behaving with tolerance toward Arab-Americans, and Muslims in this country, Americans remain unsettled – a success of the terrorism campaign – by not knowing whom among us is an enemy in the War on Terrorism. Professor Reicher has written:

Because suicide terrorists are, by their very nature, extremely difficult to identify in advance, and by definition are not susceptible to meaningful threat, the most effective antidote to the horror they are capable of causing is to remove the threat from those who exhort them, train them, arm them, and give them their marching orders. This also extends to those governments and authorities that permit their territory to be used along the chain of causation. Thus, the United States is justified by international law in uprooting the sources of terrorism, and the surrounding "soil" in which terrorism festers.

“Very shortly after 9/11, the President set forth three immediate goals and actions in the campaign against terrorism,” says **David Aufhauser L’77**, General Counsel of the U.S. Treasury. “First, there would be a punishing military response to aggressors. Second, intelligence resources would be devoted to tracking down terrorist cells and their funding sources. Third, the U.S. and allies would deprive terrorists of the fuel that runs their war – money.”

Aufhauser is heading up the war effort to choke off the money flow that funds terrorist activities worldwide. “It is an unconventional war. There are no borders. There is no common enemy. Civilians are their targets. Their weapons of choice are not guns, but martyrs. And their ammunition is not countered in bullets, but in currency. Money has accordingly taken a high profile in the war.”

The lead U.S. agency in the war on terrorist financing is the Department of Treasury. After discussing the responsibilities with the President, Secretary O’Neill returned from the White House in mid-September and told Aufhauser, “you’ve just enlisted. We need to develop and advocate the legal authority to pursue terrorist financing.”

In concert with White House counsel and Department of Justice lawyers, Treasury developed the legal foundation for freezing the assets of not only those who perpetrate acts of terror, but those who fund such actions, even unwittingly. The underpinnings of the legal authority are found in the International Emergency Economic Powers Act, the National Emergencies Act, and the United Nations Participation Act of 1945. Those authorities led to the issuance of an Executive Order on Terrorist Financing on September 23, 2001 that empowers the President and Treasury to block assets of anyone “associated with” funding terrorism.

“The U.S. can now block the assets of the ‘bankers’ of terror – the banks, businesses, and charities – who do not perform due diligence to know their customer,” Aufhauser explains.

He chairs an intra-agency policy coordinating committee on terrorist finance. The committee includes representatives from the National Security Council, the NSA (National Security Agency), the FBI, the CIA, the Department of Defense and the State Department.

How is this done?

“After we determine that designation and blocking is appropriate, we give pre-notification to allies abroad. After we secure their cooperation, we jointly tie the knot. Through the Office of Foreign Asset Control in the Treasury, we electronically notify more than 3000 financial institutions in the U.S., and our allies do much the same abroad.”

It sounds simple, but the legal and diplomatic process to make it happen is anything but.

“It would be a fool’s errand for the U.S. to attempt to do this alone,” Aufhauser explains. “Most of the assets, cash flows and books and records that we seek to exercise control over are abroad. We daily need to enlist international support.” Aufhauser explains that the U.S. has done so both bilaterally and through the United Nations. “Indeed, when the UN security council passes a resolution, it’s equivalent to law and member states must honor the resolution. The security council did so on September 28, criminalizing terrorist financing and directing member countries to use all means possible to block, deter and undermine terrorist financing. To date, more than 140 countries have joined in the effort.”

Fighting the money battle in the war on terrorism intersects with the other two prongs of war strategy, most specifically the battle for intelligence. “Through the measures we take, we also get access to books and records. The audit trail yields intelligence dividends that can far exceed the dollar value of assets seized. Indeed, it may be the most useful return of all of our efforts.”



## Terrorism and Democracy

**Kim Lane Scheppele**, Professor of Law and Sociology, introduced the course "Terrorism and Democracy" during the Spring 2002 term. From the syllabus:

In this course, we will examine terrorism (under multiple definitions) and state responses to it, focusing particularly on the challenges that terrorism poses for democratic governments and for those who reside in democracies under threat. The first part of the course will focus on terrorist groups – their internal logics and tactics, their variety and commonalities, the ways that democratic governments have coped with them in the past. The second part of the course will focus on the legal responses that are under consideration in the contemporary United States and elsewhere as a result of the specific threats made more compelling on 11 September. As we consider these possible responses and their legal warrants, we will ask how democratic governments should assess the trade-off between security and liberty and between repression and openness. Faced with a set of bad choices, how should democratic governments cope with terrorism? This term, we will consider these questions. We may not all agree on the answers, but together we should be able to sharpen our senses of what is at stake.

Students were assigned three recently published books about terrorism and numerous readings to inform their studies. They were each required to present two papers to the class. The first considered a particular terrorist group or terrorist-related incident from what was known about the group or incident, and then the government's response. Recommended topics among dozens suggested included the bombing of the Marine barracks in Lebanon; the Pan Am 103 bombing over Lockerbie, Scotland; the Weathermen; the Aum Shinrikyo sarin gas attacks in Japan; and the Aldo Moro kidnapping and the Red Brigades in Italy. The second paper students wrote was a legal memo on a particular issue arising under American law as a result of September 11<sup>th</sup>, from racial profiling to seizure of financial assets to attorney-client privilege to the writ of habeas corpus to wiretapping under the USA PATRIOT Act.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) which was passed in November undoes laws enacted after Watergate that kept agencies from operating in concert with each other. According to Aufhauser, "the cooperation among the agencies has been remarkable. September 11<sup>th</sup> changed everything."

**Friedrich Kübler**, Professor of Law at Penn and in Germany, doubts "that the terrorist networks put all their eggs in one nest. Whenever the U.S. government succeeds to seize financial resources of such a network this will reduce but not completely eliminate its activities."

The main change in the legal landscape of international finance that he sees is "much more rigid rules for money laundering" that are detailed in full in Title III of the USA PATRIOT Act.

Professor of Law **Charles A. Mooney, Jr.** shares Professor Kübler's skepticism. "It strikes me that a 'shut down' from this approach is exceedingly unlikely in a society and economy that is as open as ours. Of course, some successes may be expected."

Further, he sees the change in the landscape this way: "The events have heightened the interest and recognition worldwide of the need to modernize systems for secured financing. I recently participated as a member and position coordinator for the United States delegation at a diplomatic conference in Cape Town, South Africa in which about 70 countries send delegations to finalize a convention on secured financing of aircraft (essentially an export of Uniform Commercial Code Article 9 to the international stage)."

With a view of the effects of September 11<sup>th</sup> on our domestic front, Professor Mooney says, "Inasmuch as the tragedy generally is perceived as contributing substantially to the economic downturn, the result is to increase concerns about (and probably occurrences of) bankruptcy (witness Enron, K-mart, and others). Of particular concern are the airlines who are undergoing a crisis both in revenues and in the cost and availability of insurance."



Making something from nothing is always a challenge, but imagine the dramatic urgency to accomplish just that between September 11<sup>th</sup> and October 9<sup>th</sup> when **Carl Buchholz L'92** was one of the first five people tapped by Director Tom Ridge to set up the new Office of Homeland Security, mandated by President Bush shortly after the terrorist attacks.



December: On guard near Ground Zero

In early October the former trial lawyer was appointed Special Assistant to the President and Executive Secretary for the Office of Homeland Security. He is charged with facilitating the coordination process between federal, state, and local efforts to offer protection against and respond to terrorism threats.

“The President presents the top priorities for the Office and we respond to them by bringing leaders together,” Buchholz says. “We coordinate federal policies to identify gaps and to figure out what we need to do more of.”

Buchholz, a partner in the litigation department of Blank Rome Comisky & McCauley in Philadelphia until his appointment, served as general counsel of the Ridge Leadership Fund, the former Pennsylvania governor’s election campaign fund, and was Pennsylvania counsel to George Bush’s presidential campaign.

He notes his legal training and experience have served him well in his new position in an ever-changing terrain.

“Like trial lawyers, we have to respond quickly to a set of facts and be organized,” Buchholz explains. “The fact of life is that this Office has no sunset.” He notes that the office is modeled after the National Security Council, which was set up in 1947 as a temporary operation. Like the NSC, what he helps put in place today may be part of the landscape for many years to come.

After the initial attacks on September 11<sup>th</sup>, the Secretary of the Department of Transportation put together a “rapid response team” and launched a public website where citizens could suggest improvements to public transportation. In the first days and weeks of the crisis, issues involving civil liberties were the first to emerge as the federal government put together its response.

“We got a lot of recommendations, including from well-known people, to abandon our policy of neutrality (regarding whom is searched at airports) and go to ethnic-based selection criteria,” says **Robert S. Klothe L'74**. “Our standards reflect a random and neutral screening process. We need to meet the public need for perceived heightened security and continue to be good lawyers who do what is right.”

Klothe, who has been with the U.S. Department of Transportation since 1985 as a specialist in aviation security, has been overseeing the legal and organizational aspects of creating a new federal agency from scratch. The Transportation Security Administration was created by the Aviation and Transportation Security Act (ATSA) which was signed by President Bush on November 19, 2001 and opened its doors on February 19, 2002.



Some of the mandates of ATSA include the following: the creation of the Transportation Security Administration (TSA) within the Department of Transportation, to be headed by an Under Secretary of Transportation for Security appointed by the President; the establishment at each U.S. airport the position of Federal Security Manager, thus federalizing airport security screeners; and the creation of rules to place Federal Air Marshals on flights.

Most directly for Klothe, one year after the bill's passage the new agency must be fully staffed and operational with 30,000 employees.

"Not since the Depression has an agency been started up so quickly," Klothe says. "Airline security was formerly a responsibility of the FAA (Federal Aviation Administration) but now the FAA will be out of that business and security will be under the TSA."

After the first few months, the legal issues he's been addressing have been mainly organizational, focused not only on hiring employees for the new federal agency, but also dealing with federalizing airport security screeners.

"Right now, in a field that shows a 300% turnover in staffing, we need workers who have done the work and are qualified. Gradually the requirements for these positions will be toughened up."

At the time of the attacks, **Christopher Mora L'99**, Staff Judge Advocate based in Gulfport, Mississippi, was a Defense/Legal Assistance Attorney for the U.S. Navy, Judge Advocate General's (JAG) Corps. He provides legal services to Navy, Marine Corps, Army and Air Force commands located in a 13-state area of the south central U.S. Since graduating three years ago he's earned a lifetime of experience as a lawyer because his office of four attorneys conducted what might otherwise be considered a full service law practice. In trial practice alone, he has drafted more than a hundred motions in less than two years.

"As a JAG attorney you're seasoned very quickly. There's nothing we probably haven't handled... When September 11<sup>th</sup> occurred we were doing briefs for the reservists who were called up." This involved organizing the statutes for calling up the reservists and facilitating their activation overseas. "We went from learning about the laws for calling them up to doing it in a very short time," Mora says.

"Since September 11<sup>th</sup> each attorney in our office has probably prepared over a thousand wills... It's a sobering reality that the work you're doing is not the usual legal practice... The reality hits when you see massive numbers of wills drafted and you see the reservists going out on their mission – they have that face on that shows they're gearing up."

The legal statutes that the JAG Corps consults include two crucial pieces of legislation: The Soldiers' and Sailors' Civil Relief Act of 1940 and the Uniformed Services Employment and Reemployment Rights Act of 1994. Among the protections offered by these acts, these laws help protect reservists whose employers may be uncooperative regarding their sudden leave from work, and protect them from creditors who may try to take advantage of them or their families while they are on active duty.

"These laws were never more important than their application during Operations Desert Shield and Desert Storm," says Mora. "The Gulf War saw reservists comprising a higher percentage of the total servicemen population than in any other previous armed conflict. After September 11<sup>th</sup>, Navy JAGs have a clear purpose and mission. For the Sailors, Soldiers, Marines and Airmen we're taking the worries off their minds so they can focus on their mission."



Ground Zero

## HOW LAWYERS AID THE RESPONSE

Our longstanding strengths and skills were further galvanized by these events,” says **Glen A. Tobias W’63, L’66**, National Chair of the Board of the Anti-Defamation League (ADL). “For example, we’re exposing the vicious anti-Semitism being disseminated throughout the Arab world and its connection to extremist groups in our own country. And we’re aggressively working to challenge efforts to blame the terrorism on Israel or on America’s foreign policy in the Middle East. At the same time, we are speaking out strongly against bigotry targeted at innocent Americans who are Arab or Muslim. If you’re in the business of fighting hate, you’re only credible if you fight for all people.”

The ADL is uniquely qualified to advise the government and organizations on the delicate balance between national security considerations and preserving individual civil liberties. The ADL issues publications and guidelines to organizations worldwide to facilitate tolerance education. At the same time the group is involved in advising the legislative bodies of government.

“The ADL works with law enforcement to identify extremists and bring them out into the limelight. We

work with the legislature – our Model Hate Crime Statute has been enacted in 43 states. We played a role in advising the government in creating the new anti-terrorism legislation.”

**Michael Hirschfeld L’75** is a partner in the New York office of Dechert, and chair of the ABA Tax Section’s *September 11<sup>th</sup> Tax Task Force*. He testified before the U.S. House of Representatives’ Ways & Means Committee Subcommittee on Oversight regarding tax consequences for businesses receiving grants and loans from charities in response to the September 11<sup>th</sup> attacks. The public hearing was convened to review the coordination of, application procedures for, and appropriate uses of, charitable assistance to the families and victims of the attacks in New York and Washington.

The *September 11<sup>th</sup> Tax Task Force* was mobilized by the Bar to address tax implications resulting from the outpouring of charitable giving in the wake of the attacks. Charitable organizations are regulated by both the Internal Revenue Service and state laws. In mid-October the Task Force submitted a formal request to the IRS for confirmation from the Service that charitable loans and grants provided to for-profit business entities affected by the September 11<sup>th</sup> terrorist attacks were excludable from income as gifts. According to the Task Force’s formal request, they stated that whereas the IRS took a “clear and definitive position that relief payments awarded to individuals on the basis of need are excludable from income...the treatment of charitable relief payments to business entities” was not clear.

The attacks and the subsequent loss of approximately 29 million square feet of office space negatively affected thousands of businesses. “All seek to continue business operations but are facing severe obstacles,” the report said. The business owners sought one-time charitable grants to help them to do so. Included in the report as examples of such businesses that were struggling were pushcart operators who sold food and beverages outside the WTC; a computer servicing company that lost half its clients and its office space; and a small retail brokerage firm in the World Trade Center that lost 70% of its employees and all of its business records.





The Bar coordinated the *Pro Bono* response

### TO SUE OR NOT TO SUE - TRIAL LAWYERS SET THE TONE

**Elizabeth J. Coleman L'74**, Executive Director of the New York State Trial Lawyers Association, helped formulate the organization's response to the tragedy. In a letter to members Coleman wrote, "In the wake of the horror engendered by the September 11<sup>th</sup> atrocities, all Americans searched for a way to help the victims and our nation. NYSTLA's officers and Executive Committee have voted unanimously to encourage members to represent eligible individuals seeking compensation on a *pro bono* basis from the Victim Compensation Fund established by Congress to aid September 11<sup>th</sup> victims and their families."

Additionally, NYSTLA in conjunction with the Association of Trial Lawyers of America (ATLA) established a national non-profit entity, *Trial Lawyers Care*, to provide *pro bono* legal assistance to victims and their families in filing claims for compensation under the federal *September 11<sup>th</sup> Victim Compensation Fund of 2001* (H.R. 2926). The nation's and New York State's largest trial lawyer organizations encouraged victims and the surviving families of victims to forfeit their rights to file civil suits in exchange for participation in the Victim Compensation Fund.

Attorneys who offer their services for free are chosen based on strict criteria: they must have at least five years of litigation experience and have tried or settled at least 15 personal injury, wrongful death or other significant cases. They pledge not to accept any fee from the client, including any referral fee, on any personal injury or wrongful death cases for harm suffered during or in the immediate aftermath of the terrorist attacks, nor to accept any fee for any other legal services provided to a client referred by *Trial Lawyers Care, Inc.* A website set up to provide more information is [www.911LawHelp.org](http://www.911LawHelp.org).

This program and the efforts of its members to create *Trial Lawyers Care* garnered ATLA a *2001 Pro Bono Award* from the National Law Journal. As of December 2001, three thousand lawyers had volunteered to represent victims and their families.

Emotions run high and the questions are never-ending concerning the Victim Compensation Fund. **Regina Austin**, Professor of Law, an expert in torts resists prognostication regarding the full impact of September 11<sup>th</sup> on insurance laws, but based on the law she does offer an analysis of the Victim Compensation Fund:

At this point, it appears that the effort to compensate the victims of the terrorist attacks from a common fund has prompted much discussion in the press of the formulas by which torts damages are assessed in wrongful death cases. Valuing lives is a task fraught with moral

implications. It involves not simply a matter of calculating how much a life is worth, but also determining whether distinctions can rightly be drawn between and among persons. In assessing damages for wrongful death, the torts system generally places the most weight on a person's wage-earning capacity. Although the victims of the bombing and destruction of the World Trade Center, for example, were from such a broad spectrum of the society, materially speaking, they died a common death, one that was affected not only by who they were and what they did for a living, but also by the symbolic significance of the site where they were all murdered and the importance of commerce to our democratic way of life. Highly paid CEOs attending a morning meeting perished alongside illegal immigrants delivering breakfast made in nearby restaurants and New York City firefighters attempting to save lives as they had sworn and were paid to do. The administrator of the common fund is attempting to provide compensation that is sufficient to cover the losses of the survivors and loved ones of the deceased, to provide a disincentive for them to bring private actions, and, I hope, to acknowledge the debt of the nation for the sacrifice of those who died or were injured.

If the families of the victims choose to participate in the Victim Compensation Fund, Professor Austin suspects that "an administrative approach would eliminate the costs associated with litigation such as attorney's fees and would probably result in a more equitable distribution of limited funds."

But she also understands the many sides of the debate that citizens have been having since the Special Master announced the terms of the Fund.

"I think that tort law cannot adequately deal with the enormity of the disaster and the impact that it had on the lives of New Yorkers and the people of the nation. There were too many people hurt in ways that the tort system does not adequately recognize...On the other hand, I really wonder whether the sort of moral blameworthiness that the torts system assesses is an adequate basis for assigning responsibility to the corporate or individual defendants that may have played a relatively minor role in producing the disaster (the airlines that let the terrorists slip through security checkpoints, the architects who did not build buildings strong enough to withstand the fires, etc.). Courts label unforeseeable more mundane accidents; it is hard to imagine that the events of 9/11 can escape that designation."

Professor Austin anticipates that September 11<sup>th</sup> might "create a host of lawsuits raising very interesting questions - did each plane's striking the World Trade Center constitute a separate occurrence or was there only one occurrence? The limits of liability would be doubled if the former were the case. A common conspiracy linked the two crashes, which were separated by only a short interval of time. Was the assault on the World Trade Center an act of war? President Bush said it was. Acts of war are commonly excluded from property and liability insurance. Should insurance for acts of terrorism be created and subsidized by the government?"



## Fund's Special Master Adjunct at Penn Law

In November **Kenneth R. Feinberg**, an adjunct professor of law at Penn, was named by Attorney General John Ashcroft as the Special Master for the federal *September 11<sup>th</sup> Victim Compensation Fund of 2001*. The terms of the compensation awards were announced on December 20, 2001 and, after accepting official responses from attorneys and the families of the victims', formalized at the end of January 2002. Mr. Feinberg is a Member of The Feinberg Group in Washington, DC. He served as a court appointed Special Settlement Master on litigation involving asbestos contamination, Agent Orange, DES, and the Dalkon Shield. He is a member on the Panel of Arbitrators of the American Arbitration Association. Mr. Feinberg teaches Evidence at the Law School.

## THE SACRIFICES WE WILL MAKE – CIVIL LIBERTIES

The primary reason why Americans are cautious about how the government responds to the attacks of September 11<sup>th</sup> is because of the likely risk that civil liberties guaranteed in the U.S. Constitution will be restricted. It is understood that in a time of war changes will be required and inconveniences overcome. But what are we really talking about?

**Professor Anita Allen** notes that in the months prior to September 11<sup>th</sup> national discussion of privacy policy tended to focus on the “felt need” of Congress and the courts to increase consumer protections. “In the two years just prior to September 11<sup>th</sup>, Congress passed three major laws offering major new privacy protection regimes,” she says. “One was Title V of the Financial Services Modernization Act of the *Gramm-Leach-Bliley Act of 1999*, which requires privacy notices and protections to consumers of services provided by banks, insurance companies, brokerage firms and other companies providing financial services. The second was the *Health Insurance Portability and Accountability Act of 1996*, which includes protections for medical record privacy and security. The third is the *Children’s Online Privacy Protection Act of 1998*, requiring parental consent for disclosure of personal information by children to commercial websites.”

Clearly, after September 11<sup>th</sup> the discussion shifted to concerns about the proper balance between civil liberties and the need for national security. Professor Allen notes that the USA PATRIOT Act “weakened provisions of the law limiting government access to electronic communications, including email and phone conversations.” In addition, she points out the loss of some privacy already because of heightened airport screening and profiling of passengers, and the stricter enforcement and enhancement of laws permitting detention of undocumented persons and visa violators.

“Over the objections of the American Bar Association,” Professor Allen observes, “The Justice Department moved to eliminate the tradition of strict confidentiality of attorney/client communications by requesting surveillance of conversations between attorneys and certain non-citizen clients under detention... Also, the Federal Trade Commission changed its course, arguing against the felt need for consumer Internet privacy law and criticizing recent financial privacy laws as ineffective and burdensome on industry.”

She concludes that existing privacy laws have held up fairly well, “But the warrant requirements were modified to make it easier for judges to issue warrants good for a longer time, and in other jurisdictions voicemail and e-mail are somewhat easier by government to access.”

In mid-September “*Korematsu* stood before us as a negative beacon of a way not to go,” says Professor **Seth Kreimer**, a constitutional law scholar. He refers to the 1944 U.S. Supreme Court ruling in which the Court upheld the military’s practice of relocating U.S. citizens to detention camps solely on the basis of their race. “After September 11<sup>th</sup>, there was worry that the shock of the events would pull us back to internal divisions and racism that we saw after the Japanese attack in World War II,” he explains.

“There is hope today that the legal structures put in place over the last half-century would incline us away from over-broad racist responses.” He notes that in contrast to the “hysteria” that came with the attack on Pearl Harbor and America’s subsequent entry into World War II, the White House and the Attorney General’s office have not fanned racism, as was done then. “The Bush White House has made a point of embracing the idea of Islam and Muslims as being part of the American polity as we have not seen before.”

In terms of First Amendment rights, Professor Kreimer observes that since the 11<sup>th</sup>, for a time of crisis, tragedy and war, our public dialogue has been “reasonably robust.” Although we need to still be on guard against subtle forms of censorship, “as a country



Civilians line up outside St. Paul's Chapel to view the Ground Zero site

we have been doing reasonably well. There has been no civil harassment of critics of the War, as there has been during times of war in the past.” He credits the evolution of the legal system for guiding our response.

Where he sees a real need for concern is with privacy and criminal procedure. “The statutory amendments that the Bush Administration pushed through Congress raised concerns of privacy. I was happy to see that there was a ‘sunset provision’ in some of the most problematic of these provisions, like the expanded authority to wiretap and share information within the government.”

Professor Kreimer notes that the list of law enforcement prerogatives granted by the USA PATRIOT Act matches a wish list of law enforcement officials pre-September 11<sup>th</sup>. He points out that the fear of terrorism and the presence of unseen terrorist cells in the United States could foster an environment where we incrementally give up civil liberties. “Every time one releases law enforcement investigations from checks and balances, where a check is removed without one to replace it, in the aggregate you end up with an uncontrolled government.”

Immigration has been particularly affected by Title IV of the USA PATRIOT Act. **Howard Chang**, Professor of Law, comments “The new legislation expands the grounds related to terrorism for excluding aliens from the United States...The

new law also authorizes the detention of aliens deemed by the Attorney General to be engaged in any ‘activity that endangers the national security of the United States.’ This detention is potentially indefinite if the removal of the alien is unlikely in the reasonably foreseeable future.”

Professor Chang says the terrorist attacks of September 11<sup>th</sup> “revealed lapses in our efforts to exclude terrorist aliens from the United States.” Furthermore, “What is most needed, however, is not radical changes in our substantive immigration laws but rather improvements in enforcement of the laws that we have now that address national security concerns.”

Whereas Professor Kreimer believes that the law has evolved through history, most notably in the last half-century, Chang looks at the laws presently on the books and sees shortcomings. “When it comes to the immigration context, the norms against discrimination based on nationality or national origin are notoriously weak. Discrimination based on nationality or national origin is routine in our immigration laws, which include quotas based on the national origin of the immigrant. Courts have never struck down these laws, and are especially deferential during foreign policy crises. In *Narenji v. Civiletti* (D.C. Cir. 1979), the Court upheld a regulation imposing special reporting and review requirements solely on Iranian students, which the INS adopted following the seizure of U.S. diplomats in Iran.”

## WHAT LIES AHEAD?

The majority of Americans believe that the United States will be the target of another terrorist attack, but no one knows with any degree of certainty what form that will take, when it will occur, or if it will occur intermittently into our future. As of this writing the source of the Anthrax germ that was distributed through the mail system in October remains unknown. The effect of the scare is that the world is immediately more educated about germ warfare and the realistic threats of bioterrorism.

**Eric Feldman**, Professor of Law, joined the faculty of the University of Pennsylvania this year. He is an expert in health law and believes that the most significant development since the Anthrax scare has been the drafting of the *Model State Emergency Health Powers Act (MSEHPA)*, announced on October 30<sup>th</sup> and written by Johns Hopkins University's and Georgetown University's Center for Law and the Public Health for the Centers for Disease Control and Prevention.

As Feldman explains, "The Act is aimed at facilitating the ability of state governors and public health officials to respond to emergencies. It allows the governor to declare a public health emergency, and permits state health authorities to close facilities; control roads and public areas; compel individuals to undergo physicals exams, testing, and treatment; isolate/quarantine people if they determine it necessary to protect the public health, and obtain private health information."

The drafting of the Act had been underway for a long while, but the urgency of enacting it by state legislatures and implemented by state public health authorities was elevated with the Anthrax contaminations in October."


Although the drafters sought to balance the need to protect the public health with the importance of respecting individual rights and liberties," Feldman continues, "some critics have charged that the Act represents a draconian response to the anthrax scare that gives governors and public health authorities far too much power. What, for example, counts as a public



Tributes adorn the fence bordering St. Paul's Chapel

health emergency? How many cases of a particular disease are necessary for the provisions of the MEHPA to come into play? The principles underlying these issues are not new. But the events of the past months brings them into sharp relief, and makes their practical resolution a seemingly urgent matter. Considering the range of legal and medical responses available to state and federal authorities when faced with a bioterrorist threat was, just a few months ago, a problem that was all too easily ignored. It has become a hotly contested issue that is likely to become a key issue in legal scholarship, teaching, and practice. We can no longer simply assume that bioterrorism is the province of creative moviemakers or the worry of eccentric worrywarts. We have been forced to understand that even the simplest of acts, like opening the mail, can be fraught with danger. The institutions that make life in the United States so extraordinarily privileged – mail, public transportation, and many others – turn out to be vulnerable. Who would have ever predicted such a transformation?"





# *The New Protracted Conflict* **The Roles of Law in the Fight Against Terrorism**

*by Jacques deLisle, Professor of Law*

**I**n the immediate aftermath of September 11, the Bush administration and political leaders from both parties proclaimed a “war on terrorism” in response to what they characterized as acts of war directed against the American homeland. At the same time, they declared that the United States was determined to “bring to justice” those responsible for the September 11 attacks, as well as members and accomplices of the wider international network of terror directed against the United States and American interests.

In the weeks after September 11, the war on terrorism came to include military operations in Afghanistan and contemplation of pursuing a similar course on additional fronts. Talk in Washington turned to possible U.S.-led moves against Iraq or, less likely, North Korea, Somalia, Sudan, Syria, Yemen, or perhaps Libya, Iran, or other states that harbored or supported terrorists or developed weapons of mass destruction that—absent trustworthy safeguards—could take terrorism to devastating new levels. The United States urged less recalcitrant governments to take immediate forceful steps against terrorist groups and supporters in their own territories (along the lines of the December 2001 attack on Al Qaeda elements in Yemen), and used various means to encourage a wide spectrum of friendlier governments in the region and beyond to support the war on terrorism. The measures taken and considered have generated predictable arguments about their political feasibility, normative acceptability, and likely consequences.

Meanwhile, the prospective means for meting out justice evolved as well. Congressional legislation, presidential orders, and other executive branch actions introduced significant substantive and procedural changes in the laws that could be used in the fight against terrorism. Controversy quickly grew up around the possible spectrum of methods for dealing with the individual targets of American action. Sharp disputes arose over the legality, morality, and wisdom of U.S. forces seeking out identified individuals, trial by American military tribunals, prosecution before a special international court or criminal proceedings in the civilian judicial organs of the United States or other states with jurisdiction.

Similarly contentious were ancillary issues of procedures for investigation and prosecution that departed from the process used for ordinary criminal suspects under U.S. law but that still accorded a good deal more than the rough justice of bombing and ground combat. Questions also emerged over what law or combination of laws would apply: the laws of the United States (both already-existing and later-enacted), the laws of other countries, or the handful of international legal principles, including those developed at multilateral trials born of earlier international and internal wars.

Many observers saw a still broader set of problems than those intrinsic to either a military or prosecutorial approach. The emergence of so many divergent means to a relatively clear end revealed a troubling ambivalence in grappling with the choice between a war paradigm and a criminal justice paradigm in responding to the terrorism threat.<sup>1</sup> For those who favored a war model, judicial methods implied pointless self-restraint or dangerous unilateral disarmament.<sup>2</sup> Those of the prosecutorial school saw an opportunity to vindicate American or civilized values in a second Nuremberg, resisting the temptation to pursue military victory without great regard for justice and proof.<sup>3</sup> In the apparent muddling of the two models in U.S. policy thinking, some saw the war paradigm “infecting” the justice paradigm, legitimating an erosion of liberties that could sweep more broadly than the current dangers might warrant.<sup>4</sup>

This conventional wisdom is roughly half right in two respects. First, the initial phases of what promises to be a protracted fight against terrorism have been marked by the absence of a firm adoption of either “war” or “justice” as the defining model. This lack of a clear choice poses real risks. Genuine confusion over the basic paradigm can produce costly incoherence in more discrete policies and tactics.<sup>5</sup> Intentional uncertainty in the overarching vision invites suspicions of opportunism and attempts to avoid accountability by picking and choosing the model that best suits the aims of the moment. But it is wrong to suggest that the choice between military and legal models for fighting terrorism is dichotomous. Each in its own way is seriously unsatisfactory. Also, the two are not as antithetical as they are typically portrayed. There is much law in the prosecution of the war, and much that looks like war in the pursuit of law-based solutions.

The conventional wisdom is right in worrying that the blurring of legal and military frameworks may have corrosive effects on civil liberties that outweigh its potential contributions in defeating terrorism. But the conventional wisdom is often cast in overly broad terms, failing to note features of the war against terrorism that make the threat to liberties both particularly alarming and more easily defended than many critics contend. Moreover, the focus on civil liberties

in the debate over law and terrorism has mistakenly emphasized the impact on the United States’ domestic legal order. It has slighted a second and ultimately more difficult dimension of the “internal law question.” In pursuing the prosecution of terrorists and their enablers and the longer-term goals of eradicating the refuges, training camps, breeding grounds, and sleeper cells of terrorism, much will depend on the laws and legal institutions of countries other than the United States. An approach to the battle against terrorism that includes a significant legal element will have to concern itself with the legal systems in countries as diverse as Germany, Pakistan, and postwar Afghanistan.

### THE LAW PARADIGM AT WAR

A criminal law model for fighting terrorism is obviously appealing. The idea of bringing the perpetrators to justice has resonated for many Americans in their outrage over the September 11 attacks. The prosecutorial approach promised a degree of moral satisfaction in a country where professional and popular conceptions of criminal punishment accord a large role to retribution (in comparison to the goals of deterrence, disablement, or rehabilitation that have greater prominence in many other Western countries’ approaches). Trial and conviction also seem to offer a special form of vindication for American victims and values because of the aura of political neutrality and fair process that—especially in the United States’ uniquely legalist political culture—surrounds scrupulous court proceedings, notwithstanding the many recognized flaws that can beset judicial processes in politically charged settings. Casting terrorist groups as a law enforcement problem has the additional attraction of assimilating the tasks at hand to the familiar and often-successful campaigns against organized crime groups, with which Al Qaeda and similar entities share many practices and characteristics. Regarding them as outlaw organizations akin to the Mafia offers the further satisfaction of denying them the respect inevitably if grudgingly extended to even the most loathed enemy state in a war. The war paradigm’s approach (reflected in the international law of war) of letting go the enemy’s foot-soldiers and many of its leaders at the cessation of hostilities and its ethos of setting aside even recent conflicts

1. See, e.g., George P. Fletcher, “We Must Choose: Justice or War?” *Washington Post*, Oct. 6, 2001; “This Evidence Would Not Convict in Court, but it Does Justify a Limited War,” *Independent*, Oct. 5, 2001.
2. See, e.g., Charles Krauthammer, “To War, Not to Court,” *Washington Post*, Sept. 12, 2001, p. A29; Harvey Sicherman, “Bleak New World,” *FPRI E-note*, Sept. 13, 2001.
3. See, e.g., Burt Neuborne, “Tribunals Without the Military,” *New York Times*, Dec. 16, 2001, section 4, p. 13. For a critique of such arguments, see Jack Goldsmith and Bernard Meltzer, “Swift Justice for bin Laden,” *Financial Times*, Nov. 7, 2001.
4. See, e.g., Anthony Lewis, “Right and Wrong,” *New York Times*, Nov. 24, 2001; James D. Zirin, “Will U.S. Civil Liberties be Another Victim?” *Times* (London), Dec. 4, 2001; Clarence Page, “Selling Our Judicial System Short,” *Chicago Tribune*, Dec. 2, 2001, p. 21.
5. One concrete example in the opening months is the U.S. administration’s uncertainty whether those captured in Afghanistan or elsewhere were to be regarded as prisoners of war or as “unlawful combatants.” See William Glaberson, “Critics’ Attack on Tribunals Turns to Law Among Nations,” *New York Times*, Dec. 26, 2001.

when security interests so dictate are features that seem unappealing with respect to the Taliban, and more so for Al Qaeda and other terrorist groups.<sup>6</sup> The depth of the law paradigm's appeal was strikingly reflected—albeit with a divine, nearly apocalyptic gloss—in an early name for the war against terrorism: Operation Infinite Justice. (This was quickly renamed Operation Enduring Freedom when the possible offense to Muslims of the earlier name was realized.)<sup>7</sup>

A law-based approach also seemed to offer the advantage of being a relatively straightforward and uncontroversial way to deal with both the terrorist acts that demanded an immediate response and those activities that created a longer-term terrorist threat. Relevant U.S. laws included garden-variety proscriptions of homicide, expansive definitions of criminal conspiracy, specialized federal legislation addressing terrorism, war crimes, and hijacking dating back to the 1970s and expanded after September 11, most notably to widen proscriptions on harboring anyone whom one knows or has reason to believe is an active terrorist, providing material support to terrorist organizations or engaging in conspiracies to commit terrorism.<sup>8</sup>

Activities and individuals outside the United States could be brought legally within the reach of the U.S. criminal justice process. American law enforcement, prosecutors and courts have long adopted a broad construction of U.S. statutes' extraterritorial reach, particularly where Congress explicitly so provides, as it has in the case of antiterrorism legislation. Accepted doctrines of international law permit a state to enact laws punishing non-citizens' overseas behavior where

only part of a complex offense takes place in the state claiming jurisdiction. Other international legal principles may permit a state to prohibit and sanction actions threatening its security or harming its nationals, even though undertaken by foreigners abroad. Further, the intentional targeting of massive numbers of civilians in the September 11 attacks, the particular methods of destruction deployed, and the prior declaration by apparently responsible parties of a "war" against the United States all support the claim that this new strain of terrorism counts among the handful of offenses—including war crimes, crimes against humanity, piracy, hijacking, and sometimes international terrorism—that any state may reach and punish, without regard to where they occur.<sup>9</sup> Moreover, international law arguably permits a state to enact and apply retroactively laws punishing such universally condemned crimes.<sup>10</sup>

Potentially satisfactory fora for implementing a criminal justice paradigm included ordinary American courts for prosecuting those caught within the United States, extradited by cooperative foreign powers, or captured by U.S. or allied forces.<sup>11</sup> Indeed, the problems that have often frustrated reliance on extradition might be expected to be less serious in the present context. The usual political reluctance to extradite might be lessened by the reluctance to appear to be harboring terrorists, the growing appreciation among many states that they too faced terrorist threats, the broadly recognized international legal obligation to extradite those charged with war crimes and crimes against humanity, and the complete collapse of the government in Afghanistan, the state where some of the most wanted suspects resided. And, for those

6. See, e.g., Nicholas Kristoff, "Let Mullah Omar Get Away," *New York Times*, Dec. 26, 2001, and the highly critical readers' letters it prompted.
7. Arundhati Roy, "The Algebra of Infinite Justice," *Guardian*, Sept. 29, 2001.
8. See, e.g., Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons, 94 P.L. 467, 90 Stat. 1997 (1976); 1984 Act to Combat International Terrorism, 98 P.L. 533, 98 Stat. 2706 (1984); and Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001, 107 P.L. 56, 115 Stat. 272 (2001).
9. In international law, these several bases for jurisdiction are generally referred to as territorial, protective, passive personality, and universal. The Statute of the International Criminal Court defines a crime against humanity, a core basis of universal jurisdiction, as including murderous acts "when committed as part of a widespread or systematic attack directed against a civilian population." Some have argued that bin Laden's late 1990's declaration of a "war" against the United States subjects his organization's actions to the laws of war, which define attacks on noncombatants as a war crime—another standard basis for universal jurisdiction. The contours of universal jurisdiction are unsettled and the subject of much debate. For an account of one recent attempt at a systematic formulation, known as "The Princeton Principles of Universal Jurisdiction," see Laura Secor, "Justice Without Borders," *New York Times*, Dec. 9, 2001.
10. Examples of acceptance of this principle include Israel's prosecution of Adolf Eichmann and the United States' willingness to extradite John Demjanjuk.
11. See Harold Hongju Koh, "We Have the Right Courts for bin Laden," *New York Times*, Nov. 23, 2001.



brought before U.S. judicial institutions by less orthodox means, it is clearly (if controversially) settled in American law that U.S. courts will allow prosecutions of aliens despite serious irregularities in how they were brought before the court.<sup>12</sup>

If necessary in order to secure other states' support or enhance the process's legitimacy, an international tribunal looked to some like a viable option, given the increasingly robust international notion of individual responsibility for international crimes, the ongoing war crimes proceedings in the former Yugoslavia and elsewhere, the nascent international criminal court, and the Nuremberg precedent.<sup>13</sup> On the other hand, for those less sanguine about using domestic (much less international) courts, more summary processes might be acceptable and could be squared with the law paradigm. That view was part of the idea behind President Bush's executive order proclaiming the authority to establish special military tribunals to conduct "full and fair" trials of foreign nationals for terrorist activities and his purporting to derive that power from specific congressional authorization, the constitution and laws of the United States, and general principles of international law, including a state's right to take steps necessary for its own security.<sup>14</sup>

Yet, for all its appeal, the law paradigm has failed to become the dominant model for the United States' fight against terrorism, and for good reason. At its best, the criminal justice paradigm is inadequate in important ways. Existing laws and new ones that the United States or others might adopt will not reach many of the targets that American leaders have identified in the war on terrorism. Protracted alien detentions, arrests and prosecutions for abetting, funding, and conspiring as well as actively participating in terrorist activities, expanded powers to freeze or seize assets, and toughened immigration rules are poor tools for reaching diffuse networks of support for terrorists or members of quiescent terrorist cells that have yet to do or even plan any specific act. In an international legal order that zealously protects states and state powers, reaching state or government actors through legal means is notoriously difficult, except in cases of the most extreme behavior, which can ground individual criminal responsibility or make lawful a resort to the military option. While these features of the legalist approach may not pose problems in going after the Taliban, they become significant as the U.S.-led war on terrorism comes to target more subtle but still dangerous varieties of state involvement with terrorism, such as harboring, indirect financing, or simply failing to crack down.

Legal cooperation from other states in capturing or rendering up suspects will not always be forthcoming, especially in cases

where the United States will seek to prosecute actions short of the calculated mass killing of civilians, offer evidence that is less than incontrovertible and overwhelming, or pursue an agenda that is suspected of being overly political. Even in cases that are easy on the merits, requests for extradition will fall on deaf ears in governments with politics or powerful constituencies sympathetic to the terrorists' agenda, as well as in some European states that object to the U.S. insistence on an option to impose the death penalty or to use military tribunals.

Securing convictions of those brought before tribunals is hardly a certainty. Despite the successful prosecution in the first World Trade Center terrorist attack in 1993 and the truck bombings of U.S. embassies in East Africa in 1998, and the quick federal indictment of one co-conspirator in connection with September 11, recent misadventures in American criminal justice—most famously in the O. J. Simpson and Rodney King cases—understandably give pause to some who contemplate the prospect of turning vital aspects of the fight against terrorism over to juries. Talk of closed proceedings and anonymous juries, expansion of police powers to gather evidence, and authorization of military courts with relaxed rules of evidence, limited rights to appeal, and conviction based on a two-thirds vote all indicate worries about the sufficiency of ordinary judicial processes.

International tribunals have failed to win American support. The dominant American view remains that any such institution is likely to be overwhelmed and slow (even more so than American courts), compromised by political pressure to be too soft on terrorists or too tough on the United States, and unwilling to impose sufficiently severe sanctions (most notably capital punishment). Such concerns led to the United States' frosty relations over the last twenty years with the International Court of Justice, the International Criminal Court, and other similar bodies.

"Mere" criminal convictions—even where they can be reliably obtained—fail to capture the enormity of the recent terrorist attacks and to address the special motivation behind them. While a Nuremberg-like process might address this shortcoming, such an approach is unlikely given American skepticism toward multilateral processes, and of uncertain promise given Nuremberg's unparalleled context of Nazi atrocities and Allied victory and the questions that even that tribunal had to face about victors' justice and retroactive legal standards.

Moreover, the expected international political value of the legal model may be illusory. As was made clear by the international response to evidence of Osama bin Laden's involvement in the September 11 attacks, even the most

12. See, e.g., *U.S. v. Alvarez-Machain*, 504 U.S. 655 (1992), allowing prosecution even if the foreign defendant's abduction to the U.S. was "shocking" and "in violation of general international law principles"). International law arguably accepts the same principle. When Israeli agents abducted Adolf Eichmann from Argentina to stand trial in Jerusalem, the kidnapping was acknowledged to be in violation of international law but the prosecution was not.

13. See Anne-Marie Slaughter, "Al Qaeda Should be Tried Before the World," *New York Times*, Nov. 17, 2001.

14. "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," Executive Order of Nov. 13, 2001, available at [www.whitehouse.gov/news/releases](http://www.whitehouse.gov/news/releases); Jan Ting, "In War, What Happens to Civil Liberties?" *Philadelphia Inquirer*, Nov. 1, 2001.

unimpeachable legal process would be challenged to overcome flat denials and elaborate theories of American-orchestrated conspiracies, or the troubling squishiness of support among many members of the supposedly universal coalition against terrorism.<sup>15</sup> Worse still, the United States' embrace of the criminal justice paradigm creates political vulnerabilities. It has raised the prospect of a public trial, in whatever forum, that could afford bin Laden or others a stage from which to proclaim their vision, enhance their international status, or stake their claims to martyrdom. It has given critics opportunities to point out the tension between Washington's now seeking international legal cooperation after years of shunning international tribunals and internationalism more generally. It has produced the unseemly sight of Taliban leaders, Chinese President Jiang Zemin, and other potentates whose domestic legal systems are not known for particularly high standards of proof and fairness, demanding that the United States produce incontestable proof of bin Laden's and other suspects' guilt and accept legal procedural preconditions for trials or the use of military force.<sup>16</sup> And it has created occasions for critics to claim hypocrisy, opportunism and creeping authoritarianism in the administration's departures from a purist legal model that accords full due process and other constitutional and statutory protections provided in U.S. law and courts. This already has left U.S. officials scrambling to defend the military tribunals and other contemplated or adopted legal changes at home and abroad.

The American claim of a legal and moral right to use force against terrorists and their sponsors constrains—for good or ill—the United States' ability to press for restraint by other nations that suffer terrorist attacks, most notably Israel and most recently India. Embracing the law model could risk conferring greater legitimacy to calls for prosecution—perhaps as war criminals—of American troops or leaders for actions in military or paramilitary operations in Afghanistan or elsewhere.

Still, the legal paradigm has played an important role in U.S. conceptions of the war against terrorism, in part because it has not been as inconsistent with a war model as is often thought. Much that some may find legally and morally unseemly is fully consistent with a prosecutorial model. The formal legal changes to address the specific circumstances of the immediate war on terrorism are part of this pattern, including the

much-discussed military tribunals, exceptional secrecy to protect sources of intelligence, indefinite detention of aliens suspected of terrorist activities and involvement with terrorism, authority to listen to conversations between federal detainees and their lawyers, increased power to conduct surveillance and to gain access to information, dragnet questioning (with formal consent) on the basis of little more than national origin, toughened immigration rules and enforcement efforts, and substantive criminal proscriptions that cast a wider net for providers of material, organizational, and even some forms of moral support to terrorists. While such measures may be objectionable and even ill advised, they are not a thorough rejection of the law paradigm but an effort to make a legal model work under the extraordinary and dangerous conditions of a proclaimed (though legally undeclared) war.

Moreover, less exceptional features of a criminal law approach applied in the fight against terrorists include much that is not for the purist or the squeamish. Bringing suspects and evidence before tribunals sometimes requires questionable means. Success in finding, capturing, and prosecuting defendants routinely entails dealing with highly odious and criminal characters, enlisting their cooperation, rewarding them, and promising them immunity. It should hardly be surprising that such ordinary practices of police and district attorneys have analogs in intelligence operatives' dealings with terrorist elements or in the United States' overlooking the sins of now-useful cooperative governments in the region. These are indeed features of a law paradigm that retains coherence, some prospect of efficacy and broad appeal precisely because it thus partakes of some of the moral ambiguity and political realism that are more obviously and more often associated with its supposed polar opposite, the war paradigm.

**NEXT:**

**The War Paradigm and the Roles of Law and Civil Liberties at Home and Legality Abroad**

*Jacques deLisle is a professor of law at the University of Pennsylvania Law School and a senior fellow at the Foreign Policy Research Institute. In June he will speak on the topic of this paper as a panelist at the Penn Law European Society gathering in Berlin, Germany.*

**This article may be read in its entirety in *Orbis*, Vol. 46 No. 2 (2002), a publication of the Foreign Policy Research Institute ([www.fpri.org/orbis](http://www.fpri.org/orbis)).**

15. See e.g. Marjorie Miller, "The bin Laden Tape: Many Watch, but Opinions Mostly Unchanged," *Los Angeles Times*, Dec. 15, 2001; Susan Sachs, "Look at bin Laden Is Unlikely to Change the Minds of Arabs Hostile to U.S." *New York Times*, Dec. 14, 2001; Fawaz A. Gerges, "A Time of Reckoning," *New York Times*, Oct. 8, 2001.
16. Patrick E. Tyler and Jane Perlez, "World Leaders List Conditions on Cooperation," *New York Times*, Sept. 19, 2001, p. A1; John F. Burns, "Taliban Refuse Quick Decision Over bin Laden," *New York Times*, Sept. 18, 2001.



After the U.S. Civil War, federally appointed Utah territorial officials made polygamy and the Mormon Church's control of the political and legal systems the centerpiece of their complaints in Washington. With the passage of the Poland Act of 1874, which for the first time since 1862 expanded the reach of federal power in the Utah Territory, the stage was set for a judicial confrontation between Mormons and the federal government. This played out in *Reynolds v. United States*, which went to the U.S. Supreme Court in 1878.

THE  
MORMON

# Question

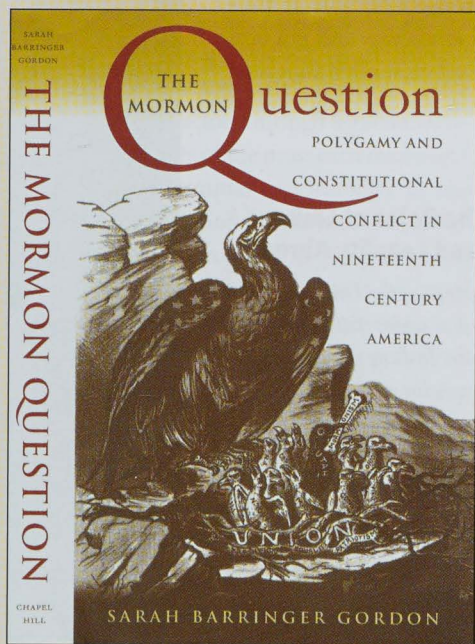
## Polygamy and Constitutional Conflict in Nineteenth-Century America

by Sarah Barringer Gordon,  
Professor of Law and History

### From the Introduction

In the mid-nineteenth century, an extraordinary contest over religion and law took shape. The conflict began with the announcement in 1852 by Brigham Young, president and prophet of the Church of Jesus Christ of Latter-day Saints, popularly called Mormons. Young proclaimed that Mormons believed in and practiced polygamy – known to the faithful as the “celestial” law of plural marriage, or “Patriarchal Marriage,” or simply “the Principle.” In 1890, however the church formally announced that it would no longer counsel the Saints to disobey the laws of man by practicing polygamy. The public announcement of the intention to abandon all claims to legal right eventually (although with aftershocks that lasted into the twentieth century) satisfied the great majority of those who opposed polygamy (antipolygamists) that their goal had been achieved at last, and that American civilization had been saved from a potent and destructive “barbarism.”

Published in 2001 by University of North Carolina Press in association with the American Society for Legal History as part of the Studies in Legal History Series. Reprinted with permission.



## An Excerpt from Chapter Four: “Law and Patriarchy at the Supreme Court”

George Reynolds recorded in his diary that territorial delegate George Q. Cannon had assured the Mormon leadership that the first conviction for polygamy “will be overturned in any event.”<sup>1</sup> As it turned out, Cannon’s optimism was misplaced; yet in the 1870s the turn to jurisprudence instead of political argument offered promise. At best, Mormons felt, the judicial branch would rescue their embattled constitutional rights from the clutches of federal tyrants and the political hacks sent to govern the territory.

Like many litigants before and since, however, George Reynolds and the Saints saw the Supreme Court simplify and reconstruct their constitutional claims in ways that channeled their arguments into long-established grooves. The freshness and power of the New Dispensation shriveled on the pages of the Supreme Court Reports; Supreme Court justices used the power of judicial review not to protect the practitioners of the Principle but in the service of its enemies.

*Reynolds v. United States* was argued at the United States Supreme Court in November of 1878. Mormon leaders, notwithstanding confident public statements, were far from sanguine.<sup>2</sup> The church hired George Washington Biddle, dean of the Philadelphia bar and lifelong Democrat, to counteract the “excitement and agit[ion of] the public mind” that the case would be sure to provoke. Attorney General Charles Devens, a native of Massachusetts and highly partisan Republican, argued for the government personally, a clear indication of the importance the Hayes administration attached to the case.<sup>3</sup>

There was good reason to take seriously the first polygamy prosecution to reach the Supreme Court. First, the penalties and reforms imposed on the former Confederacy after the end of the Civil War, known as Reconstruction, crumbled in the 1870s. With the departure of federal forces and federal support, the “reclamation” of the South by white former slaveholders began in earnest at the end of the decade. The erosion of a national commitment to reform in the South actually increased the attention paid to Utah, and to polygamy. Growing doubts about Republicans’ commitment to humanitarian principles highlighted the potential value of decisive action on the “twin relic of barbarism.”<sup>4</sup>

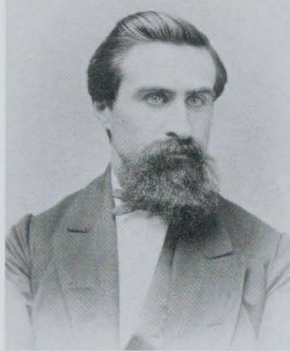
And the Supreme Court itself was at something of a jurisprudential (and institutional) turning point. By the late 1870s, the Court had reined in the applicability of the Reconstruction Amendments to the daily lives of those



The U.S. Supreme Court at the time of the decision in *Reynolds v. United States*. Photo courtesy of Library of Congress

who claimed that the federal government should now protect their rights. Therefore, one category of potentially transformative rights — the “privileges and immunities” clause of the Fourteenth Amendment invoked by African Americans and white women — had recently been rejected and the conflict receded in constitutional interpretation. The development of an alternative body of limitations on affirmative government power lay in the future. The blossoming of the constitutional doctrine of substantive due process, or the theory that the protection of “due process of law” included in the Fourteenth Amendment meant that there were substantive limits on what state and federal legislatures could regulate or proscribe, did not occur until the end of the nineteenth century. *Reynolds v. United States* lies on this fault line between constitutional interpretations. The opinion in the case provides insight into the rejection of the new constitutional claims at issue in earlier cases. *Reynolds* also exemplifies the development of constitutional doctrines drawn from common-law concepts of contract and property that eventually were subsumed under the label of substantive due process at the turn of the twentieth century.<sup>5</sup>

Equally important, the opinion in *Reynolds* immediately and irrevocably raised the pitch of antipolygamy activism. The Supreme Court’s power to make history (and to interpret it) was nowhere more evident than in this first polygamy case, which gave constitutional texture to the long-standing theories of antipolygamists. The opinion reassured congressmen, lobbyists, newspaper editors, and husbands and wives in the states that the marital structure they inhabited was indeed the very marrow of the Constitution, the highest expression of civilization, and the essential building block of democracy. An entire generation of activists gained new confidence that true human happiness and sacred meaning found expression in monogamy. In *Reynolds*, the Supreme Court connected constitutional law to increased federal power and Protestant humanism.



George Reynolds was indicted and tried for polygamy in the 1870s. His case became a landmark in constitutional law and undermined Mormons' claims to the right to practice plural marriage. Photo Courtesy of Historical Department, Church of Jesus Christ of Latter-day Saints

*Reynolds* was the first Supreme Court case to apply a provision of the First Amendment and determine its meaning in law. Previous cases had dismissed the contention that the protections of the original amendments to the Constitution provided federal protection for citizens against the power of the states. The Bill of Rights was addressed explicitly to Congress, held the Supreme Court, and it meant what it said. Any other interpretation would undermine the sovereignty of the states. And yet in *Reynolds* the Supreme Court decided that the establishment and free exercise clauses would not protect local difference in domestic relations. The Court upheld the criminal punishment of participants in a marital system that was perceived by the majority of the nation as a fundamental violation of humanitarian precepts, a sexual analogue to slavery. The fact that the Court decided the case on First Amendment grounds indicates that at the end of the 1870s, Chief Justice Morrison Remick Waite and his brethren were beginning to think of the amendments to the Constitution as entailing a positive vision of the moral limits on the American federal system. This was a sea change in federalism, even applied against a territory, but one that was cloaked in a layer of familiarity. The states provided the template for this new constitutional law of federalism, blending respect for the (past) local development of law with a (present and future) national rendering and harmonization of local tradition.<sup>6</sup>

The court's opinion in *Reynolds* drew heavily on the jurisprudential lessons of the states, relying on state precedent to explain and delineate the meaning of the religion clauses of the federal Constitution. State courts had long wrestled with questions of religious liberty, marriage and political legitimacy. State constitutional jurisprudence provided the pattern for federal constitutional analysis. If the federal Supreme Court respected and even replicated the jurisprudence of the justices of state supreme courts, especially against as unpopular a system as that of the Mormons in Utah, then its constitutional analysis would not be susceptible to charges of radicalism or abandonment of first principles.

The lawyers' arguments in the case framed the central questions: would the Court validate the traditional theories of the limitations of federal power to change (or even to investigate) the decisions of majorities in areas of law traditionally reserved for local populations? Mormon leaders and their counsel relied primarily on the lessons of majority power over local government that had been painfully and violently inflicted on the faithful before the exodus to Utah. The government, on the other hand, focused directly on polygamy. Attorney General Charles Devens stressed the individual and social inequities he claimed were inherent in a form of marriage that sacrificed the sensibilities of women at the behest of priests.

Biddle's argument for the church addressed a number of technical issues, including a claim that the trial judge's charge to the jury, which referred to "innocent women" and children whose lives were blighted by polygamy, was unfairly prejudicial (see later discussion). The meat of Biddle's argument, however, was a classic restatement of the theory of popular sovereignty so dear to Democrats before and after the Civil War: "[T]here is always an excess of power, when any attempt is made by the Federal Legislature to provide for more than the assertion and preservation of the right of the General Government over a Territory, leaving necessarily the enactment of all laws relating to the social and domestic life of its inhabitants, as well as its internal police, to the people dwelling in the Territory."<sup>7</sup>

Biddle claimed that the Morrill Act of 1862 was unconstitutional on its face because it violated Article 4, Section 3, giving Congress "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Article 4, Biddle argued, conferred only the power to make "needful" rules and regulations to protect the national interest, not the authority to intervene in local concerns. This was the constitutional provision on which the Missouri Compromise, which limited slavery to land below the famous "Mason-Dixon line," was based. The Supreme Court, however, held that such interference with local decision-making was unconstitutional in 1857 in *Scott v. Sandford*, known popularly as *Dred Scott*. In that case, the majority opinion also held that Article 4 did not confer upon Congress "powers over person and property" in the territories but limited the reach of the national government there as in the states. The prohibition against national action



contained in the Bill of Rights, wrote Chief Justice Roger Brooke Taney, "is not confined to [protecting the sovereignty of states], but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial Government, as well as that covered by States." Thus the "citizens of a Territory" were on the "same footing with citizens of the States," protected by the Bill of Rights against tyranny from the center. Any other position, Taney insisted, would be to treat the territories as "colonies ... to be ruled and governed that the [federal government's] own pleasure." Thus any attempt by Congress to prohibit slavery, interfering in the territories' sovereignty "over person and property," would be unconstitutional. Slavery's "twin," considered from the perspective of the *Dred Scott* case, would be equally protected against congressional interference.<sup>8</sup>

By invoking Article 4 and relying upon the majority decision in the *Dred Scott* case, however, George Biddle touched nerves still raw after the Civil War. *Dred Scott* stands out as among the most controversial decisions in the history of the Supreme Court. The Court, and especially Chief Justice Taney, were also controversial at the time. Many contemporaries blamed the onset of the Civil War on the decision. Historians generally agree that *Dred Scott* did not single-handedly precipitate the war, but that it did drastically undermine the prestige (even the power) of the Court. Yet the opinion also had many supporters and was relied upon in congressional debates and Supreme Court argument, especially by Democrats, into the 1870s and 1880s, and beyond. Slavery may have been removed from the powers of local majorities by the Thirteenth Amendment, but considerable doubt lingered about the effect of the Fourteenth Amendment on the basic tissue of the federal system. Questions of domestic relations, which traditionally had been the centerpiece of localism, were among the most troubling and contentious of the areas of law potentially unsettled after the Civil War.<sup>9</sup>

The Fourteenth Amendment, despite the imprecision of its language protecting of the "privileges and immunities" of citizens against state deprivations, nonetheless provided a plausible and hotly contested basis for the claim that the entire power structure of the country had been changed by the war and its constitutional aftermath. According to its more nationalistic interpreters, basic civil rights, including the rights to life, liberty and property, were secured against state infringement by the new amendment. Such a restructuring of power over the lives and fortunes of citizens in areas that were by definition "local" and "domestic" (especially marriage) would spell the demise of all state government, replied opponents of Reconstruction and its attendant constitutional amendments. To illustrate the potentially catastrophic consequences of a broad interpretation of federal power after the war, traditionalists harped on the absurdity of removing any of the "domestic relations" from state control. Opponents of the federal Civil Rights Act of 1866, for example, argued that its inevitable result would be interference in the private relations between husband and wife.<sup>10</sup>

Republicans assured themselves and their colleagues across the aisle that no such control of the marital bed was contemplated, but the nature and power of state sovereignty was nonetheless clouded. There can be little doubt that most legislators were committed to an interpretation of the Fourteenth Amendment (and civil rights legislation) that did not affect the law of husband and wife, or remove its enforcement to the federal courts. Instead, as one scholar put it, "Congressional Republicans recast the achievement of emancipation as a question simply of race." In this sense, the Civil War was memorialized as a war over slavery, however vehemently it was denied as the fighting raged.<sup>11</sup>

In the early 1870s, the Supreme Court's decisions reassured many conservatives and moderates. As the Court closed the door to radical reinterpretations of federal power through the postwar amendments in case after case, the power of federal courts in the South declined, Reconstruction atrophied, and the rhetoric of states' rights revived. In other words, the power of local majorities to challenge the authority of the central government waxed as Reconstruction waned. The reinvigoration of pre-war localism affected lawyers' arguments at the Supreme Court, as well as at the more overtly political arenas of the capitol.

As George Biddle put it on behalf of the Mormon defendant, the power to create a territory did not confer upon the federal government the power to rule the inhabitants as “mere colonists, dependent upon the will” of the center. Migration to a territory, Biddle stressed, citing *Dred Scott* as his authority, did not strip citizens of the United States of their political rights to self-governance. Instead, like the residents of states, the residents of territories were “most competent to determine what was best for their interests.” They were protected in such self-determination by the very “genius of the Constitution.” The American Revolution, indeed, had been fought in part to establish the rights of the periphery against the central government of the British empire. Biddle’s arguments aligned this powerful, insurrectionary tradition with the Mormon claim to local self-determination.<sup>12</sup>

Such arguments were by definition dangerous; Biddle was more cautious than Chief Justice Taney had been on the same question of territorial sovereignty two decades earlier. Much had changed in the intervening years, especially in the desire to find moral limitations on the powers of local majorities. Biddle borrowed from religious tradition to tame the radical import of his constitutional claims. Congress, he maintained, was empowered only to establish such political and judicial structures as would ensure the vitality and integrity of local self-governance. When necessary, the central government might act positively to prohibit things that were clearly contrary to the law everywhere — only those things “*mala in se*” (“law Latin” for “evil in themselves” rather than as a result of some positive declaration) such as murder, false swearing (perjury), and like offenses affecting the rights of others that would undermine republican government. The Ten Commandments, Biddle stressed, provided the catalog of such offenses, and polygamy (like slavery, it is worth noting here) fell outside this “general moral code” that described and circumscribed the legislative power of Congress.<sup>13</sup>

Biddle conceded that while the “teachings of the New Testament” might be construed to prohibit polygamy, such an interpretation was a matter of theological rather than legal dispute. “[A] majority of the people of this particular Territory deny that the Christian law makes any such prohibition,” he stressed. Thus, Biddle concluded, the statute criminalizing polygamy constituted an abuse of power by the center against the periphery, an exercise of tyranny over the inhabitants of Utah: the national government acted without express constitutional or biblical authority, and against the manifest wishes of the majority of those same inhabitants.<sup>14</sup>

For the government, Charles Devens defended the Morrill Act by focusing on humanitarianism, on the perception of the essential foreignness of polygamy (and, by implication, of Mormons themselves) — on everything, that is, but the central question of federal power to outlaw polygamy. Devens evaded explicit constitutional analysis, both in his brief and at oral argument. Instead, he played relentlessly on the public perception of the human costs of polygamy. He dredged up a series of analogies that had played to good effect for decades and that would eventually appear in only slightly altered form in the *Reynolds* opinion itself.



The Mountain Meadows massacre of 1857 remained a topic of interest and speculation until the 1870s, when Mormon Bishop John D. Lee was finally brought to trial and executed for participating in the murder of more than 125 members of a wagon train from Missouri. From T.B.H. Stenhouse, *Rocky Mountain Saints*. Photo Courtesy of The Huntington Library, San Marino, California

Renowned for his sonorous voice, striking looks and fierce patriotism, Devens had long been a popular speaker. His capacity for touching the emotions of an audience served him well in *Reynolds*, as he sidestepped the dry abstractions and jurisdictional arguments of his opponent. According to press reports of the oral argument, Devens focused on the potentially gory consequences of allowing polygamists to escape criminal punishment. Should George Reynolds go free, Devens argued, the territories would soon be home to all manner of religious atrocities. “Hindu widows [would] hurl themselves on the funeral pyres of their husbands, East Islanders ... expose their newborn babes, Thugs ... commit gruesome murders,” all in the “name of religion.” He closed with a “moving reference to the Mountain Meadows massacre,” homing in on the blood that Mormons reputedly had spilled already.<sup>15</sup>

The murder in 1857 of some 125 members of a wagon train in Mountain Meadows by a group of Mormons and Indians was, by 1878 when Devens argued the *Reynolds* case, an old and well-worn story. Its currency, however, had been revived by the trial in Utah of ringleader Mormon Bishop John D. Lee, who was not captured until 1873. Lee's trial for murder and its associated publicity rekindled tales of "Avenging Angels," "blood atonement," and other real and imagined offenses associated with the virulent and isolationist rhetoric of the Mormon Reformation in the 1850s. Many non-Mormons believed that Lee had long been shielded by Brigham Young, who they charged had ordered (or at least countenanced) the slaughter. Young turned him over to federal officials, antipolygamists maintained, when the scandal of the massacre showed such persistence that the continued lack of any official punishment was more costly than the loss of one of the faithful. Whatever the merits of such a theory, stories of murderous bands of Mormon zealots extracting revenge for transgressions made good copy, and added spice to the claim that behind polygamy lurked bloodshed. Human sacrifice, Devens claimed, was the logical consequence of the sacrifice of humanitarianism at the behest of local religious majorities in the territories.<sup>16</sup>

These were familiar themes to antipolygamists. But their deployment in court changed the tenor of the claims. Depicting the galloping wrongs that would follow on the mistaken extension of rights is a classic form of legal argument. Lawyers for the federal and state governments had, by 1879, frequently made such arguments at the Supreme Court as they wrestled over the meaning of the Fourteenth Amendment. The lesson that lawyers and judges had taken from the results of such arguments in cases involving individual rights against state and local majorities, was that for most purposes the power of the federal government remained inaccessible to individual citizens. The Fourteenth Amendment, for example, did not extend to the protection of small butchers against a city ordinance that established a local monopoly over the slaughter of animals. Nor did the amendment apply to a woman who wanted to practice law despite the state's limitation of legal practice to men, or immunize from criminal prosecution a woman suffragist who had voted knowing that local law restricted the franchise to men. Arguments against the extension of rights in such a climate were both predictable and intimately tied to the recent jurisprudence of the Court.<sup>17</sup>

In *Reynolds* the thrust of such claims was more complicated. For the denial of a "right" to religious freedom in this case was tantamount to the protection of its victims in the eyes of antipolygamist reformers. If the extension of rights was typically the empowerment of those who had been subordinate, in *Reynolds* the equation was reversed. The extension of a right to Mormons to practice their faith in plural marriage was construed by liberals to be a violation of humanitarian principles. Thus one could satisfy the humanitarians by denying the power of a local majority and at the same time argue against the extension of rights, which was traditionally the constitutional conservatives' position.

Either way, the Mormons lost. And the Constitution protected the presumably enslaved women of Utah but did not insulate the patriarchs of the Mormon Church. The list of offenses that Devens insisted were the logical correlatives of polygamy (suttee, exposure of newborns, ritual murder), also countered Biddle's claim that polygamy was not prohibited by the Decalogue. If murder and human sacrifice were the ineluctable result of the protection of polygamy, then the recognition of a right to practice plural marriage was tantamount to licensing murder at the hands of the same men who claimed the right.

The connections between Christian family structure, human rights, and stable government could not have been more clearly drawn. As Devens hammered the connections between polygamy and Asian religions, he also distinguished the Christian localism sanctioned by the Constitution from the "foreign" practices of the majority in Utah Territory. None of the states had ever (or would ever, Devens implied) authorized such an abuse of the law of marriage. The point has some irony, to be sure, since enslaved persons were formally prohibited from marrying in Southern states before the Civil War.<sup>18</sup>

After the war, according to the government's argument, all states were once again empowered with full control over the civil rights of their inhabitants, with the explicit exception of the rights protected by the Fourteenth Amendment. And because the Reconstruction amendments were themselves designed to erase slavery and its incidents, the happy blending of antipolygamy and antislavery theory in political and cultural venues spilled over into the government's strategy at the Supreme Court. If the "overshadowing and efficient cause" of the Civil War was slavery, and the extension of federal power through constitutional amendment after the war was directed explicitly at slavery, as the Supreme Court had said in 1873, then how could the Constitution be validly invoked only six years later to shield slavery's analogue, polygamy? The very moral meaning of the Constitution was contrary, Devens argued. Equally vital was the fact that state law on the question was uniform. Bigamy was a felony everywhere except Utah at the time of the passage of the Morrill Antipolygamy Act in 1862. This meant that even those states that had been "wrong" on slavery were "right" on polygamy. There was no call, on humanitarian grounds, to interfere with the uniform practice of the states.<sup>19</sup>

Yet uniformity, as lawyers in the nineteenth century well knew, hardly described the law or the practice of the states with regard to marriage. The mobility of the population after the Civil War undercut the ability of state governments to control the law of marriage and divorce. Migration also raised questions of fundamental interstate relations as peripatetic husbands (and sometimes wives) probed the boundaries of the new federalism. As recent scholarship has shown, illicit (or just extralegal) remarriage without a formal divorce in another jurisdiction was endemic to a culture in which disappearing was as easy as walking away from a failed relationship. And several jurisdictions openly (or implicitly) countenanced divorce for reasons far less grave than adultery or desertion. Polygamy thus marked the outer edge of a legal system riven by jurisdictional difference and transient populations. Preoccupation with rising divorce rates, abandonment, the relationship of marriage to political stability — all could be conveniently channeled into the condemnation of polygamy. By attacking plural marriage in Utah, one could pretend that the legal experience of husbands and wives in the rest of the country was more uniform — more monogamous — than it actually was.<sup>20</sup>

The hard-fought lessons of the Civil War, especially that of the dangers of fundamental moral diversity by region, were nowhere so seamlessly applicable as they were to Utah Territory. The aura of polygamy colored the case. The arguments at a Supreme Court tainted with the controversy over *Dred Scott* and an uncomfortable proslavery past produced the desire to distinguish the present from such barbarism. In this political and jurisprudential atmosphere, polygamy described the limit beyond which a husband, or a state, might not go.

The Supreme Court's opinion in the case was handed down in early 1879. The decision held that Mormon polygamists had no constitutional right to engage in a form of marriage directly prohibited by Congress. In the process, the Court explored the interdependence of marriage and political structures, and the importance of religion to both. Subsequent decisions sustained and amplified the essential premise of *Reynolds*, which remains a frequently cited precedent. The staying power of antipolygamy jurisprudence is remarkable, for many nineteenth-century cases were buried under the weight of twentieth-century rights doctrines that consciously eschew the nineteenth-century Court's restrictive interpretation of civil rights.<sup>21</sup>

At the time, and for many decades afterwards, *Reynolds* was a popular and politically important decision. It marked a watershed in anti-polygamy activity and theory, galvanizing reformers, politicians, and lawyers into renewed commitment to the cause. The carefully crafted jurisdictional arguments of the Mormons evaporated in Chief Justice Morrison Remick Waite's analysis for the Court. They were replaced with a lesson in historiography that has dominated the constitutional analysis of law and religion ever since.

*Reynolds* used historical analysis of the legal experience of the states in the service of federal power. The decision translated the politics and jurisprudence of disestablishment and free exercise at the state level into a mandate for dismissing the constitutional claims of George Reynolds. The research that went into the *Reynolds* opinion raises interesting questions about the institutional stature of the Supreme Court in the 1870s, and the relationship of the federal Supreme Court to state jurisprudence. Until recently, the postwar Court has not been viewed as any great improvement over what came before. And before the Civil War, of course, there was *Dred Scott*. The apparent rigidity and class bias of the Court's decisions, legal scholars maintain, revealed a deep concern with formal distinctions

between public and private life that frequently obscured basic questions of justice and humanity. Certainly most Mormons at the time, and legal historians of Mormonism since, have echoed those sentiments.<sup>22</sup>

The jurisprudential harvest of the polygamy cases supports a more nuanced interpretation of the late-nineteenth-century's moral philosophy of law. At the Supreme Court, litigation over Mormon polygamy was the vehicle for the development of a jurisprudence that explored and delineated what one scholar has felicitously called "the sharp moral edges [of] complex legal problems." *Reynolds* stands as the first, and the foundation, of the complex legal problems brought to the Supreme Court by the Saints of Utah.<sup>23</sup>

The new forum in which litigants and decision-makers deployed their legal stratagems was also affected by the logic of resistance. By the time the Court decided the *Reynolds* case, polygamy had been illegal for more than sixteen years. Yet in all appearances, the Mormon polygamists remained defiant, and impervious to congressional command or public condemnation. They maintained, as they always had, that the federal government had no power to punish a local majority's domestic relations.

Instead of addressing the Mormons' jurisdictional claim directly, the Court invoked the religion clauses of the First Amendment, only to reject their applicability to the question of Mormon plural marriage. The issue crept in sideways, not as a direct argument. George Biddle, in his brief and again at oral argument, had stressed the prejudicial effect of the charge to the jury in the second *Reynolds* trial. First, the judge refused to charge the jury that religious belief vitiated criminal intent, undermining the Mormon contention that latter-day celestial marriage had nothing in common with the venality of garden-variety bigamy in the states. Instead of focusing on the religious nature of plural marriage, the judge charged the jury to consider the "innocent" victims of polygamy (that is, the wives and their children) as they deliberated the fate of George Reynolds. Biddle argued that these procedural decisions had unfairly conveyed to the jurors the message that Reynolds was in fact a criminal. He cited extensive case law to bolster this argument, which was unquestionably one of criminal procedure rather than First Amendment right. Biddle's constitutional argument, on the other hand, was jurisdictional, based on the powers of Congress over the territories, and far from gritty questions of sexual behavior and religious mandates or even criminal mens rea.<sup>24</sup>

As Chief Justice Waite reframed the argument, however, the claim that the jury charge was unduly prejudicial was tantamount to admitting that the plural marriage had in fact taken place, and that the religion clauses were used as an excuse. The claim, in other words, was for an exemption from an otherwise valid law. Clearly, this misconstrued Biddle's central constitutional claim, which relied on a far more powerful and more traditionally focused concept of local sovereignty and corresponding limitations of the powers of central government.

The majority opinion recast the argument as follows: "The inquiry is not as to the power of congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong." This inquiry led the Supreme Court into an elaborate exercise in constitutional historiography. The *Reynolds* opinion became a study in the meaning of disestablishment and free exercise. Waite began by noting that "the word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted."<sup>25</sup>

So began the judicial designation of state constitutional and statutory provisions as the source of meaning for the federal religion clauses. The irony is that when they were introduced, debated, and ratified, the religion clauses were designed in significant part to protect local decision-making against federal interference. Addressed explicitly to Congress, the religion clauses were a check on federal power rather than a model for local behavior. State practices, which were hardly consistent when the First Amendment was adopted in 1791, were protected by it from federal intervention.<sup>26</sup>



*Sarah Barringer Gordon is a Professor of Law and History at the University of Pennsylvania, and an Associate Dean at the Law School. She is a Visiting Scholar at the National Constitution Center during this academic year.*

1. "Extract from a letter of brother Geo. Q. Cannon to Pres. J. Taylor dated Washington 19 Mch," vol. 5, March, 1878, George Reynolds Journal, vols. I, 3-6, Latter-day Saints Historical Archives.
2. As the correspondence of George Cannon reveals, he was determined that "we should have strong counsel [sic]." (letter from George Q. Cannon to President John Taylor, 11 March, 1878, quoted in Reynolds Journal, vol. 5, March 1878). Cannon asked someone he referred to as "our Friend" for a recommendation of "first class and at the same time moderate [sic] priced lawyer." ("Extract from a letter of brother Geo Q. Cannon to Pres J. Taylor") Almost certainly this friend was Philadelphian Thomas L. Kane, longtime ally of the Mormons, negotiator of the truce in the Mormon War. See Albert L. Zobell Jr., *Sentinel in the East: A Biography of Thomas L. Kane* (Salt Lake, 1965); Leonard J. Arrington, "In Honorable Remembrance: Thomas L. Kane's Service to the Mormons," Task papers in LDS History: no. 22 (Salt Lake, 1978).
3. "Extract from a letter of brother Geo. Q. Cannon to Pres. J. Taylor." On Devens, see John Codman Ropes, "Introductory Memoir" to a collection of Devens's public addresses, *Orations and Addresses on Various Occasions Civil and Military* (Boston, 1891); obituary, *American Law Review* 25 (1891): 255; and obituary, Massachusetts Reports, vol. 152 (1891), 608.
4. On Reconstruction, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York, 1988), 564-601; Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana, Ill., 1997).
5. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 36 (1873), and *The Slaughter-House Cases*, 16 Wall. 36, 130 (1873) decided on the same day, decimated the theory that the "privileges and immunities" clause of the Fourteenth Amendment would provide new constitutional rights for all citizens. See also Paula Brandwein, *Reconstructing Reconstruction: The Supreme Court and the Production of Historical Truth* (Durham, N.C., 1999), 61-95.
6. In *Barron v. Mayor and City of Baltimore*, 7 Pet. 243 (1833), Chief Justice Marshall held that the Bill of Rights did not apply to disputes between individuals and states, thus effectively foreclosing litigation on questions involving the first nine amendments to the Constitution until after the Civil War. See also *Permolli v. First Municipality of New Orleans*, 44 U.S. (3 How.) 589 (1845) (applying holding of *Barron* to religion clauses of the First Amendment).
7. Brief of the Plaintiff in Error, *Reynolds v. United States*, 98 U.S. 145 (1879), 55.
8. *Scott v. Sandford*, 60 U.S. (19 How.) 393, 446, 450-51 (1857).
9. For contemporary attacks on Taney and the Court, see Charles Warren, *The Supreme Court in American History*, 3 vols. (Boston, 1923), 3:1-42. See also Maxwell Bloomfield, "The Supreme Court in American Popular Culture," *Journal of American Culture* 4 (1982); 3. For support of the opinion after the war, see, for example George Graham Vest, Confederate official during the Civil War, Democratic senator from Missouri after the war, and counsel for the Mormon Church in *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885), maintained that *Dred Scott* was written in "letters of gold; letters which declare the essence of the Constitution and the rights of every American citizen." (CR, 47 Cong., 1 sess., 1158 [15 February 1882]). On Southern Democrats' defense of the Mormons, see David Buice, "A Stench in the Nostrils of Honest Men": Southern Democrats and the Edmunds Act of 1882," *Dialogue* 19 (1982): 106.
10. William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, Mass., 1988), 110-147; Warren, *Supreme Court in United States History*, 3:261-69.
11. Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge, Eng., 1998), 58.
12. Brief of the Plaintiff in Error, *Reynolds v. United States*, 53-54.
13. *Ibid.*, 54.
14. *Ibid.*
15. The oral argument in the *Reynolds* case is reported in the *New York Times*, 15 November 1878, p. 4, col. 7.
16. Juanita Brooks, *The Mountain Meadows Massacre*, rev. ed. (Norman, Okla., 1962); John D. Lee, *Mormonism Unveiled; Or The Life and Confessions of the Late Mormon Bishop, John D. Lee* (St. Louis, 1877); David L. Bigler, *Forgotten Kingdom: The Mormon Theocracy in the American West, 1847-1896* (Spokane, Wash., 1998), 159-80, 308-09. On the antipolygamist theory that Young sacrificed Lee, see Robert N. Baskin, *Reminiscences of Early Utah* (n.p. 1914), 136-37. For the ongoing currency of tales of avenging Danites in non-Mormon popular culture, see Arthur Conan Doyle, *A Study in Scarlet* (London, 1887).
17. *The Slaughter-House Cases; Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1875); *Bradwell v. Illinois*, 130.
18. On pro-marriage rhetoric after the Civil War, see Laura F. Edwards, "The Marriage Covenant Is at the Foundation of All Our Rights: The Politics of Slave Marriages in North Carolina after Emancipation," *Law and History Review* 14 (Spring 1996): 81-124. See also Stanley, *From Bondage to Contract*, 1-35.
19. The quoted language is from *The Slaughter-House Cases*, 68.
20. On marital irregularity in the nineteenth century, see Beverly Schwartzberg, "Grass Widows, Barbarians and Bigamists: Documenting and Describing Marital Irregularity in Nineteenth-Century America" (unpublished manuscript on file with author); Hendrik Hartog, in *Man and Wife in America, a History*, (Cambridge, Mass., 2000) 242-86; Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America*, (Chapel Hill, N.C., 1985) 129-32. Compare Jill Elaine Hasday, "Federalism and the Family Reconstructed," *University of California at Los Angeles Law Review* 45 (June, 1998): 1297-1400.
21. *Reynolds v. United States*, 98 U.S. 145 (1879). The list of such disapproved (or outright overruled) cases is extensive, including but not limited to *The Slaughterhouse Cases*, *Bradwell*, *Minor v. Happersett*, *Plessy v. Ferguson*, 163 U.S. 537 (1896), and *Lochner v. New York*, 198 U.S. 45 (1905).
22. For examples of pro-Mormon response see, Henry Reed, *Bigamy and Polygamy: Review of Reynolds v. U.S.* (New York, 1879), 20, which argued that the opinion was an example of "popular passion and sentimental fanaticism." Edwin B. Firmage and Richard Collin Mangrum (*Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-Day Saints, 1830-1900* [Urbana, Ill., 1988], 153-56) maintain that the decision was misguided and shortsighted. On the Court in the late nineteenth century, see, e.g., William E. Nelson, *Roots of American Bureaucracy, 1803-1900* (Cambridge, Mass., 1982); Michael Les Benedict, *AlLaissez-faire and Liberty: "Re-evaluation of the Meaning and Origins of Laissez-faire Capitalism."* *Law and History Review* 3 (1985), 293-332; Robert W. Gordon, "Legal Thought and Legal Practice in the Age of American Enterprise," in *Professions and Professional Ideologies in America*, ed. Gerald L. Geison (Chapel Hill, N.C., 1983); Charles W. McCurdy, *A Justice Field and the Jurisprudence of Government-Business Relations*, *JAH* 61 (December 1975): 970-1005; Morton J. Horwitz, *The Transformation of American Law, 1879-1960: The Crisis of Orthodoxy* (New York, 1992); Benjamin R. Twiss, *Lawyers and the Constitution: How Laissez Faire Came to the Supreme Court* (Princeton, N.J., 1942); J. Willard Hurst, *Law and the Conditions of Freedom* (Madison, Wisc., 1950); and Arnold M. Paul, *Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1895* (Gloucester, Mass., 1960).
23. Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley, Calif., 1999), 50. Few historians have studied the *Reynolds* opinion in depth. The exceptions are Carol Weisbrod & Pamela Sheingorn, "Reynolds v. United States: Nineteenth-Century Forms of Marriage and the Status of Women," *Connecticut Law Review* 10 (1978); Orma Linford, "The Mormons and the Law: The Polygamy Cases Parts 1 and 2," *Utah Law Review* 9 (1964); (1965); Firmage and Mangrum, *Zion in the Courts*; and Nancy L. Rosenblum, "Democratic Sex: *Reynolds v. U.S.*, Sexual Relations, and Community," in *Sex, Preference, and Family: Essays on Law and Nature* (New York, 1997), 63-85.
24. *Reynolds v. United States* 98 U.S., 147-49.
25. *Ibid.*, 161-162.
26. Kenneth R. Bowling, "A Tub to the Whale: The Founding Fathers and the Adoption of the Federal Bill of Rights," *Journal of the Early Republic* 8, no. 3 (1988); Arlin M. Adams and Charles J. Emmerich, *A Nation Dedicated to Religious Liberty: The Constitutional Heritage of the Religion Clauses* (Philadelphia, 1990).

# Clyde Summers' 60 Years of Labor Days

*by Jennifer Baldino Bonett*



**I**n 1935, the U.S. government passed the Wagner Act, the landmark law protecting the rights of organized labor. That same year, the man who would become “Mr. Labor Law” left his family farm in Montana with a suitcase and \$70 in his pocket and headed for the University of Illinois. There, Clyde W. Summers, a would-be preacher, found his true calling.

As an undergraduate studying accounting, Summers began his academic career. “When I graduated,” he says, “I realized I didn’t like accounting all that much.” Summers then studied law at Illinois and, as a newly minted J.D., began his teaching career in 1942. As for the preacher’s life: “I started teaching because teaching didn’t prevent one from preaching,” he says. “In a classroom, you had a conscripted audience. You didn’t have to pass a collection plate. So it had all the advantages.”



# Summers on Summers

## ON HIS FIRST TIME TEACHING

*I started teaching in a night school and these were people who were already working – insurance agents, factory workers, a variety of people . . . I was 23 years old. I walked into the room. I looked around. I was clearly the youngest one in the room. So I took a deep breath, and I said to myself, “I know more law than they do.” So I went ahead, and that was the last problem because they didn’t care as long as I taught them. They wanted to hear the law, and as long as I did that, I could have been in diapers.*

## ON LEGAL EDUCATION TODAY

*In the first place, students are much better prepared. Their undergraduate education is better. In terms of law schools like this law school, I think we have more people who have been out of school for two, three, ten years, and they come back with some knowledge of what the world is about. . . . We get cycles in which the students are much more interested in pro bono work, public interest work, intellectual subjects, and so on. Then we get cycles in which they are very occupation-oriented – getting a job, getting a good job, getting a job on Wall Street. . . . Students at the present time are sort of halfway in between vocational focus and public interest focus, so we’re in the middle of swing, probably swinging the wrong way because jobs are becoming more scarce.*

## ON HIS BELIEF THAT LABOR LAW IS “THE STUDY OF A SOCIAL INSTITUTION”

*The union is a political and social organization. They’re dealing with employers. They’re dealing with social problems: How are the workers going to live? Plus they provide a social setting, social membership for the workers. For lots of union members, the union is at least equivalent to their church. . . . [Unions] are concerned about the rights of the workers, the living conditions of the workers, the working conditions, and so the unions are dealing with these interests, basic social concerns, and to think of them as just economic institutions misses the point. . . . It is an article of faith: that members feel they belong to this group is very important. The institution does very important things for them.*

Today, with four academic degrees, scores of distinguished fellowships, professorships, and lectureships, and 150 publications to his name, Clyde Summers marks his 60th year of teaching. Now the *Jefferson B. Fordham Professor of Law*, he has spent nearly half his professional career at Penn Law. Technically a professor emeritus, Summers, who is 83, says he never uses the term: “Emeritus means you’re retired, and I’m not.”

On a Tuesday in January, Summers has returned from his first-year class on labor law to his office, which is paneled with brimming bookshelves and features the political cartoons and black-and-white photography of his two sons. (Summers and his wife of 55 years, Evelyn, also have two daughters.) An email to a colleague blinking on his computer screen, Summers talks about his current research interests in public employee bargaining, arbitration, and issues of privacy, health and safety in employment law. When a student drops by to chat, he welcomes her warmly. As she exits, Summers leans back in his chair, hands folded under his chin, and talks about what he enjoys most about the law.

“Teaching,” he says in the plainspoken way that recalls his Midwestern roots. Why teaching? “Students,” he says. “I simply like the intellectual interchange, but I think probably that it is that I am a ham. I like an audience and I like performing. . . . one is always on one’s toes. It’s a genuine intellectual stimulation.

“I can have a bad headache,” says Summers who enjoys good health and walks two miles to and from work almost daily. “I go into class and teach for an hour, and I don’t have headache. Maybe it’s adrenaline. All I know is: It’s fun.”

Described by a colleague as “a teacher in the most complete sense of the word,” clearly Summers is modest. He has shared his expertise in domestic and comparative labor law with the nearly 9,000 students he has taught in his career, those he has mentored, and colleagues he has advised. Attorneys, courts, and government agencies have turned to him for counsel and as an expert witness for two decades, and unions have relied on him as an arbitrator in some 1,000 cases over 50 years.

Once dubbed “Mr. Labor Law” by a colleague, he also has been called “a prophet” and “the senior partner” in “the active labor law professoriate.”

Deciding early in his career to teach and not practice law (particularly in law firms, which he calls “modern-day, highly paid sweatshops”), Summers was drawn to labor law from his early experiences growing



up in the Depression, working to pay for college tuition under “atrocious” conditions in a restaurant, the liberal views of his Methodist church, and the rising wave of union activism of the day.

Robert A. Gorman, *Kenneth Gemmill Professor of Law Emeritus*, wrote that Summers “has had no peer in influencing such a large number of significant areas within the field,” in the January 1990 *University of Pennsylvania Law Review*, which was dedicated to Summers. Principal among these areas are: individual worker rights; union democracy law; unjust discharge; the rights of public employees and non-union employees; and comparative labor law, which has sent him around the world and earned him eminent research prizes including a Guggenheim and a Fulbright, and two honorary degrees.

Honored for his advocacy work by the National Employment Lawyers Association in 1991, Summers began his legal career seeking justice. A conscientious objector to World War II, Summers was denied admission to the Illinois bar. The case went to the U.S. Supreme Court. He lost but, at the age of 26, he left an impression on Justice Hugo Black, who wrote in his dissent that Summers “is honest, moral, and intelligent . . . His ideals of what a lawyer should be indicate . . . that he would strive to make the legal system a more effective instrument of justice.” Summers was admitted to the New York bar in 1951.

Thus began the leit motif of Summers’ career: civil liberties. From a lifetime of quiet accomplishments – and too unassuming to speak of any without prompting – Summers says his work on union democracy has given him the greatest satisfaction. With civil liberties in mind, in 1946 he began work on a thesis that unions should be “instruments of democracy” and its members “citizens” of the union entitled to particular rights. A piece he wrote for the



## Students on Summers

*One of the most inspiring things about Professor Summers is the way he remains at the very cutting edge of his field by continuing to question the developments of today and constantly thinking about how they will unfold into the future. I know that professor Summers will remain a mentor to me well beyond my time at Penn Law.*

**TIFFANY FONSECA 3L**

*Quite simply, Professor Summers should be held as an example to law professors everywhere that a professor can do it all – groundbreaking scholarly research, involvement in the school and the professional realm, and be a good person.*

**VIJAY KAPOOR 3L**

*On the very first day of class, Professor Summers made clear to his students that he often sides with labor (vs. management) in the various disputes that arise between them. Not only do I appreciate a professor actually professing his views, rather than being a mere conduit of the many arguments on both sides, but the professor’s passion in defending the everyday rank-and-file worker also gave me a newfound respect for the problems labor deals with in its negotiations with management . . . Because he spoke what he felt, Professor Summers renewed my interest in the labor and employment field, and changed the side for which I will advocate.*

**—WILLIAM B. MONAHAN 2L**

*Clyde Summers was enormously influential for me professionally. . . . as a professor I thought he was brilliant. He could explain quietly and without a lot of commotion very complicated concepts.*

**— EDWARD T. ELLIS L’76**

**PARTNER & HEAD OF THE LABOR AND EMPLOYMENT PRACTICE  
MONTGOMERY, MCCrackEN, WALKER & RHOADS**

*It was my good fortune to study labor law with Clyde Summers. He did a wonderful job of teaching the history and evolution of labor law so that students could understand, in full context, the policy issues at the heart of the subject. As we studied the seminal cases, he helped us clearly see how they had involved real people, at real times and in real, trying circumstances. There was little that was dry or dusty in his course. In my second or third year, he hired me to check footnotes and citations for an edition of his labor law textbook. As a “boss,” he was benevolent, practicing the kind of enlightened management for which he advocated in the classroom. I greatly enjoyed the experience, and never felt any need to go on strike.*

**— STEPHEN D. SCHUTT L’83**

**PRESIDENT, LAKE FOREST COLLEGE**

# The Summers Sampler

ACLU on democracy in unions led to his chairmanship of a committee on union corruption in New York State in the 1950s. During similar national investigations, Summers sat on a committee called by then-Senator John F. Kennedy. With Summers writing most of the language, the committee produced the 1959 Landrum-Griffin Act, which established standards for labor-management relations, protected employee and public rights in relation to unions, and called for the elimination and prevention of improper labor practices. He is pleased, he says, that “the ideas I generated in 1946 ultimately ended up as a statute.”

In the 1970s, Janice R. Bellace CW'71, L'74, *Samuel A. Blank Professor of Legal Studies* and Professor of Management at Wharton, consulted Summers for a study on the Landrum-Griffin Act. She had what students and colleagues might call a typical “Clyde Summers Experience.” Bellace described it this way in the January 1990 Penn Law Review: “[I found] a straightforward, entirely modest person who genuinely sought to understand what I wanted to study and who earnestly wanted to convey what the statute was meant to achieve. . . . I walked back to my office, astounded at how generous he had been with his time, how open he had been in the discussion, and how incredibly insightful his suggestions had been.”

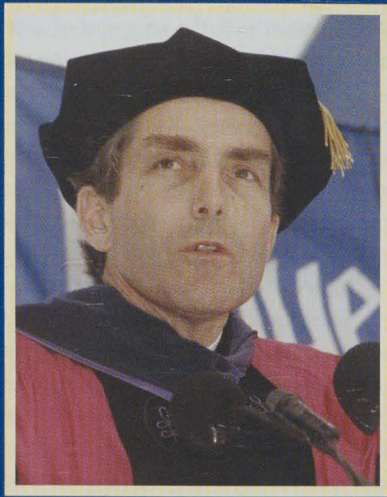
Clyde Summers reflects on such intellectual exchanges often and has spent his career aspiring to their lasting effects. Feted by the University of Pennsylvania Law Review staff at their annual banquet in 1989, Summers offered this rare introspective glimpse: “Many times, at the end of a class, the end of a week, the end of a semester or when I sit at graduation, I ask myself, what have we taught these students? Have we taught them to be sensitive or only smart? Will society be better off for what they have learned, or worse off because their client’s interests run against society’s better interests? Have they increased their sense of responsibility for the world about them, and a sense of direction in dealing with it, or have we only made them more useful for the law firms to whom they sell themselves . . .

“[T]he life of the law is precedent . . . But the life of the lawyer should be something more, to search within themselves for answers which precedents cannot provide, to go beyond the question, ‘what does the case hold and why’, to ask what is good, what is just, what is kind.”

Perhaps the foremost American scholar on comparative labor law, Summers has been prolific in this and other legal areas, publishing over 150 articles. Even Summers’ early publications, as Prof. Robert Gorman wrote in 1990, bear “the Summers trademark” of thorough research, careful analysis, and dedication to fair treatment for workers.

- *Sources and Limits of Religious Freedom*  
4 Ill. L. Rev. 43 (1946)
- *Democracy in Labor Unions: A Report and Statement of Policy*, American Civil Liberties Union, 1952
- *Law of Union Discipline: What the Counts Do In Fact*, 70 Yale L.J. 175 (1960)
- *Collective Agreement and the Law of Contracts*  
78 Yale L.J. 525 (1969)
- *Public Employee Bargaining: A Political Perspective*  
83 Yale L.J. 1156 (1974)
- *Individual Protection from Unjust Dismissal: Time for a Statute* 62 Va. L. Rev. 481 (1976)
- *Individual Employee Rights Under Collective Agreements: What Constitutes Fair Representation*  
126 U. of Pa. L. Rev. 251 (1979)
- *Industrial Democracy: America’s Unfilled Promise*  
28 Clev. St. L. Rev. 29 (1979)
- *Worker Participation in the United States and Federal Republic: A Comparative Study from an American Perspective*, 28 Amer. J. of Com. L. 367 (1980)
- *Worker Participation in Sweden and the United States: Some Comparison from an American Perspective* 133 U. of Pa. L. Rev. 175 (1984)
- *Democracy in One Party State: Perspectives from Landman-Griffin* 43 Md. L. Rev. 93 (1989)
- *Measuring the Unions Duty to the Individual Employee: An Analytic Framework in the Changing Law of Fair Representation*, Jean McKelvey, ed. (1985)
- *Effective Remedies and Employment Rights: Preliminary Guidelines and Proposals*,  
141 U. of Pa. L. Rev. 457 (1992)
- *The Trilogy and Its Offspring Revisited: It’s a Contract Stupid* 71 Wash. U. L. Q. 2021 (1993)
- *NAFTA; Labor Side Agreement and International Labor Standards*  
3 J. Small & Emerg. Bus L. 173 (1999)
- *Worker Dislocation: Who Bears the Burden? A Comparative Study of Social Values in Five Countries*  
70 Notre Dame L. Rev. 1033 (1995)
- *The Battle in Seattle: Free Trade, Labor Rights and Societal Values*, 22 U. of Pa. J. Inter L. 61 (2001)





PRESIDING AT COMMENCEMENT



WITH COLLEAGUES AT FACULTY RETREAT



WITH JUSTICE WILLIAM BRENNAN

## Former Dean Professor Colin S. Diver Named President of Reed College

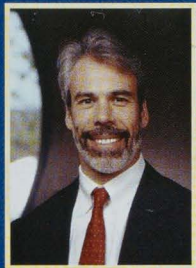
Colin S. Diver, *Charles A. Heimbold Professor of Law and Economics*, and Dean of the University of Pennsylvania Law School from 1989-1999 was named the 14<sup>th</sup> president of Reed College in February. Diver will be installed at the private liberal arts college located in Portland, Oregon in July 2002. Diver's decade-long tenure as Dean of the Law School invigorated the spirit of the school, setting an energetic tone for the 1990s during which 18 scholars joined the faculty, the award-winning Public Service Program was established, and the physical space of the Law School was overhauled. As the result of a successful capital campaign in the early 1990s, *Nicole E. Tanenbaum Hall* was constructed which allowed the expanding Biddle Law Library to relocate with room to spare. In 1998 Henry Silverman L'64 and his wife Nancy made a gift of \$15 million to the Law School, at the time the largest single gift ever made to any law school. This historic gift funded an endowed professorship, a research fund, and the renovation of historic Lewis Hall, which was renamed Silverman Hall at its re-opening in 2000.

In his announcement to the Law School community Dean Michael A. Fitts stated, "Colin will be greatly missed here at Penn Law School. He served as a very successful dean for a decade (the longest tenure of any Penn Law Dean since Jefferson Fordham). Since stepping down from the deanship three years ago, he has pursued teaching and scholarship with the same energy and dedication."

Known for his expertise in administrative law, when Diver joined the faculty in 1999 his scholarship and teaching had evolved to include emerging legal issues in biotechnology. In 2000, with Professor Edward Rubin, he introduced the course "Law and Biotechnology" at Penn Law School.

At the Law School's celebration of the close of the "Diver Decade" in 1999, then-Chairman of the Board of Overseers Charles A. Heimbold L'60, and present-Chair Paul S. Levy L'72 presented a check in excess of \$3 million to the Law School raised from dozens of alumni and friends of Penn Law to establish a new endowed professorship, the *Colin S. Diver Distinguished Chair in Leadership*. In addition to this chair that will formally carry his name forward at Penn Law for generations to come, the lasting legacy of Colin Diver will be seen here daily in the faculty he recruited, the groundbreaking coursework these young scholars introduced, and in the physical plant he successfully modernized.

## Saul A. Fox Distinguished Professor of Business Law: Edward B. Rock



Edward B. Rock L'83 was named the inaugural *Saul A. Fox Distinguished Professor of Business Law* at the University of Pennsylvania Law School and *Professor of Business and Public Policy* at the Wharton School. A professor of law on the faculty since 1989, Professor Rock also serves as co-director of the Institute for Law and Economics, a joint research center of the Law School, the Wharton School, and the Department of Economics in the School of Arts & Sciences.

Professor Rock joined the Penn faculty in 1989 from the Philadelphia law firm of Fine, Kaplan and Black, where he specialized in antitrust, corporate and securities litigation. In 1994, Professor Rock was a Visiting Professor of International Banking and Capital Markets at the Institut für Arbeits-, Wirtschafts- und Zivil Recht at Johann Wolfgang Goethe – Universität in Frankfurt am Main, Germany. During the 1995-96 academic year, he was a Fulbright Senior Scholar and Visiting Professor of Law at the Law Faculty of the Hebrew University of Jerusalem, Israel, where he taught comparative antitrust and corporate law. He has also taught at Columbia Law School.

Professor Rock has written widely in corporate law, including on the role of institutional investors in corporate governance; close corporations; the overlap between corporate law and antitrust; comparative corporate law; and the regulation of mutual funds. In recent years, in a series of articles with Michael L. Wachter, *William B. Johnson Professor of Law*, Professors Rock and Wachter have examined the relationship between law and nonlegally enforceable norms in the governance of business enterprises, and the ways in which corporate law and labor law facilitate the self governance of firms.

The *Saul A. Fox Distinguished Professorship in Business Law*, and the associated *Saul A. Fox Research Fund*, were established in 2001 with a gift of \$4 million from the Winding Way Foundation of the Jewish Community Foundation's Endowment Fund in honor of Saul A. Fox, a 1978 graduate of the Law School. The gift is historic because it was the largest single gift to establish a chaired professorship in the history of the University of Pennsylvania.

# Faculty ACTIVITIES & NEWS

This Fall, **STEPHEN B. BURBANK** *David Berger Professor for the Administration of Justice* was a member of a panel of academics asked to comment on a draft report concerning the selection of class counsel at the Third Circuit Judicial Conference. Also during the Fall, he moderated a panel on proposed amendments to the Federal Rules at a class action conference held by the Advisory Committee on Civil Rules. In January, Burbank presented a short paper, "Procedure, Politics and Power," to the Section of Civil Procedure of the Association of American Law Schools. In March, Burbank was the Symposium Moderator and also moderator of a panel at a conference on *Litigation in a Free Society* co-sponsored by Penn Law, Washington University Law School and the Institute for Law and Economic Policy. The following week he presented a paper, "What Do We Mean by Judicial Independence?" at a conference in Columbus, Ohio. In April he moderated and participated in the program at the annual meeting of the American Academy of Political and Social Science on judicial independence, an event coordinated with the publication of Burbank's co-edited book on that subject. In May 2001, Burbank taught a short course at the University of Urbino (Italy) and presented a short paper on federal judicial selection at a symposium sponsored by the American Judicature Society in Washington, D.C. Also in May, Burbank became a Life Member of the American Law Institute. **HOWARD F. CHANG**, Professor of Law, presented "Immigration Restrictions as Employment Discrimination" at faculty workshops at New York University School of Law in October 2001, at a workshop on labor and employment law at NYU School of Law in November 2001, and at the University of Michigan Law School in January 2002. He presented "Public Benefits and Federal Authorization for Alienage Discrimination by the States" at an immigration law symposium at the New York University School of Law in October 2001 and at a faculty workshop at the University of Michigan Law School in February 2001. Chang also presented "Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies" at an immigration law symposium at the University of North Carolina School of Law in January 2002. **JACQUES DELISLE**, Professor of Law, presented the following papers: "Sovereignty as Shield, Sword or Plowshare?: China's Complex - and Confounding - Engagement with the International Legal Order" as part of a conference on the *Rule of Law in China*, held at William & Mary Law School in February; "Altered States? – Taiwan, China and the Sovereignty Problem," at a Foreign Policy Research Institute conference he helped organize on *Varieties of Sovereignty and the Cross-Strait Relationship* in December; "China's May Days, June Bugs and October Revolutions: Historical Legacies and Resonances in the Politics and Law of the PRC's Accession to the WTO" at a symposium he co-organized, with James Zimmerman of Baker & McKenzie's Beijing office, on *Legal Issues in China's Entry into the WTO*, held at Penn Law School in November; "A Chinese Solution?: Development without Democracy and the Turn to Law in the P.R.C." at the China Law Center at Yale Law School in November 2001. In addition, deLisle spoke on "US-China Relations in the Twenty-First Century" for the Peking University Philadelphia Alumni Association in

## The Robert G. Fuller, Jr. Professor of Law: Jason Scott Johnston



Jason Scott Johnston was named the *Robert G. Fuller, Jr. Professor of Law*. Professor Johnston also serves as the director of POLE (Program on Law and the Environment), which he founded at the Law School in 1998.

The program promotes multidisciplinary research in environmental law and regulation. POLE's objective is to further our understanding of the evolution of federal environmental and resource law as well as the possibilities for new market and decentralized approaches. Through POLE Penn Law trains a new, transactional generation of environmental lawyers.

Professor Johnston has taught environmental law since joining the Penn Law faculty in 1995. He arrived from Vanderbilt Law School where he was on the faculty from 1989 to 1994. Before that, Professor Johnston was a Senior Fellow in Civil Liability at Yale Law School, an associate professor of law at Vermont Law School, and a clerk for The Honorable Gilbert S. Merritt, U.S. Court of Appeals, Sixth Circuit. He earned a J.D. in 1981 *cum laude* from the University of Michigan and a Ph.D. in Economics in 1984 from the University of Michigan where he was the Aloca Fellow in Law and Economics.

The *Fuller Professorship* was established in 1989 under the terms of a gift by Robert G. Fuller, Jr. L'64. Though designated primarily for a scholar in the field of real property and natural resources law, Mr. Fuller supports the use of the chair to recognize the contributions of outstanding scholars in other fields of critical importance to the Law School. Michael A. Fitts was the previous holder of the Fuller Chair until he was named dean in 2000.

January; "To Russia – and China - With Law: A Critical Assessment of U.S. Legal Development Assistance" for the Foreign Policy Research Institute, in Philadelphia in October. In April 2001, he traveled to Moscow to conduct research on Western legal advice and assistance programs in Russia. Over the last year he has served as an expert witness/consultant in cases concerning asylum proceedings for Chinese nationals claiming political or religious persecution; litigation regarding issues of PRC company law and PRC foreign economic relations law; and issues of Taiwan's status in U.S. law. **ERIC FELDMAN**, Assistant Professor of Law, presented a talk at Waseda University, Graduate School of Law, Tokyo, Japan, on "The Ritual of Rights in Japan" in November. In February he presented "Facing Danger: Bioterrorism and the Duty to Treat, in a talk at the National Press Club in Washington DC. **DOUGLAS N. FRENKEL**, Practice Professor of Law, participated in the American Bar Association's mediation training for judges in Wilmington, Delaware in February. His article "On Trying to Teach Judgment" was published this Fall by the Australian Legal Education Review in a symposium issue on teaching Professional Responsibility (12 Legal Ed Rev 190) (2001). **SARAH BARRINGER GORDON**, Professor of Law and History, was a guest on National Public Radio stations in Salt Lake City and in Philadelphia discussing her book *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*. **MICHAEL KNOLL**, Professor of Law, spoke to the Philadelphia Financial Analysts Association in May 2001 about prospects for tax reform and the impact the proposed changes would have if enacted on the economy. In the Fall semester he gave a talk at *Income Taxation and Financial Innovation*, a conference sponsored by the International Seminar in Public Economics at U.C. Berkeley. He addressed whether employee stock options are tax efficient. Knoll taught Accounting and Finance for Nonfinancial Managers, and Mergers and Acquisitions for Wharton's Executive Education Program. He served as a member of the Academic Advisory Committee to the Joint Committee on Taxation in connection with its project to produce a detailed study of complexity in the tax law. Knoll co-authored two reports, "The Economic and Policy Implications of Repealing the Corporate Alternative Minimum Tax," and "The Importance of Eliminating the Corporation AMT" published in 2001 by the Tax Foundation. **FRIEDRICH K. KÜBLER**, Professor of Law, presented the general report on "The Control of Media Concentration" to a Conference of the German Association of Comparative Law in September. National reporters included Professor **Edwin Baker** from Penn Law. In October he presented a paper on deregulation to a symposium discussing the reform of German corporate law. **BRUCE H. MANN**, Professor of Law, addressed the 20th Annual Bankruptcy Conference of the University of Texas School of Law Continuing Legal Education Program on "Failure in the Land of the Free: Debtors' Prison and the First Bankruptcy Act," in November in Austin, Texas. He chaired a panel on "Discourse, Authority, and Allegiance" at the *Conference on New World Orders: Violence, Sanction, and Authority in the Early Modern Americas, 1500-1825* in October. Also, he finished his three-

### David Skeel Strikes It Rich With Bankruptcy

Presenting *Debt's Dominion*  
at the Penn Bookstore



*Debt's Dominion: A History of Bankruptcy Law in America* (Princeton University Press, 2001) the first nonfiction book written by David A. Skeel, Jr., Professor of Law, could not have been better timed. Although it may have seemed to be odd to start researching the history of bankruptcy a few years ago during dot-com fever and unprecedented economic growth in the United States, he was onto something. Since September, Professor Skeel has been nationally recognized as an expert in bankruptcy, bailouts, and the Enron scandal, called on by the media for appearances on *Nightline*, NPR's *Marketplace* and *Radio Times*. Skeel has been quoted in the news and has had Op-Ed articles published in the *Philadelphia Inquirer*, the *Los Angeles Times*, and several other national and international newspapers. He has presented readings of *Debt's Dominion* at bookstores in Nashville and Philadelphia.

year term as a member of the Board of Directors of the American Society for Legal History, but continues as chair of the Society's Publications Committee, which oversees the Society's journal, the *Law and History Review*, and the *Studies in Legal History*, a book series which the Society sponsors with the University of North Carolina Press.

**CHARLES W. MOONEY, JR.**, Professor of Law, served as Position Coordinator and member of the United States delegation for the U.S. Department of State at a diplomatic conference in Cape Town in October and November 2001, at which the Cape Town Convention on International Interests in Mobile Equipment was completed, along with the Protocol on Matters Specific to Aircraft Equipment. In February 2002 he spoke in Phoenix at an ALI-ABA program on Revised UCC Article 9. In January 2002 he spoke at an academic symposium on the uniform law process at Oklahoma City University School of Law, and again in March 2002, on the same topic, at an academic conference at the Louisiana State University Law Center. **NATHANIEL PERSILY**,

Assistant Professor of Law, spoke on strategies for election reform at Georgetown Law Center in February, and hosted attorney David Boies in his Election Law class when Boies was at Penn to deliver the *Irving R. Segal Lecture on Trial Advocacy* in November. In coordination with the Brennan Center for Justice, Persily and 30 students in his Constitutional Law class are writing an *amicus* brief in support of the Bush administration's position in *Utah v. Evans* concerning the Department of Commerce's use of imputation in the 2000 Census and Utah's subsequent loss of a congressional seat to North Carolina. **CURTIS R. REITZ C'51, L'56**, Professor of Law, is one of the

Advisers for the American Law Institute's project to revise the sentencing and corrections articles of the Model Penal Code. He and his son **Kevin R. Reitz L'82**, a professor of law at the University of Colorado, were co-reporters for an ABA Criminal Justice Standards project on Sentencing Standards in the early 1990s. He was elected a Life Member of the American Law Institute in December. **LOUIS RULLI**, Practice Professor of Law, presented "Attorneys' Fees After *Buckhannon*" at the annual program *Litigating Employment Discrimination Cases* at Federal Court in December; he was selected by the Chancellor of the Philadelphia Bar Association to serve as Consultant to the newly formed *Task Force on Pro Bono*, charged with holding public hearings and developing

recommendations on how to improve the overall delivery of *pro bono* legal services to the poor in Philadelphia. Rulli co-authored an *amicus* brief in the Pennsylvania Supreme Court on behalf of the Women's Law Project regarding issues of statutory interpretation under Pennsylvania's Child Protective Services Act. In addition, he chaired the Legislative Subcommittee of the Pennsylvania Bar Association's Task Force on Legal Services to the Needy and helped draft proposed legislation that was recently introduced in the Pennsylvania House of Representatives seeking to create an access to justice fund for civil legal services to the poor. **DAVID A. SKEEL** presented "Bankruptcy as a Business Address" and co-organized the Institute for Law & Economics' Bankruptcy Roundtable; moderated panels at the Eastern District Bankruptcy Conference in Philadelphia; presented "Corporate Ownership Structure and the Evolution of Bankruptcy Law" at Seton Hall Law School; participated in a panel presentation at "The Lawyerland Symposium" at Columbia Law School; presented "Corporate Ownership Structure and the Evolution of Bankruptcy Law" at a symposium on Corporate Governance at Vanderbilt University Law School; commented on "Bankruptcy as Asset Partition" by Marcus Cole at a Corporate Bankruptcy symposium at the University of Cincinnati; and participated in a panel on "The Decalogue' and the Proper Domain of Law," commenting on Krystof Kieslowski's film, at the Law, Culture and Humanities Conference held at the Law School in March. **AMY WAX**, Professor of Law, presented a paper at a conference on disability rights and the Bill of Rights at William and Mary Law School in November. Also, she presented papers on basic income and disability legislation to the economics department and the law school at Washington University in St. Louis in February. In March she presented a paper on welfare work requirements and liberal theory at a conference on basic guaranteed income at the City University of New York (CUNY) Graduate Center and also to the philosophy colloquium at CUNY.

# Mille Gracie, Signor Carano!

by Sally Benner



*Frank Carano lifts a glass to Penn Law's future.  
The painting behind him recalls the donor at the beginning of his legal career.  
(Left-right: Mark Sherman, Dean Michael A. Fitts)*

Frank Carano hands a guest a replica of the image that crowns the Sistine Chapel in the Vatican. "It shows the moment when God touched man and gave him life," he explains of the fingers that incline toward each other in Michelangelo's masterpiece *La Creazione*. "I give this to you."

This present should come as no surprise because Mr. Carano is known as a thoughtful and generous man. But

in a harried world that runs at a rapid pace his graceful gesture is moving. In his lifetime, over 90 years so far, Mr. Carano has given much to the legal community, to Philadelphia, to the country of Italy, and now to the University of Pennsylvania Law School. In the Fall of 2001 Mr. Carano made a gift of \$2 million to the Law School to establish *The Frank Carano Professorship of Law*.

## Mille Gracie, Signor Carano!



*Mr. Carano with University President Dr. Judith Rodin*

“The Dean told me that the mark of a good school is its faculty, and a new professorship would help the teaching at Penn,” he offers as an explanation for his generosity. “I attribute whatever success I had to my stint at the Law School. Being a Penn graduate was significant. Because of my education I had whatever success I had. To whom better can I leave it other than this nice school?” he smiles modestly.

In the Roaring Twenties, a friend of Frank Carano’s parents regularly frequented their home in the Italian-dominated Philadelphia neighborhood of Overbrook. Adrian Bonnelly, an immigration lawyer, had a fondness for Mrs. Carano’s Italian cooking. Over the dining room table he would encourage young Frank to apply to the University of Pennsylvania and later attend the Law School to make a career for himself.

This might have been hard for the young man to imagine. His parents were born in Italy, in Rome and Abruzzi to be exact, and immigrated to Philadelphia around 1907. Frank was born shortly thereafter. Though a cabinetmaker in Italy, his father opened a “Superette” grocery store where Frank worked in his youth. At the time, as he remembers it, to get around Overbrook one needed a horse or a bicycle, and automobiles were rarely seen much less owned.

But the influence of Adrian Bonnelly’s guidance in young Frank’s career cannot be overstated. While in high school Frank worked as an office assistant in Bonnelly’s firm. After law school he served his preceptorship there as well. Another gentleman who mentored him in his career was The Honorable Eugene V. Alessandrone who sat on the Court of Common Pleas in Philadelphia. “He was one of the greatest judges we ever had on that bench,” Carano recalls. “He was brilliant.”

At Penn Law School, where only 50% of his entering class graduated, Frank Carano befriended Milton H. Kunken, the classmate who sat beside him. Upon graduation in 1933 and after completing their preceptorship, the two were unable to find jobs so they hung out a shingle in an office on the 7<sup>th</sup> floor of the former National Bank Building on Market and 14<sup>th</sup> Streets.

Laughing today, Mr. Carano recalls that “we had nothing to show for ourselves but a few legal principles.” They took on a lot of *pro bono* clients who remained their clients once the economic Depression lifted. The firm took hold and the two Class of 1933 graduates practiced together for nearly 60 years until Mr. Kunken died. During that time, Mr. Carano practiced as a trial lawyer taking on cases from immigration to matters involving international law. Until the system was abolished, he conjectures that about 75 Philadelphia lawyers were preceptees in the office of Carano & Kunken. Among them, three later went on to become judges – Tullio Leomporra, Leonard Ivanoski, and Michael Wallace.

“We had the League of Nations in our office,” Mr. Carano remembers. This is not a toss-off remark. The firm, and Mr. Carano especially, worked vigorously to change the immigration laws which at the time were “unfair,” he recalls with gravity. The laws stated specific quotas for immigration, favoring the Nordic countries and putting Mediterranean countries at a disadvantage. “The laws were discriminatory,” he comments. When asked why that was so, he pauses before answering, “Can you justify discrimination?”

After two years of service in the U.S. Army in the early 1940s, Frank Carano returned to Philadelphia and made a home in the Germantown area. When other lawyers couldn’t speak the language of prospective clients they sent them to Carano & Kunken where Mr. Carano stood a better chance of understanding them and making their case. He knew the Italian language from his upbringing, and as an undergraduate at the University of Pennsylvania he was required to learn Latin and Greek. In addition, he studied Italian more formally at Penn with Professor Vittorini, mastered Spanish, and picked up French. His reputation spread among immigrant and international communities in Philadelphia and beyond.



He began speaking on the radio and on the lecture circuit advocating for changes in the immigration laws. Over the decades he visited congressmen in Washington, DC pushing for changes in the law. In a favorite picture in his home today he is captured making his case with a young Senator John F. Kennedy.

Soon, the government of Italy hired Mr. Carano as their General Counsel. Only in the last few years did he turn over the stewardship of that role to his firm, now merged with and renamed Mattioni Ltd. He was honored by the Italian government four times for his work on behalf of the nation and its people, including the highest honor the government bestows, the title of *Grande Ufficiale*. In 1961 he had an audience with Pope John XXIII who thanked him for his work on behalf of Italy and for his efforts to reunite families involuntarily separated by the immigration laws. When Mr. Carano answered the Pope's question about the work he did, he recalls the Pope commenting, "You're a lawyer? That's a hard job."

A reward for his work in the courtroom and on the speaker's circuit was that eventually he did have an impact on immigration law and it was changed. "It's now fair," he observes. Another reward was that he met his wife Gina at a radio station where she was singing. A graduate of Curtis School of Music in Philadelphia, Mrs. Carano performed in operas. She is a captivating figure portraying a number of operatic heroines in paintings that hang in Mr. Carano's house today. It was her love for and pursuit of the arts that inspired frequent trips to Italy, over one hundred so far according to Mr. Carano's estimate.

Is there more that a lawyer could hope for than to look back on a career in which his advocacy impacted a change in law for the better, and improved the lives of his clients yearning for a future in America? Enjoying the career along the way would be another benefit, and he did.

"I loved the thrill of a trial," Mr. Carano says, "The challenge of it. I liked helping people, which I did all my life." He shrugs his shoulders with a shy smile and fingers an ordered succession of business papers on his table, "It was a way of making a living."

In addition to his work as a lawyer and for the Italian government, Mr. Carano founded and was treasurer of the America-Italy Society, a cultural organization, and was a founder, Secretary, and General Counsel of the Philadelphia Grand Opera Company. Most recently he was awarded the Legion of Honor Gold Medallion by The Chapel of Four Chaplains in recognition of his humanitarian activities.



*Still at work 70 years after graduating from Penn Law School*

He looks forward to a future in which he will be cutting back on work. "I want to loaf a little bit now." And he looks forward with enthusiasm to the future of the University of Pennsylvania Law School, which has changed so much in his lifetime. But, is he nostalgic for the way things once were?

"Evolution is good! You've got to progress, whatever you do. You can't be static."

With that Mr. Carano rises from his chair and escorts his guest on a tour of the artifacts he has collected from around the world, and those that were currency from his clients who had nothing more than a brass-gilded treasure box to compensate him for his legal services. Such compensation lasts longer than the slabs of meat, the chickens, and perishable foods with which poor clients paid him during the Depression.

The University of Pennsylvania Law School will remain grateful for the gift Frank Carano has given to future students – an investment in teaching at Penn. He will be recognized for his career accomplishments and for his extraordinary gift at a gala dinner in the coming months.

*Frank Carano was a subject of Biddle Law Library's Legal Oral History Project. A video interview and transcript are available through Associate Director and Project Manager Ed Greenlee.*

PHILANTHROPY

## Donors are Fêted at Annual Benefactors Dinner at the Law School



Paul S. Levy, Chairman of the Board of Overseers

An annual tradition was made more festive in October when the Law School celebrated a gift made in honor of **Saul Fox L'78** last summer. The gift established the *Saul A. Fox Distinguished Professorship of Business Law* and the associated *Fox Endowed Research Fund*. The Distinguished Chair, the most prestigious form of endowed professorship at Penn, was created through a \$4 million gift from the Winding Way Foundation of the Jewish Community Foundation's Endowment Fund in honor of Mr. Fox who also serves as a member of its Board of Overseers. This is the largest single

gift establishing a chair in the history of the University of Pennsylvania. The purpose of the gift is to enrich the academic resources of the University of Pennsylvania Law School. Professor Edward B. Rock, who was named the inaugural *Saul A. Fox Distinguished Professor of Law* holds a primary appointment to the faculty of the Law School and a secondary appointment to the faculty of Penn's Wharton School. **Paul S. Levy L'72**, Chairman of the Board of Overseers, presented Mr. Fox with the Law School's medallion in gratitude for his service to the Law School. In accepting the award, Mr. Fox said, "I will be forever grateful for having been accepted to this Law School. Penn provided me the academic scholarships that really allowed me to enjoy the academic experience in those three years. Finally, Penn provided me with a clearly superior legal education particularly in tax law, which became my first calling, and my essential springboard for everything that transpired thereafter, both professionally and vocationally." University President **Dr. Judith Rodin** thanked Saul Fox and the assembled guests for their philanthropy to the Law School in the previous academic year.



Valla Amsterdam (right)

PHILANTHROPY

## Paul Port W'34, L'37 Memorialized In Scholarship

**Paul Port W'34, L'37**, who died in 1996, has been remembered by **Julia Walther**, a former client of his, who established *The Paul Port Memorial Scholarship* at Penn Law School. The scholarship will be awarded to undergraduate students enrolled in the Wharton School of the University of Pennsylvania and have submatriculated in the Law School. Mr. Port was Of Counsel at Sewell & Riggs in Houston, Texas.

ALUMNI EVENTS

## Law Alumni Society Hosts Receptions Around the Country



Dean Fitts delivered updates about the Law School at receptions around the country over the last year and a half. Sponsored by the Law Alumni Society, alumni have gathered under the Penn Law banner in Boston, Philadelphia, North Jersey, New York, Wilmington, Washington D.C., Miami, Chicago, Los Angeles, San Francisco, and New Orleans. In June, following on the heels of a very successful reunion last year in Philadelphia – for the first time in the United States – the Penn Law European Society will gather in Berlin, Germany. For information about this upcoming event in Berlin, alumni should contact Franz Tepper GL'87 at [tepper@bdphg.de](mailto:tepper@bdphg.de). For information about forthcoming alumni events, contact Sheila Rizzo, Director of Donor and Alumni Relations, (215) 898-6303 or [srizzo@law.upenn.edu](mailto:srizzo@law.upenn.edu).

## ALUMNI EVENTS

**Coffee Talk**

Michael L. Wheat L'79 (right)

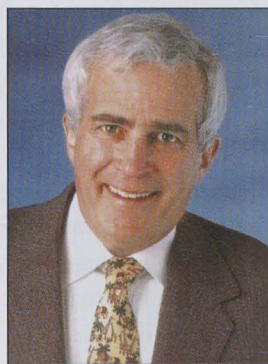


R. Bruce Rich L'73 (left)

This Fall a popular alumni program from the past was revived in the format of the Breakfast with the Dean series. Distinguished alumni who have pursued non-traditional career paths are invited as featured speakers of breakfasts at the Law School over which Dean Fitts presides and to which 1L students are invited to learn about the alum's career. As the Dean tells students, "This is an opportunity for you to meet some of the incredible alumni I've had the chance to meet in my duties as dean. This series will show you the array of options available to you in your career." So far students have benefited from visits from **Michael L. Wheat L'79**, Director, Salomon Smith Barney; **R. Bruce Rich L'73**, Partner, Weil Gotshal & Manges; **Rebecca Lieberman L'97**, Executive Director, The Democracy Compact; **William H. Bohnett L'74**, Partner, Fulbright & Jaworski; **Allen J. Model L'80** of Overseas Strategic Consulting; **James S. Eisenstein WG'83, L'84**, Executive Vice President, Corporate Development for American Tower Corporation; and **Henry Hoberman C'82, L'85**, Senior Vice President, Counsel for ABC, Inc.

## BOARD OF OVERSEERS

## The University of Pennsylvania Law School Welcomes Two New Overseers to the Board in Academic Year 2001-2002



**Robert S. Blank L'65** is Co-Chairman and Co-Chief Executive Officer of Whitney Communications Company based in New York City. Whitney Communications is an owner and operator of newspapers and cable television systems. Mr. Blank is a Trustee of the University of Pennsylvania and serves on the Board of Managers of the Wistar Institute. He began his career as an Assistant U.S. Attorney in Washington, DC and Philadelphia. In 1968 he joined the Mergers and Acquisitions Department at Goldman, Sachs and Company. In 1971 he became a partner with Whitcom Partners where he is presently Senior Partner. Mr. Blank serves as a director of Toll Brothers, Inc. and Advanta Corporation and is a former director of the International Tribune, Devon Group Inc, and the Diversified Products Corporation. He is a graduate of Cornell University. He and his wife, Nancy, live in Meadowbrook, Pennsylvania and New York City. They are the parents of Wendy Blank Chaikin C'98, Lee Chaikin W'95, Sam Blank C'01, and Matt, presently a junior in the College.

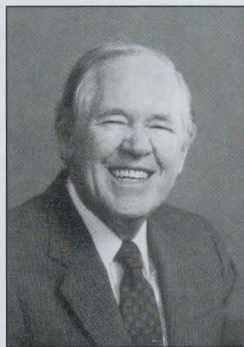


**Charles N. Martin, Jr.** is Chairman and Chief Executive Officer of Vanguard Health Systems based in Nashville, Tennessee. He is former Chairman, President, and Chief Executive Officer of OrNda HealthCorp. Under his leadership, OrNda grew from revenue of \$450 million to \$3 billion in five years to become the third largest investor-owned hospital management company in the United States. He has previously serviced as President, Director and Chief Operating Officer of HealthTrust, Inc. as well as Executive vice President and Director of Hospital Corporation of America and Chief Operating Officer and Director of General Care Corporation.

# ALUMNI BRIEFS



## 1940s

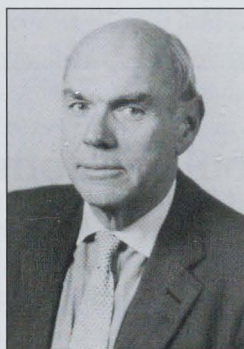


**John M. Bader L'48** joined the practice of Thomas S. Neuberger, P.A. in Wilmington, Delaware. He is Of Counsel at the firm.

**Marvin Garfinkel C'51, L'54** is teaching an ALI-ABA professional skills course "Real World Document Drafting – Form, Style, and Substance." Garfinkel is counsel in the Philadelphia office of Wolf, Block, Schorr and Solis-Cohen LLP, where he specializes in real estate, bankruptcy, product distribution, licensing, mergers and acquisitions, and other business transactions.

## 1950s

**The Honorable Harold Berger EE'48, L'51** retired from the Philadelphia Court of Common Pleas, was named by the Federal Bar Association to the position of chairman of a special bench-bar liaison committee.



**Edward W. Madeira, Jr. C'49, L'52** received the American Bar Association's Meador-Rosenberg Award in recognition of his "profound contributions to the administration of justice." The award was presented by the

**Bernard S. Dempsey L'55** was awarded the American Bar Association Senior Lawyers Pro Bono Award in August. Dempsey performs *pro bono* work for Delaware Volunteer Legal Services Inc. (DVLS), helping indigent clients who faced a variety of civil legal problems. He has contributed 513 hours in direct client services over 10 years, and has donated a comparable number of hours mentoring third-year law students working with the Widener University School of Law's Delaware Civil Clinic.

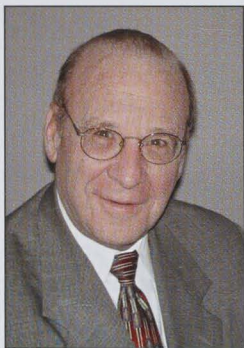
ABA's Standing Committee on Federal Judicial Improvements. Only the fourth winner of the award since its inception in 1994, Madeira is a partner and chairman emeritus of Pepper Hamilton LLP of Philadelphia, PA. He will be a recipient of the Law Alumni Award of Merit at the Law Alumni Society Awards Reception during Reunion Weekend in May.

**Norman P. Zarwin C'52, L'55**, a senior member of Zarwin, Baum, DeVito, Kaplan, O'Donnell, Schaefer P.C. of Philadelphia, conducted a seminar on employee hiring practices for the Alliance of Automotive Service Providers of Pennsylvania. The event was held at the organization's annual trade show at the Valley Forge Convention Center and dealt with legal hiring issues including age, civil rights, and sexual discrimination.

**Samuel E. Pryor III L'53**, senior counsel in the New York City law firm Davis, Polk & Wardwell, was selected by New York Governor George Pataki as one of two recipients of the Governor's Annual Parks and Preservation Award. Pryor is the vice-chair of the Palisades Interstate Park Commission. The award is presented annually to an individual, family, or organization that has demonstrated outstanding commitment and generosity toward New York's State Parks and Historic Sites. Past recipients include Laurance Rockefeller, Stanford Lipsey, John Cronin, Virgil Conway, and David Rockefeller.

**Thomas B. Moorhead L'59** has been appointed deputy under secretary of labor for international affairs by Secretary of the U.S. Department of Labor Elaine L. Chao. Moorhead will represent the U.S. government before the International Labor Organization and will aid the implementation of the North American Agreement on Labor Cooperation, the labor side agreement to NAFTA. Moorhead was previously vice president of human resources for pharmaceutical firm Carter-Wallace Inc.

## 1960s



**Frederick Cohen W'57, L'60** was the featured speaker at the "Divorce Conference" sponsored by the Pennsylvania Institute of Certified Public Accountants in October. Cohen is a matrimonial lawyer and a member of the litigation department and family law group at Obermayer Rebmann Maxwell & Hippel LLP in Philadelphia where he is Of Counsel.

**The Honorable Samuel W. Salus L'60** retired from the Montgomery County Court of Common Pleas Court in January. He was elected to a third ten-year term in 1999.

**The Honorable John Walter L'60** and his wife were honored by the Lebanon County Pennsylvania Democratic Committee for their service and contributions to the community. The committee also planted a tree in honor of the Walters in Stoever's Dam Park.

**The Honorable Jerold G. Klevit L'62**, of the Pennsylvania Workers Compensation Bureau, received the Philadelphia Bar Association's *Martha J. Hampton Memorial Award*. The award was presented at the annual meeting of the Workers' Compensation Section of the Philadelphia Bar Association held in December. The award honors his scholarship, professionalism, and dedication while serving 26 years as a judge of workers compensation disputes.

**Robert R. Atterbury III C'60, L'63** retired from his position as vice president, legal services division, at Caterpillar Inc. in December after 35 years of service.

Philadelphia Mayor John F. Street has appointed **Henry F. Miller L'63** to the Board of Directors of the Philadelphia Commercial Development Corporation (PCDC). Miller is a partner in the real estate practice group Philadelphia law firm of Wolf, Block, Schorr and Solis-Cohen.

**Robert Fiebach W'61, L'64** received the Pennsylvania Bar Association's President's Award. He is co-chair of the commercial litigation department and chair of the professional liability group at Cozen O'Connor in Philadelphia.

**The Honorable William H. Platt L'64** has been elected president judge by unanimous vote of the nine judges of Lehigh County. Having served as administrative judge of the criminal division for five years, Platt began an additional five-year term in January, 2002.



**Richard Shusterman L'64**, a partner in the Commercial Litigation Department of White and Williams LLP in Philadelphia, was a featured guest speaker at the annual meeting of the Federation of Insurance and Corporate Counsel (FICC). Also a vice-president of the FICC, Shusterman is a member of several of its committees, and spoke on topics including, "Recent Developments in E-commerce Litigation;" "Training for Lawyers and Clients in Mediation Advocacy;" and "Mandatory Arbitration Versus Jury Trials —What do the Results Tell Us?"

**Frank P. Slattery, Jr. L'64** has been elected as the new board chairman of Main Line Health, an integrated health system that includes Bryn Mawr, Lankenau and Paoli Memorial Hospitals, Bryn Mawr Rehab, the Lankenau Institute for Medical Research, and other healthcare facilities in the Philadelphia area.

### AOL Time-Warner CEO Retires

**Gerald M. Levin L'63**, Chief Executive Officer of AOL Time Warner will retire in May 2002. Levin, who was named to CEO of Time Warner in December 1992, led the company when it closed its \$156 billion merger with America Online in 2001. In a statement, Levin spoke of a desire to turn his full energies "to the moral and social issues [he] feels passionate about." After beginning his legal career practicing anti-trust law, Levin joined Time, Inc. in 1972 to pioneer the then-fledgling cable service Home Box Office. For 29 years, Levin worked in some form for the current company. He was named president of HBO a year later and was promoted to chairman in 1976. He became the vice-chairman and chief executive of the company in 1990 after it was acquired by Warner Communications.

## ALUMNI BRIEFS

### 1960s

**David Samson L'65** has been named Attorney General of the State of New Jersey by New Jersey Governor Jim McGreevey. Samson will lead the Department of Law and Public Safety as a senior partner at Wolff & Samson, in Roseland, New Jersey.

**Fred Blume L'66** and **Betsy Z. Cohen L'66** have been named to the board of trustees of the National Museum of American Jewish History. Blume is a co-chairman of Philadelphia law firm Blank Rome Comisky & McCauley. Cohen is the chief executive officer of Thebankcorp.com, chair and chief executive officer of RAIT Investment Trust and chairwoman of Financial-Muse.com.

**Murray H. Pinkus W'63, L'66** has been named senior vice president, fiduciary team leader at Bank of America, in Radnor, Pennsylvania. Pinkus had been vice president and senior adviser for advanced estate planning at First Union.

**Patricia Ann Metzger CW'63, L'66** is an adjunct faculty member of Boston University School of Law's Graduate Tax Program.

**The Honorable Paul W. Tressler L'66**, Administrative Juvenile Court Judge for Montgomery County, PA, was one of five Souderton High School alumni inducted into the Allentown, Pennsylvania high school's hall of fame. The inductees were selected by a committee of district educators and community members, and were honored for having demonstrated career achievements or exemplary community contributions.

**Jonathan M. Stein L'67** has returned from a year's leave on a British Atlantic Fellowship in Public Policy and a Penn Law Gowen Fellowship at the Centre for the Analysis of Social Exclusion, London School of Economics. While researching developments in welfare reform, child disability and legal aid, the LSE published his monograph critiquing recent legal aid reforms in Britain, "The Future of Social Justice in Britain: A New Mission for the Community Legal Service." Stein is General Counsel at Community Legal Services in Philadelphia.

**Dennis R. Suplee L'67** of Philadelphia law firm of Schnader Harrison, Segal & Lewis LLP has been elected to the Board of Regents the governing body of the American College of Trial Lawyers, and was named to the National Judicial College (NJC) Advisory Council.



**Thomas A. Reed L'68** has been named chair of the New York State Bar Association's Corporate Counsel Section. Reed is a contract attorney acting as in-house corporate counsel for British Telecom's BT North America Inc. unit in New York City.

**Carl B. Feldbaum L'69** was honored as the 2001 Individual Inductee into the Biotech Hall of Fame at the 14<sup>th</sup> Annual Biotech Meeting, in Laguna Niguel, California. Feldbaum was recognized for his guidance as President of the Biotechnology Industry Organization (BIO) to its position as a dominant organization that serves and represent the biotechnology industry.

**John F. Meigs L'69** has been named chairman of the personal wealth services group at Saul Ewing L.L.P. in Philadelphia. He will remain co-chairman of the estates and trusts department.

**Roel Nieuwdorp GL'69** joined the business law practice in the Brussels, Belgium office of Loyens, a Benelux firm. Nieuwdorp was formerly a partner at De Bandt Van Hecke, Lagae & Loesch in Brussels.

### 1970s

**Joseph C. Bright L'70** joined the Board of Directors of the Pennsylvania Economy League (Eastern Division), a nonprofit public policy group. Bright was also recently elected a Fellow of the American College of Tax Counsel. Bright is a partner at Wolf, Block, Schorr and Solis-Cohen.

**John W. Morris L'70** was elected chairman of the Pennsylvania Judicial Conduct Board. He is in his own practice in Philadelphia.

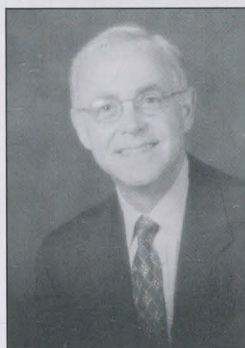
**Steven R. Waxman L'70**, a partner with the Philadelphia law firm Fineman & Bach PC, was elected trustee of the Jewish Federation of Greater Philadelphia and chair of its Committee on Formal Jewish Education.

## 1970s

**Michael Willmann L'70** was elected chairman of the board of the Arts and Business Partnership (ABP) of Southern New Jersey. Willmann will serve a two-year term as chairman of the ABP. He is the Chief Executive Officer of WMSH Marketing Communications in Haddonfield, New Jersey, and a member of the board of the South Jersey Performing Arts Center and Art-PRIDE New Jersey.

**John C. S. Kepner L'71** has been named to the advisory board of Acquisition Management Services of King of Prussia, Pennsylvania. He is a partner with Saul Ewing LLP in Philadelphia.

**Robert C. Heim W'64, L'72** was awarded the Philadelphia Bar Association's First Union Fidelity Award in recognition of his commitment to pro-bono work and public service. He is a co-founder of Pennsylvanians for Modern Courts, part of a statewide reform effort advocating for merit selection of judges. Heim is a partner and chairman of the litigation department at Dechert in Philadelphia.



**Marc D. Jonas C'69, L'72**, a real estate partner in the Lansdale, Pennsylvania office of Fox Rothschild O'Brien & Frankel LLP appeared on the Fox News television program Hannity & Colmes, to discuss the Federal Religious Land Use and Institutional Persons Act of 2000.

**David L. Pollack L'72**, a partner in the real estate department of Ballard, Spahr & Ingersoll LLP served as co-moderator for a panel "The Retail Bankruptcy," a component of the American Bar Institute's "Bankruptcy 2001: Views from the Bench" conference held in Washington, D.C. in September.

**Joseph E. Murphy L'73** recently co-edited the book, *Guide to Professional Development in Compliance* with Jan Heller and Mark Meaney. The book explores the rapidly developing field of in-house compliance and business ethics. Murphy is a partner in the Compliance Systems Legal Group and a managing director at Integrity Interactive Corporation, a company that provides online compliance training.

**Ian M. Comisky, W'71, L'74**, a partner in the tax and fiduciary department of Blank Rome Comisky & McCauley LLP in Philadelphia, was elected to the Board of Directors of Historic Philadelphia, Inc, a non-profit tourism organization in Philadelphia. In addition, he participated in a CLE course for the Pennsylvania Institute of Certified Public Accountants in December. He chaired two panels, the first discussing what an accountant needs to know to avoid running afoul of the criminal tax and money laundering laws; the second focused on current criminal tax initiatives and priorities. Comisky also participated in the 18<sup>th</sup> Annual National Institute on Criminal Tax Fraud, speaking on Federal Sentencing Guidelines, including a discussion of the new Tax & Money Laundering Guidelines, Negotiating Pleas and Creative Guideline Departures.

**Jonathan W. Delano L'74** was been named the Money and Politics Editor for KDKA-TV, the CBS affiliate in Pittsburgh, Pennsylvania, reporting and analyzing political and economic issues in Pennsylvania. Delano continues to teach courses on legislative policy-making, campaign finance law, media and public policy, and the Congress to graduate students at Carnegie Mellon University's H. John Heinz School of Public Policy & Management.

**J. David Howman GL'75** is Chair of the Legal Commission of the World Anti-Doping Agency (WADA), and Chairman of the Independent Observer Group set up by WADA to oversee the doping controls at the Salt Lake 2002 Winter Olympics. He was previously Deputy Chair of a similar team that attended the 2000 Sydney Olympic games. Howman is a barrister specializing in sports law and medico-legal law in Wellington, New Zealand.

**Eleanor Myers CW'69, L'75** was recently honored with the 2001 Lindback Award for distinguished teaching. An associate professor at Temple University's Beasley School of Law, she is one of six professors from the Temple University faculty to receive the award.

**John D. Sharer L'75, WG'75** has been promoted to Managing Counsel - Electric Delivery & Telecommunications in the law department of Dominion, an energy services company based in Richmond, Virginia. Sharer is responsible for advising Dominion Virginia Power's Distribution Operations business unit on customer contracts, joint use, and infrastructure access issues. He also advises Dominion's start-up telecommunications affiliate, Dominion Telecom, Inc. on a wide range of legal issues.

# ALUMNI BRIEFS

## 1970s

**Andrea E. Utecht L'75** has been elected vice president, general counsel and secretary at FMC Chemicals Corp., a Philadelphia chemical company. She was formerly general counsel at Atofina Chemicals, previously known as Elf Atochem.

### From Private to Public: Joining the S.E.C.

**Alan L. Beller L'76**, formerly a partner with Cleary Gottlieb, has been named Director of the Division of Corporation Finance of the United States Securities and Exchange Commission, and to the newly-created post of Senior Counselor to the Commission. Beller's practice at Cleary Gottlieb focused on a wide variety of domestic and international securities and derivatives activities. He has extensive experience in securities offerings, including representing issuers and underwriters in initial public offerings as well as pioneering the offerings of a number of complex structured products.

**C. Baird Brown L'76** was elected chairman of the board of directors of the International Visitors Council. Brown is a partner in the business and finance department at the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll LLP and co-head of the firm's energy and project finance group.

**John B. Kearney L'76**, a partner in the Cherry Hill, New Jersey law firm of Kenny & Kearney LLP, was elected a Fellow of the American Bar Foundation.

**Donna R. Lenhoff L'76** is the new executive director of the National Citizens' Coalition for Nursing Home Reform (NCCNHR) in Washington D.C. Lenhoff drafted the Family & Medical Leave Act (FMLA) and led the coalition that won passage of the law. She previously served as Vice President and General Counsel for the National Partnership for Women & Families. Lenhoff joined the National Partnership for Women & Families (then the Women's Legal Defense Fund) in 1978 as the organization's first Staff Attorney, developing and implementing advocacy programs for work/family issues like equal opportunity, labor and child care.

**Mark A. Kadzielski L'76** joined the Los Angeles office of Fulbright & Jaworski as the head of the firm's health industry practice. Kadzielski was formerly with the Los Angeles office of Akin, Gump, Strauss, Hauer & Feld L.L.P.



**Michael T. Scott L'76**, a partner in the Philadelphia office of Reed Smith LLP, has been appointed to the Board of the Mental Health Association of Southeastern Pennsylvania.

**Robert D. Lane Jr. L'77**, a partner with Morgan Lewis & Bockius LLP, has been named to the board of The PenJerDel Council of Philadelphia.

**Thomas R. Eshelman L'78**, a partner at Ballard Spahr Andrews & Ingersoll LLP, has been named to the board of The PenJerDel Council, Philadelphia.

### Leading the Charge for School Reform

**James E. Nevels L'78, WG'78** was appointed Chairman of the School Reform Commission, the governing body for Philadelphia's public schools, by Pennsylvania Governor Mark Schweiker and Philadelphia Mayor John Street. In 1998, he was nominated by the Governor of Pennsylvania to serve on the Board of the Pennsylvania State Employees' Retirement System, which is responsible for the administration of approximately \$25 billion of fund assets. The CEO of the Swarthmore Group, Nevels is also on the state-run board overseeing Chester Upland schools in Delaware County, and was recently appointed to the Board of Managers of the Philadelphia Foundation.

**Jeffrey Dalke L'78** was elected to the Advisory Board of Citizens' Scholarship Foundation of America, Inc. (CSFA), a St. Peter, Minnesota group that advocates for private sector financial aid for students seeking post-secondary education. Dalke is a partner in the Philadelphia law firm of Drinker Biddle & Reath LLP, and is a member of the firm's Business and Finance Department.

**Lawrence R. Cohan L'79** received board certification as a trial advocate by the ABA-accredited National Board of Trial Advocacy. Cohan also chaired the Mealey's Conference on Emerging Litigation in Drugs & Medical Devices in West Palm Beach, Florida. Cohan is the managing partner of the toxic tort litigation department at Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C. in Philadelphia.

**Niki T. Ingram L'79** of the defense litigation law firm Marshall, Dennehey, Warner, Coleman & Goggin presented an employment law seminar to the members of the Philadelphia Chapter of the Chartered Property Casualty Underwriters Society.



## 1970s

**Lynn Marks L'79**, executive director of Pennsylvanians for Modern Courts, was profiled in the *Philadelphia Business Journal* (Nov. 30, 2001). Marks is co-chair of the Gender Bias Committee of the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System. In February 2001 the *Legal Intelligencer* of Philadelphia named her to its list of the 50 Most Influential Women in the Legal Profession in Pennsylvania.

**Gerald A. McHugh, Jr. L'79** has been named President of the Philadelphia Bar Foundation, the charitable arm of the Philadelphia Bar. McHugh is a shareholder in the Philadelphia office of Litvin, Blumberg, Matusow & Young.

**Barbara S. Mishkin L'79** has been named vice chair of the truth in lending sub-committee of the American Bar Association's committee on consumer financial services. She is a partner in the consumer financial services group at Reed Smith LLP, Philadelphia.

**Kenneth J. Warren L'79**, a partner with Wolf, Block, Schorr and Solis-Cohen LLP, and Chairman of its Environmental Law Practice Group, and was elected Vice-Chair of the American Bar Association's Section of Environment, Energy, and Resources at the ABA's annual meeting in Chicago. Warren has also been selected by the Delaware River Basin Commission (DRBC) to serve as its general counsel.

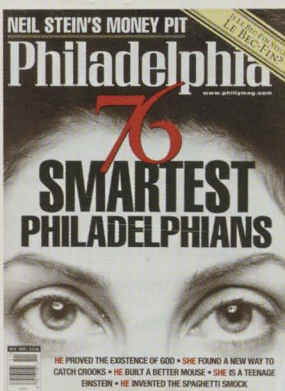
## 1980s

**Barbara A. McDonnell L'80**, Colorado deputy attorney general for state services, was appointed general counsel for the Community Colleges of Colorado in July. McDonnell was in private practice with the law firm of Sherman and Howard from 1982 to 1987, handling cases involving mental health and developmental disabilities. She was director of the Colorado Department of Institutions when it merged with the Department of Social Services and was appointed executive director of the new Colorado Department of Human Services.

**David L. Cohen L'81** was named by Philadelphia Mayor John Street to the city's newly created Council of Economic Advisors to lure more business to the City of Philadelphia and to examine the city tax structure that appears to inhibit potential businesses from coming to Philadelphia. Cohen, presently the Chairman of Ballard Spahr Andrews Ingersoll of Philadelphia also served as Chief of Staff to ex-Philadelphia Mayor Ed Rendell during his administration.

**Philip R. Recht L'81** has been confirmed by the Los Angeles City Council as a member of the Board of Transportation Commissioners which has oversight responsibility for traffic flow, traffic safety, and parking, and works with other agencies to improve transit service for the city. Los Angeles Mayor James K. Hahn appointed Recht to the commission for a term ending in 2005. Recht was the Deputy Administrator of the National Highway Traffic Safety Administration in the U.S. Department of Transportation during the Clinton Administration from 1995-1999. He served as Chief Counsel of the Department of Transportation from 1994-1995.

### Philadelphia Magazine Ranks the "76 Smartest Philadelphians"



Dean Adler W'79, L'83 - Partner, Lubert-Adler

David L. Cohen L'81 - Chairman, Ballard Spahr Andrews & Ingersoll LLP

Betsy Z. Cohen L'66 - CEO of The Bankcorp.com, Chair and CEO, RAIT Investment Trust, and founder of Jefferson Bank

Stephen Goodman L'65 - Partner, Morgan, Lewis & Bockius

James R. Ross L'52 - Professor of Philosophy and Law, University of Pennsylvania

The Honorable Frederica Massiah-Jackson L'74 - President Judge, Philadelphia Court of Common Pleas

The Honorable Louis H. Pollak Dean, Penn Law School (1975-1979), Judge, U.S. District Court for the Eastern District of Pennsylvania

David Rudovsky, Senior Fellow, Penn Law School & Partner, Kairys Rudovsky Epstein & Messing

# ALUMNI BRIEFS

## 1980s

**Marian A. Kornilowicz GL'82** was named partner with the Philadelphia law firm of Cohen, Seglias, Pallas & Greenhall. Kornilowicz specializes in commercial and construction litigation, business, contract and real estate law, creditors' rights and financing.

**Maida Milone C'76, L'82** was named to the board of directors of the Creative Arts Network of Philadelphia. Milone is the senior vice president of P2B ventures, the Penn to Business Connection at the University of Pennsylvania.

**Kevin R. Reitz L'82** has been designated Reporter for a project started by the American Law Institute to revise the sentencing and corrections articles of the Model Penal Code. Reitz is a Professor of Law at the University of Colorado Law School.

**Maria E. Semidei-Otero L'82** received a \$100,000 grant from the Johnnie Walker Keep Walking Fund, to help support and expand the Women's Venture Fund. In 1994 Semidei-Otero founded the Women's Venture Fund, a New York City nonprofit organization designed to help women entrepreneurs mainly in under-served urban communities.

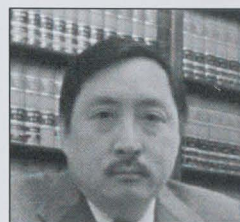
**Jack R. Wiener L'82** was elected Managing Director and promoted to Deputy General Counsel at the Depository Trust & Clearing Corporation (DTCC) in New York. In this role Wiener will oversee the legal aspects of the Depository Trust Company's international and e-commerce initiatives.

**Dean S. Adler W'79, L'83** has been elected to the Board of Directors of Bed Bath & Beyond Inc. Adler is a co-founder of Lubert-Adler Partners, a private equity real estate group based in Philadelphia.

**Lynn R. Axelroth L'83** has been elected to a three-year term as a member of the Board of Overseers of the Annenberg Center for the Performing Arts of the University of Pennsylvania, and has been appointed to its executive committee. Axelroth is Managing Partner of the Philadelphia office of Ballard Spahr Andrews & Ingersoll, LLP, a partner in the firm's real estate department, and partner-in-charge of the firm's construction law group.

**Stephen D. Schutt L'83**, the former vice president and chief of staff of the University of Pennsylvania, was installed as the 13<sup>th</sup> President of Lake Forest College, a liberal arts college in Illinois, in October.

**Jay A. Dubow W'81, L'84**, a partner in Wolf, Block, Schorr and Solis-Cohen's litigation and corporate/securities practice groups, served as co-chair of a program at the ABA's recent annual meeting in Chicago. Dubow, who also serves as the co-chair of the criminal and enforcement litigation subcommittee of the business and corporate litigation committee of the ABA's section of business law, presided over the session, "The Promises and Perils of Joint Defense Agreements" at the ABA's annual meeting in Chicago.



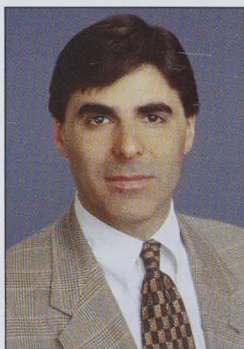
**Tsiwen M. Law L'84** was presented with the 2001 Trail Blazer award (Northeast Region) by the National Asian Pacific American Bar Association (NAPABA). Law was honored for his history of leadership which includes the founding of NAPABA, Chairman of the Philadelphia Commission on Asian American Affairs, Governor of the Pennsylvania Bar Association and a 30-year commitment to the Asian Pacific American community. In addition, Law was recently appointed by Philadelphia Mayor John Street to a seat on the Philadelphia Workforce Investment Board (WIB). Law co-authored the article, "The Immigration Backlash," which was published in *The Philadelphia Lawyer* (Nov. 2001). An associate of the law firm of Hwang & Associates P.C, Law is also an adjunct instructor of Asian American Studies at the University of Pennsylvania and Temple University.

**Jerrilyn Marston L'84**, a lecturer in law at the Wharton School, was one of five recipients of the school's undergraduate teaching awards for associated faculty. Marston is a shareholder at the Philadelphia office of Bazelon Less & Feldman, where she concentrates on complex commercial litigation.

**Thomas J. Ellis C'82, L'85** has been named to the board of directors of the Southeastern Pennsylvania Transportation Authority (SEPTA). Ellis is a partner at Ballard Spahr Andrews & Ingersoll L.L.P in Philadelphia.

**Cathy Gebhard L'85** rejoined Crowell & Moring in Washington, DC as a partner. Gebhard works with domestic and foreign companies on general corporate and securities matters and has a specialized background with biotechnology companies. She was previously with the biotech company Serono S.A. for 11 years.

## 1980s



**Henry Hoberman C'82, L'85** was promoted from Vice President to Senior Vice President of ABC, Inc. He is responsible for overseeing litigation and employment practices of all business units of ABC. He was previously a partner with the Media and Communications group in the Washington, D.C. office of Baker & Hofstetler.

**Osagie O. Imasogie GL'85** was appointed Chairman of International House of Philadelphia, a nonprofit educational organization. Imasogie had previously served as a Trustee on that Board, and currently serves on the Advisory Committee of the new Russell Byers Charter School in Philadelphia. Imasogie is the Vice President and Director of Genetics and Discovery Ventures of GlaxoSmithKline P.L.C. in Philadelphia.



**Stephen D. Lerner C'82, G'82, L'85** was elected a Fellow of the American College of Bankruptcy. A partner at Squire, Sanders & Dempsey L.L.P. in Cincinnati, Lerner was inducted at a ceremony at the U.S. Supreme Court in March 2002.



**June Melvin Mickens L'85** has been named to the Board of Directors of the Eastern Regional Interstate Child Support Enforcement Association. An Associate Principal with Tier Technologies, Inc. in Burtonsville, Maryland, Mickens is also an instructor at Howard University in Washington, D.C.

**Thomas P. Pinansky L'85** has been elected Chairman of the Asia-Pacific Council of American Chambers of Commerce (APCAC). APCAC groups 23 American Chambers of Commerce in 17 Asia-Pacific countries. Through the member chambers, APCAC represents the interests of some 50,000 business executives from more than 8,000 business entities engaged in US-Asia trade, services and investment. Pinansky, who has been a governor of the American Chamber of Commerce in Korea for over six years, has been based in Korea for more than a decade and is Senior Foreign Attorney at the law firm of Kim, Shin & Yu. He is actively engaged in the practice of international corporate law, and he represents numerous U.S. corporate interests in the region.

**Linda M. Howard L'86** was profiled in the August 2001 issue of Black Enterprise. She is Chief Executive Officer of Ashanti Origins, a six-employee African-inspired furniture and housewares store in the Fort Greene section of Brooklyn. The company is the U.S. arm of Image Afrika Ltd., an Accra, Ghana-based company.

**Kenneth Trujillo L'86** resumed his position as a member of the Philadelphia law firm of Trujillo Rodriguez & Richards after serving two years as Philadelphia City Solicitor.

**Marianne E. Brown L'86** presented "Employment Agreements, Trade Secrets, Restrictive Covenants and Other Mysteries" at NBC10's Family Techfest in Philadelphia. Brown used case studies to inform employers about protecting their businesses, and employees about protecting their careers. Brown is an associate in the litigation department of Dilworth Paxson LLP.



**Joshua D. Cohen W'84, L'87** was named to the Board of Directors of EDC Finance Corporation, a subsidiary of the Economic Development Company of Lancaster County. Mr. Cohen is a partner with the law firm Hartman Underhill & Brubaker LLP in Lancaster, Pennsylvania.

**Matthew A. Lopes L'87** was among six honorees inducted into the hall of fame of East Providence High School in Rhode Island. Lopes, a member of the litigation section of the Providence law firm of Brown, Rudnick, Berlack and Israels LLP was honored for his professional achievements and ambassadorial efforts as an alumnus of the school.

# ALUMNI BRIEFS

## 1980s

**Mark A. Sereni L'87** was elected the first President of the Delaware County Trial Lawyers Association (DCTLA), a year old organization, at its September 2001 meeting. He is a partner with DiOrio & Sereni in Media, Pennsylvania, focusing on litigation and medical malpractice.

**Frank N. Tobolsky L'87** spoke at a seminar organized by the Philadelphia Bar Institute's 'Day of Real Estate' program. He presented "How to Negotiate a Commercial Lease in Record Time." Tobolsky's practice represents banks, borrowers, landlords, tenants, and commercial real estate developers.

**Abbe F. Fletman L'88**, a partner in Wolf, Block, Schorr, and Solis-Cohen's business litigation practice group, has been appointed the 2002 Chair of the City Policy Committee of the Philadelphia Bar Association.

**Craig McCrohon L'88, WG'89** joined the Chicago law firm of McBride Baker & Coles as a partner in its corporate, banking and technology groups. McCrohon was previously with Freeborn & Peters.



**Khaled Abou El Fadl L'89** was a guest commentator for CNN, NPR, NBC Dateline, the *New York Times*, *Los Angeles Times*, the *National Review*, Marketplace, Religion and Ethics, and the Dennis Prager Show. An author of four books on Islamic law, El Fadl is the *Omar and Azmeralda Alfi Distinguished Fellow in Islamic Law* at the UCLA School of Law.

**Penny Conly Ellison L'89** has been named to the board of directors of the National Association of Women Business Owners, Greater Philadelphia Chapter. Ellison is a partner at Dilworth Paxson L.L.P in Philadelphia.



**Henry Moniz L'89** was named to the "40 under 40" rankings published by the *Boston Business Journal*. Moniz is distinguished as the first African-American to achieve partnership at Bingham Dana LLP. He

was one of only seven attorneys nationwide chosen to join the Democratic Counsel to the Judiciary Committee of the U.S House of Representatives during the inquiry on the impeachment of President Bill Clinton. Moniz has successfully handled a wide variety of matters at Bingham Dana, including a recent resolution – after mediation and arbitration—of a \$30 million claim against a venture capital firm. As a federal prosecutor for four years, he handled cases at the Justice Department with national and international implications involving, among other things, refugees from Cuba and Haiti, and international narcotics and financial-related conspiracies. As an Assistant United States Attorney in 1998, Moniz received the New England Organized Crime drug Enforcement task Force Award for the successful trial of "Operation Pale Dry," a nationally noted prosecution of a multi-million dollar liquid cocaine importation conspiracy. In addition, Moniz was recognized in 2001 as one of Greater Boston's Ten Outstanding Young Leaders (TOYL) by the Junior Chamber of Commerce. Since then, Moniz has been appointed a judge for the TOYL awards, to the New England Committee of the NAACP Legal Defense Fund and as a Board member of the YMCA of Greater Boston. He serves as a member of the Law Alumni Society board of managers.

**Lisa M. Whitcomb L'89** has been named Director of Wealth Advisory Services at the Glenmede Trust Company. She will retain her responsibilities as First Vice President for Tax and Personal Financial Management.

## 1990s

**Robert S. Halpern L'90** was named vice president of business development for Xpogen, a bioinformatics software company in Cambridge, Massachusetts. He was formerly vice president of business development for Fact City Inc.

**Christopher R. Pace L'90** was named partner in the San Diego office of Cooley Godward LLP.



**Amy Sinden L'91** joined the faculty of Temple University's Beasley School of Law as an assistant professor. Sinden most recently served as senior counsel for Citizens for Pennsylvania's Future, and was an associate attorney for Earthjustice Legal Defense Fund in Seattle, Washington.

**Scott F. Becker L'92** was recently promoted to Assistant General Counsel at Sears, Roebuck and Co. in Hoffman Estates, Illinois where he handles commercial litigation.



**Carl M. Buchholz L'92** was appointed to serve as Special Assistant to the President and Executive Secretary for the United States Office of Homeland Security. Buchholz was formerly a partner in the litigation department of Blank, Rome & Comisky in Philadelphia, served as general counsel of the Ridge Leadership

Fund - the former Pennsylvania governor's election campaign fund - and was Pennsylvania counsel to George Bush's presidential campaign.

**Michael D. Jones L'92** joined Philadelphia law firm Reed Smith's employment law and benefits department as Counsel. Jones was previously an associate with Klehr, Harrison, Harvey, Branzburg & Ellers LLP in Philadelphia.

**David L. Richter ENG'87, W'87, L'92**, President of the Project Management Group at Hill International Inc. of Willingboro, New Jersey, has been elected to the Board of Directors of the Construction Management Association of America.

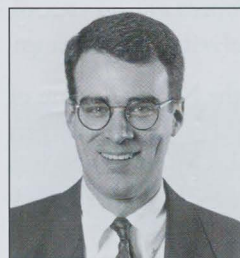
**Christopher G. Smith C'87, L'92** was elected partner at the Raleigh, North Carolina firm of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP.

**Kevin C. Smith L'92** has been named partner in the corporate department of the New York law firm of Chadbourne & Parke LLP.

**Steven Spielvogel C'89, L'92** was named CEO and President of Bianka Corporation, a Silicon Valley technology company.

**Keith Wasserstrom W'89, L'92** joined the Miami office of Hogan & Hartson as a partner in its corporate, securities, and finance group. Wasserstrom was previously with the Miami law firm of Baker & McKenzie.

**Wendy Beetlestone L'93** was named to the Board of Directors of WYBE Public TV 35 in Philadelphia. She was recently named partner at Schnader Harrison Segal & Lewis L.L.P in Philadelphia.



**Ronald E. Cahill L'93** was elected partner in the intellectual property group of the Boston law firm of Nutter McClennen & Fish LLP.

**Andrew R. Gaddes GL'93** was elected partner in the mass torts and product liability group in the Philadelphia office of Dechert.

**Sean M. Halpin L'93** was named partner at the Philadelphia law firm of Reed Smith. Halpin specializes in commercial and general litigation.



**James Shifren L'93** was named partner at Stroock & Stroock & Lavan LLP. He is a member of its litigation group specializing in complex commercial litigation and international practice.

**Leisa M. Smith L'93** was named partner in the New York office of Fitzpatrick, Cella, Harper & Scinto. Smith focuses her practice on patent litigation.

# ALUMNI BRIEFS

## 1990s

**Nancy Bedel Barnes L'94** joined the law firm of Kaufman & Cumberland in Cleveland, Ohio, where she handles general litigation matters. Barnes previously clerked in the Southern District of Florida for United States District Judge Patricia A. Seitz and United States Magistrate Judge Barry L. Garber.

**Stephen D. Goldberg L'94** joined the crisis communications practice of Adam Friedman Associates LLC in New York. Goldberg was most recently an associate at Otterbourg, Steindler, Houston & Rosen, P.C in New York. Goldberg has extensive experience in bankruptcy, restructuring, and creditors' rights matters.



**Matthew P. Joseph L'94** was named partner in the capital markets group of the New York office of Stroock & Stroock & Lavan LLP.

**Thomas C. Rotko L'94** has joined the New York, firm of Clayman & Rosenberg Of Counsel. He will specialize in the practice of civil and criminal litigation. Rotko was formerly an Assistant District Attorney in the New York County District Attorney's Office.

**Rita Goldberg L'95** and **Daniel I. Goldberg L'95** welcomed a new baby, Abigail Mia Goldberg in January 2002. Rita continues to practice at McDermott Will & Emery in New York City, and Daniel practices at Piper Rudnick LLP.

**Paul Auh L'95** and **Michael Rosenberg L'95** (see more below) co-hosted a daylong seminar entitled, "Advanced Legal Writing for the New Jersey Paralegal," sponsored by the Institute for Paralegal Education. A former attorney with Bochetto & Lentz P.C in Philadelphia, Auh is currently enrolled in Penn's Graduate School of Education.

**Michael Rosenberg L'95** and Sheryl Rosenberg announce the arrival of their second son, Jack Holden Rosenberg, born in January. Michael is a commercial litigation attorney at Wolf, Block, Schorr & Solis-Cohen LLP.

**Meenu T. Sasser L'95** has been board certified in business litigation by the Florida Bar. She practices commercial and intellectual property litigation at Gunster, Yoakley & Stewart PA in West Palm Beach, Florida, and is co-chair of the judicial relations committee of the Palm Beach County Bar.

**Rachel Solar-Tuttle C'92, L'95's** first novel, *Number Six Fumbles*, a coming-of-age story that takes place at Penn, was published by Pocket/MTV Books. She is currently working on a second novel that takes place in law school. Solar-Tuttle worked for three years as a litigator in Boston before leaving law practice to become a writer.

**Marie Hurabiell L'96** has been promoted to vice president at Red Herring Communications Inc. in San Francisco. Since November 2000 she served as the company's first corporate counsel.

**Bruce Bellingham GR'84, L'97** joined the Philadelphia law firm Spector Gadon & Rosen PC as an associate in the firm's commercial litigation department. He previously worked for Kaufman, Coren, Ress & Weidman.

**Elizabeth D. Preate L'97** was honored by the Greater Delaware Valley Chapter of the National Multiple Sclerosis Society's Leadership Class program. Preate was recognized for her outstanding contributions to the business, civic and cultural betterment of the Philadelphia metropolitan area. Preate is an associate in the Philadelphia office of Pepper Hamilton LLP.

**Kevin M. Greenberg L'98** was appointed to the Board of Directors of the Philadelphia Commercial Development Corporation (PCDC) by Mayor John Street. Greenberg is a member in the Intellectual Property and Information Technology Practice Group of Wolf, Block, Schorr and Solis-Cohen.



**Christopher Mora L'99** was recently awarded the Navy-Marine Corps Achievement Medal for his litigation and legal assistance service as well as support in the mobilization of commands for Operations Noble Eagle and Enduring Justice. In addition, he was nominated a second time and selected officer of the Quarter, and received the Military Outstanding Volunteer Service Medal for his *pro bono* work on the Chitimacha Indian reservation in Louisiana. In January of 2002 he became Staff Judge Advocate in JAG serving as general counsel and assistant U.S. Attorney for all Navy commands on the Mississippi Gulf Coast. He will marry Filomena Ricciardi in Summit, New Jersey in June.

## 1990s

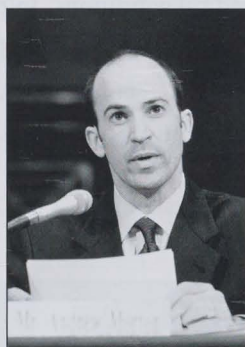
**Andrea Ortvals Patton L'99** and Dick Patton WG'99 welcomed a son, Henry Ortvals Patton in December. She continues to practice in the securities and business litigation group at King & Spalding in Atlanta.

**Jonathan Pressman L'99** joined the litigation group of the New York law firm of Wilmer, Cutler & Pickering.

**Sharif Street L'99**, an associate in the real estate practice group of Wolf, Block, Schorr and Solis-Cohen LLP, is running for a seat in the Pennsylvania State Assembly.

## 2000s

**Malia N. Brink L'00**, an associate with Wolf Block Schorr and Solis-Cohen, was awarded a Shestack Public Interest Fellowship with the American Civil Liberties Union.



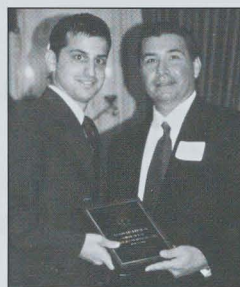
**Andrew Morton L'00** was featured in *The National Law Journal* (January 2002) for his *pro bono* work in helping protect non-U.S. citizen children who have cases before the Immigration and Naturalization Service. He testified on behalf of the Unaccompanied Alien Child Protection Act at a hearing of the Senate Judiciary

Committee in February. Morton is an associate in the Washington, DC office of Latham & Watkins.

**Alison Pauly L'00, SW'00** joined the Menlo Park, California office of Perkins Coie LLP as an associate in the intellectual property and patent practice group.



**Hannah Um L'00** joined the Lawrenceville, New Jersey office of Fox Rothschild O'Brien & Frankel LLP where she will concentrate her practice in the areas of corporate law and tax law. She was a judicial intern for the Honorable Arnold L. New in the Court of Common Pleas of Philadelphia County.



**Jason Leckerman L'01** was presented with the James J. Manderino Award for Trial Advocacy by the Philadelphia Trial Lawyers Association at its annual meeting in Philadelphia. He is an associate with Schnader Harrison Segal & Lewis.

**Eric J. Marcuson L'01** joined Fox Rothschild O'Brien & Frankel LLP as an associate. Marcuson focuses his practice in commercial real estate, commercial sales, real estate, and residential real estate.

**Can Nguyen L'01** joined the Palo Alto, California office of Fish & Neave as an associate.

**Michael Raffaele L'01** joined the Washington, D.C office of Akin, Gump, Strauss, Hauer & Feld as an associate in its litigation group.

**Thea Rozman L'01** joined the Washington, D.C office of Akin, Gump, Strauss, Hauer & Feld as an associate. Rozman focuses on international trade litigation, U.S. sanctions regulation, and development of U.S. trade policy.



**Johanna Wilson L'01** was presented with the James J. Manderino Award for Trial Advocacy by the Philadelphia Trial Lawyers Association at its annual meeting in Philadelphia. She is an associate with White & Case.

### SUBMISSION DEADLINE FOR THE FALL ISSUE OF THE PENN LAW JOURNAL

**JUNE 15, 2002**

Email news of your professional accomplishments and activities to [alumnijournal@law.upenn.edu](mailto:alumnijournal@law.upenn.edu) or mail news and photos to the attention of the Editor at the return address on this publication.

- 1922**  
MORRIS S. GROSS
- 1927**  
THE HON. C.W. KRAFT, JR.
- 1928**  
J. RUSSELL CADES C'25, GL'30  
NATHAN L. EDELSTEIN W'25
- 1930**  
SAMUEL B. BRENNER C'27  
GERTRUDE HOFFMAN
- 1931**  
J. EDWARD CANTOR W'28  
I. I. JAMISON
- 1932**  
MARTIN R. FREEDMAN  
PAUL S. HERZBERG C'29
- 1933**  
AUSTIN GAVIN, JR.  
BENJAMIN LICHTENFELD W'30  
THE HON. JOSEPH P. OLEY
- 1934**  
LEONARD J. BERNSTEIN W'31  
PAUL KRAFT W'31
- 1936**  
HERBERT J. BASS G'35  
LEWIS M. GILL  
HARRY K. MADWAY W'31
- 1937**  
ROBERT M. CROOKS G'36  
ALBERT B. GERBER  
IRVING I. SOLIT
- 1938**  
SYLVAN M. COHEN C'35  
VANCE L. ECKERSLEY  
BERNARD FRANK  
HARVEY L. PANETTA  
SAMUEL R. WEXELBLATT
- 1939**  
ALBERT J. CRAWFORD
- 1940**  
THE HON. CHARLES H. COFFROTH  
GEOFFREY STENGEL
- 1941**  
R. STEWART RAUCH  
JOHN M. STOCKER
- 1942**  
ANTHONY J. BONADIO  
H. ROBERT FISCHER  
THOMAS J. GAFFNEY  
NATHAN B. HALL  
JAMES P. MACFARLANE, JR.  
RICHARD G. MILLER  
WALTER N. READ C'39
- 1943**  
STANTON W. FELT II
- 1944**  
PAUL L. WISE
- 1945**  
ALVIN E. MAURER, JR.
- 1947**  
HAROLD S. PATTON

- 1948**  
CLIFFORD D. ROOT
- 1949**  
JOHN M. CURRY, JR. W'43  
CLIFFORD C. DAVID  
JOHN B. FELTON  
ALVAN S. HUTCHINSON  
THE HON. JAMES A. O'NEILL W'47  
FRANCIS M. RICHARDS, JR.  
FRANKLIN H. YOUNG
- 1952**  
SHIRLEY RAE DON CW'49, WG'75  
EDWARD L. FLAHERTY, JR.  
SETH W. WATSON, JR.
- 1953**  
EDWARD H. HUSS
- 1955**  
RICHARD H. BATE  
THE HON. DOMINIC T. MARRONE  
JOHN J. MCCARTY  
LIONEL WERNICK  
THE HON. ALFRED T. WILLIAMS, JR.
- 1956**  
SAMUEL L. HIRSHLAND  
RONALD I. KRAVITZ C'53  
RICHARD L. MCMAHON  
ALVIN G. SHPEEN
- 1957**  
ALVIN S. ACKERMAN W'54
- 1959**  
JOHN W. BROCK JR. CHE '54  
DAVID C. FURMAN W'56  
ROBERT P. OBERLY C'53
- 1960**  
MICHAEL GOLDMAN W'57  
WILLIAM R. MOSOLINO
- 1961**  
A. GRANT SPRECHER
- 1962**  
MERLE H. TOM
- 1964**  
RICHARD A. ASH
- 1967**  
ARTHUR H. ERNST
- 1968**  
ALBERT R. SIMONDS
- 1970**  
WILLIAM R. DIMELING  
RICHARD FRIEDMAN
- 1976**  
JAMES M. WILLIAMS

IN REMEMBRANCE OF  
MEMBERS OF OUR  
LAW SCHOOL COMMUNITY  
LOST ON SEPTEMBER 11, 2001

GEOFFREY CLOUD L'90  
JOHN BURKHART SCHWARTZ  
KEIJI TAKAHASHI GL'85



**RICHARD SLOANE**  
(1917-2002)

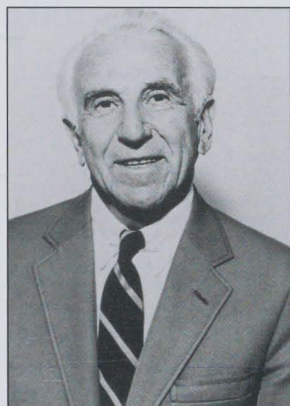
Richard Sloane, Professor Emeritus of Law and director of the Biddle Law Library from 1971 until his retirement in 1984, died in February 2002. Richard 'read for the law' while working at Cravath, Swaine & Moore, where he worked for 23 years as both a librarian and an associate. He was active in the law library profession and was one of the first librarians to see the enormous potential of Lexis-Nexis and Westlaw. Professor Sloane's major reference work, "The Sloane-Dorland Annotated Medical-Legal Dictionary" (1987 & supp.), utilized these online systems to find judicial annotations to a vast number of diseases, injuries, and medical conditions. In this respect he was a pioneer in the use of technology to further interdisciplinary research.



**HERBERT J. BASS**  
G'35, L'36  
(1912-2001)

Herman J. Bass died on October 11, 2001 at his home in Abington, Pennsylvania. He earned a masters degree in philosophy from Penn in 1935 and graduated from the Law School in 1936. He was honored by the Philadelphia Bar Association in 1997 for over 60 years of continuous practice in the area of civil litigation and commitment to the Philadelphia legal community. He retired in 1998. Mr. Bass is survived by his wife, Lillian, two daughters, Rebecca Bass and Susan Bolch, and three grandchildren, Natalie, Melanie and Jordan Bolch.





### SYLVAN M. COHEN C'35, L'38

(1914-2001)

There are few alumni as dedicated to class spirit as Sylvan Cohen was dedicated to the Class of 1938's *joie de vivre*. While it is customary for a class to come together for reunions every five years at Penn Law School, it's extraordinary for a class to get together every year for over 60 years. Led by Mr. Cohen, chairman of the former firm Cohen, Shapiro, Polisher, Shiekman & Cohen in Philadelphia, the Class of 1938 traveled the world together by land and sea. Mr. Cohen, a member of the Law School's Board of Overseers, was Note and Legislation Editor of the Law Review and class president. After graduation he formed Cohen & Cohen with his brother Albert. During World War II Mr. Cohen was an intelligence officer in the

Army Air Corps, after serving as a lawyer with the U.S. Office of Price Administration in 1941 and 1942. He was a founder and former president of the International Council of Shopping Centers, and at his death was chairman of the Pennsylvania Real Estate Investment Trust (PREIT) one of the earliest REITs to specialize in shopping centers. Known for his prowess on the courts, in 1998 Mr. Cohen was named to Penn's Tennis Hall of Fame. His legacy will live on at Penn Law School through the Friends of Biddle, the group he inspired to support the Biddle law Library. His wife of 58 years, Alma Orlowitz Cohen, and two sons, Stephen B. Cohen and Marc A. Copland survive him.



At the Law School in 1967:  
Dean Jefferson B. Fordham, Joseph Alessandrini,  
The Honorable Arlin M. Adams L'47, HOM '98,  
Governor William W. Scranton, and Sylvan Cohen



### J. RUSSELL CADES C'25, L'28, GL'30

(1905-2002)

J. Russell Cades, an attorney in Honolulu, Hawaii who helped establish, and greatly influenced, the legal profession in Hawaii, died in February at the age of 97. After graduating from Penn Law School Mr. Cades moved to Hawaii to join the firm Smith & Wild where he specialized in corporate and tax law. A Philadelphia native, he practiced at Cades Schutte Fleming & Wright up until his death. In 1969, Mr. Cades, with his brother **Milton Cades W'24, GL'37**, established the *Ida Russell Cades Memorial Faculty Research Fund* in memory of their mother. The Cades brothers indicated that the fund should support scholarship in the area of constitutional law, specifically First Amendment rights, and pay special attention to the growing internationalization of the world and the importance of comparative law and international communication. The Law School has been fortunate to have a long relationship with the Cades family with several graduates having come through the school: **Stewart Russell Cades W'64, L'67**; **Julian David Waldman C'71, L'88**; and **Susan Kate Levenson Carroll L'73**. His widow, Charlotte McLean Cades, passed away only days after his death.

## END PAGE



Paul S. Levy L'72, Chairman of the Board of Overseers, and Saul A. Fox L'78

Over the years I was troubled by seeing tax professors lured away from Penn to other schools. As I thought about this dilemma, I was reminded of the wisdom of “The Wizard of Oz.” Specifically the Wizard’s observation that all that remained between a Cowardly Lion and a courageous hero was a gold medal. The answer for me was readily apparent. For Penn Law to retain its best and brightest was a gold medal – with the word spelled “m-e-t-a-l” and the emphasis on ‘gold.’ Hence, the *Saul A. Fox Distinguished Professorship* and the *Fox Endowed Research Fund*. For the Law School I hope for more such gold from others to endow more of the same.

From remarks delivered  
by Saul A. Fox upon receiving the  
Law School Medallion in honor of establishment of the  
*Fox Distinguished Professorship* in 2001 with the largest single gift  
to establish a chair in the history of the University of Pennsylvania.

BENEFACTORS DINNER  
OCTOBER 23, 2001

The Law School  
Board of Overseers  
2001-2002

Law Alumni Society  
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2001-2002

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\* *emeritus status*

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# Penn Law Reunion Weekend 2002 . . .

## Friday, May 10, 2002

6:00 p.m. – 7:30 p.m.

**Law Alumni Society Awards Reception The Law School** – *Please join us in honoring this year's award recipients:*

**THE JAMES WILSON AWARD**

is presented to an alumnus/a to honor his/her service to the legal profession.

**THE HONORABLE A. RAYMOND RANDOLPH L'69** *Circuit Judge, United States Court of Appeals for the District of Columbia Circuit*

**THE DISTINGUISHED SERVICE AWARD**

"The Goat" is presented to a member of the Penn Law community who has distinguished him/herself by his/her outstanding service to the Law School.

**COLIN S. DIVER** *Charles A. Heimbald, Jr. Professor of Law and Economics, Dean (1989-1999), University of Pennsylvania Law School*

**THE ALUMNI AWARD OF MERIT**

is presented to select alumni for professional achievement and support of the Law School.

**ANITA L. DEFRANTZ L'77** *President of the Amateur Athletic Foundation, Member of the International Olympic Committee*

**THE HONORABLE RANDY J. HOLLAND L'72** *Justice of the Supreme Court of Delaware, President of the American Inns of Court Foundation*

**EDWARD W. MADEIRA, JR. C'49, L'52** *Chairman Emeritus and Partner, Pepper Hamilton LLP*

**MICHAEL J. ROTKO L'63** *Partner, Drinker Biddle & Reath LLP*

**JO-ANN M. VERRIER L'83** *Vice Dean for Student Services and Director, Career Planning & Placement, University of Pennsylvania Law School*

**THE YOUNG ALUMNI AWARD**

is presented to a member of the Penn Law community, who has graduated in the past ten years, for professional achievement and service to the Law School.

**HUSSAM ("SAM") HAMADEH L'97, WG'97** *Co-Founder, Vault, Inc.*

## Saturday, May 11, 2002 *All daytime events on Saturday will take place at the Law School.*

9:30 a.m. – 11:00 a.m.

**Classes Without Quizzes** – *The Law School*

**HOW LAW WILL WIN THE WAR**

A panel discussion about how the government is using the law to protect our nation and manage a just response to the events of September 11, 2001.

MODERATOR: **MICHAEL A. FITTS** *Dean and Bernard G. Segal Professor of Law*

PANELISTS INCLUDE: **DAVID D. AUFHAUSER L'77** *General Counsel, U.S. Department of the Treasury*

**CARL M. BUCHHOLZ L'92** *Special Assistant to the President and Executive Secretary for the Office of Homeland Security*

**ROBERT S. KLOTHE L'74** *Senior Attorney, U.S. Department of Transportation*

12:30 p.m. – 2:30 p.m.

**Reunion Picnic (Families Welcome!)**

12:30 p.m. – 2:30 p.m.

**Class Reunion Luncheon for 1937, 1942, 1947** *The Law School, Biddle Law Library*

6:30 p.m.

**Individual Class Reunion Dinners for 1952, '57, '62, '67, '72, '77, '82, '87, '92, '97**

**FOR INFORMATION:** (215) 898-2808

**TO REGISTER ONLINE:** [www.law.upenn.edu](http://www.law.upenn.edu)

University of Pennsylvania Law School  
3400 Chestnut Street  
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