

Hearsay

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A new chapter

"Who's the No. 1 comedian working today?" Appeals Court Judge **R. Marc Kantrowitz** asks more than a dozen wide-eyed, mostly young law clerks seated around a long conference-room table.

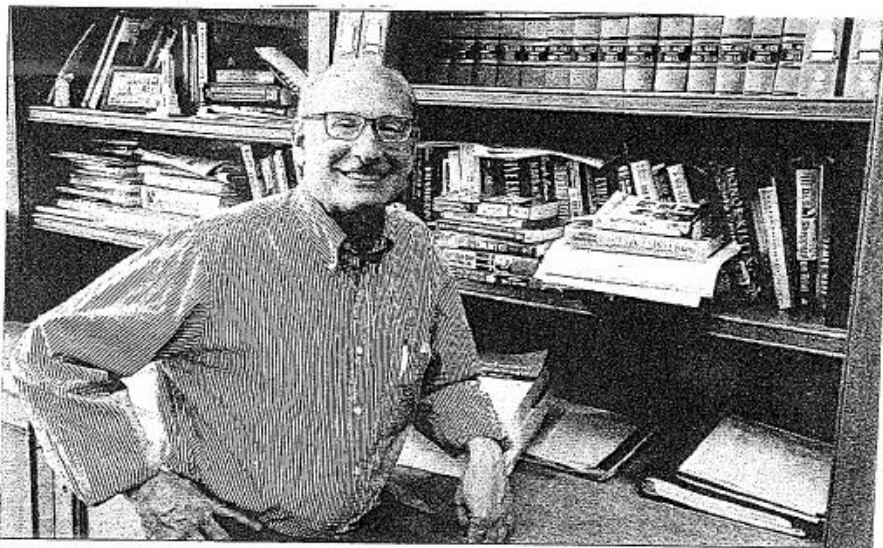
A few moments of tense silence follow. This, after all, is a bit less serious of a query than a judge might typically pose to a student clerk, so it takes a few seconds to warm to the task. Eventually, the answers begin to flow.

"Louis CK."

"Kevin Hart."

Kantrowitz himself suggests Jon Stewart.

"Imagine, if you will, if one of those folks were to be accused of murder — how big that story would be," Kantrowitz says.



JUDGE R. MARC KANTROWITZ

And yet, the judge continues, despite the books that would be written and movies that would be made in the immediate aftermath of such a titillating tabloid trial, “the only thing we can be certain of is that, 100 years from now, no one will know the story.”

How can Kantrowitz be so sure? He’s spent the past couple years researching dozens of cases that were the O.J. Simpson trial of their day, only to see their notoriety evaporate with the passage of time.

Kantrowitz, whose column, “Law ‘n History,” appears periodically in *Lawyers Weekly*, has compiled 30 such stories in his forthcoming book, “Old Whiskey and Young Women: American True Crime Tales of Murder, Sex and Scandal,” set to be released in early fall, just after Kantrowitz says goodbye to the Appeals Court bench on Aug. 14.

Kantrowitz’s opening question relates to Roscoe “Fatty” Arbuckle, one of the two biggest movie stars of his day, along with Charlie Chaplin. Nearly 100 years ago, Arbuckle was accused of the rape and murder of model and actress Virginia Rappe.

Arbuckle was subjected to three trials, Kantrowitz notes. After the last one, the jury acquitted him in a matter of minutes, the foreman suggesting that the defendant was “not only not guilty, but clearly innocent,” Kantrowitz says.

Despite the jury’s hope that the controversy would not adversely affect Arbuckle’s career, it in fact destroyed it.

That story — set in a Hollywood even wilder than today’s version, Kantrowitz asserts — is just one example in the book that people historically have been “as generous, as petty, as vengeful, as smart and as dumb as they are today,” he says.

Kantrowitz goes back even further, to 1778, to find the Pamela Smart of her day, Bathsheba Spooner, who co-opted a pair of wandering British deserters in the murder of her husband, Joshua. The conspirators were quickly brought to justice thanks to their clumsy attempts to cover up their crime, and Bathsheba was hanged in front of a festive crowd of thousands, despite being pregnant at the time.

Among the other notorious characters “Old Whiskey” explores is the real-life inspiration for the lead character in the Alfred Hitchcock film “Psycho,” Ed Gein. Meanwhile, members of the legal profession may be particularly interested to read about John W. Webster, the accused murderer whose “judicial lynching” in a mid-19th-century case gave rise to the model jury instruction on reasonable doubt that continues to echo through the state’s courtrooms; and Dolly Mapp, the woman at the heart of *Mapp v. Ohio*, “one of the biggest cases handled by the Warren Court,” Kantrowitz says of the decision that extended the exclusionary rule for unlawful searches and seizures under the Fourth Amendment to state courts.

Touring to promote the book, which will take him to Europe (publisher Fonthill Media has a home base in the U.K.), is not the only adventure that awaits Kantrowitz in retirement. This fall, he will return to teach at his alma mater, Ohio University, from which he holds a B.A. in history and M.A. in political science, and which also gave him a distinguished alumni award in 2012.

During his fellowship, professors will invite Kantrowitz into their classrooms to speak on a variety of subjects, including pre-law. He’ll be living in a dormitory, riding the elevator with students in their teens and early 20s, a far cry from the stately marbled halls of Boston’s John Adams Courthouse.

The kinetic Kantrowitz also will be working on developing ideas he has for three other books in his “spare time.”

While Kantrowitz says he’s enjoyed his time on the Appeals Court “immensely,” and he’s stepping down five years earlier than required under state law, he says it’s time to move on.

“There are things I want to do — writing, teaching — that will be easier to do at 65 than at 70, when I’ll have a tad less energy,” he says.

— KRIS OLSON