

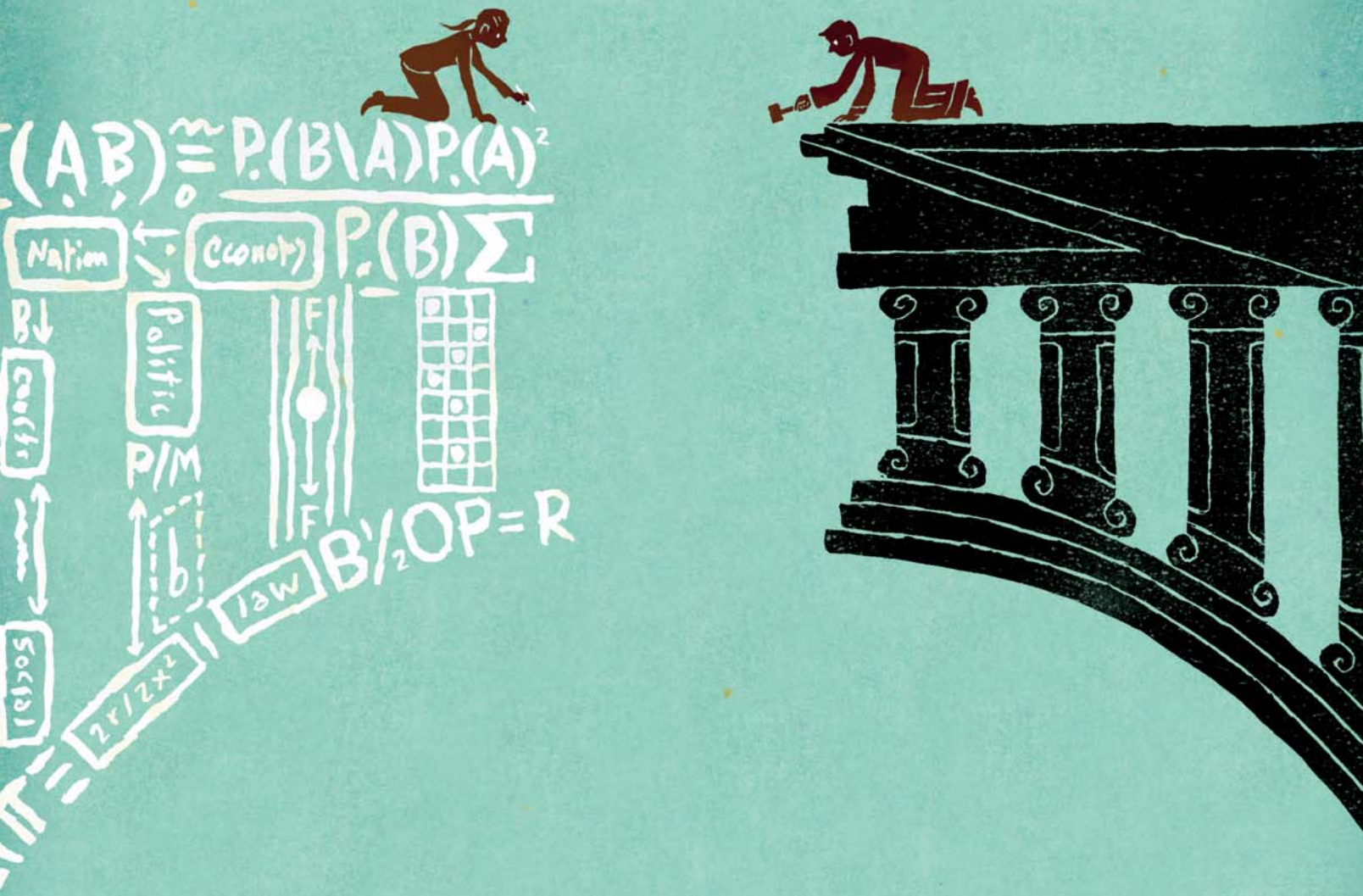
WINTER 2012

# Harvard Law

*bulletin*

→ REAL-WORLD PERSPECTIVES AND HANDS-ON TRAINING ←

NEW CONNECTIONS  
BETWEEN THEORY AND  
PRACTICE



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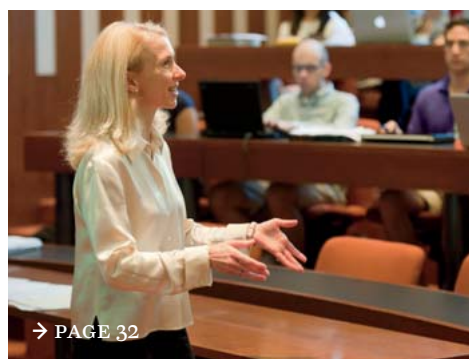
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## Theory and Practice, at the Same Time

“In theory there is no difference between theory and practice. In practice, there is.” So, we think, said Yogi Berra. He also supposedly said, “How can you hit and think at the same time?” At law school, we daily acknowledge the differences between theory and practice—and between thinking and doing—while also working constantly to bridge the two. In the creative tension between theory and practice lies our comparative advantage. So this September—10 years after the 9/11 attacks—we launched a new initiative pairing the academic research of Harvard Law School

professors with the policy expertise of the Brookings Institution to tackle challenging issues of national and international security. Headed by HLS Professor Gabriella Blum LL.M. '01 S.J.D. '03 and Benjamin Wittes, a senior fellow in governance studies at Brookings, the Harvard Law School-Brookings Project on Law and Security directs legal scholarship to vexing and persistent questions of policy while

infusing real-world realities into academic discussions.

The project includes Professor Jack Goldsmith, who co-founded the national security blog Lawfare with Wittes and Robert Chesney '97, and also many of our students.

Members of our corporate law faculty, consistently recognized around the world for their innovative and influential

scholarship, also bring perspectives of practitioners, case studies of business strategies, real-time analyses of contemporary deals, and in-depth studies of business transactions to their classrooms. This issue highlights some of these efforts and also explores burgeoning clinical opportunities for students interested in business law and business regulation.

Another story here follows our faculty member Gerry Neuman '80 to Geneva, where he brings his knowledge and research to his new role as one of 18 elected members of the United Nations' Human Rights Committee, the expert body created by and charged with enforcing the International Covenant on Civil and Political Rights. Selected as an internationally renowned master in the field, Professor Neuman is already bringing back to Cambridge rich insights from his immersion in reports by member states

and petitions by individuals.

Further cross-pollinating practice and theory, this year we have launched a multiyear training program for associates of the Milbank law firm. In turn, we will use this effort to explore the demands and opportunities in the changing marketplace for lawyers as we pilot new teaching materials and examine career paths and changing modes of delivering legal services.

Every day at the school, accomplished alumni who have pursued vital careers in law practice, business, politics, nonprofit leadership, and other fields generously share their time and insights, advising students, faculty and this dean. I am delighted that the Bulletin has profiled several outstanding alumni: former Solicitor General Paul Clement '92, private equity investor Tope Lawani '95, and financial expert and successful Broadway producer Roy Furman '63, among others. More than 700 alumni attended the joyful 3rd Celebration of Black Alumni. This issue shares insights from Peggy Cooper Davis '68, John Payton '77, Loretta Lynch '84, Timothy Wilkins '93 and Darin Johnson '00, who exemplify the remarkable and diverse careers of black alumni graduating from HLS over the past five decades.

Students find opportunities to reflect on

*“At law school, we daily acknowledge the differences between theory and practice—and between thinking and doing—while also working constantly to bridge the two.”*

their clinical and summer work experiences while also generating research that in turn assists practice. A story inside recounts how Ryan Park '10 learned that Judge Richard Posner '62 of the U.S. Court of Appeals for the 7th Circuit cited an article he wrote as a student.

We mourn the loss of a colleague and friend, Professor Bernie Wolfman, whose career connected theory and practice in tax law and civil rights, and whose memorable teaching and prolific writing informed generations of law students and lawyers. We also remember here Professor Derrick Bell, a former HLS faculty member and the school's first African-American tenured professor. His pivotal and courageous work spanned the front lines of the civil rights movement, imaginative writing, outspoken protest and searing critique in pursuit of equality.

Sparks fly when theory and practice meet. Daily work lifts with aspirations while lived experiences discipline ideals. As Yogi Berra apparently said, “If the world was perfect, it wouldn't be.”

*Matthew Minow*

## LETTERS

### A ROLE FOR HLS IN THE DEVELOPMENT OF 'CLEAN' NUCLEAR ENERGY

THE NOTE FROM Dean Martha Minow in the Summer 2011 edition of the Harvard Law Bulletin favorably comments on the “center stage” role of the law school’s graduates in “developing innovative technologies” for “the nation’s future and the welfare of the world.” Any even part-time reader of the news knows of the disastrous earthquake, tsunami and nuclear reactor meltdown that devastated Japan. Many who may read more thoroughly will have learned that the radiation disaster still plaguing that nation would have been averted if the nuclear reactor had been fueled with thorium instead of uranium. Our planet is still paying for the “Cold War” decision made so many years ago to use uranium for its bomb-making capabilities instead of thorium in its nuclear reactors.

If Harvard Law School wishes to lead the way as the pre-eminent educational institution in the country, it should cooperatively work with the university’s physicists, its Business School and Kennedy School to find a way to engineer, permit, and finance safe, clean and nonproliferating

“IN THE ARTICLE,  
... NO BLAME OR  
RESPONSIBILITY  
IS PLACED  
ON THE  
BORROWER.”

thorium reactors to solve our energy problems. If you need some additional scientific help, it seems to me that MIT is just down the avenue and that there are a host of engineers across the river at Northeastern.

HARRIS BASEMAN '55  
*Brookline, Mass.*

### WHAT ABOUT THE RESPONSIBILITY OF THE BORROWER?

IN THE ARTICLE titled “Law on the home front” (Summer 2011), we are told the victim—Beth—was deceived by “predatory” lenders. That word appears four times in an extremely slanted article. No blame or responsibility is placed on the borrower, who receives disability income and lives in federally subsidized housing funded by taxpayer monies.

She took two mortgages totaling

nearly \$500,000 to purchase a tenement. Do we detect an element of greed here? It appears the victim should have consulted a lawyer from the Harvard Legal Aid Bureau before she made the purchase.

R.J. MCMAHON '45  
*Pawtucket, R.I.*

### A GRAVESTONE DOES AS MUCH

BECAUSE I HAVE enjoyed the Harvard Law Bulletin for many years and hope to enjoy it for several more years, I must tell you that the recent truncating of your obituaries is a dreadful mistake.

Your current (Summer 2011) issue notes the passing of five people I once considered friends. You’ve told me the dates they died (a gravestone does as much), but what were the highlights of their lives?

I believe that our current demotion—so typical of this mechanistic age—is bad for us alums. I am certain it will be bad for the law school. Doing the obits the way you used to and the Harvard Magazine still does them must be a hassle, but, trust me, they are worth it. You will do us both a favor if you restore them.

MALCOLM H. BELL '58  
*Weston, Vt.*

**FROM THE EDITORS:** *We appreciate your thoughtful letter and active readership. As of this issue, we are including links to newspaper obituaries in the online version of In Memoriam (bit.ly/inmemlinks). In the near future, we will provide an online avenue for sharing remembrances.*

### A CALL TO READERS

David Warrington, librarian for special collections at Harvard Law School, is seeking information on graduates or students who have died in military action since World War II.

HLS plans to honor those veterans by adding their names to a plaque in Langdell Library outside the Caspersen Room, where others who have died in past wars are commemorated.

Warrington is aware of five alumni who have died in military conflict over the past six decades:

**JOHN G. SHEEHAN '48-'49**, killed in Korea in 1950

**BIGELOW WATTS JR. '51**, killed in Korea on June 17, 1951

**NELSON RAMON MORALES '64-'65**, killed in Vietnam on Dec. 26, 1967

**HELGE P. BOES '97**, killed in Afghanistan on Feb. 5, 2003

**MICHAEL WESTON '97**, killed in Afghanistan on Oct. 26, 2009

If you have information on others, please send it to [warringt@law.harvard.edu](mailto:warringt@law.harvard.edu) or call 617-496-2115.



### Stephen Shay

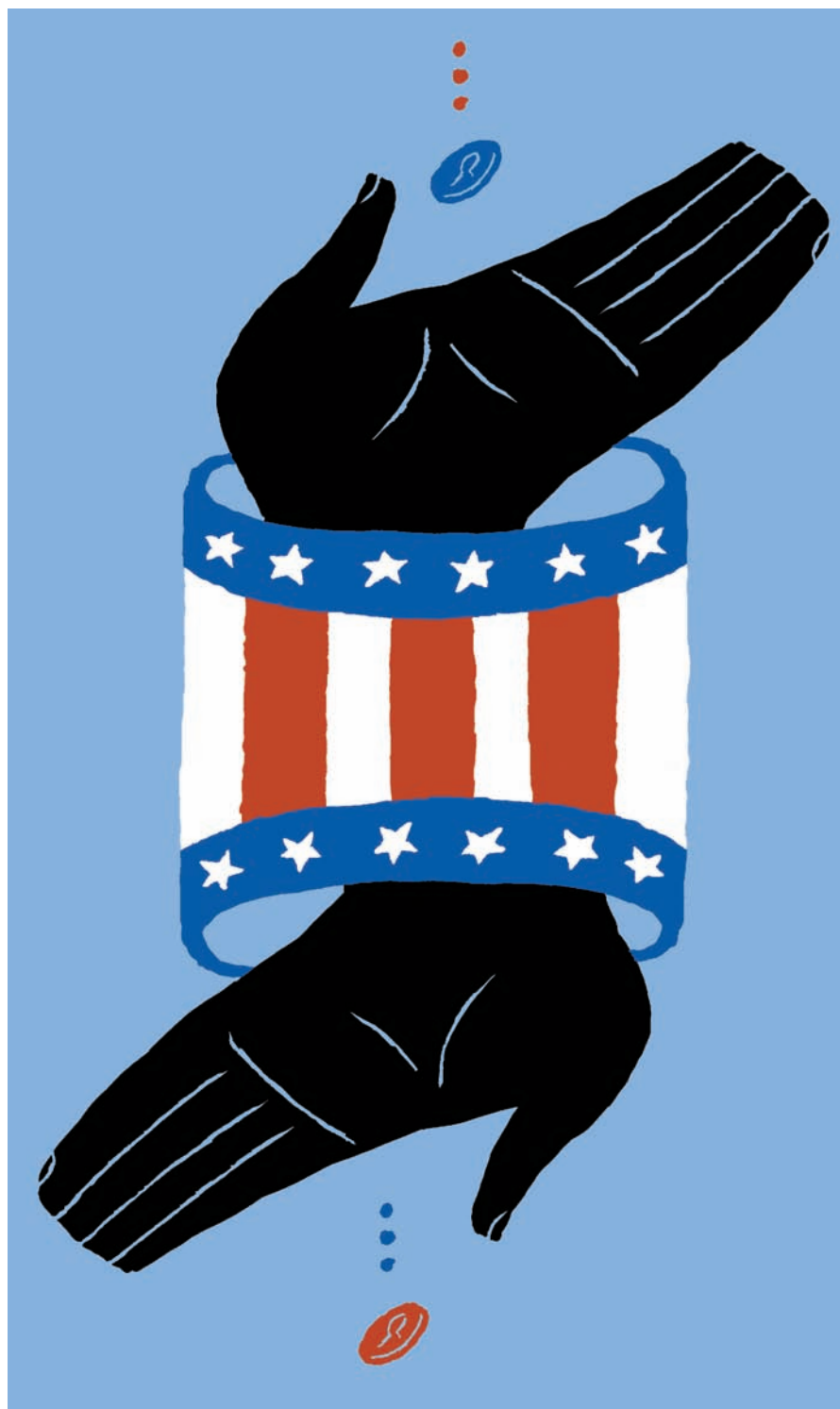
#### Reforming *TAX EXPENDITURES* *ALONE Won't Fix the Deficit*

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In recent debates over reducing the budget deficit, even politicians adamant about not raising taxes have been discussing the elimination of tax loopholes, or “tax expenditures.” We turned to Professor of Practice Stephen Shay, who recently joined the law school faculty after extensive experience developing and overseeing implementation of U.S. international tax policy. We asked the former deputy assistant secretary in the U.S. Treasury: What are tax expenditures, and should they be repealed as a means to lower tax rates, reduce the deficit or both?

THE CONCEPT OF TAX EXPENDITURES IS closely associated with the late Harvard Law School Professor Stanley Surrey, who, as assistant secretary of the Treasury, in 1967 gave a speech arguing that a tax provision that gives a subsidy or benefit to a taxpayer group or category of income should be considered the equivalent of direct spending by the government. Professor Surrey’s policy insight was that targeted tax relief was functionally equivalent to the government collecting the tax from the taxpayer receiving the relief and immediately giving it back to that taxpayer as a spending outlay.

In 1974, Congress adopted budget legislation requiring annual estimates of tax expenditure costs. Tax expenditures for this purpose are revenue losses attributable to provisions of the federal income tax laws that allow a special exclusion, exemption or deduction from gross income, or that provide a special credit, a preferential rate of tax or a deferral of tax. However, tax expenditures listed in the annual budget are not treated in the same manner



Professor  
of Practice  
Stephen Shay



PHIL FARNSWORTH

as spending. There is no established process, such as an annual budget appropriation, for reviewing individual tax expenditures or for evaluating whether an individual tax expenditure achieves congressional objectives at a reasonable cost. Even tax expenditures scheduled to expire are routinely renewed, which reduces the visibility of their true costs.

The tax expenditure concept has been controversial. Some scholars argue that whether a tax provision should be treated as a tax expenditure, in relation to an income tax base or a reference tax baseline, is an unprincipled exercise. Consumption tax advocates object that existing tax expenditure analysis favors income over consumption as the basis for taxation with the result that provisions that exempt or reduce tax on income from savings and investment are classified as tax expenditures. Notwithstanding these and other criticisms, there is a broad consensus among policy analysts that tax expenditure budgets have provided useful information to legislators and tax policymakers.

For fiscal year 2012, estimates of annual revenue loss from tax expenditure provisions total in excess of \$1 trillion, exceeding the discretionary spending portion of the federal budget (i.e., spending other than for entitlements, defense and interest on the debt). For this reason, tax expenditures have been a “quick fix” target to raise revenue in the name of deficit reduction or to reduce tax rates in the name of tax reform or both. It is not so easy.

Today, more than 90 percent of tax expenditures benefit individuals and less than 10 percent benefit corporations. Some of the largest tax expenditures and some of the Treasury’s five-year (FY2012-2016) estimates for these provisions include: the employee’s income exclusion for

employer-provided health insurance (\$1.1 trillion), the home mortgage interest deduction (\$609 billion), and deductibility of state and local taxes (not on owner-occupied homes)

(\$292 billion). Other tax expenditures, such as the child credit and earned income tax credit, perform important social safety net functions.

Some tax expenditures are poorly designed

subsidies that create inefficient incentives, and many inappropriately benefit higher-income taxpayers. The largest tax expenditures, however, are embedded in the fabric of important sectors of the economy, such as health care and residential housing, and most tax expenditures support social program activities: housing (especially low-income housing), education, social services, health, income security (including for retirement), veterans benefits, and aid to charities, states and localities. Moreover, the revenue loss estimates for tax expenditures are static and do not take account of behavioral responses that would substantially limit revenue that would actually be raised by repeal of certain tax expenditures such as capital gains

preferences. Tax expenditure repeal is not a panacea for achieving deficit reduction or tax reform.

Reform, and in some cases repeal, of tax expenditures should be a part of tax reform and contribute to deficit reduction. Consistent with Professor Surrey’s original vision, there should be an analysis of the objectives of each provision and an evaluation made whether the provision’s benefits outweigh its revenue and administration costs in the current context of substantial deficits. If a provision is to be retained, there should be a further consideration whether it should be redesigned as either a tax or spending provision.

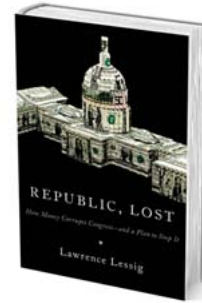
Real tax reform would go deeper than merely re-examining tax expenditures; it should also re-examine and rehabilitate the individual and corporate income tax bases to fairly and efficiently raise the revenue needed to support the size of government adopted through the democratic process. Tax expenditures deserve scrutiny, but the tax expenditure classification does not address whether a provision is good or bad policy, and it does not cover the full extent of inequities and inefficiencies in our current income tax system. \*

**“MORE THAN 90 PERCENT OF TAX EXPENDITURES BENEFIT INDIVIDUALS AND LESS THAN 10 PERCENT BENEFIT CORPORATIONS.”**



## Fear and Loathing

*Lessig diagnoses a cancer that has attacked OUR POLITICAL SYSTEM*



At a time when Americans are expressing record dissatisfaction with Washington, the publication this fall of Professor Lawrence Lessig's latest book couldn't be more opportune. "Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It" (Twelve) is an exhaustively researched and passionately argued indictment of Capitol Hill and the money-centered daily dance between lawmakers and lobbyists.

Lessig, the Roy L. Furman Professor of Law and Leadership at HLS and director of Harvard's Edmond J. Safra Center for Ethics, says that his disgust with Washington's modus operandi grew over the course of about 10 years—from the mid-1990s to the mid-2000s—when he was a frequent visitor to the halls of Congress, advocating for reduced restrictions on copyright in the Internet age. His observation, that moneyed special interests enjoy special treatment from Congress, would hardly seem earthshaking to the average American. But as Lessig points out, the symbiosis between lobbyist and lawmaker is a far cry from a bag of greenbacks buying a favor. The current Congress may be the cleanest in history, he says. It's just that now the influence of money on government is out in the open, operating in a legal system governed by rules that he contends are dysfunctional.

Lessig recently sat down with the Bulletin to talk about the book.

### Is Congress corrupt?

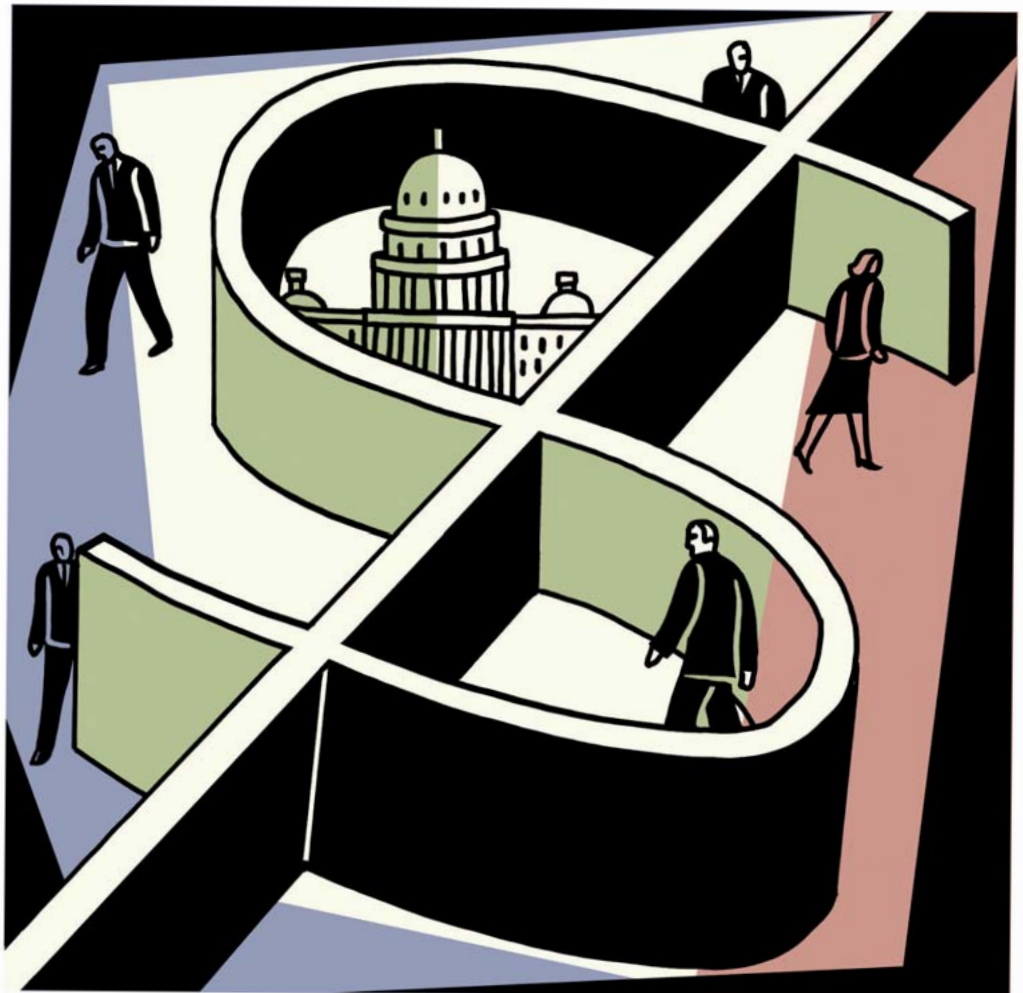
I don't think there's a significant amount of bribery, or that kind of corruption. It's institutional corruption—and by institutional corruption I mean corruption that doesn't involve any illegal activity at all. This is legal corruption. It's members completely, legitimately and openly spending 30 to 70 percent of their time focusing on the task of raising money, developing the sixth sense about how what they do might affect

their ability to raise money, constantly shape-shifting so that when they walk into that room, the guy with the money will have reason to give money to that congressman. It's that process that is a corruption, in my view, and that is responsible for the inability of this government to govern.

**"I DON'T THINK THERE'S A SIGNIFICANT AMOUNT OF BRIBERY [IN CONGRESS]. ... THIS IS LEGAL CORRUPTION."**

**To what extent do you think the average congressman has qualms about this system?**

I think certainly the average congressman hates the



system. They think, I didn't come to Washington to spend half my time making anonymous phone calls to people asking for money. "Dialing for dollars" is not why I came to Washington. On the other hand, they got to Washington and they think to themselves, I won under this system and I'm not eager for another system because I might not be able to win. And there are some who think, OK, I spend six or eight years in this system and then I'll graduate and become a lobbyist and I'll make real money leveraging all the connections I made inside the Hill, so I like this system.

**Have you seen any change in Congress over the years in terms of members' susceptibility to lobbyists?**

There has been a radical change in just the last 20 years. The Gingrich Congress (after the 1994 midterm elections) really changed the process. ... That process encouraged a massive devotion of energy toward the idea of raising money, and that, thereby, leveraged power of those who were giving the money to control or deflect change inside the system. ... Maybe the biggest testimony to how bad it's gotten is that you have a president like Obama who comes in dedicating himself to changing the system but very quickly gives up and doesn't even pursue it.

Watch video of a conference on a constitutional convention, co-chaired by Lessig and held at HLS in September, at [www.youtube.com/harvardlawschool](http://www.youtube.com/harvardlawschool).



**Can he still do it?**

I wish he could, but I think, increasingly, that he might just not be the person who's got the constitution to wage that kind of battle. That battle's going to require someone who's strong enough to be hated.

**Say more about how your suggestions for fixing the problem might get off the ground.**

I'm increasingly of the view that the cancer in D.C. is too progressed for D.C. to cure itself. The framers of our Constitution envisioned a case in which Washington itself becomes the problem, and they gave us a way around Washington: That's the convention process. So I think what has to happen is that we have to build a political movement to drive toward a constitutional convention, and then in the context of the convention we have an opportunity to have people deliberate seriously about what kind of change the government needs.

**What are the groups in place that could do this?**

The Tea Party is the inspiration for this possibility. I'm not a member of the Tea Party, and I disagree fundamentally with some of the values that they hold. But I'm a great admirer of their ability to mobilize people enough to create great terror inside the existing political system.

**What do you think the reaction to your book will be?**

Obviously, there are going to be people who aren't going to like it—people inside the Beltway and a lot of my friends—because the book is very critical of Obama. But I'm not sure. It's the first time I've written something that I'm deeply anxious about. —*Dick Dahl*

**A Milestone But ...**

*Kennedy argues that a 'RACIAL PREDICAMENT' still predominates despite the election of the nation's first black president*

ON THE NIGHT BARACK OBAMA '91 was elected president of the United States, many people cried tears of joy. For many black people the tears held a special significance: They couldn't believe they had lived to see this milestone. Yet their happiness also signified something



sad about the moment, about the history of the country and about the problem of race in America that did not end with the election of the nation's first black

president, says Randall Kennedy. "What they were really saying," he says, "is that given how racist the United States has been and still is, it's remarkable that a black person could be elected president."

Remarkable, too, says Kennedy, is that the person who holds the most power in the world is still limited by racial considerations. The HLS professor, who has examined the role of race in law and society in his writing and teaching, highlights the subject anew through the prism of Obama's political career in his new book, "The Persistence of the Color Line: Racial Politics and the Obama Presidency" (Pantheon, 2011).

"This was an extraordinary landmark in the history of white and black race relations," says Kennedy. "At the same time, there were important continuities. Are we in a completely different environment?"





No, we're not."

In the book, Kennedy asserts that Obama has appealed in different ways to black and white audiences. He writes that the president "made himself black enough to arouse the communal pride and support of African-Americans but not 'too black' to be accepted by whites and others."

Commentators such as Cornel West have criticized Obama for being insufficiently attentive to the black community. But for a politician trying to be elected—and re-elected—president of the country, Obama is making the correct calculation, contends Kennedy.

It is a calculation many black people have to consider, he adds. Kennedy himself has been accused of "selling out" (a subject he tackled in a previous book, "Sellout: The Politics of Racial Betrayal") and not supporting black people ardently enough. "Some of what Barack Obama grapples with is grappled with by all black Americans who are operating in elite, predominantly white settings," he says.

While Kennedy writes of his admiration for Obama, he also criticizes the president for failing to support same-sex marriage purportedly because of his religious beliefs (Kennedy contends that Obama espouses the position because of

perceived electoral benefit) and for adopting "conservative rhetoric" to champion the Supreme Court nomination of Sonia Sotomayor. "Obama's much-vaunted pragmatism degenerates at key moments into mere expediency, facilitating default on the difficult task of promoting progressive policies and values," he writes.

He also notes that Obama has consistently evaded racial issues, though he acknowledges that such a course of action is pragmatic, given the electoral realities. Even so, the president has been involved in many controversies related to race, as Kennedy catalogs in his book. He covers the many charges of "playing the race card," both against Obama and against his opponents, that surfaced

during the 2008 presidential campaign. Kennedy contends that most of these charges were overblown. Indeed, he believes John McCain showed admirable restraint in not running a more racially tinged campaign. But because that campaign was unsuccessful, he fears that opponents will resort to more racial demagoguery as the president runs for re-election.

The most incendiary issue Obama faced during the campaign revolved around his former pastor, Rev. Jeremiah Wright, whose perceived anti-American and anti-white comments were aired repeatedly. Kennedy addresses this subject by recalling his own father, who shared

Wright's anger toward a society that mistreated him because of the color of his skin. He believes his father would not have changed his perspective even with Obama's election, which he did not live to see. But, he adds, a substantial number of black people have come to see their country differently. While race will likely still influence society for a long time to come, Obama's ascent has permanently changed the face of the nation, he says.

"The thing that really put him apart was his perception that a black man could actually win," Kennedy says. "Now, there will be other black people who are going to have had their expectations broadened and lifted. That is going to be his great legacy."

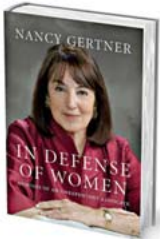
—Lewis I. Rice

## The critic **IN THE MIRROR**

In his new book, Kennedy details issues President Obama avoids for fear of being charged with racial partiality, such as mass incarceration, which Kennedy calls "a singularly destructive governmental intervention that particularly burdens poor, inner-city minority communities." This description did not always reflect his views, as he points out. Indeed, in one of the many interesting footnotes to "The Persistence of the Color Line," he says he erred by minimizing the punitiveness of the criminal justice system in previous writings, particularly in his book "Race, Crime, and the Law." In an interview, Kennedy said he's always felt comfortable sharing his views, and facing the criticism that may follow. He is certainly willing to face self-criticism, too.

## An Advocate Before the Bench

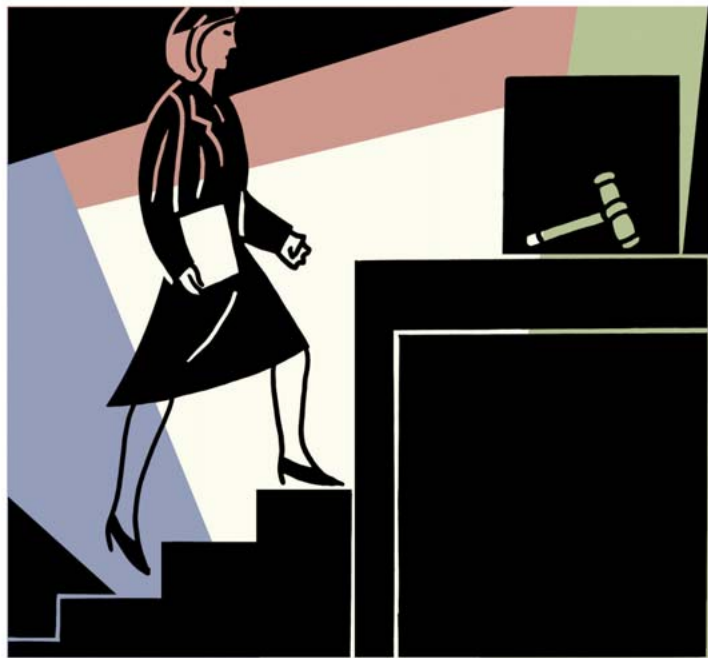
*How Gertner's work as a 'REVOLUTIONARY' AND 'RADICAL LAWYER' laid the groundwork for a career as a federal judge*



IT'S A BRILLIANT August day in Boston, and U.S. District Court Judge Nancy Gertner, who will be joining the HLS faculty in just a few weeks after 17

years on the federal bench, is presiding over the sentencing of a minor player in a New England heroin trafficking ring. There are dozens of cases on her docket, and she's determined not to leave them unfinished when she retires and heads to HLS. Yet Gertner—unabashed feminist, outspoken liberal and author of a new book about her life, "In Defense of Women: Memoirs of an Unrepentant Advocate" (Beacon Press, 2011)—refuses to rush this morning. Not when five years of the defendant's life hinge on whether the government interpreter correctly translated a Spanish phrase caught on an FBI wiretap relating to the quantity of heroin the defendant controlled.

She calls a brief recess. Back in her chambers, Gertner—warm, down-to-earth, her scarlet suit peeking out from her robes—smiles but shakes her head. "He was an addict tester!" she says, referring to a peon in the heroin hierarchy who tries the drug to



determine its quality. Yet the sentence recommended by the U.S. Attorney's Office would keep him in prison long after the kingpins are back on the street.

Back in court, she rules that the ambiguous phrase from the wiretap must be construed in the defendant's favor, meaning a shorter sentence under the sentencing guidelines. After carefully explaining her decision, Gertner gives him 37 months in prison and recommends drug treatment, then adds, "Any other sentence would be grossly unfair."

Gertner's thoughtful and outspoken approach to judging has been her trademark (along with her red dresses and suits) since President Bill Clinton named her to the federal bench in 1994. As she relates in her book, her two decades as a defense attorney in Boston, and as a self-described "revolutionary" and "radical lawyer," laid the groundwork for her judgeship, which critics describe as "activist." At the same time, those years redoubled her belief in the inherent unfairness

of many aspects of the criminal justice system, including its disparate impact on racial minorities. As a professor of practice at HLS, Gertner, a prolific writer who's penned numerous law review articles on sentencing, employment discrimination, and more, will share her experiences and insights with students in courses on sentencing and other topics related to her career.

A graduate of Yale Law (where she became close to fellow student Hillary Rodham), Gertner was one of very few women trial lawyers in the early 1970s. In one of her first cases, she represented an anti-Vietnam War activist charged with felony murder in the death of a Boston police officer during a bank robbery. Gertner uses the case to describe the political zeitgeist, including the budding women's movement and her own beginnings as a girl from modest circumstances who had argued politics with her beloved father at the family dinner table in Flushing, N.Y. Although her client, Susan Saxe, eventually pleaded guilty, Gertner's advocacy in

## Making the Grade

A PRIMER FOR 1Ls

Harvard Law School Professor and torts law expert **John C.P. Goldberg** has written "Open Book: Succeeding on Exams from

the First Day of Law School" with co-author Barry Friedman (Aspen Publishers, 2011). "In my experience, even smart, hardworking law

students often underperform because they don't fully grasp what's expected of them," says Goldberg. "The motivation behind the book is

to help students see why law school exams look the way they do, and to explain what this means for how they should learn and prepare."



the case launched her career.

She writes in detail about her representation of Clare Dalton, an assistant professor at HLS who sued the school for gender discrimination after it denied her tenure (the case settled in 1993 when HLS agreed to fund a domestic violence program at Northeastern University School of Law founded by Dalton). Gertner's memoir also discusses other high-profile sex discrimination cases she handled, as well as a notorious murder case in which she employed a battered-woman defense (the defendant was found guilty of manslaughter, which Gertner viewed as success under the circumstances).

Gertner has more books in the works, among them a look at judging in the 21st century, which she says involves little-recognized issues including "the pressure to duck, evade, avoid making a decision, to dismiss cases rather than engage with cases." This inclination among judges to avoid controversy, she believes, is "the reverse of the activist debate."

She also wants to write another memoir, focused on an alleged gang member whom she famously befriended when he appeared before her in court, sentencing him lightly but ordering him to report to her after he was released from prison. Despite her efforts to help him, he was "executed on the streets of Boston" in a gang war, she says, and she's determined "to find out how and why he was killed."

Coming to HLS provides Gertner the opportunity for a "new adventure," she says. "I love to teach, and I have regarded talking to juries as teaching, judging as teaching. ... I'm really looking forward to this." —*Elaine McArdle*

Watch McArdle's interview with Gertner at [hvr.d.me/gertnervideo](http://hvr.d.me/gertnervideo).

## An Enduring Conversation

*Carol Steiker '86 reflects on the late William Stuntz's summation of a BROKEN CRIMINAL JUSTICE SYSTEM*

Carol Steiker '86 and Bill Stuntz had been discussing each other's work long before they became colleagues on the HLS faculty. It began nearly 20 years ago when Stuntz, a professor at the University of Virginia School of Law and already a leading thinker about criminal justice, commented on a paper that Steiker, a young death penalty scholar and HLS professor, had presented. This dialogue intensified when Stuntz joined the HLS faculty in 2000, and continued through his final illness. Steiker says she and Stuntz were friends and professional colleagues of the first order, who didn't always agree, but who spent a lot of time discussing each other's ideas. Even after his death in March at age 52 of cancer, for Steiker, the dialogue continues.

In January, Stuntz completed his book "The Collapse of American Criminal Justice" and turned the manuscript in to Harvard University Press. After her friend's death, Steiker, along with their HLS colleague Michael Klarman and Daniel Richman of Columbia Law School, shepherded the book through its final stages of production.

"It felt like a continued conversation with Bill," says Steiker. "If an editor



queried, 'What did he mean here?' I'd have to ask, 'Bill, what did you mean there?' It kept him alive for me to engage so actively and deeply with his manuscript, and to polish up a few footnotes or clarify a sentence here or there."

Stuntz had written many highly acclaimed scholarly articles and casebooks on criminal law and procedure, but this is his only book for a general audience. In it, he argues that over the course of the late 20th century, the American criminal justice system unraveled, upending the rule of law and resulting in skyrocketing levels of incarceration, the discriminatory overrepresentation of blacks as both suspects and victims, and the rise of prosecutorial discretion, which has replaced legal doctrine and jury verdicts as the arbiter of criminal justice outcomes. Through a closely observed study of the history of



Professor Bill Stuntz at a conference at HLS in March celebrating his career

MARTHA STEWART



crime and punishment in the United States—from bar fights, to Prohibition, to the vicious legacy of lynchings—Stuntz explores the roots of this dilemma. The solutions he proposes are “decentralization, local democracy, and last but not least—money”: Local communities should have more control over the exercise of justice in their neighborhoods. There should be more jury trials, and the juries should be composed of the defendant’s true peers. And “local governments should pay more for the prison beds they use,” creating an incentive to decrease guilty verdicts and increase investment in effective community policing. Steiker says, “He came to feel that the solutions lay less in law than in the structure of the institutions through which law is mediated; he put his greatest hope in the greater democratization of criminal justice.”

What has always been so attractive about Stuntz’s scholarship, says Steiker, is that he was an independent thinker who can’t be pigeonholed. And one of the things she loves about his last book is the way it “marries different scholarly approaches.” Stuntz, she says, was very attuned to public choice arguments that looked at the incentives of public actors in institutional settings. But he was also very drawn to history and loved to look back “and in a fine-grained way observe the past and its profound difference from the present.”

Steiker says that Stuntz was also “a very sophisticated doctrinalist,”

This fall, Carol Steiker received the Henry J. Friendly Professorship, which had been held by William Stuntz. In 2012, Cambridge University Press will publish “The Political Heart of Criminal Procedure: Essays on Themes of William J. Stuntz,” edited by Steiker, Michael Klarman and David Skeel.

who deeply understood the Supreme Court’s and the lower courts’ roles in developing legal doctrine and how those doctrines shaped institutions. “He brought his disparate approaches together in a unique voice, free of jargon,” she says. “In fact, he was a great storyteller.” He also crossed the “substance/procedure line.” While people in the academy often think of criminal scholars as either substantive criminal law or criminal procedure experts, she says, “Bill not only wrote about both but also showed people how they affect each other and are inextricably intertwined.”

At the center of the book—and this is a point upon which Steiker continues to imagine a debate with her friend—is a critique of the Warren Court’s emphasis on criminal procedure rather than the substance of criminal justice outcomes, resulting in the underdefended poor’s inability to benefit from rules intended to protect them. “But he eschews the traditional right-wing arguments against the ‘soft-on-crime’ Warren Court,” says Steiker. “In fact, he sort of ‘out-lefties’ the left by criticizing the Warren Court for failing poor minority defendants in particular.”

Steiker notes that despite Stuntz’s passionate yet clear-sighted condemnation of the criminal justice system, which he calls “an arbitrary, punitive and discriminatory beast,” there are no ultimate villains, neither liberal nor conservative. He describes a system, she says, that is the product of limited human understanding of very complex institutions—an example of the unintended consequences he loved to point out. Ultimately, it strikes her that the book is imbued with Stuntz’s basic decency, his concern for the poor and the oppressed, and the sense that “only those who really understand the suffering that both crime and punishment entail should judge.” —*Emily Newburger*

## FACULTY SAMPLER

### From Medical Tourism to the System of the Constitution

A glimpse into new research by 5 HLS FACULTY



#### Global justice, medical tourism and the cruel ironies of care

Assistant Professor I. Glenn Cohen '03

“MEDICAL TOURISM—THE TRAVEL OF patients who are residents of one country (the ‘home country’) to another country for medical treatment (the ‘destination country’)—represents a growing and important business. For example ... in 2005, Bumrungrad International Hospital in Bangkok, Thailand, alone saw 400,000 foreign patients, 55,000 of whom were American (although these numbers are contested). By offering surgeries such as hip and heart valve replacements at savings of more than eighty percent from that which one would pay out of pocket in the United States, medical tourism has enabled underinsured and uninsured Americans to secure otherwise unaffordable health care. ...

“While the growth of medical tourism has represented a boon (although not an unqualified one) for U.S. patients, what about the interests of those in the

destination countries? From their perspective, medical tourism presents a host of cruel ironies. Vast medico-industrial complexes replete with the newest expensive technologies to provide comparatively wealthy medical tourists hip replacements and facelifts coexist with large swaths of the population dying from malaria, AIDS, and lack of basic sanitation and clean water. ...

“How likely is medical tourism to produce negative consequences on health care access in less developed countries? If those effects occur, does the United States (or other Western countries or international bodies) have an obligation to discourage or regulate medical tourism to try to prevent such consequences? How might governments do so?”

“I examine those questions in this article, the first in-depth treatment in the literature focusing on the normative question of home countries’ obligations.”

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 ↳ From “Medical Tourism, Access to Health Care, and Global Justice,” 52 *Virginia Journal of International Law* (November 2011)  
 Read the entire article at <http://ssrn.com/abstract=1926880>.

*Cohen is co-director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at HLS.*

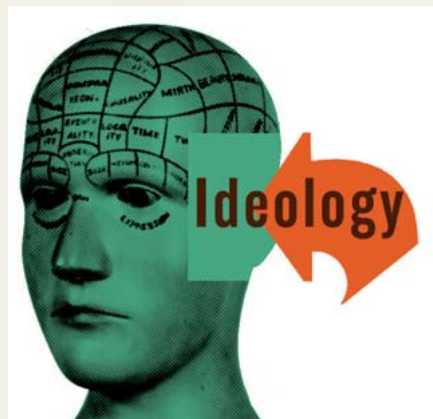
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### A sea change in legal theory

Professor Jon D. Hanson

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“AS LEGAL ACADEMICS BEGAN TO explore new fields, they soon



encountered discoveries with far-reaching implications for law and legal theory. Indeed, while economists, lawmakers, and legal theorists were embracing the rational actor model (or the law’s reasonable person norm) in the late 20th century, social psychology, social cognition, cognitive neuroscience, and other mind sciences were demonstrating its flaws. ...

“More specifically, researchers amassed a sizable and still burgeoning body of evidence showing that the commonsense presumption that a person’s behavior is the product of stable preferences ... was based on an illusion or ‘attribution error.’ More than people’s disposition and conscious decision-making, mind scientists demonstrated that people’s *situation*—that is, hard-to-see forces within us (such as knowledge structures, subconscious motives, and implicit associations) and nonsalient forces outside of us—is shaping behavior and outcomes. The mind sciences turned commonsense legal theory on its head by recognizing ideology—construed broadly to include numerous internal influences outside the norm of reasoning—as foundational to human behavior and ‘reasoning’ as a potential façade behind which ideology operates.

“Looking back just a decade or two, we appear to be in the midst of a fundamental shift in the direction and trajectory of legal theory and the law itself. It is as if the legal world had been operating on geocentric assumptions and has only now begun to confront the heliocentric discoveries of modern astronomy. In projects ranging from modest to enormous in scope, legal theorists are increasingly attempting to grapple with a new way of understanding the world.”

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 ↳ From the introduction to “Ideology, Psychology, and Law,” edited by Hanson (Oxford University Press, November 2011)  
*Hanson directs the Project on Law and Mind Sciences at HLS and edits the award-winning blog *The Situationist*.*




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### The role of international law in constitutional interpretation

Professor Vicki C. Jackson

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“SHOULD THE UNITED STATES seek to bring its constitutional law into harmony with that of a transnational community of nations? Should it resist efforts to do so as a matter of first principle, rejecting even the consideration of foreign or international sources as bearing on constitutional meaning? The first approach, a convergence posture, risks ignoring the singular and long history of the U.S. Constitution; the second, a posture of general resistance, would deny to our judges the many benefits of considering foreign and international law arising from constitutions, treaties, and human rights instruments to which the United States has contributed. Engagement offers important insights for constitutional adjudication, both from a deliberative perspective concerned with improving the decision-making of the U.S. Supreme Court, and from a relational perspective in accommodating and mediating the developing relationships among and between constitutional and supranational legal systems.

“[T]he U.S. Court and its justices have been involved in deliberative engagements with foreign and international law episodically over the course of our constitutional history, and in many of our most important constitutional decisions. It is thus emphatically not ‘foreign to our Constitution’ to engage with the constitutional approaches of

other nations. And there is more reason in the twenty-first century to look to outside sources as an aid to interpretation than in the past, both because there are more transnational legal resources that bear on problems of constitutional interpretation in the United States and because the legitimacy of national states in the international community depends more than in the past on their adherence to transnational norms of democracy, the rule of law, and the protection of individual rights.”

From “Constitutional Engagement in a Transnational Era,” Chapter 4, P. 103 (Oxford University Press, 2010)

*Jackson is a renowned contributor to the field of comparative constitutional law.*

### A more nuanced story

Professor Richard J. Lazarus '79

“THE SUPREME COURT HAS decided 17 cases arising under the National Environmental Policy Act (NEPA) and the government has not only won every case, but won them almost all unanimously. Commentators routinely cite the drubbing that environmentalists have received in NEPA cases as evidence of the Court’s hostility toward environmental law and environmentalism. But a close look at the cases, extending beyond what appears in the U.S. Reports, suggests a very different and more nuanced story. First, as revealed



by the briefs and oral arguments of the advocates and by the papers documenting the internal deliberations of the Justices in those cases, the government’s ‘perfect record’ came at a significant cost: the Solicitor General abandoned lower court arguments and offered concessions about NEPA’s requirements. The Court’s rulings consequently frequently included language favorable to environmentalists in future litigation. Indeed, in some instances, the NEPA plaintiffs won more than they lost. Second, the NEPA cases underscore the difference that skilled advocacy makes on either side of the lectern: by the advocates before the Court and by the Justices during the Court’s own internal deliberations. The significance of a Court opinion turns on the particular wording of its reasoning far more than on whether it ends with an ‘affirmed’ or ‘reversed.’ And the better advocates before and within the Court are exceedingly effective at shaping that reasoning. In NEPA cases, the Solicitor General has generally outlitigated NEPA plaintiffs and within the Court, no Justice was more influential than Justice, later Chief Justice William Rehnquist.”

From an article tentatively titled “The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains”

*Lazarus, a preeminent expert in environmental law and Supreme Court litigation, has argued 40 cases before the Court.*

### A system of systems

Professor Adrian Vermeule '93

“THIS BOOK ATTEMPTS TO TRACE out the ultimate implications of a single premise: any complex constitutional order, including our own, is best understood as a *system of systems*. Constitutional analysis examines the interaction among institutions, which are themselves equilibrium



arrangements that result from the interaction of their individual members. So there are always two levels of aggregation in the picture: from individuals to institutions, and from institutions to an overall constitutional order. I use the term *systems* to designate such aggregates, whose properties are determined by the interaction of their components; those components may themselves be institutions as well as individuals. Hence constitutional orders are aggregates of aggregates—nested systems of systems.

“These ideas draw upon a loosely related family of approaches called *systems theory*, variants of which can be found in fields as distant as computer science, biology, engineering, sociology, management, and organization theory. Political scientists have made some use of systems theory, but legal applications are few and far between. A premise of the book is that systems theory, interpreted in pragmatic terms, is a natural and fitting tool for legal theory in general and constitutional theory in particular. Because legal systems arise from the interaction of institutions, which themselves arise in turn from the interaction of individuals, systems theory asks questions from which legal and constitutional theory can profit.”

From the introduction to “The System of the Constitution” (Oxford University Press, forthcoming December 2011)

*Vermeule, a leading public law scholar, recently co-wrote “The Executive Unbound” with Eric Posner '91 (Oxford University Press, 2011).*



## A Shared Vision

*The growth of a friendship AND A  
PROFESSIONAL COLLABORATION* born at HLS

Marissa Vahlsing '11 and Ben Hoffman '11 in Peru, where they are setting up an office of EarthRights International



IT'S HARD TO REMEMBER now what she said. But it was vintage Marissa—something others would not have thought, or had the courage to say. She raised her hand in the first week of law school, and spoke her mind.

Right away, Ben wanted to be her friend. He flagged her down on the crosswalk after class. He asked if she wanted to bat around some ideas. And that was how

Ben Hoffman and Marissa Vahlsing started Harvard Law School: side by side.

Three years later, they graduated the same way.

“The joke is that Ben has become more like Marissa, and Marissa has become more like Ben, and they’re starting to blur into the same person,” said Susan Farbstein '04, associate clinical director of the Human Rights Program, a mentor and teacher to both.

This fall, along with the rest of the Class of 2011, Marissa and Ben have headed out into the world to make their way. Specifically, they’re working in Peru, helping EarthRights International set up an office to support indigenous communities in the fight to protect their land.

When Marissa heard they had received funding for the project, she could not stop smiling.

“We were going anyway,” she said. “Now we’ll have the money to eat.”

IN HIGH SCHOOL, Marissa wanted to be a potter. Or maybe a writer. Then one day, talking to an activist on a banana plantation in Costa Rica, she asked what he needed most.

A lawyer, he said.

Marissa was not the most conventional candidate for the profession. Waiting to

interview for the prestigious Truman Scholarship, a leadership award that would help her pay for studies at HLS, she walked the hallway in bare feet, a peacock feather she found in India tucked into her pocket for luck.

“Everyone else thought, This girl, she’s never going to win,” Marissa said.

Then, in a surprise to no one who knew her, she did.

WHEN BEN GRADUATED high school, he delivered the valedictory speech entirely in rhyme.

It was about tolerance and kindness and making the world a better place; in prose it would have been a very good speech. But the rhyme made it Ben. It became the stuff of lore among his friends at HLS.

Ben is known for his silly streak; he’s the kind of man who will moonwalk with the 5-year-old daughter of a professor in the halls of HLS. But as the grandson of labor leaders and Holocaust survivors, he has always focused his mind on how to help.

“If I can make my family proud, I know I’ve done something right,” he said.

RIGHT FROM THE START, Ben and Marissa made HRP their home. She traveled to Bolivia to work with indigenous communities on an Alien Tort Statute case. He wrote amicus curiae briefs to the U.S. Supreme Court about corporate liability for human rights violations in Sudan.

Given their common interests, they could have

competed. But early on, Ben and Marissa made the decision to work together. They bounced ideas off each other, borrowed styles from each other, and three years later, emerged better lawyers for it.

Marissa took on some of Ben’s level-headed calculation. Ben took on some of Marissa’s emotional intensity. Friends admired the way they worked—the discipline, the creativity, the vision.

“They’re the Siegfried and Roy of human rights law,” said Stephen Cha-Kim ’11.

The dream for Ben and Marissa is that one day they’ll start a nonprofit organization together. Their mentor, Tyler Giannini, clinical director of HRP, co-founded EarthRights International with a woman he sat beside in Torts class.

“If you’re going to do community lawyering, friendships like Ben and Marissa have are essential to the work,” Giannini said. “That support system is critical.”

This year in Peru, Marissa and Ben will face a sharp learning curve. Ben will have to cope with people who care less than he does. Marissa will have to keep her emotions in check. There are so many unknowns.

But after three years, it’s become habit now, one friend looking after the other. No matter what happens, they always do.

—Cara Solomon

*Solomon is the communications coordinator for the HLS Human Rights Program.*

### FROM THE MASSACHUSETTS SUPREME JUDICIAL COURT

A ruling in August against lenders in *Bank of New York v. Bailey* agreed with Harvard Legal Aid Bureau student **JENNIFER TARR ’11**, who argued the case last fall, as noted in the Summer Bulletin. In a 6-0 ruling, which has been called pivotal, the state’s high court found that lenders trying to evict people after foreclosure carry the burden of proving the foreclosure was valid. It also held that the state housing court has jurisdiction to hear a challenge to an already completed foreclosure when the challenge is brought in an eviction case.

“I was incredibly excited when I heard about the decision,” said Tarr, which she describes as the result of months of collaboration with other members of the Legal Aid Bureau, the legal services community across the state, City Life/Vida Urbana and her client.

“One of the main focuses of my time at HLAB was fighting for former homeowners to make sure that the bank seeking to evict them actually did own their home,” added Tarr, who is now working at the Environmental Law & Policy Center in Chicago. “I’m hopeful that the case will make a difference in the legal services community’s ability to protect homeowners like my former clients from sloppy foreclosure practices.”

### FROM THE U.S. COURT OF APPEALS FOR THE 7TH CIRCUIT

A ruling in July by Judge Richard Posner ’62 cited an article written by **Ryan Park ’10** when he was a law student on proving genocidal intent in international law. Posner was ruling on the appeal of a class action brought on behalf of children who worked in Firestone Natural Rubber Co.’s Liberian plants.

Park, who is clerking for Judge Robert Katzmann on the 2nd Circuit, described his reaction when he learned his article—which began as a paper he wrote as an intern in Cambodia—had been cited: “After the initial ebullition ... there was, to be honest, a tense period of about 30 minutes while I closely parsed Judge Posner’s opinion with my heart in my stomach, trying to gather its import and implications.”

Posner agreed with the lower court decision to dismiss the case, but he found that the law supports corporations being held liable under the Alien Tort Statute.

“In retrospect,” said Park, “I guess I was worried that my work had been used to further a purpose with which I disagreed, though the reality was quite the contrary. I think the opinion, in addition to being characteristically brilliant, offers the most cogent ... argument in support of corporate ATS liability of which I am aware.”

In October, the Supreme Court granted cert on another corporate ATS case, and its decision is expected to resolve a split on this issue in the lower courts. The HLS International Human Rights Clinic filed amicus briefs in the SCOTUS and 7th Circuit cases. Park, along with clinic faculty and students, will be watching.



## From Truth to Justice

Giving human rights scholarship  
*REAL-WORLD IMPACT*

THIRTY-FIVE YEARS AGO, after majoring in mathematics at Harvard and receiving a Ph.D. in the same subject from MIT, HLS Professor Gerald Neuman '80 switched from the field of math to the field of law—from “truth to justice,” he said in an interview in his office in Griswold Hall. That decision has led to a career of teaching and writing on international human rights law and comparative constitutional law, and to his election last fall to the U.N.’s Human Rights Committee, a body of 18 independent experts who assess and critique countries’ records on civil and political rights. About that long-ago decision, Neuman says, “As a mathematician, I couldn’t describe to my friends what it was that I was doing, because even to understand what I was studying required extensive training in mathematics. Whereas in law, we have some complex concepts that we use sometimes, but we are fundamentally dealing with matters of human life that everyone can take an interest in.”

Three times a year, in three-week sessions in either Geneva or New York, the committee takes on matters of human life by examining the human rights records of several different countries; by elaborating on

the meaning of provisions in the International Covenant on Civil and Political Rights, in the context of the current state of human rights and international law; and by reviewing cases where someone’s rights were allegedly violated—a defendant who has been tortured into confessing a crime, for instance, or a family trying to find justice for a “disappeared” person. The committee publishes its findings and reports them annually to the U.N. General Assembly. Neuman calls the work “amazingly interesting and extremely intense,” involving people from all over the world and with all kinds of work backgrounds—some are sitting judges, some have had diplomatic careers, some have worked in NGOs, and many, like Neuman, are academics. “We bring a variety of different skills to the work, which is important, because in everything we do, the question of how human rights can be made effective in the real world is a very important consideration,” he says.

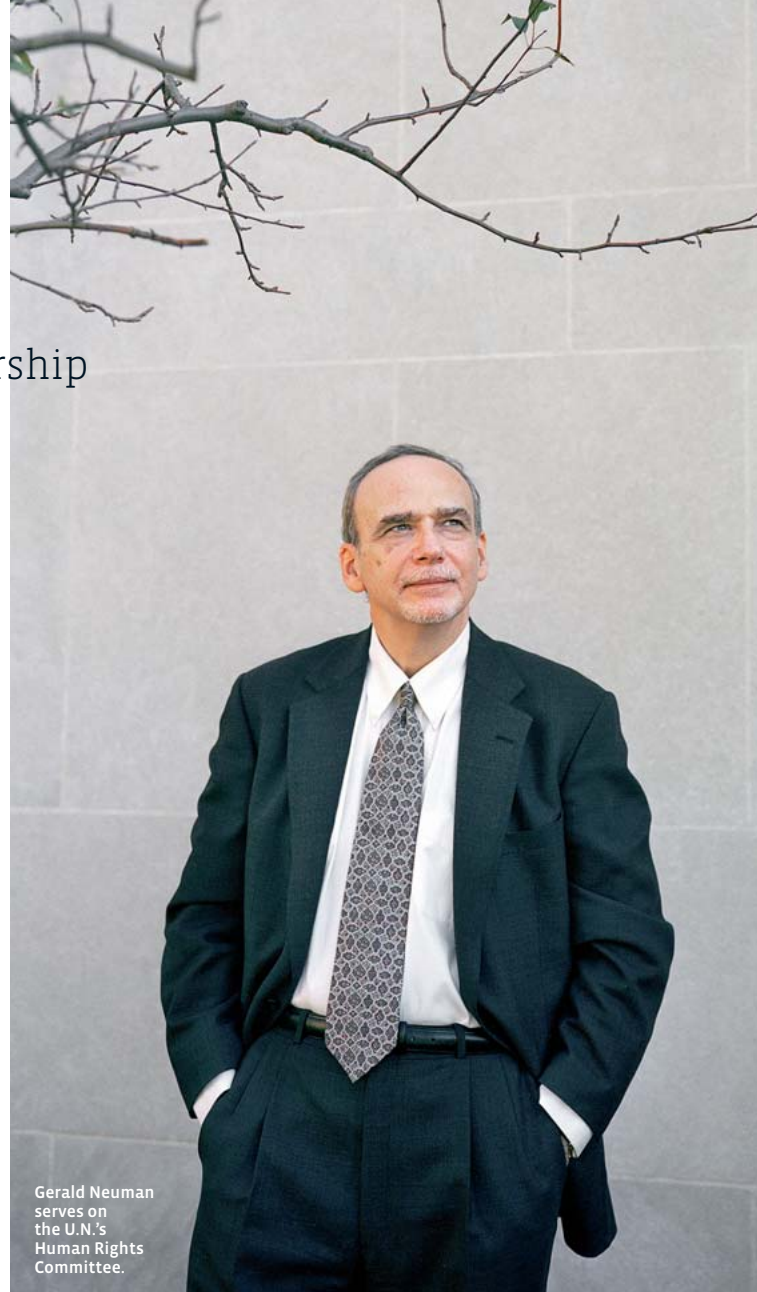
Neuman’s nomination to the Human Rights Committee originated in the State Department, and was based on his long history of scholarship and advocacy on human rights issues, including amicus briefs filed

for Guantánamo detainees in 2004 and 2008. Those briefs, Neuman explains, grew out of two separate strands of his work: an examination of the extraterritorial application of constitutional rights, including the rights of Haitian refugees housed at Guantánamo during the 1990s, and his study of the habeas corpus rights of foreign nationals in the immigration process.

One thing that Neuman has realized throughout his career, whether arguing that the rights of Guantánamo detainees are being violated

or doing the work of the Human Rights Committee: In human rights work, the job is not just to improve practices around the world, but also to make sure that countries don’t backslide. “When states come under financial pressures, pressures of war or civil disorder or climate change, even in societies that once had a fairly high standard of compliance with human rights, [things] can unravel fairly easily. ... It’s a constant struggle to keep the world as good as it was yesterday.”

—Katie Bacon



Gerald Neuman serves on the U.N.’s Human Rights Committee.



# Nothing Ventured, Nothing Gained

An Israeli fosters West Bank *ENTREPRENEURSHIP*

Daniel Doktori '13 knew he wanted to work in the venture capital field during his first summer in law school; an interest in "emerging companies practice" had brought him to HLS. Thanks to a connection he made after consulting the



hlsconnect.com

alumni database HLS Connect, Doktori got both

the exposure he was seeking and the opportunity to contribute to what he sees as a "visionary project." After reaching out to Israeli venture capitalist Yadin Kaufmann '84, he spent the summer in Israel and the West Bank working on the first fund aimed at investing exclusively in Palestinian high-tech startups.

Kaufmann opened Sadara Ventures with Saed Nashef, a Palestinian software entrepreneur, in April, after they raised \$28.7 million from backers including Google, Cisco Systems, the European Union's investment bank and George Soros. They expect to make their first investment before the end of the year.

Kaufmann says the idea for Sadara came to him as he got to know Palestinian entrepreneurs in the software industry. Their "creative energy, drive and entrepreneurship" impressed him and reminded him of what he'd seen in the Israeli entrepreneurial scene when he joined Israel's first venture capital fund in 1987. In addition to a good investment, he recognized an opportunity that could have far-reaching repercussions.

"It's a win-win," he says. "I'm a believer that economic growth and prosperity and opportunity create hope and give people a stake in their future. As an Israeli living in the region, it's in my interest that our neighbors have that kind of hope. So I think it's good for Israelis, and it's certainly good for

### AN INTERNSHIP WITH THE FIRST V.C. FUND AIMED AT PALESTINIAN HIGH-TECH STARTUPS YIELDS HIGH RETURNS



Daniel Doktori '13 and Yadin Kaufmann '84 in Israel

Palestinians, to have a dynamic entrepreneurial sector that can help pull the whole economy forward."

Doktori believes that Kaufmann and Nashef "are on the verge of something big" and says the internship was a fantastic experience. His involvement included a substantive analysis of Palestinian law affecting venture capital investment and a report recommending changes. He also helped to think about how to structure the companies once the investments were made.

In addition, he traveled

to Ramallah to meet with Palestinian entrepreneurs and sit in on their pitches to venture capitalists. "Just to see how one group of entrepreneurs did that was exciting," he says.

Before coming to law school, Doktori headed the New York State Governor's Task Force on Industry-Higher Education Partnerships, and drawing on his experience, he also worked with Birzeit University in Ramallah assisting efforts to promote entrepreneurship on campus.

Doktori had vacationed in Israel (his father is Israeli), but he had never visited

## INSIDE THE CLASSROOM

the West Bank; in fact, his Israeli relatives had some trepidation about his doing so. But he was delighted by Ramallah, “a cosmopolitan city with a significantly educated population,” where he saw for himself a wealth of talent and opportunity in an untapped market, which he says is the basis for the new fund.

Kaufmann has high praise for Doktori, saying that his work will be part of a process of getting some important changes made over time: “You want to make sure the intern is having a good and meaningful experience also, and that requires investment. But Daniel took the initiative. ... I think he’ll make a real contribution, maybe even to the development of the industry here [in the Middle East].”

Kaufmann says it was Harvard ties that first helped him to make his start in Israel. After he graduated from HLS, feeling the draw of Zionism, he wanted to go to Israel to see if he could “do something meaningful.” Professor Alan Dershowitz, he recalls, introduced him to Aharon Barak, then a justice on the Israeli Supreme Court, who offered him a clerkship.

Although at the time Kaufmann wasn’t sure it was a permanent move, he stayed on, and he agrees that Sadara Ventures is part of that meaningful work he was seeking.

—Emily Newburger



## iLaw: The Next Generation

*INTERDISCIPLINARY COLLABORATION  
focuses on freedom, power, control,  
security, openness and democracy*

Last year, during Admitted Students Weekend, Professor Jonathan Zittrain ’95 was slated to give a talk on cyberlaw. For Ona Balkus ’13, the topic was not high on her list. Yet she was surprised to find that this presentation “ended up being the session that I went home and told my family about and that got me really excited about starting law school,” says Balkus. This year, when the school offered iLaw, a crash course on cyberspace, she registered.

iLaw: Internet Technology, Law, and Policy, an intensive, four-day, presemester course run in September by Harvard’s Berkman Center for Internet & Society, drew an unusual mix of students and professionals. About three-quarters of the students were from HLS, but there were also engineering students, policy students from the Kennedy School, and a few from Stanford and MIT. The professionals included academics, lawyers,

company and foundation representatives, technologists, activists and policymakers. Participants hailed from Kenya, Egypt, Italy, Japan, Switzerland and Brazil. All told, there were about 200 attendees.

With its rich mix of lectures, panels and lively class discussions—facilitated by electronic question tools and a Twitter feed—iLaw felt like a band of swaggering explorers surveying an untamed frontier. In his kickoff lecture offering a history of cyberlaw, Zittrain contrasted the quaint concerns of the Net’s early days—exemplified by lawyerly email policies for businesses—with today’s focus on freedom, power, control, security, openness and democracy. Professor Lawrence Lessig tied his theory of cyberspace, in which the Internet is influenced by law, norms, architecture and the market, to threats to intellectual freedom by a political system beholden not to the people, but to its corporate funders. Professor Yochoi

Benkler '94 championed a globally decentralized, open Internet against self-serving political and corporate forces. Professor John Palfrey '01 presented empirical research documenting Internet access constraints, censorship, and surveillance around the world, and moderated a discussion about the Arab Spring. Along the way, telling Internet moments were up for consideration, including authoritarian crackdowns on subversive bloggers, video mashups versus copyright law, and the role of Internet satirists in the Tunisian revolution.

iLaw attendee Justin Tressnowski '13 says he feels inspired to take more courses in law and the Internet. "I'm interested in how you balance the openness and potential for creative production with the security threats that come with openness," he says.

Annamarie Levins, an associate general counsel for Microsoft, was fascinated by Internet-spawned innovations and experiments. These include digital humanities, an approach to scholarship that encourages cross-disciplinary collaboration, and extraMUR0S, an open-source tool that will power the Digital Public Library of America, an ambitious Berkman initiative.

When iLaw was first offered in 2001, it was aimed at professionals and practitioners, like Levins, and was held biannually in spots around the globe. According to Urs Gasser LL.M. '03, the Berkman Center's executive director, the new seminar reflects changes in the field: "Thematically, things have changed and developed over the years, which has to do with the Berkman Center being even more interdisciplinary than six, seven, eight years ago. But also, because the field is more mature, 'Internet studies' means something different than 10 years ago." —*Jeri Zeder*

## Stand Up for Their Rights

### Representing prisoners and *TRAINING LAWYERS* for 40 years

Students in the HLS Prison Legal Assistance Project are a fiercely passionate, tightknit community, who host "plappy hours" when not driving together in Zipcars to Massachusetts prisons and jails to represent inmates charged with disciplinary violations or up for parole. Through PLAP, one of 13 HLS student practice organizations, students begin learning advocacy skills as ILs, handling cases for a population that often has nowhere else to turn.

Last year PLAP received 1,051 requests for assistance from inmates in Massachusetts, and collect calls from prisons all over the country. Under the supervision of John Fitzpatrick '87, a Cambridge attorney, PLAP students put in 3,718 hours of pro bono work, including handling 40 disciplinary hearings, five parole hearings and two classification hearings (which determine the facility and security level at which an inmate will do his or her time). Students also staff the inmate hotline, answer inmate letters, and send information about self-representation to out-of-state and many other clients they can't take.

Created in 1971, PLAP may be the only law school organization in the country to handle such a wide variety of inmate needs. It also plays a unique role in the lives of HLS students, as the following reflections indicate.

—*Elaine McArdle*







“PLAP WAS SUCH AN important part of my time at Harvard Law School. I was not a terribly happy 1L, maybe because at that time the classes were so big and there were few choices. When I went into law school, I knew I wanted to litigate and be in a courtroom, but there were not that many opportunities. ... I found that PLAP was the one place where you could learn about trials, mediation, and evidence and use those skills in an administrative setting where the prisoners would have almost no ability to defend themselves. The group of students were very engaged and fun, and, to be honest, the last remaining leather-jacket wearers on campus. It became a home for those two years and helped me have the confidence for my first job at the Department of Justice.”

**JULIETTE KAYYEM '95**, *national security and foreign policy columnist for The Boston Globe and lecturer in public policy at Harvard's Kennedy School of Government, who served under President Obama as assistant secretary for Intergovernmental Affairs at the Department of Homeland Security*

“THE HEARINGS OFFICER sitting as judge is a former guard, the opposing witnesses are current guards, and your client is a convicted felon. You'll never face a more hostile, difficult-to-win situation anywhere. The odds are stacked against you. It's been a really great opportunity to work with people who absolutely need our help, who really have nowhere else to turn. It's probably the most fulfilling work I've done in law school.”

**BENJAMIN HOLTZMAN '12**, *PLAP co-executive director*

“[THE STUDENTS] COME WELL-prepared, having reviewed relevant documents for their oral arguments before the disciplinary hearings officer. For those inmates seeking such representation, they walk

away confident that their interests were well-represented.”

**PHILIP SILVA**, *director of the Central Inmate Disciplinary Unit at the Massachusetts Department of Correction. PLAP students recently collaborated with the Massachusetts DOC to revise inmate disciplinary regulations, resulting in what the DOC says is now a more fair and neutral process.*

“FOR PRISONERS, HAVING somebody talk to them with respect is huge, and that is something I found very rewarding.”

**STEPHANIE YOUNG '11**, *who joined PLAP as a 1L and is continuing her work this year as a fellow at Prisoners' Legal Services in Boston*

“IT'S A CHALLENGING AND uniquely gratifying population to serve. ... These are folks no one else wants to represent. They are among the most damned in our society, large numbers of whom suffer from cognitive deficits such as mental retardation, learning and other impairments; who suffer from a significantly higher proportion of mental illness; and who also often—almost always—are cut off from their families.”

**JOHN FITZPATRICK '87**, *PLAP alumnus and supervising attorney*

“I'VE LEARNED A TON OF SKILLS in terms of how to advocate for someone in an administrative setting. I'm hoping to do legal aid after I graduate, and that's a skill you need. It also gives you the experience of learning how to communicate with people from different places and backgrounds. ... And I feel like we are fighting for justice.”

**RAJAN SONIK '12**, *PLAP co-executive director*

## RECENT GRADUATES COUNCIL

*Creating Connections for Young Alumni*

When he was in law school, T. J. Duane '02 set up HL Central, to make it easier for fellow students to network and socialize. More than a decade later, he wanted to do something similar for young alumni. In response, the Harvard Law School Alumni Association formed the Recent Graduates Council, the latest in a series of shared interest alumni groups, and a complement to the online directory and networking services available at the school's site HLS Connect.

In January 2011, after Duane put out a call to young alumni to submit proposals, they came flooding in. The council now includes more than 40 volunteers living and working around the country. Some of these alumni are helping to shape regional networking groups. Others are using tools such as Google Docs, LinkedIn, and teleconferencing to connect alumni in different locations to trade stories, ask for and give advice, and learn more about particular types of practice. Highlighted on these pages are just a few of the alumni volunteers and the groups they've helped to shape. For more information on the Recent Graduates Council or to find the group that best suits your needs, contact [tjduane@gmail.com](mailto:tjduane@gmail.com).



Laura Mutterperl '02 and T. J. Duane '02 at an HLS In-House Counsel Network event in New York City



Laura Mutterperl '02



Wade Ackerman '04



David Pearl '08



John Snyder '02



Melanie Howard '01

### LAURA MUTTERPERL '02

*Senior Director, Associate General Counsel of Starwood Hotels & Resorts Worldwide Inc.*

#### HLS IN-HOUSE COUNSEL NETWORK

"There is a great void when attorneys leave law firms and go in-house," says Mutterperl, who herself is a former associate at Kirkland & Ellis. The group she has created in response "provides HLS alumni with a platform to meet others in the industry encountering similar issues, share ideas and resources, and develop relationships across companies." So far, this fall they have held panel discussions, in New York and LA, on transitioning from a law firm and building your career in-house.

### WADE ACKERMAN '04

*Associate Chief Counsel for Drugs, U.S. Food & Drug Administration*

#### HEALTH CAREERS

"Getting your head around the vast array of options" in the space of health-related careers—from the private sector to government to NGOs—can seem almost impossible, says Ackerman. He hopes his group can help by offering information-sharing and ideally networking opportunities within the field. In October they hosted a teleconference call with alumni from around the world.

### DAVID PEARL '08

*Associate, Antitrust & Competition Law Group, Jones Day*

#### WASHINGTON, D.C., "MYSTERY DINNERS"

"One of my initial hopes in planning this initiative was that it would be a way to connect younger alumni with some of our more prominent alums in the area, and I'm happy to say that that wish has come true," says Pearl, who came up with the idea for dinners that bring together a randomly assigned cross-section of eight to 10 HLS alumni, held at hosts' homes or at restaurants. "We've got a federal judge, partners from major law firms and heads of some of the federal agencies hosting or attending dinners in the coming months. 1600 Pennsylvania Ave. has so far not been returning my calls, but maybe President Obama reads the Harvard Law Bulletin."

*For more events planned by Recent Graduates Council volunteers as well as events planned by other shared interest group organizers, go to [HLSA.org](http://HLSA.org).*

**JOHN SNYDER '02**

*John H. Snyder PLLC*

**HLS SOLO AND BOUTIQUE LAW FIRM NETWORK**

“It’s a daunting thing to start your own firm, but what’s been really valuable to me is knowing other small-firm lawyers. It’s a support network of like-minded entrepreneurial lawyers,” says Snyder. “You can really figure out what niche you want and exactly what it is you want to do. It doesn’t take that many clients to have a thriving practice and a fun, interesting, rewarding career.”

**MELANIE HOWARD '01**

*Associate, Loeb & Loeb*

**MICROFINANCE CAREERS**

“The field of microfinance presents great opportunity for lawyers in terms of volunteer positions as well as career alternatives,” says Howard, an intellectual property attorney who helped create one of the first microfinance curriculums taught at law school when she was on the faculty at Pepperdine University School of Law. “In many developing nations—as in the U.S.—the laws concerning the operation of microfinance institutions are still being developed. There is opportunity for lawyers with a passion for this type of work to have great impact.”

**Other shared interest groups in the works include:**

- HLS New Parents Group
- Middle East International
- HLS Public Defense Network
- HLS International Affairs and Human Rights Network
- HLS Gives Back
- “Real Life Lawyers” skills series
- Environmental Law Network
- HLS Private Public Interest Firm & Nonprofit Network
- The Harvard Law School International Justice Assistance Network
- HLSA Mentoring Initiative

**REGIONAL GROUPS INCLUDE:**

- |              |               |
|--------------|---------------|
| Atlanta      | Los Angeles   |
| Boston       | Miami         |
| Cleveland    | Michigan      |
| Dallas       | New York      |
| Florida      | Raleigh       |
| Indianapolis | San Francisco |

**CONNECTIVITY** | *How to stay in touch with HLS*

**HLS CONNECT** Share your expertise with students and other grads through the online advising network. You can also take advantage of the online directory and get access to job databases in the public and private sectors: [hlsconnect.com](http://hlsconnect.com).



**CLASS NOTES** Submit your news for the Harvard Law Bulletin to [www.bit.ly/sendyournews](http://www.bit.ly/sendyournews).



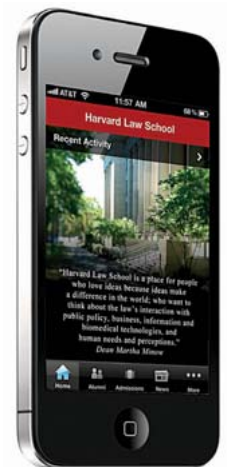
**FACEBOOK** Get your news from campus at <http://www.facebook.com/harvardlaw> and follow HLSA events around the world at [www.facebook.com/hlsalumni](http://www.facebook.com/hlsalumni).



**TWITTER** Receive HLSA event announcements by signing up at <http://twitter.com/hlsa>.



HLS information is at your fingertips, through the HLS app, available for iPhone, Android and BlackBerry. The Alumni tab offers information on Reunions, and the News tab provides HLS stories and tweets from across the university and HLS. A directory of faculty members and a list of newly published books by HLS alumni and professors are available under the More tab. The app can be downloaded from any web or mobile browser at [road.ie/hls](http://road.ie/hls).



**CALENDAR**

NOV. 8, 2011  
**HLSA OF NEW JERSEY 55TH ANNUAL VANDERBILT LECTURE:**  
*In Brown's Wake: Legacies of America's Educational Landmark*  
Dean Martha Minow  
West Orange, N.J.

NOV. 29, 2011  
**HLSA OF D.C. RECEPTION AND DISCUSSION**  
*In Celebration of the HLSA 125th Anniversary*  
Dean Martha Minow and U.S. Supreme Court Justice Elena Kagan '86  
Washington, D.C.

MARCH 2012  
**HLSA OF ARABIA INAUGURAL DINNER**  
Doha, Qatar

APRIL 20-22, 2012  
**SPRING REUNIONS WEEKEND**  
*Classes of 1982, 1987, 1992, 1997, 2002, 2007*  
Harvard Law School

APRIL 20-21, 2012  
**HLSA SPRING MEETING**  
Harvard Law School

SEPT. 28-29, 2012  
**LATINO ALUMNI REUNION**  
Harvard Law School

OCT. 26-28, 2012  
**FALL REUNIONS WEEKEND**  
*Classes of 1952, 1957, 1962, 1967, 1972, 1977 and Emeritus Club*  
Harvard Law School

➔ For the latest HLSA events, go to: [www.hlsa.org](http://www.hlsa.org)







# DOUBLE

## Strength

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*A new collaboration  
between HLS and  
Brookings takes on  
security issues*

BY KATIE BACON

THE CONNECTION between Harvard Law School and the policy world of Washington, D.C., has historically been strong, with some faculty taking leave to work in Washington and others coming to teach at HLS after working in government first. But this fall it was bolstered and formalized by the inauguration of the Harvard Law School-Brookings Project on Law and Security—a collaboration that seeks to pair the academic expertise of HLS professors on issues of national and international security with the policy expertise and access of the

## One of the program's first projects is looking at the future of weaponry—from drones to nanobots.

Brookings Institution in D.C. The project—which was launched in September with an inaugural conference—is directed by HLS Professor Gabriella Blum LL.M. '01 S.J.D. '03 and Benjamin Wittes, a senior fellow in governance studies at Brookings. They envision that most of its work will be written, whether blog posts, op-eds, law review articles, papers, reports or books, all geared toward shaping policy in the many essential areas where law and security intersect.



BLUM

The project will also serve as a hub for some existing enterprises, including the student-run Harvard National Security Journal and the influential national security blog *Lawfare* (see sidebar), founded by Wittes, Goldsmith (who shaped—and challenged—legal policy in the early years of the war on terror, as the director of the Department of Justice's Office of Legal Counsel) and Robert Chesney '97 (a professor at the University of Texas School of Law who runs a listserv on developments in national security law).



WITTES

For both Blum and Wittes, the project is a natural melding of each institution's strengths. As Wittes explains it: "The project is designed to combine the forces of two organizations that have very deep capacity in areas of law and security. HLS has unparalleled academic resources and a lot of people with very granular experience in a diverse array of law and security issues. Brookings speaks about these issues in a way that the policy community is very responsive to." Blum, too, sees the project as an effective means of channeling the intellectual energy at the law school toward the challenging security questions the country faces. "I think it's safe to say that HLS has the largest group of academics in the country with expertise and interest in this field," she says, pointing to Philip Heymann '60 as one of the first legal academics to study the issue of terrorism, years before 9/11; to Jack Goldsmith for his role making legal policy in government; to Adrian Vermeule '93 for his work on constitutional and institutional design, including in national security; and to Yochai Benkler '94, Jonathan Zittrain '95 and Lawrence Lessig, who examine aspects of cyberlaw. Blum, a native of Israel, brings her own experience advising the Israel Defense Forces on counterterrorism.

More than a dozen other faculty are associated with the project, including professors like Tyler Giannini, who studies human rights issues, and Noah Feldman, who looks at law's intersection with religion. The mix reflects the many fields that overlap with law and security, and the scope of topics the project will examine. On these types of issues, Blum argues, one can't think about things narrowly. Famine in Somalia ties in with piracy on the high seas and the activities of Al Shabab; new technologies lead to new ways

for terrorist groups to finance themselves; weapons proliferate through transnational crime networks. "When you look at it this way," Blum says, "you understand you need experience in constitutional law, in foreign relations, in criminal law, in human rights law, in religion and in technology. And you realize that the HLS faculty can contribute to this discussion in the most comprehensive way possible."

The project's emphasis, Wittes says, will be on examining looming security issues in a nonideological way. "There is no program devoted to the single-minded production of nonideological analytic work with an eye toward it being useful to policymakers in this intellectual space," he says. "This program won't do endless events talking about interrogation techniques—it's going to be looking at future issues." One of the first issues it will take on is the future of weaponry, assembling a group of experts to examine and report on the implications of everything from drones to nanobots, or tiny robots with surveillance and perhaps lethal capacity. "This is not sci-fi," says Blum. "Once you have this technology, you can't control it and you can't contain it—it's going to be available to the public. What does it do to society when it's surrounded by these weapons? What are the strategic implications and the potential uses and misuses?"

In terms of getting the project off the ground, Blum and Wittes give a good deal of credit to Dean Martha Minow, for her enthusiasm and support for the idea. "She made this happen with some initial support, and now it's up to us," says Blum. But they also give credit to students, who, according to Blum, repeatedly expressed the desire for more ways to be involved in work on security issues. "The students were the real entrepreneurs of this project; they have unparalleled capacity and interest to explore timely questions of national security."

One of the first tasks will involve the Harvard National Security Research Committee, a student-run group that takes on projects for academics and practitioners examining the legal dimensions of national security issues. The committee will collaborate on the maintenance and expansion of a Brookings paper, "The Emerging Law of Detention 2.0: The Guantánamo Habeas Cases as Lawmaking" by Wittes, Chesney and Larkin Reynolds '10, which has become an online living document that will be updated as detention law evolves through court decisions. The group's director, Miranda Dugi '12, says: "Ben and Bobby [Chesney] have been very open to brainstorming what we want our role to be; they have been very responsive to our questions. I think it will be really fruitful, and hopefully it will mean that there's a broader audience for the things we've



→ To view video of the HLS-Brookings conference, “Law, Security and Liberty post-9/11,” go to <http://hrvd.me/lawsecurityconference>.

been working on.” For the Harvard National Security Journal, being linked with the HLS-Brookings project could widen the journal’s readership and the pool of people who contribute essays. Brian Itami ’12, the print executive editor of the journal, also cites the more direct connection to the D.C. policy world that the HLS-Brookings association will provide. “As someone who hopes to practice in the area of national security law, I can’t think of a better opportunity to tie in the academic work that goes on here with what goes on in D.C.,” he says.

Strengthening the connection between theoretical work on issues of security and the policy work going on in Washington is especially important these days, according to Michael Chertoff ’78, secretary of Homeland Security under President George W. Bush and now senior of counsel at Covington & Burling

and founder of a risk management consulting firm called the Chertoff Group: “The legal architecture for a lot of what we do in the security space is built around a lot of concepts and rules and statutes that were developed in the 20th century. We are now facing a totally different global threat picture and totally different technologies and issues. We try to adapt to that in an ad hoc way, but having systematic thoughts on this would be helpful if you’re going to rebuild this architecture for the 21st century. There are some great minds at Harvard,” he continues. “Opening the aperture through which they can be participating in things in D.C. makes sense.” \*

*Katie Bacon is a writer based in Boston. She has written for The New York Times and The Boston Globe, among other publications.*

## ALL’S FAIR IN LAWFARE

*With contributors from all sides, the new blog is essential reading for leading thinkers on law and security*

A little over a year ago, HLS Professor **JACK GOLDSMITH**, **BENJAMIN WITTES** and **ROBERT CHESNEY** ’97 decided almost on a whim to put their collective experience and expertise in law and security together. They launched Lawfare, a blog with op-ed-style postings on anything from Guantánamo habeas litigation to targeted killings to cybersecurity—essentially any subject where the legal system rubbed up against national security.

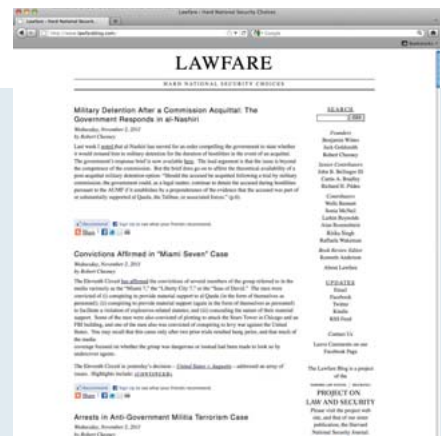
Though the site made its debut with little planning or forethought, it almost immediately became de rigeur for people in the field of national security law, including judges, civil-liberties activists, journalists, academics, and people on Capitol Hill and in the military and intelligence communities. “Its readership is pretty small but pretty darn influential on the galactic scheme of things,” says Paul Rosenzweig, who was deputy assistant secretary for policy at the Department of Homeland Security under George W. Bush and now teaches cybersecurity law and policy at George Washington University and runs Red Branch, a strategic consulting firm

focused on privacy and security issues.

For an example of the type of reader and contributor Lawfare draws, Rosenzweig points to a series of five posts by Mark Martins ’90, an Army brigadier general, about the military’s efforts to build the rule of law in Afghanistan. “It’s talking about things that I think are very important at a good level of sophistication and among people who may be able to actually do something about it,” Rosenzweig says.

Perhaps even more important, Lawfare has become that rare place where people from all sides can come to discuss thorny issues in a civil way. “The blog promotes a healthy discussion on issues of intense interest. You can’t have a forum for discussion of these serious issues if everyone’s shooting at one another,” says David Remes ’79, a human rights lawyer who represents Guantánamo detainees in habeas corpus cases.

For its founders, both the impact of Lawfare and the intellectual rewards of writing a blog were unanticipated. Goldsmith says that he was initially quite hesitant about doing Lawfare, because he



saw blogging as a “less rigorous discipline and form of scholarship than the kind I valued.” But now he’s come to see it as an “important channel for trying out ideas and putting them out in the world.” Chesney shared that hesitation but says he eventually realized that blogging—unlike writing law review articles or books—allowed the type of speedy response necessary to potentially shape fast-moving national-security debates: “These issues were churning so quickly that the opportunity to influence the debate was often missed. If you want your legal analysis to have an impact, you have to be in that space.” Wittes, for his part, says, “There’s an immediacy of the relationship to a particularly devoted and important reader that’s like nothing I’ve ever experienced. It’s become a forum for significant debate among people for whom no other such forums exist.” —K.B.

**'DEFENDING**

**UNPOPULAR  
POSITIONS  
IS WHAT  
LAWYERS  
DO'**



# ***In an era of ideological fencing, Paul Clement '92 won't be fenced in***

BY NATALIE SINGER  
Photographs by Brooks Kraft



THERE ARE TWO THINGS PAUL CLEMENT '92 WON'T DO: Tell you where he stands on same-sex marriage, and grouse about the controversy that enveloped him last spring when he resigned from his law firm in order to continue defending U.S. House of Representatives Republicans in litigation over the Defense of Marriage Act.

Clement, who had been hired to defend the law, left King & Spalding of Atlanta after the firm withdrew its representation. The firm's chairman, Robert D. Hays Jr., said that the process used for vetting the engagement was inadequate. There was also backlash from attorneys and their supporters over a clause in the engagement contract with the House that would prohibit the firm's employees from personally advocating for or against the 1996 DOMA, which defines marriage as between a man and a woman.

For days, the blogosphere, legal forums and editorial pages were afire over whether Clement was a hero or a human-rights basher. (Neither, he says. The explanation he gave former

Paul Clement '92, former solicitor general, current high-stakes appellate litigator



partners in his much-publicized resignation letter still stands, says Clement. “A representation should not be abandoned because the client’s legal position is extremely unpopular in certain quarters. Defending unpopular positions is what lawyers do,” he wrote.)

“Mr. Clement’s statement misses the point entirely,” Richard Socarides, president of Equality Matters, fired back in *The New York Times*, echoing criticism from other gay-rights groups. “While it is sometimes appropriate for lawyers to represent unpopular clients when an important principle is at issue, here the only principle he wishes to defend is discrimination and second-class citizenship for gay Americans.”

The buzz unleashed by his decision to leave King & Spalding, one of the nation’s oldest and largest firms, underscores the challenge facing Clement, who now represents the House Republicans as a partner at Bancroft PLLC.

It’s likely Clement’s ability to long-jump over criticism has at least something to do with his seemingly unshakable pragmatism.

“Nobody really wakes up in the morning and says, ‘I’d really like to be a teaching moment today at the expense of my career,’” he said of the DOMA dustup. “When the stakes are this high, sure, people are going to speculate and attribute motives—that’s just part of the process. The good news is that it’s just speculation. ... I didn’t resign because I wanted to take a stand on policy issues.”

What heartened him during the controversy (which he said, affably, “wasn’t that unpleasant”) were the reminders by his defenders (including Attorney General Eric Holder, who announced early this year that the Obama administration would no longer defend the federal ban on same-sex marriage in court) that an attorney’s job is simply to represent the client who signed on with him.

“In ... representing Congress in connection with DOMA, I think he is doing that which lawyers do when we’re at our best,” Holder told the media in April. “[The] criticism, I think, was very misplaced.”

“It’s not that different from representing Guantánamo detainees. This isn’t a left or right issue; it’s something lawyers should stand together on,” said Clement, who is also defending South Carolina’s controversial voter identification law and Arizona’s disputed immigration law. He also represented the NFL earlier this year in its dispute with players.

“As a football fan,” he said, “*that* was a fun case.”

### ***The holy grail of law firm recruiting***

ONE OF THE YOUNGEST ATTORNEYS TO HOLD THE position, Clement, 45, served as the 43rd solicitor general of the United States, from June 2005 until June 2008. Before that he was acting solicitor general for nearly a year and principal deputy solicitor general for three years, defending the legality of the Bush administration’s war on terror.

He has argued more than 50 cases before the United States Supreme Court, a list including *McConnell v. FEC*, *Tennessee v. Lane*, *Rumsfeld v. Padilla*, *Credit Suisse v. Billing*, *United States v. Booker*, *MGM v. Grokster* and *McDonald v. Chicago*. He also argued many of the government’s most important cases in the lower courts, such as *Walker v. Cheney* and the successful appeal in *United States v. Moussaoui*.

In 2008, while he was poised to move into private practice and was being wooed by top-tier firms, attorneys and legal-watchers referred to him as the “holy grail” of law firm recruiting.

His argument style has been called "assurance without cockiness."

# 'THE JOB OF

# LAWYER IS NOT TO REFEREE POLICY ISSUES.'



Clement has argued more than 50 cases before the U.S. Supreme Court.

He is known for his capabilities as a skilled orator with a photographic memory. He most often argues notes-free. At a celebration two years ago on the occasion of Clement's 50th Supreme Court argument, Deputy Solicitor General Edwin Kneedler described his argument style as "assurance without cockiness," according to The Blog of Legal Times.

Legal observers have predicted that Clement could be heading toward a promising, high-profile judgeship or even, one day, a spot on the high court.

It's hard to believe that just six years ago, when he took over the SG office from Theodore Olson, Clement was a relative unknown with much to prove, said HLS Professor Richard Lazarus '79.

"He established very quickly that he was first-rate," Lazarus said. "He's very smooth. He's engaging. Formal but not too much so. Extremely credible and straight with the justices. You don't have the sense that anyone is trying to sell you anything."

Clement's notes-free style is impressive, Lazarus said, especially in complex cases. One such case, *Rapanos v. United States* in 2006, involved a challenge to the federal jurisdiction to regulate wetlands under the Clean Water Act.

"It was classic Paul Clement," Lazarus said of the argument before the Court. "This is a case which involves an extraordinarily complicated federal statutory scheme, chemistry, geography, resources. There's a huge amount of law to learn, to make this argument."

"He did it beautifully. He stood his ground. He was very solicitous but direct with Justice Scalia. If the environmentalists had wanted the very best possible argument for their side, they got it from a Republican-appointed solicitor general."

### ***A fascination with the gray areas of law***

CLEMENT GREW UP IN THE MILWAUKEE SUBURB OF Cedarburg, Wisc., where he went to public school. He received his bachelor's degree summa cum laude from the Georgetown University School of Foreign Service, earned a master's degree in economics from University of Cambridge, and graduated magna cum laude from Harvard Law School, where he was the Supreme Court editor of the Harvard Law Review.

"He was a standout," said Eric Sacks '92, now a partner at the firm Jenner & Block who was in the



GETTY IMAGES

same class and section as Clement and, despite some differing political views, remains close to him.

"One of my first memories of Paul is in Phillip Areeda's Contracts class. He held his own up there against Areeda's amazing combination of intimidation and kindness," said Sacks.

"Paul's a master of making a position, whatever the position is, seem reasonable. He has respect from both sides."

Clement said he was fascinated by appellate and constitutional law from the start: "You're playing around in the gray areas of the law."

His most challenging case so far, he says, was probably *McConnell v. FEC*, in which he successfully defended the McCain-Feingold campaign finance reform law.

The 2003 case, which involved more than a dozen parties, a warren of First Amendment issues and a towering stack of briefs filed with the Court, was "very difficult to manage," said Clement. "Pretty messy. Not something that looked like anything the Supreme Court usually takes."

Clement's team consolidated, filing one 135-page brief. "The 30-minute Supreme Court argument is nothing compared to the work going into the brief, the work that is a lot less glamorous. But it really is the necessary part of what an appellate lawyer does."

The DOMA case was not the first in Clement's career to cause controversy. In 2004, while arguing before the U.S. Supreme Court on the Bush administration's right to detain enemy combatants, Clement denied that the administration tortured detainees.

Hours later, CBS aired the first photographs of U.S. soldiers abusing Iraqi prisoners at Abu Ghraib. Clement would later say that he did not have the all the facts that day in court.



He's willing to acknowledge his "teaching moments," but the trademark easygoingness masks a toughness. He doesn't blame people who feel close to an issue for pushing for change—as the Human Rights Campaign did when it urged major U.S. law firms, including King & Spalding, not to represent the House in DOMA—but he doesn't want his time wasted.

"I'm here to listen to legal arguments, and if you don't have one of those, we're done."

### ***An appellate lawyer, not a policy referee***

IN MANY WAYS, CLEMENT SAYS, DOMA BOILS down to the type of case he spent the bulk of his career on: a federal statute whose constitutionality requires defending.

But he agrees that the case is different, too.

"Obviously it's a case that inspires a lot of strong feelings on both sides, maybe to a unique degree, given what's at stake."

Asked to spell out what is at stake from his perspective, he immediately answered, "What kind of marriage is the government going to recognize? As a lawyer, you have to try to deal with the legal issue that's at the heart of the case, [but] you never ignore the fact that the issue is inspiring strong feelings."

Despite that, he said, "The job of lawyer is not to referee policy issues. Tell Congress to repeal the statute and then this whole issue will go away. But don't tell one lawyer or another not to [do his job]."

### ***The hardest case to argue***

ON THE AMERICAN POLITICAL SPECTRUM, Clement carries conservative currency. He clerked for Judge Laurence H. Silberman '61 of the U.S. Court of Appeals for the D.C. Circuit and for Justice Antonin Scalia '60 of the U.S. Supreme Court. After his clerkships, Clement served as chief counsel of the U.S. Senate Subcommittee on the Constitution, Federalism and Property Rights, which was chaired by John Ashcroft.

He is a politically comfortable choice for Republicans looking for legal representation, as in the DOMA case and the Florida challenge to President Obama's health care law, which will take him again before the Supreme Court. But he has also represented clients across ideological lines, and cases like the campaign finance reform defense have helped win him a balanced reputation among Democrats.

Another success this year was *Brown v. Plata*, in

which a 5-4 decision by the Supreme Court affirmed a lower three-judge panel's order that California reduce the inmate population in its overcrowded prisons.

Clement represented a class of prisoners in the case.

"Look, I'm a Republican," said Clement. "But it certainly doesn't define the kinds of cases I take on. You read about one big case and you think, That must be the kind of lawyer he is. That's not what it's about. The specialty an appellate lawyer provides is pitching legal cases to appellate judges.

"You're not a criminal defense lawyer; you're not a sports lawyer; you're not a labor lawyer; you're not an antitrust lawyer; you're not a DOMA lawyer. You're an appellate lawyer, and you may turn from one of those issues to another, one after another," he said.

If anything lingers from the King & Spalding affair, it might be the larger discussion around general service law firms and attorneys' responsibilities and opportunities within the context of the nation's growing ideological divide.

In an analysis in *The American Lawyer* in July, HLS Professor David B. Wilkins '80 and Ben W. Heineman Jr., senior fellow at the school's Program on the Legal Profession, determined that if the DOMA representation had come to them as members of King & Spalding's initial review committee, they would likely have declined it for two reasons: the much-discussed provision in the engagement contract that many believed would have, had the firm taken the case, prevented employees from acting on personal political beliefs, and, secondly, because "the principle of nondiscrimination on the basis of race, religion, gender, national origin, or sexual orientation is and ought to be a core commitment of our society and of our law firm."

Beyond that, Wilkins and Heineman wrote, general service firms will increasingly need to carefully consider how they decide whether partners can represent controversial clients. "Will the polarization of our politics lead to the polarization of general service law firms?" they mused.

Clement, for one, hopes not.

"It's the diversity of practice that defines it," he said. "Some of my best arguments have been in cases where, if I had to say my personal views, I would say I'm skeptical.

"The hardest case to argue is one where you're so sure you're right, you don't see where somebody who disagrees with you is going to come from." \*

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*Natalie Singer, a Seattle-based journalist, covers legal issues.*

*HLS classes  
offer lessons  
from real-life  
deal-making,  
contract  
negotiations,  
hostile  
takeovers,  
leveraged  
buyouts and  
more*

## BRIDGING

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# Theory



# Practice

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## IN CORPORATE LAW

BY ELAINE McARDLE

For the last several years, former HLS Dean Robert C. Clark '72 has broken with tradition in teaching his mergers and acquisitions course. It isn't enough to read leading cases, he realized; students still may leave the classroom without any real understanding of how to structure a deal, identify and avoid pitfalls, and recognize why personalities matter—in short, how M&As work in the real world.

So Clark decided to bridge the storied gap between the academy and the world of practice, an approach unheard of in corporate law classes 10 years ago. He co-teaches the course *Mergers, Acquisitions, and Split-Ups*, with Leo E. Strine Jr., chancellor of the Delaware Court of Chancery, who offers a behind-the-scenes view of boardroom negotiations and the personalities involved, a perspective very popular with students. "Learning the cases in this context made the material readily digestible," recalls Oscar Hackett '09, CFO and general counsel of BrightScope Inc.

Moreover, at least a quarter of the classes over the semester include guest speakers who offer an invaluable real-world point of view: CEOs, M&A experts from major law firms, and lawyers from private-equity and public companies, who discuss deals in which they've been involved.

The alliance between the academy and the world of practice yields benefits for both. Theodore Mirvis '76, a partner at Wachtell, Lipton, Rosen & Katz and a top M&A lawyer, has been a guest in Clark's class several times. "I've had questions asked of me by students that were far more difficult and perceptive than any I've had in a courtroom," Mirvis says. "It forces you to have a new perspective."

The benefits of this teaching model may seem obvious. Yet it's radically different from what Clark himself experienced as a student at HLS. "There wasn't much connection with law practice at all," Clark recalls. Many professors had never stepped outside the academy, and even those with experience as practicing attorneys adopted the traditional pedagogy once they joined the faculty, perhaps sprinkling in a few of their own war stories during doctrinal lectures.

But today that is changing rapidly, not only in Clark's classes but in others taught by his corporate law colleagues at HLS, who have found many ways to bring the world of practice into the classroom to give students insights on deal-making, contract negotiations, hostile takeovers, leveraged buyouts and more. We highlight a few of those efforts.



MARTHA STEWART

Professor John Coates

**LOOKING BEYOND THE CASES TO THE CLIENT**

PROFESSOR JOHN COATES

*Corporations: Board of Directors and Corporate Governance*

FOR A STUDENT LIKE NEIL RAO '13, who sits on the board of a nonprofit corporation and spent two years at McKinsey & Co. advising hospitals and other corporations, the traditional law school course on corporations would have limited value. "To me, the distinction between an S corporation versus a C corporation—I can read that," he says.

Rao enrolled in a new kind of course with a practical approach, taught jointly by Professor John Coates—who also teaches M&A and came to HLS after nine years at Wachtell—and Harvard Business School Professor Jay Lorsch. The students simulate the roles they will play as corporate lawyers and executives after they graduate. Rather than focusing solely on appellate cases, Coates and Lorsch focus on the daily decisions by and interactions between corporate lawyers and their clients, including addressing the personalities involved in corporate governance and the complex dynamics among shareholders, executives, boards of directors and lawyers.

The 100 students in the class—half from HLS, the other half from HBS—team up in exercises that mimic the kinds of interactions corporate lawyers have in advising their clients. Students are encouraged to participate in solving problems a real client is likely to run into.

"One of the law students will say, 'You should have done this,' but the business student will say, 'That would be bad for the following reasons,'" says Natasa Kovacevic '13, who plans to do M&A work after graduation. This kind of practical application of legal theory is essential, she says. For the many HLS students planning to go into corporate transactional work, she adds, "it's a great way to run a class."



**A FOCUS ON M&A:** Professor Robert Clark '72 (left) teaches his mergers and acquisitions class with Leo Strine (above), chancellor of the Delaware Court of Chancery. Guest practitioners, such as Richard E. Climan '77 (top), partner at Dewey & LeBoeuf, also participate.







MARTHA STEWART

### HOW CORPORATE LAWYERS AND VENTURE CAPITALISTS OPERATE

PROFESSOR JESSE M. FRIED '92

*Corporations; Venture Law and Finance*

IN HIS CORPORATIONS COURSE, HLS Professor Jesse M. Fried '92 typically invites several prominent corporate lawyers to talk to students about their careers as well as recent deals and cases they have worked on. For his course on venture capital, he brings in not only attorneys, but also venture capitalists and entrepreneurs.

"Students love it," Fried says. "They want to hear about the world they'll be entering from the people they'll be working with. Plus they enjoy seeing that what they learn in class is actually used in practice." Fried notes that law faculty are much more connected to the world of practice today than they were 30 years ago and recognize the value

of bringing that perspective to the classroom.

A practitioner perspective is particularly useful in the venture capital course because case law and financing documents cannot capture much of what goes on in entrepreneurial startups. There's another benefit to inviting outside speakers: Students make contact with people who may mentor them or even offer them jobs, he says. During the past two years, Sarah Reed '91, general counsel of venture capital firm Charles River Ventures, has not only spoken to students, but also hired several to work as interns. "The more interactions students have with practitioners like Sarah, the better," Fried says.

### REAL DEALS

PROFESSOR GUHAN SUBRAMANIAN J.D./M.B.A. '98

*Dealmaking*

AS THE FIRST PERSON IN THE HISTORY OF HARVARD University to hold tenured appointments at both HLS and HBS, it may seem only natural that Guhan Subramanian J.D./M.B.A. '98 includes students from both schools in his course on deal-making, and splits the class between both locations. After a few introductory sessions, the course leaps into examining real deals taking place at that time, chosen not for their dollar value (although there are some high-profile deals in the mix) but for the interesting issues of structuring and dynamics that they raise. Bankers, lawyers and CEOs at the center of those deals come to the class to provide their perspectives, says Subramanian, who has written an accompanying text, "Dealmaking: The New Strategy of Negotiauctions."

Subramanian adopted this approach based on his experience on the faculty at HBS in the late 1990s, where case studies and guest speakers were a common pedagogical tool. "If every single course at HLS was focused on the practitioner's perspective, I think we'd be missing something." But offering a spectrum of choice, from pure theory to practical courses, gives students the benefit of both, he says.



KATHLEEN DOONER

## A FULLER PICTURE OF THE BUSINESS LANDSCAPE

PROFESSOR KATHRYN SPIER

*Business Strategy for Lawyers*



TONY RINALDO

Professor Kathryn Spier's course, which she began offering at HLS four years ago, presents the fundamentals of business strategy and includes business school case discussions in addition to traditional lectures. The class presents economic and game-theory approaches to business strategy and explores topics such as strategic positioning, product differentiation, performance evaluation, battles for corporate control, franchising, joint ventures, network externalities and innovation. Case studies include the cola wars between Coke and Pepsi and issues touching on Microsoft and on Wachtell, Lipton, Rosen & Katz.

Spier, an economist by training, joined the HLS faculty in 2007 as part of the efforts of then-Dean Elena Kagan '86 to broaden the faculty and offer students a different perspective on the practice of law.

As Spier explains, "While the class is not building on

law per se, it introduces students to an important and different facet of a client's needs." Since many clients come from a business school background, the course also offers HLS students a "common language." Students also learn how to structure settlements and other types of "creative contracting," agreements to help clients position themselves for success, she says.

Business Strategy for Lawyers, which enrolls about 50 students each year, is also helpful for students who someday will be managing law firms, she says, since it covers such topics as how to structure incentives.

The course focuses on the management of pharmaceutical companies and major manufacturers, among other businesses. "It helps [students] understand their clients' needs and also the motivation of their clients' adversaries, so they're getting a fuller picture of the business landscape," Spier says.



TONY RINALDO

## When Business Law Gets Clinical

*A growing number of opportunities*

→ While years ago, clinics at Harvard Law School were focused primarily on poverty law, student demand for business-oriented clinical experiences has since skyrocketed. And for HLS students interested in the business world, there are now numerous clinical opportunities.

This year, students are working for the U.S. Department of the Treasury creating a treatise on the legal rules that apply to the government's collection of delinquent debts, including student loans, small business loans, administrative fines and child support debts.

Professor Howell Jackson '82 developed the federal debt collection clinic last year in response to a request from Treasury for assistance in preparing the treatise, which will be used by hundreds of government lawyers and private practitioners. There is significant educational value to students, Jackson says, as the field is full of challenging issues of statutory interpretation and constitutional restraints. Plus there is the added complexity of working for a real client. "Unlike in classroom discussions, students can't just get by reciting Supreme Court dicta on balancing tests under the Due Process Clause. They must come up with much more practical and pragmatic advice," says Jackson, an expert in financial regulation and consumer protection.

The Transactional Law Clinics are among the most popular at HLS, in large part because

so many students plan to go into transactional work after graduation. "Students learn to develop the mindset and mental toolkit of a transactional lawyer, to figure out and structure the legal landscape of proposed deals, to navigate their clients through and successfully complete transactions, and to help clients launch and grow successful businesses," says Clinical Professor Brian Price, TLC director. Clients also include artists and musicians, and students are matched with projects that meet their interests, including those involving trademark matters, licensing agreements, and corporate governance and tax issues.

The Sports Law Clinic is also in high demand, but few students will end up in a sports law career, says Peter Carfagna '79, an expert in sports management who has represented a number of major athletes and launched the clinic a few years ago. For most, the clinic is an interesting and fun way to learn how to draft sophisticated contracts, licensing agreements, and leases, essential skills for representing corporate clients and others. The clinic, he says, "is all business law."

Other clinics that offer some business-law experience include the Negotiation and Mediation Clinical Program, which has represented Hewlett-Packard, the technology company ABB, and the Cleveland Indians, among other clients, assisting them with deal-making, dispute system design and negotiation strategy.



## A Two-Way Street

➔ At the same time that HLS students are learning from the real world of practice, lawyers are benefiting from HLS classrooms. The HLS Executive Education Program offers intensive courses, including Leadership in Law Firms, aimed at law firm managing partners and senior firm leaders, and Leadership in Corporate Counsel, aimed at general counsels and chief legal officers. In the spring, the New Partners Program will focus on recently elected equity partners. In addition, last winter, a training program for Milbank associates was launched, which will provide intensive education in business, finance, and law from HLS and HBS faculty over the course of several years.

“We try to connect the worlds of academics and practitioners to the benefit of both communities,” says Professor of Practice Ashish Nanda, faculty director of Executive Education. “Already, we have seen the benefits

of collaboration ... in the form of new case studies, research projects, class visits and seminars.”

John Coates, who also teaches in the executive ed program, says he appreciates being exposed to what today’s lawyers find most challenging. “Teaching people who’ve been out in practice for 20 or 30 years is certainly changing the way I think about teaching things,” he says. For example, Coates, who also teaches legal ethics, recalls that he used to believe that noncompetition agreements among lawyers should be prohibited. After listening to longtime practitioners describing the problem of turnover—with lawyers building up business at one firm and then taking clients with them when they join another—he now thinks noncompetes have a valid purpose. “All of that comes out of listening to the stories of people running these firms,” he says.

Ashish Nanda,  
faculty director  
of Executive  
Education



MARTHA STEWART

### A CONCRETE WAY OF LOOKING AT THE LAW

PROFESSOR MARK ROE '75

#### *Bankruptcy*



MARTHA STEWART

MARK ROE’S COURSE on bankruptcy emphasizes how business transactions are structured in light of bankruptcy law. Students get to focus during several weeks on a typical bond agreement to determine how its key parts would fare under bankruptcy court decisions and the bankruptcy statute.

“It’s a concrete way of looking at the law,” says Roe, who launched the approach after realizing that too many traditional bankruptcy courses didn’t address enough of what business lawyers do in the financing transactions that anticipate a bankruptcy. Many HLS students would

benefit from this approach, he concluded—to see how bankruptcy affects financing decisions, planning, and structures, and to spend more time decoding transactional complexity in law school, rather than on the job.

His course has included visits from prominent bankruptcy lawyers to discuss the most current, and often most controversial, transactions and bankruptcy proceedings. And, since most bankruptcy matters are settled rather than litigated, toward the end of the semester, he has students break up into groups and negotiate a plan of reorganization in bankruptcy.

Roe introduced these aspects because, he says, “many HLS students who become business lawyers will deal with bankruptcy in complex financing transactions, and I had the sense that we could do better in getting students ready for that by imparting more finance and business skills and background.” Reading and parsing appellate decisions and doctrines are important skills, he believes, but reading the bankruptcy statute in light of a proposed transaction is just as important and can get neglected in casebooks that focus on appellate decisions and statutory construction. “The transaction ... and not the appellate brief is more often how our graduates will bump into bankruptcy,” he adds. \*



REFLECTIONS  
ON  
THE

# JOURNEY

VOICES FROM THE CELEBRATION OF  
BLACK ALUMNI

The third Celebration of Black Alumni drew more than 700 graduates to the school in September and filled the campus with excitement and engagement, crossing generations. The Bulletin interviewed participants who graduated during each of the past five decades. They reflect on their own experiences and the path of social change in the era of the nation's first black president.

BY LEWIS I. RICE  
PHOTOGRAPHS BY  
JESSICA SCRANTON





## PEGGY COOPER DAVIS '68

*A professor at New York University School of Law for nearly 30 years, Peggy Cooper Davis '68 has written about professional pedagogy, feminist and critical race theory, child welfare and substantive due process. Her book "Neglected Stories: The Constitution and Family Values" argues for an anti-slavery vision of 14th Amendment rights of personal and family autonomy.*

**On her time at HLS:** One of the reasons I'm so excited about the kinds of connections I can make now and the kind of community I see building around the Celebration of Black Alumni is of course there was none of that then. I was one of very, very few women and one of very, very few African-Americans, and one feels that. I think the school is a better place for having more perspectives, a more comfortable place to me than the

Harvard Law School I entered and left. At the same time, it's inspiring to see a kind of continuum and growth.

I also feel a special bond because my husband [Gordon Davis '67] and I were there together and married after law school. There almost begins to feel like a tradition of Harvard Law couples. Seeing Michelle and Barack is incredibly inspiring, given all that.

**Before she joined the NYU faculty, she worked in public interest law:** It wasn't until after law school, when I was working in legal services and then civil rights law, that I began to feel that I could take ownership of the law.

**She also served as a family court judge:** Using the law as a judge was a very sobering experience. I'm very glad that I did it before I began to teach because it was a great feeling to go into law teaching having

**I was one of very, very few women and very few African-Americans. I think the school is a better place for having more perspectives.**

been an advocate in a variety of contexts but also having felt the weight of responsibility for making decisions about people's lives. **At NYU Law, she oversees the school's experiential learning program:**

An important part of my teaching is bringing feminism and critical cultural studies to bear in the classroom. I stress the relational nature of practice and lawmaking, and I work to develop students' interpersonal and social intelligence as conscientiously as I work to develop their logical and quantitative skills. My students not only think about but also confront in simulated practice

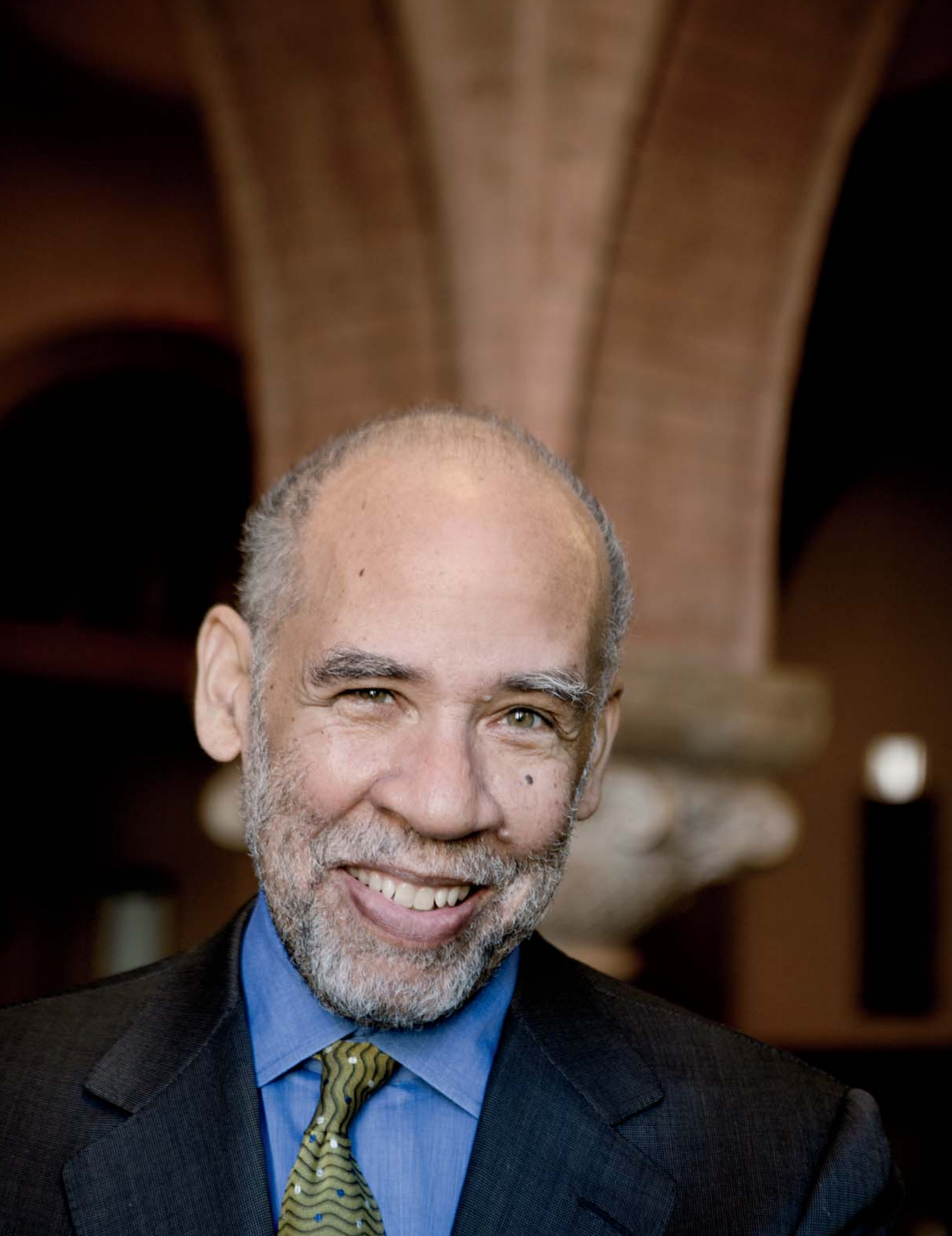
settings tough issues involving identity, diversity and social justice.

**On race and justice today:** I feel that we're at a point in history where social justice struggles are not technically about race, but problems are allowed to persist because of racial attitudes.

Our public education system is pretty much a disaster. I think efforts to resolve that problem are stymied because they are perceived as helping "the other," so things we ought to do in our collective interest we often don't do because we're not thinking collectively but in our own self-interest or in the interest of groups.

Things have happened that I'd never dreamed would have happened in my lifetime. But I'm still stunned and frightened by the divisiveness and hatred that I see. **In summary:** I still feel that I'm working counterculturally.





## JOHN PAYTON '77

*John Payton '77 has worked on issues of social and racial justice throughout his career, as a partner at Wilmer, Cutler, Pickering, Hale and Dorr and now as president and director-counsel of the NAACP Legal Defense and Educational Fund.*

The social movements of his youth sparked his passion for civil rights: Most of the people who grew up in the '60s and '70s, certainly who were African-Americans, were greatly affected by social justice, racial justice issues, the civil rights movement, and wanted to figure out how we could make a difference in our society. I concluded—and I think a lot of people who went to law school with me concluded—that if you really wanted to be a change agent for social justice, being a lawyer was probably the best platform to have. He successfully argued before the

Supreme Court that the University of Michigan could consider race to attain a diverse student body: It's had the effect of changing some parts of the conversation. Diversity has essentially been embraced by all of corporate America. It's now commonplace to hear people across partisan divides say they, too, want to make sure they are inclusive and are diverse. I think that's something that is quite healthy for our democracy. Race-based measures are still needed to address injustice: All minorities, all women, have seen great progress. That said, we still have very serious issues that relate to race. There are all sorts of studies out there that are not disputed that [say] bias and implicit bias still are in very high numbers. On the Obama election: It's great success that comes after great sacrifice by a lot of folks.

... and postelection: I have to say I did not expect the level of unbelievable hostility that his election would spark. I know we have divisive politics, but the extra layer of "He's a black man poisoning our civic culture" caught me off guard. It's there. It's not going to go away. It's a reflection of what remains to be done. He was drawn by the history of the NAACP Legal Defense and Educational Fund: Everyone knows *Brown* but there are cases leading up to *Brown* and way past *Brown*. It's a tremendous legacy to be able to look back at that and then to be the head of the law firm that Charles Hamilton Houston [LL.B. '22 S.J.D. '23] and Thurgood Marshall created that changed this country dramatically for the better. Sadly we still have a lot of work to do. There are still issues in education and economic justice and certainly

criminal justice, where we have mass incarceration as a horrendous problem, and voting rights is always under challenge. What we can do now: No matter what you do in your career, you can still do things that help advance issues of social justice and racial justice. That includes pro bono, which is now in every crevice of our profession. You can obviously financially support things. But there are also things you can do outside of your job, becoming involved in your communities in ways that matter, becoming involved in how your school system works and striving to make it better, making sure that our civic culture is healthy. It's not necessarily being a lawyer but being a good citizen. I think those broader responsibilities are what is going to make us a better society, and I think all of us have some commitment to that.

If you really wanted to be a change agent for social justice, being a lawyer was the best platform.





## LORETTA LYNCH '84

*Loretta Lynch '84 has found rewards in different aspects of legal practice, from law firm partner to her current position as U.S. attorney for the Eastern District of New York.*

She served on the trial team for the Abner Louima civil rights case, overseeing the prosecution of the New York City police officers charged with sexually assaulting Louima, a Haitian immigrant: It was a very tense atmosphere. It was extremely racially and politically charged at the time. My way of dealing with high-profile cases like that is to completely separate from the press. What you have to do is insulate yourself. Lynch also served as special counsel to the prosecutor of the International Criminal Tribunal for Rwanda, for which she conducted a special investigation into allegations of witness tampering and false testimony: People are traumatized. The only thing that's

similar to it is the trauma some people still feel after 9/11 in this country. There are certain things that never leave you. When you're talking with a survivor, particularly someone who physically survived an attack, and they tell you about hiding in a pile of dead bodies all night long because they knew if they moved, the genocidaires who were waiting to see if anyone was alive would come back and finish the job. You think, How does the human spirit deal with that?

What I say to young lawyers in particular is, I wish for them to have the kind of experience [I did], to use the law in a way that's transforming. I think you can do it in any venue because every case is important to the people involved in it. It doesn't have to be a genocide case.

Some critics have said that the criminal justice system harms the African-American

community: There were people who, until I worked on the Louima case, thought, Why do you do this? To me, I do it because I think everyone deserves protection.

Frankly, it shouldn't be an easy thing to stand up and say this person by their actions has forfeited their right to walk among free people.

She has conducted outreach with Muslim-American groups who have spoken about facing bias: What I hear them saying is what so many African-Americans said in the '50s and '60s: "We're part of America, too. We're just like you." I think every group struggles with that. On whether she has faced race-related bias herself: You mean when I was a young associate when I went to take a deposition and everyone assumed I was the court reporter. Or when I interviewed at a law firm and the receptionist looked

What I hear Muslim-Americans saying is what so many African-Americans said in the '50s and '60s.

at me and said: "You can't be Loretta Lynch. She goes to Harvard." I think everyone has those stories.

Most African-Americans are very cognizant of assimilating into mainstream culture, but you're also very aware of and very comfortable with your own culture. To me, that's an advantage. I think it makes you flexible; it makes you see things from more than one perspective. I look at people who have only one experience, and I think that's really unfortunate. That's where those comments come from. In their worldview, this is how they see black people. I learned a long time ago, I can't really change your worldview. You can get to know me, you can spend time with me, and if your worldview changes as a result of that, fine. But it's really not my job to try to change it.



## TIMOTHY WILKINS '93

*A graduate of HLS and Harvard Business School, Timothy Wilkins '93 conducts business deals with corporations around the globe as a partner with Freshfields Bruckhaus Deringer in New York.*

His brother, HLS Professor David Wilkins '80, established the Celebration of Black Alumni: It was important to both David and me because both our father and his brother are also alumni of Harvard Law School. For us, the idea of the tradition and bringing together African-Americans from all the different generations at the law school was especially poignant.  
He is his firm's first and only African-American partner in the United States:  
The challenges continue to be real

**It's the personal mentoring and support that can make or break the trajectory of an African-American lawyer.**

for lawyers of color. The numbers when we were first coming out of law school were quite stark. I did not know more than two or three black people who had become partners.

A member of Freshfields' global diversity committee, he has sought to increase the number and improve the experience of minority attorneys: It's the personal mentoring and support that can make or break the successful trajectory of an African-American lawyer so that they believe that the firm's culture is supportive of them, and they also have as many opportunities to succeed and be involved in the most exciting work. Being creative around how to think about diversity from a recruitment point of view but also from an inclusion point of view will continue to be an important challenge for large corporate law firms.  
He embraces the role

of mentor: Lawyers are most successful if they can cross borders and work with people from different offices and different cultures. If we are struggling with successfully handling difference and cultural variety in our own firm, that's going to make it harder for us to be successful with our clients.

On practicing in Freshfields' Tokyo office: It was a really dynamic and exciting time because you got to do international transactions shoulder to shoulder with your Japanese bengoshi (Japanese-qualified lawyers). We saw the quality go up substantially for international clients as well as Japanese clients doing deals overseas where you could have both lawyers' approaches to the law coming together to come up with joint solutions.  
Negotiating styles can differ between cultures, he says:  
My experience in

Asia is that it often takes an important few sessions of understanding the big-picture issues and the ultimate goals of the client before people get down into the detail and the small points. And I see sometimes U.S. lawyers jumping immediately to the clause on Page 23, Subpart B before they've really given the clients the chance to understand the bigger picture and also the relationship between the two parties.

The impact he can have as partner: I do find that the privilege of actually being at the table at the partners' conference, at the global diversity committee meeting, means that I have an obligation to speak out and make sure that our firm is carrying out its role and responsibilities to the highest degree that it can, but also that the firm is making the most positive impact that it can.





DARIN JOHNSON '00

While our community has come very far, we also have a lot of ongoing challenges to be confronted.

*As attorney-adviser in the U.S. Department of State, Darin Johnson '00 advises the Bureau of International Organization Affairs on United Nations-related legal issues.*

As a commissioned officer in the Army, he was an attorney in the Secretary of the Army, Office of the General Counsel Honors Program at the Pentagon: I come from a long line of military service. It's very much a part of our family tradition. In Baghdad in 2007, he advised the U.S. ambassador to Iraq and other senior State Department officials: It was right around the time when the insurgency had become very active. It made for a very tense environment. It also offered the opportunity to deal

with some really interesting, cutting-edge, critical issues. As a member of the Black Law Students Association at HLS, he helped organize an African summit, for which students visited law schools in African countries, including South Africa: There's a certain level of respect and admiration [in South Africa] for the African-American community in the United States. In speaking with students about the transition from apartheid, and the freedom movement of South Africa, I saw a lot of inspiration drawn from the civil rights movement. There are a lot of parallels. On those who have come before him: One of the powerful things about coming back for the Celebration [is] actually getting to spend time with alumni who have been at the law school in different periods and hearing about their experiences

generally as well as during their time at the law school. For those of us who are younger, we really have an appreciation for how far society has come and how far we've come as African-American students and alumni. On the struggles that remain: You name the problem, you'll see a disproportionate impact in the African-American community. So while our community has come very far, we also have a lot of ongoing challenges that still need to be confronted. He moderated a Celebration panel on "International Law and Foreign Affairs: Adding Our Voices to the Global Dialogue": I very much appreciate efforts at inclusion, expansion, protection of minority rights. That appreciation of the civil rights struggle of African-Americans and the community that I've come from definitely has led to

a greater sensitivity to the same struggles that may exist for minority communities in other countries. \*



MARTHA STEWART

HLS BESTOWS AWARDS

During the Celebration of Black Alumni, HLS Professor Annette Gordon-Reed '84 (above) received the HLSA Award, and Walter Leonard, former assistant director of admissions at HLS and former president of Fisk University, and Derek Bok '54, former president of Harvard University (below, from left) were awarded the HLS Medal of Freedom. To read more about CBA and to watch video of the event's panels, including those featuring the five alumni interviewed here, go to <http://bit.ly/CBA11>.





▼ **FALL REUNIONS**

brought nearly 600 back to HLS in October. Alumni attended panels on topics ranging from the law of fashion to the financial crisis to the future of the Internet and found time to discuss the past and the future with old friends and new.

→ To view the panels or find more photos from the weekend, go to: <http://bvr.d.me/HLSFallReunions>.



1. Genevieve Hertzfeld, Bruce Jay Colan '66, Annette Colan and Jeffrey M. Hertzfeld '66
2. Allen Rieselbach '56 and Dean Martha Minow
3. Frank E. Ferruggia '81, Donna Ferruggia and Bruce Cohen '81
4. 1951 classmates Bob Ehrenbard and Ronald Rothstein
5. 1991 classmates Anahaita N. Kotval, Sima Sarrafan, Amy Null, Joan Slavin and Jackie Scott Corley
6. 1996 classmates David Morgan and Joseph M. Ditkoff



## Strength in Numbers

“DO YOU HAVE a law degree you’re not using?”

So began a January 2008 posting on Washington, D.C., listservs to attract lawyers for the DC Volunteer Lawyers Project, a nonprofit legal services organization begun by Jenny (Sternbach) Brody '81. After 15 years at home with her three children, Brody reentered the courtroom, this time taking pro bono cases in family law. She met Marla Spindel and Karen Barker Marcou, two attorneys who had followed a similar path after having children. Each had quickly discovered the logistical and financial challenges facing an individual doing pro bono work: expensive malpractice insurance, a lack of office space for meeting with clients and a lack of support. They knew there must be a better way.

“When we first started, we thought we would eventually have 10 attorneys and do 20 cases,” Brody said. Instead, 30 interested lawyers showed up to the first meeting, most of them mothers in a similar stage of life. They also found an untapped resource in laid-off associates eager to keep up their skills.

Soon, the organization had acquired a group malpractice policy, rented space in a shared office—which gave volunteers access to a business address for pleadings, conference rooms for client meetings and a telephone answering service—and established an online legal library. By the end of 2010, they had provided more than 14,000 hours of free legal services across 411 cases, primarily in the area of family law. They now have 430 volunteer lawyers.

Petitions for civil protection orders for domestic violence victims constitute the majority of the organization’s work. “The consequences of not being represented can literally be life and death,” Brody said about these clients. The need in this area is immense: DCVLP takes between two and four cases a week, but 20 victims come through the D.C. Superior Court intake center each day. “We have cases involving really horrific abuse—clients who have been stabbed, choked, or pummeled while pregnant and suffered a miscarriage,” Brody said. “It is actually inspirational to work with clients who have come to a point of wanting to stop the abuse, and to help them and their children create a new life.”



WHEN BRODY FIRST STARTED THE DC VOLUNTEER LAWYERS PROJECT, SHE IMAGINED EVENTUALLY ATTRACTING 10 ATTORNEYS; IT NOW HAS 430.

DCVLP lawyers also work extensively in guardian ad litem cases, immigration law cases and custody cases for prior domestic violence clients. Although Brody now takes on fewer cases herself and misses working with clients, she is intent on growing the organization. The nonprofit’s \$250,000 annual budget is derived solely from private donors and grants. Brody hopes to increase it through more fundraising so that they can hire more part-time supervisory attorneys, which would allow volunteers to take on more cases. She and her co-founders would also love to help lawyers in other cities replicate their model.

For the clients of DCVLP, there is no doubt about the difference the organization has made in their lives. “Thank you for not handling my case with a cookie-cutter approach,” wrote a client in a successful protection order case. “I am grateful and thankful for this service for [domestic violence] victims.” —ELIZABETH CHILES SHELBURNE

## Force of Nature

HARRY BADER '88 jokes that he is proceeding ever so slowly toward getting his Ph.D. at the Yale School of Forestry & Environmental Studies. He has a good excuse, however. "Three wars and other things have interfered with my progress," he says.

Bader has traveled to some of the most dangerous locales in the world, including Bosnia, Iraq and Afghanistan, in an unusual hybrid of environmental and counterinsurgency work. The first person hired by and trained for the Office of Civilian Response of the U.S. Agency for International Development, which deploys civilian experts to conflict areas, he recently returned from his second six-month stint in Afghanistan. There, he worked on behalf of the Natural Resources Counterinsurgency Cell, a joint civilian-military operation seeking to "deny the enemy human and financial capital derived from the exploitation of natural resources," as he describes it.

In Afghanistan, he found that insurgents would sell natural resources, particularly timber in mountainous regions, in order to finance their operations. As part of that effort, they attempted to recruit men who could influence their community to rally around the insurgency. In response, the NRCC worked with local people to identify and train these influencers in ways to improve their community, such as by building dams to protect villages from floods, with the idea that taking on such responsibility would drive them away from the insurgency.

"We targeted these individuals with the opportunity to lead and obtain respect in a manner that was different from the insurgents but provided the same incentives," Bader says. "It's not about money. It's about the exercise of wisdom and judgment and character."

While he facilitated such development projects for the civilian component of the operation, he also mentored military platoons and leadership in noncombat counterinsurgency efforts. That work exposed him to ambushes and firefights while he accompanied military units on patrol. He says that such attacks are simply part of the business he's in. Though he was unarmed, he was extremely well-trained for such "kinetic environments," he says.

Those environments have been a part of his life ever since he was a student at Harvard Law, when he traveled to El Salvador during the civil war to assess whether land reform and a lack of natural resources were affecting recruitment and support for the FMLN insurgent group. It was his first taste of an environmental security field on which he would later focus.

"The nexus of natural resources, conflict and socioeconomic justice is just fascinating," he says. "There's no shortage of where those three things come together."

After graduating from HLS, he became a professor of resource policy at the University of Alaska Fairbanks, in a state that has held his imagination since he was a small boy growing up in the Midwest reading Jack London tales. While teaching, he also took to the field, including a trip to Rwanda with graduate students to examine how natural resources could benefit itinerant populations in the aftermath of the genocide. In Bosnia, he was captured and tortured by Serbian forces while pursuing ways to detect mass graves in forests, according to an account in *The New York Times*, an incident



### ENVIRONMENTAL COUNTERINSURGENCY WORK HAS TAKEN BADER TO SOME OF THE WORLD'S MOST DANGEROUS PLACES.

he doesn't want to discuss because information he collected may be used in ongoing prosecutions. Despite that incident and others in which his life was in peril, he downplays the dangers involved in his work, saying that his friends in Alaska do far more daring and dangerous things, like mushing, hunting grizzly bears and climbing mountains.

He still maintains a home in Alaska while based at USAID headquarters in Washington, D.C. Before starting with the Office of Civilian Response, he had established his own consulting firm specializing in resource management issues in challenging environments. He called it the *Betula Group*, named after a genus of the birch tree that spreads from the equator to the poles. It will spring up just about anywhere, and so will he. —LEWIS RICE

## The Proof Is in the Returns

BY THE TIME Tope Lawani '95 started law school, he knew he would not likely spend his career practicing law. Already the impact of his Nigerian childhood and a captivation with investment markets had planted the seed of an idea that would eventually pull him back to his homeland in hopes of reaping great returns for investors—and for Africa itself.

Lawani is one of the two principals of Helios Investment Partners, a London-based equity firm focused exclusively on private investment in Africa. The firm has managed \$1.8 billion in capital invested in more than 30 countries, primarily in sub-Saharan Africa.

The continent has historically been reliant on investment from development finance institutions, which are backed by states with developed economies and finance investments that specifically promote development. But Africa has become increasingly attractive to private investors because they can earn higher returns for less than commensurately higher risks, Lawani said.

He has built a portfolio reflecting the rapidly changing socioeconomic landscape of Africa. Sectors include media, telecommunications and banking. Among the limited partners in Helios' funds are global investment funds, corporate entities, high-net-worth individuals and development finance institutions.

It might be an understatement to call Lawani's educational background well-rounded: He received his bachelor's degree in chemical engineering from MIT, studied law at Harvard and stayed to earn his M.B.A., moving down the difficulty curve as he went, he joked.

He first fell in love with markets when he deferred law school for a year and worked for Disney analyzing potential acquisitions and business lines.

Later, in San Francisco at Texas Pacific Group, Lawani invested fortunes in North America, Latin America, Western Europe and Asia. But never in Africa.

Yet from abroad and on visits home, he watched the changes—including the spread of democracy, the growing privatization of various sectors, and the advent of information technology.

At the same time, he said, traditional world markets were becoming more competitive; returns were harder to obtain.

But for Lawani, convincing an employer to invest in Africa wasn't enough. In 2004, he and Babatunde Soyoye, also a native Nigerian, chose to be at the helm of an enterprise of their own, so they launched Helios.

"I don't believe in small things. I believe in trying to do big things," said Lawani, 41, who lives in London with his wife and three children.

Moreover, he was seeking returns other than just financial ones. His goal, beyond making money for his investors, was to help transform the continent.

Lawani grew up in the Nigerian city of Ibadan, as one of four sons in a well-to-do family. A top-of-the-line education and comfortable life would be his if he worked hard, yet the chasm between his experience and that of most Africans never escaped him.

You are surrounded, he said, by "people who have every bit as much talent and are every bit as hardworking as you, but for some reason, accident of birth or whatever, they end up with fewer life



AT THE HELM OF AN AFRICA-FOCUSED EQUITY FIRM, LAWANI WANTS TO DEBUNK THE MYTH THAT AFRICANS CANNOT DO FOR THEMSELVES.

opportunities. You become aware of how much good fortune plays a role in life. When you are among those who won the lottery ... it's important to use those capabilities to the best of your abilities.

"If your desire (which mine is) is to see meaningful and sustained improvements in the socioeconomic status of Africa," he added, "you get there by mobilizing significant amounts of private-sector capital. If you can do that, you will get a virtuous cycle of more capital going to more interesting causes and creating more jobs."

But managing equity in Africa has challenges, Lawani said. "You need to work harder to ascertain the value of a company." There are fewer shortcuts, less data. "You need to be a better investor."

There are also historical misperceptions, he said, not the least of which is the notion that Africans cannot do for themselves. One of his personal challenges is to debunk that myth.

And the proof, he said, will be in the returns. "The beauty of the investment business is that the truth always comes out."

—NATALIE SINGER



“Constitutional Originalism: A Debate” by **ROBERT W. BENNETT ’65** and **LAWRENCE B. SOLUM ’84** (Cornell). In a series of “dueling essays,” Solum advocates for constitutional originalism, while Bennett promotes living constitutionalism and judicial activism. The book challenges both sides of the debate while acknowledging where the two viewpoints find common ground.

“A Governor’s Story: The Fight for Jobs and America’s Economic Future” by **JENNIFER GRANHOLM ’87** and **DAN MULHERN ’86** (Public Affairs). The former governor of Michigan, Granholm (in collaboration with her husband, Mulhern) reflects on her stewardship of a state hit particularly hard by the economic downturn and on her attempts to revitalize its sagging manufacturing industry through public-private partnerships and clean-energy businesses. The experience in Michigan offers the country lessons about new economic realities and how rigid political ideology can impede progress, they write.

“Reclaiming Fair Use: How to Put Balance Back in Copyright” by **PETER JASZI ’71** and Patricia Aufderheide (Chicago). The book challenges the assumption that copyright law has become unworkable in the digital age. Introducing the experience of documentary filmmakers and other content creators “who are making fair use more usable,” the authors invite readers to discover the principle long embedded in copyright as a “tool of creative freedom.”

“People’s Warrior: John Moss and the Fight for Freedom of Information and Consumer Rights” by **MICHAEL R. LEMOV ’59** (Fairleigh Dickinson). In the wake of the McCarthy era, an obscure California congressman doggedly shepherds an open government bill for 12 years, and in the face of opposition from three presidents, the Freedom of Information Act passes. This carefully researched account, which also relies on the author’s firsthand experience serving as chief counsel to Moss, describes how the congressman goes on to win sweeping consumer protection reforms and ultimately to challenge Wall Street in a battle to enact major new investor protection laws.

“Pancreatic Cancer: A Patient and His Doctor Balance Hope and Truth” by **MICHAEL J. LIPPE ’68** and Dung T. Le, M.D. (Johns Hopkins). Diagnosed with pancreatic cancer in 2007, Lippe offers insight into his own experience with the disease while, in alternating chapters, his doctor provides a medical and caregiver perspective. The collaboration between patient and doctor presents intimate details of the physical and psychological toll of cancer diagnosis and treatment as well as in-depth medical information on pancreatic cancer. The book also examines the nature of the patient-provider relationship during the course of a life-threatening illness.

“Fatal Invention: How Science, Politics, and Big Business Re-create Race in the Twenty-first Century” by **DOROTHY ROBERTS ’80** (The New Press). Although the Human Genome Project showed that race can’t be identified in our genes,

scientists continue to claim a biological basis to race, according to Roberts, a professor at Northwestern University School of Law. She cites examples ranging from pharmaceutical companies marketing drugs specifically designed for black patients to law enforcement agencies focusing DNA collection on black suspects. A belief in intrinsic racial differences denies our common humanity and can be used to justify biased treatment of minorities, she writes: “[T]he redefinition of race as a genetic category and the technologies it is generating make racial inequality, as well as the punitive apparatus that maintains it, seem perfectly natural.”

“Primetime Propaganda: The True Hollywood Story of How the Left Took Over Your TV” by **BEN SHAPIRO ’07** (Broadside). Shapiro, who in previous books critiqued social liberalism and contended that universities indoctrinate students with a leftist agenda, now turns his attention to the television industry, which for decades has attempted to spread a liberal message in the guise of entertainment, he writes. Featuring many interviews with industry insiders, the book analyzes popular shows from “The Waltons” to “The Simpsons” to make the case that “television is the exclusive domain of a select few who use the mystique of the industry to mask their own political propagandizing.”

“Tangled Webs: How False Statements Are Undermining America: From Martha Stewart to Bernie Madoff” by **JAMES B. STEWART ’76** (Penguin). The Pulitzer Prize-winning author uncovers the truth and discusses the consequences of four notorious cases of deceit, involving Barry Bonds, I. Lewis “Scooter” Libby, Madoff and Stewart. Through investigative reporting and exclusive interviews, he offers revelations about each case, including how Madoff eluded detection of his Ponzi scheme and the levels of involvement of White House officials other than Libby in the Valerie Plame scandal. The lying that occurred in each instance is symptomatic of a larger problem in society, Stewart argues, a surge of perjury that has infected many aspects of American life. He writes that as long as people can get away with making false statements, the problem will only get worse, leading to widespread contempt for the law.



## A Renowned Scholar and Magnificent Teacher

BERNARD WOLFMAN, A renowned scholar of tax law and the Fessenden Professor of Law Emeritus at Harvard Law School, died Aug. 20, 2011. One of the pre-eminent tax professors in the United States, Wolfman clarified the world of tax law for generations of lawyers through his teaching and scholarship. He was also a leading expert in the ethics and rules of professional responsibility for lawyers.

“His contributions to tax and ethics, and his devoted teaching and mentoring of students and younger colleagues, will long endure, as will his distinguished public interest advocacy and service to the profession,” wrote Dean Martha Minow in a statement to the HLS community.

Wolfman, whose principal scholarly interests were federal income taxation and the professional responsibility of tax practitioners, began his teaching career in 1963 at his alma mater, the University of Pennsylvania Law School, where he was a professor, and then dean from 1970 to 1975. He joined the HLS faculty in 1976 as the Fessenden Professor of Law, becoming professor emeritus in 2007. During his career, he also taught law as a visiting professor at New York University and the University of Michigan.

In a tribute in the Summer 2007 Bulletin, Howard Abrams ’80, one of Wolfman’s former students, now a tax professor at Emory University School of Law, called Wolfman “a magnificent teacher and a master of the Socratic method,” adding, “The Socratic method can impose harsh demands, but Bernie was not at all harsh; on the contrary, he was kind and treated us kindly both inside and outside

the classroom. For those of us who teach tax, Professor Wolfman is our ideal.”

Throughout his years as a professor, Wolfman remained active as a practitioner, consulting with law firms, large accounting firms and the government. In 2003, he served as senior adviser to the assistant attorney general for the Tax Division, U.S. Department of Justice. He was a consultant on tax policy with the U.S. Treasury Department from 1963 to 1968 and again from 1977 to 1980.

A prolific writer, he penned dozens of articles, essays, and commentaries. His four books include “Dissent Without Opinion: The Behavior of Justice William O. Douglas in Federal Tax Cases” (1975).

Wolfman received his undergraduate and law degrees from the University of Pennsylvania, earning an A.B. in political science in 1946 and a J.D. in 1948.

Prior to his academic career, he practiced law for 15 years in Philadelphia at the firm of Wolf, Block, Schorr and Solis-Cohen, serving as the firm’s managing partner from 1961 to 1963.

He was also noted for his civil liberties and civil rights work. As a volunteer with the American Civil Liberties Union, he did preparatory work for what became a landmark school-prayer case, *Abington School Dist. v. Schempp* (1963). He would later criticize President Ronald Reagan for granting tax exemptions to racially segregated schools.

A consultant for 20 years to

the American Law Institute’s Federal Income Tax Project, he made recommendations for structural legislative change. He also served as special consultant to Iran/Contra independent counsel Lawrence Walsh.

He was a member of the Council of the American Bar Association Section of Taxation and council director of its committees on Corporate Tax, Standards of Tax Practice, and Tax Policy and Simplification. He also served on the Council of the ABA Section of Individual Rights and Responsibilities. President of the Federal Tax Institute of New England and a fellow of the ABA, he was also a fellow of the American College of Tax Counsel, serving for six years as its regent from the 1st Circuit.



Bernie Wolfman in his office at HLS in 1971

JOHN CHAPIN

## An Iconoclast and a Community Builder

Derrick Bell at HLS in 1990, after taking a voluntary unpaid leave to protest the lack of minority female professors

DERRICK BELL, a distinguished legal scholar, prolific writer and tireless champion for equality, died Oct. 5. He helped to develop critical race theory, a body of legal scholarship that explores how racism is embedded in laws and legal institutions. And more broadly, over the course of his five-decade career, he worked to expose the persistence of racism.

Dean Martha Minow said: “From his work on the front lines of legal argument in the civil rights movement to his path-breaking teaching and scholarship on civil rights and racial justice issues, Professor Derrick Bell inspired and challenged generations of colleagues and students with imagination, passion and courage.”

Bell joined the Harvard Law School faculty as a lecturer in 1969 and in 1971 became its first tenured black professor. He gave up his professorship in 1992 to protest the school’s hiring practices, specifically the lack of women of color on the faculty. His protest garnered national news coverage and stirred the passions of many students.

In 1980, Bell was appointed dean of the University of Oregon School of Law. He resigned in protest five years later after an Asian woman was denied tenure. He returned to Harvard to teach in 1986 and later led a five-day sit-in in his office to protest the school’s failure to grant tenure to two professors whose work involved critical race theory.

In 1990, Bell was appointed a full-time visiting professor at New York University School of Law on a permanent basis.

Professor Lani Guinier, who was appointed the first female black professor at Harvard Law

School in 1998, told *The New York Times*, “[Derrick] set the agenda in many ways for scholarship on race in the academy, not just the legal academy.” She added: “Most people think of iconoclasts as lone rangers. But Derrick was both an iconoclast and a community builder. When he was opening up this path, it was not just for him. It was for all those who he knew would follow into the legal academy.”

“He has left a trail of immeasurable scholarship,” said HLS Professor Charles Ogletree ’78 of his former professor, his mentor and his friend.

Bell’s many books and articles include “Race, Racism and American Law,” which became a

staple in law schools and is now in its sixth edition, and “Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform.” He also wrote two autobiographical works: “Confronting Authority: Reflections of an Ardent Protester” (1996) and “Ethical Ambition: Living a Life of Meaning and Worth” (2002). He was also known for using allegory and parable in his legal writing to explore race and racism.

Bell earned an A.B. from Duquesne University in 1952 and an LL.B. from the University of Pittsburgh School of Law. He later served in the U.S. Air Force and was stationed in Korea for a year. After graduating from law

school in 1957, Bell worked as a staff attorney at the Civil Rights Division of the Justice Department. He resigned in protest in 1959 when the department asked him to withdraw his membership from the NAACP. He became an assistant counsel for the NAACP Legal Defense Fund, and from 1960 to 1966 he administered 300 desegregation cases regarding schools and restaurant chains in the South. He later served as deputy director of the Office for Civil Rights in the U.S. Department of Health, Education, and Welfare (1966) and as executive director of the Western Center on Law and Poverty at the University of Southern California Law School (1968).



TIME & LIFE PICTURES/GETTY IMAGES



**1930-1939**

HARRY RUDERMAN '32  
*Sept. 3, 2011*

JAMES MACK SWIGERT '35  
*April 15, 2011*

MYER B. BARR '36  
*Oct. 23, 2011*

DAVID L. MARKS '36  
*April 25, 2011*

JOHN J. RYAN JR. '36  
*June 6, 2011*

JAMES C. ADAMS '38  
*June 12, 2011*

JAMES EDWARD DOWNES JR. '38  
*May 28, 2011*

W. WARD FEARNSIDE '38  
*Aug. 20, 2011*

WALTER C. HUMSTONE '38  
*Aug. 11, 2011*

MALCOLM MUIR '38  
*July 22, 2011*

JESSE D. WOLFF '38  
*July 8, 2011*

WALTER W. DWYER '39  
*May 26, 2011*

JOHN O. RHOME '39  
*Aug. 28, 2011*

NORMAN J. SONDEHEIM '39  
*Sept. 6, 2011*

**1940-1949**

ELIOT J. FROST '40  
*Aug. 21, 2011*

ARTHUR J. RIGGS '40  
*July 12, 2011*

ARNOLD R. GINSBURG LL.M. '41  
*June 24, 2011*

JOHN OTTAVIANO JR. '41  
*May 1, 2011*

DWIGHT L. KING '42  
*April 12, 2011*

JAMES S. OTTENBERG '42  
*April 9, 2011*

HAROLD B. ROITMAN '42  
*April 1, 2011*

JOSHUA JACOBS '43  
*Aug. 18, 2011*

JOHN D. KENNEY '43  
*Aug. 2, 2011*

JOHN P. BLEDSOE '44  
*July 6, 2011*

JOHN R. CARR JR. '44  
*July 17, 2011*

BENJAMIN W. COREY '44  
*July 23, 2011*

DONALD E. FAHEY '44  
*Aug. 3, 2011*

MURRAY GARTNER '45  
*June 25, 2011*

DON V. HARRIS JR. '45  
*May 15, 2011*

GEORGE A. STARRELS '45  
*Sept. 9, 2011*

JACK A. STONE '45  
*July 10, 2011*

JOHN H. DOWNS '47  
*June 28, 2011*

JEROME H. TICK '47  
*Oct. 26, 2010*

WALTER H. BECKHAM JR. '48  
*Oct. 4, 2011*

GEORGE K. CRACRAFT JR. '48  
*Aug. 28, 2011*

MARSHALL J. DEUTSCH '48  
*Sept. 17, 2011*

STANLEY R. EVANS '48  
*Sept. 29, 2010*

ROBERT L. FLEMING '48  
*April 4, 2011*

DONALD H. GORDON '48 LL.M. '57  
*March 28, 2011*

J. WRIGHT HORTON '48  
*July 20, 2011*

JOSEPH B. MCGRATH '48  
*July 4, 2011*

THOMAS F. MCGUIRE '48  
*March 9, 2011*

RICHARD G. MINTZ '48  
*April 20, 2011*

EDWARD I. ROTHSCHILD '48  
*July 31, 2011*

WILLIAM A. RUSHER '48  
*April 16, 2011*

BRUCE G. SUNDLUN '48  
*July 21, 2011*

JAMES M. WEINBERG '48  
*July 19, 2011*

ROGER W. HAGER '49  
*Aug. 30, 2011*

STANLEY H. LEVY '49  
*June 20, 2011*

MAHLON F. PERKINS JR. '49  
*March 28, 2011*

ALLEN H. RUSSELL '49  
*June 17, 2011*

JEROME SCHWARTZ '49  
*Sept. 25, 2011*

SAUL L. SHERMAN '49  
*May 15, 2011*

JEROME J. SHESTACK '49  
*Aug. 18, 2011*

FRAMPTON W. TOOLE JR. '49  
*July 10, 2011*

HAROLD S. WRIGHT '49  
*Aug. 20, 2010*

**1950-1959**

WARREN D. BARTON LL.M. '50  
*July 8, 2011*

ROBERT N. GREEN '50  
*July 31, 2011*

DEAN M. HENNESSY '50  
*March 16, 2011*

IRVING MALCHMAN '50  
*Nov. 4, 2009*

ROBERT N. SHAMANSKY '50  
*Aug. 11, 2011*

ROURKE J. SHEEHAN '50  
*Aug. 24, 2011*

AARON B. WEINGAST '50  
*Jan. 1, 2011*

HENRY C. CARON '51  
*April 7, 2010*

R. BRADBURY CLARK '51  
*July 13, 2011*

DOUGLAS M. COOMBS '51  
*May 28, 2011*

THEODORE F.T. CROLIUS '51  
*Aug. 27, 2011*

ALVIN FERLEGER '51  
*Oct. 5, 2011*

LEE M. HYDEMAN '51  
*July 17, 2011*

MELVIN E. LEVINSON '51  
*Jan. 10, 2011*

GORDON A. MACLEOD '51  
*Dec. 8, 2010*

CALVIN R. PASTORS '51  
*April 3, 2011*

ROBERT M. RAIVES '51  
*Sept. 17, 2011*

RALPH K. SMITH '51  
*Aug. 23, 2011*

H. PETER SOMERS '51  
*June 17, 2011*

JAMES M. WAINGER '51  
*May 30, 2011*

ROBERT S. ZOLLNER '51  
*April 2, 2011*

ROBERT P. COOK '52  
*June 12, 2011*

JOSEPH M. DELANEY '52  
*April 29, 2011*

EVERETT B. ELLIN '52  
*Sept. 16, 2011*

RICHARD A. GREEN '52  
*Aug. 22, 2011*

LLOYD S. KAYE '52  
*May 10, 2011*

WILLIAM A. KAYNOR '52  
*May 25, 2011*

IRVING L. KESSLER '52  
*Aug. 1, 2011*

ROBERT V. SPAYD '52  
*March 22, 2011*

HARRY H. WELLINGTON '52  
*Aug. 8, 2011*

ERWIN B. DRUCKER '53  
*Oct. 12, 2011*

MATHEW M. FONER '53  
*Feb. 9, 2011*

MARY MARGARET "MICKY" (O'CONNELL) TRUSCHEL '53  
*Oct. 8, 2011*

ALFRED ARONOVITZ '54  
*July 12, 2011*

ROBERT L. BLUMENTHAL LL.M. '54  
*April 13, 2011*

WILLIAM W. CRAWFORD '54  
*Aug. 14, 2011*

CHARLES G. EDWARDS '54  
*Aug. 20, 2011*

RICHARD D. HARBURG '54  
*March 29, 2011*

DAVID LEANSE '54  
*June 25, 2011*

WILLIAM J. TOOHY '54  
*June 12, 2011*

MORRIS BROWN '55  
*Aug. 10, 2011*

PETER WILKINSON '55  
*March 26, 2011*

HARRY LOUIS FREEMAN '56  
*June 6, 2011*

JOHN S. FREY '56  
*April 11, 2011*

RICHARD E. HAESSEMEYER '56  
*Sept. 12, 2011*

JOSEPH J. HURLEY LL.M. '56  
*May 6, 2011*

GERALD H. MARKOWITZ '56  
*Aug. 9, 2011*

HAL F. REYNOLDS '56  
*May 17, 2011*

LUDWIG A. SASKOR '56  
*June 13, 2011*

HARRIS J. SOBIN '56  
*July 25, 2011*

RALPH J. TEMPLE '56  
*Aug. 27, 2011*

GEORGE B. ADAMS '57  
*April 24, 2011*

ROBERT E. GOODMAN '57  
*April 22, 2011*

ROY ALBERT POVELL '57  
*June 22, 2011*

JOSEPH L. HUTNER '58  
*June 9, 2011*

RICHARD L. OCHELTREE '58  
*Sept. 2, 2011*

HARRY A. PHILLIPS JR. '58  
*March 26, 2011*

ARNOLD H. KROLL '59  
*Sept. 27, 2011*

ROBERT J. MCGEE '59  
*Aug. 10, 2011*

GERALD T. SAJER '59  
*May 14, 2011*

THEODORE SIMOS LL.M. '59  
*May 26, 2009*

DOUGLAS L. WORTHING '59  
*July 29, 2011*

GEORGE D. ZUCKERMAN '59  
*July 30, 2011*

**1960-1969**

JOHN K. ROSE '60  
*Sept. 29, 2011*

RICHARD T. WATSON '60  
*July 20, 2011*

ALBERT GRAVES JR. '61  
*May 8, 2011*

THOMAS R. SHEPPARD '61  
*July 27, 2011*

PAUL REED TOOMEY '61  
*April 23, 2011*

GEORGE S. POND '62  
*April 14, 2010*

NEAL L. ROSENBERG '62  
*Oct. 14, 2010*

JONATHAN STRONG '62  
*June 11, 2011*

STEVEN K. COCHRAN LL.M. '63  
*May 27, 2011*

LARRY J. FULTON '64  
*Sept. 16, 2011*

JAMES R. HOPKINS '64  
*Sept. 26, 2011*

JAMES H. BELL '65  
*June 14, 2011*

JAMES J. FREEMAN '65  
*July 13, 2011*

ROBERT E. LEE '67  
*April 30, 2011*

JUDITH A. (SCHNEIDER) CION '68  
*July 6, 2011*

HAROLD L. STULTS JR. '68  
*Aug. 14, 2011*

MARK H. SUTTON '68  
*April 17, 2011*

DONALD S. BREAKSTONE '69  
*March 27, 2011*

SAMUEL E.H. ERICSSON '69  
*Jan. 21, 2011*

DONALD P. RICKLEFS '69  
*March 28, 2011*

CHRISTOPHER W. WALKER '69  
*Aug. 31, 2011*

WILLIAM ALLAN ZARLING '69  
*Aug. 8, 2011*

**1970-1979**

DAVID E. KENTY '70  
*May 17, 2011*

ROBERT C. LOWER '72  
*Aug. 28, 2011*

JAMES T. DRAUDE '73  
*Aug. 16, 2011*

WILLIAM M. BURKE III '74  
*March 27, 2011*

CRAIG R. CALLEN '74  
*April 23, 2011*

DAVID M. COBIN LL.M. '79  
*May 21, 2011*

**1980-1989**

STEVEN KNISELY '80  
*Aug. 19, 2007*

DANIEL L. WESSELS '80  
*June 7, 2011*

JOHN BERNARD LEE '86  
*Aug. 3, 2011*

TAMARA LYNN HJELLE OLSEN '86  
*July 4, 2011*

**1990-1999**

JOSEPH A. PIACQUAD '90  
*June 27, 2011*

SHEN-SHIN LU LL.M. '91 S.J.D. '94  
*May 19, 2011*

DANA E. STERN '95  
*May 22, 2011*

KARIN J. KINCAID '98  
*June 2, 2011*

→ As of this issue, the online version of In Memoriam includes links to newspaper obituaries. Visit [www.law.harvard.edu/news/bulletin/](http://www.law.harvard.edu/news/bulletin/) and click on "In Memoriam."

# LEADERSHIP PROFILE A CONVERSATION WITH ROY L. FURMAN '63



→ *The smell of the greasepaint, and the roar of the crowd ...*

Roy L. Furman '63 is vice chairman of Jefferies & Company and chairman of Jefferies Capital Partners, a group of private equity funds. In 1973, he co-founded Furman Selz, an international investment banking, institutional brokerage and money-management firm, where he served as president and CEO until 1997, when the firm was sold to ING. Among his other positions, he is vice chairman of Lincoln Center for the Performing Arts and chairman emeritus of the Film Society of Lincoln Center. He has produced five Tony Award-winning plays and musicals on Broadway and currently has five shows running. He served as national finance chairman for the Democratic National Committee in 1992-1993 and is former chairman of the HLS Fund. Furman established a professorship at HLS this year, which is held by Lawrence Lessig.

**Jefferies & Company was named this year by Fortune as “one of the world’s most admired companies.” What sets it apart?**

Jefferies is distinguished by the fact that while it is a large, rapidly growing global bank with a comprehensive

range of financial services, it is still run with an entrepreneurial spirit. The firm is not bureaucratic, cross-sector participation is encouraged, and almost all layers of management are actively involved in the investment process. It’s a wonderful atmosphere for intelligent and creative talent.

**How did your HLS education lead you into investment work?**

I practiced for a few years before determining that my mind was better suited for Wall Street, where I found the absence of precedence was a positive. But the law school had taught me to think and to anticipate problems where none seemed apparent, and I trace my success as an analyst to the rigor of my HLS education. I still maintain that law school is a better training ground for Wall Street than business school, but I am no doubt prejudiced.

**How did you become a Broadway producer?**

I became a Broadway producer incrementally, without any long-term expectations. Decades ago, my wife and I began investing small amounts in individual shows. As the dollars in-

creased, so did my involvement, until I proceeded to ask for a seat at the table as a producer. Ultimately, I became more active. It’s a most exciting business because it’s live, which magnifies every problem and every success. Each performance is different, audiences impact the artists, actors get sick, weather affects grosses—in other words, there is a constantly challenging environment.

**Of the plays you’ve produced, which is your favorite?**

I am most proud to have been co-lead producer of “The Color Purple.” This was a musical that all the experts “knew” could never succeed because African-Americans were a minor proportion of Broadway ticket buyers, and it was common knowledge that white audiences would not be attracted to a distinctly African-American story. The show proved to be a major commercial success on Broadway and the road and is currently in its sixth year of performances. My favorite show as a co-producer has to be “The Book of Mormon.” It, too, was an unlikely candidate for anything more than a specialized success, and has turned out to be the biggest hit on Broadway in over a decade.

**Is there a highlight of your Broadway association?**

It’s been thrilling to develop personal relationships with the great creative talents and performers who populate the shows I am involved with. One of my most memorable moments came while we were rehearsing “The Color Purple.” My co-lead producer and I received a call from Oprah Winfrey, who wanted to meet with us in Chicago. In the media world, that is akin to being invited to the White House—one simply does not turn down such an invitation. The Chicago meeting led to Oprah’s joining our team as a named producer, which subsequently led to a surprise visit to see the cast rehearsing. When we called them together to explain we were adding another producer, they couldn’t have been less interested—until the door opened and Ms. Winfrey stepped inside. Only a winning touchdown in the last minute of a Super Bowl could match the pandemonium that erupted in the rehearsal studio, all of which was filmed and featured on a subsequent “Oprah” show.

**How is HLS today different from when you were a student?**

The Harvard Law School of



... await Roy Furman '63 in theaters below his high-rise Manhattan office.

today bears no resemblance to the Harvard Law School I attended in the early '60s, aside from the extraordinarily high level of intellect and skill manifested by the professors and students. "My" Harvard Law School had limited course selections, autocratic teaching, a homogeneous student body, and little warmth or personality. It was seen as a trade school for the best minds in the country, and miraculously, some of those

minds were actually found to be female (there were 17 in the class). How I'd love to attend today's HLS. The curriculum has expanded geometrically; the professors are more involved with, and devoted to, the students; and women and minorities have their rightful place in the student population.

**What lasting impact has HLS had on your life?**

One of my learnings

throughout an extensive career has been that no matter what experience or success I have had, my HLS background has always been the great validator. Early on, I felt this validation, which was especially meaningful as a young Wall Street analyst and banker, would become less significant as I succeeded in business, but such was not the case. Being an HLS graduate has never stopped being meaningful. In certain ways, it's a defin-

ing element, and that special branding remains with you forever. It's one of the prime reasons I am so passionate about HLS—I can never thank the school enough for what it gave me, and I believe it's vitally important to sustain the great academic institutions in this country. In that vein, I am proud to have been able to establish a chair at Harvard and even more pleased that the first recipient is the illustrious Larry Lessig. \*



# GALLERY AN OLD MANUSCRIPT, A NEW PAGE



→ ‘Summa de Legibus Normanniae’ goes digital

Among the legal issues addressed in “Summa de Legibus” is the problem of too much snow. What happens if jurors assigned to a case about a piece of land can’t see the land that they are trying to make a judgment on? The law says ... wait until the snow melts.

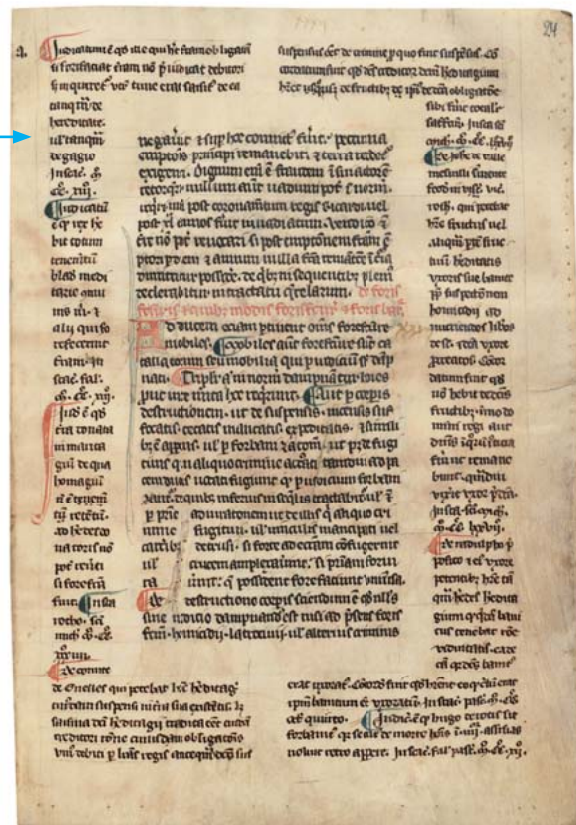


THE HLS LIBRARY’S recent acquisition and digitization of “Summa de Legibus Normanniae” (Summary of the [Customary] Laws of Normandy) has the attention of legal history scholars, particularly HLS Professor Charles Donahue, author of “Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts.”

“I am interested in the process of development [of law] that is happening over the centuries in Normandy,” said Donahue, who hopes that the digitization of this important record of legal practice in feudal Normandy and Norman England will contribute to an understanding of the period for scholars all over the world.

Written in Latin, circa 1300, the manuscript describes

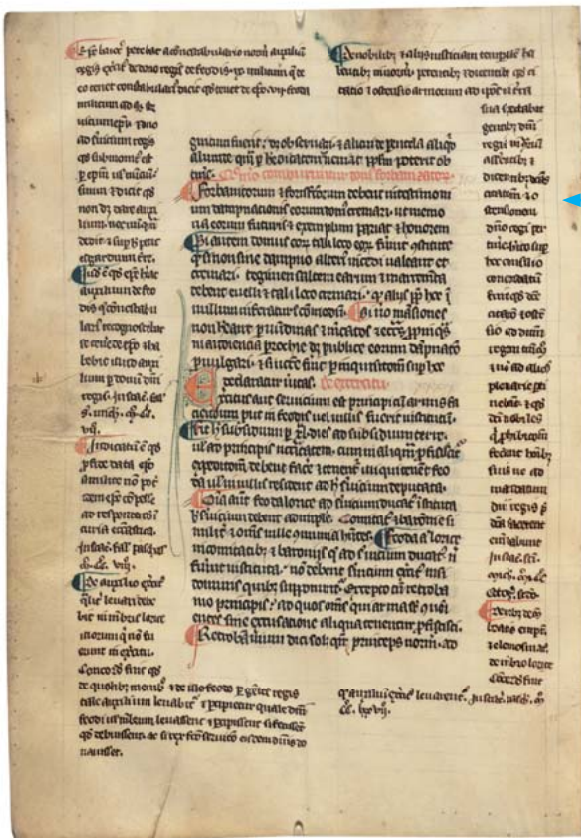
“The text starts circulating, then people start making notes, adding and changing things. People in Normandy stayed pretty close to the original text and tended to put their notes in the margins,” said Donahue.



THE 127-PAGE VOLUME DESCRIBES THE CUSTOMARY LAW IN NORMANDY IN THE 12TH AND 13TH CENTURIES.

HLS LIBRARY HISTORICAL AND SPECIAL COLLECTIONS

LAYERS OF TEXT AND COMMENTARY ILLUMINATE THE DECLINE OF FEUDALISM OVER TIME.



The first part of the text deals with the relations between landholders and the duke, who was also the King of France. In an earlier copy of the manuscript, it appears the intent of the law was that knights and barons who held land were obliged to serve in the military or the “army” for 40 days a year. By comparing the manuscripts, Donahue found evidence that this eventually came to be understood as an obligation only to send money so that others could be hired to fight. “That’s the kind of thing that this text is good for,” said Donahue. Layers of text and commentary illuminate, over time, the decline of feudalism and changing feudal relations.

customary law in Normandy in the 12th and 13th centuries. Its 127 vellum pages include regulations on marriage, land ownership, finance, trading, the crusades, trial by combat, military service and even a legal issue arising from too much snow.

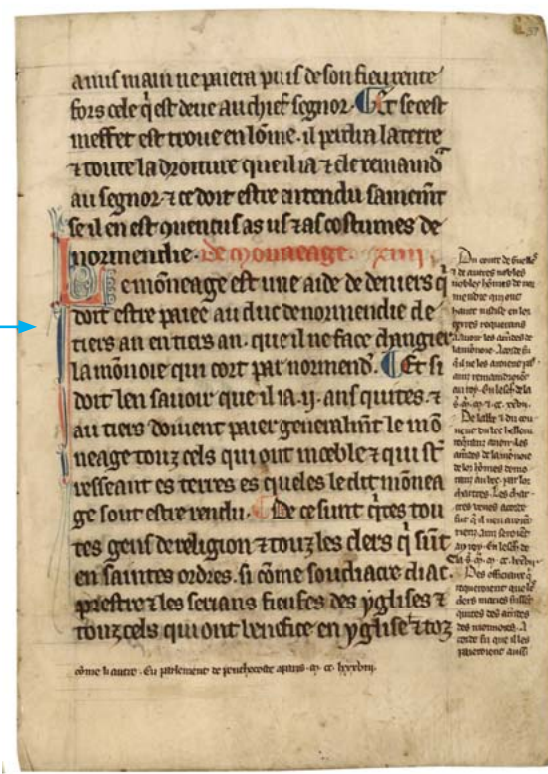
It is one of 25 known copies of this manuscript, and text variations between copies and a wealth of marginal commentary raise their own intriguing questions. This is “a living text,” said Donahue. “The changes reflect what the law really was.”

According to Donahue, the manuscript promises to be especially valuable for the study of early English law. Though it was probably written in Normandy, marginal annotations by an English hand are evidence of the early appearance of “Summa de Legibus” in England. “Why would someone in England want a copy of a manuscript that described the custom of Normandy after Normandy had ceased to be a possession of the English crown?” said Donahue. “That is a puzzle, one of the many that are yet to be solved.” —Linda Grant

Duplication of the laws of Normandy was done by scribes. At times a whole roomful would copy words as they were dictated. At other times, a scribe would work alone to copy the text line by line. According to Donahue, the occasional skips and omissions in the “Summa de Legibus” suggest that this manuscript was originally copied in the latter manner.



“Summa de Legibus” was translated into the French “Grand Coutumier de Normandie” sometime in the middle of the 13th century. The HLS Library owns the French text, which has also been digitized. (See <http://bit.ly/GrandcoutumierNorm>.) Comparing the two versions gives researchers an opportunity to see how the laws changed.



→ View the digitized manuscript at: <http://bit.ly/Summadelegibus>.



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**HOMESTRETCH**

**Just around  
the (northwest)  
corner ...**

*The Wasserstein Hall,  
Caspersen Student Center  
and Clinical Wing, opening  
Jan. 3, 2012*

