

Winter
2020

Harvard Law

bulletin



**Ideas
with
Impact**

From law and forgiveness to politics and the integrity of the Supreme Court to an insider's view on foreign policy, HLS faculty tackle big issues with scholarship, candor, and compassion

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DANA SMITH

HLS PROFESSOR JACK GOLDSMITH,
AUTHOR OF "IN HOFFA'S
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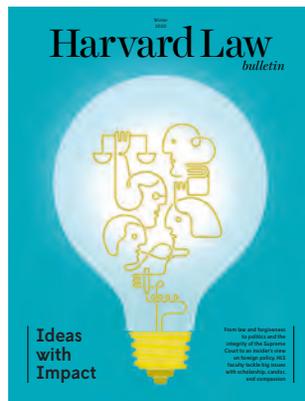
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*From justices on an elephant to
Chayet on the law*



JESSICA SCRANTON

“Being from a low-income family or being a first-generation student is not a visible affinity group,” says Li Reed '20, who helped create First Class to provide community for a group of people who did not have an easy way to connect. PAGE 10



ON THE COVER: *This issue highlights books by Harvard Law School faculty, reflecting a tantalizing mix of scholarly passions, professional journeys and personal narratives. Illustration by Melinda Beck.*

Harvard Law Bulletin

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A Place of Ideas and Action

BY
JOHN F.
MANNING
'85

One of the most exciting aspects of Harvard Law School is its consistent engagement with the most important issues of the day. Often HLS will supply the leading voices on both sides of the great and urgent debates about the law and about the institutions, public and private, that structure society. The work of HLS faculty, students, staff, and alumni helps shape how policymakers understand and solve the most challenging local,

national, and international problems. Through productive, public discussion and disagreement, our community is able to deepen understanding of the hardest and most consequential questions of democracy, constitutional governance, social justice, finance, international relations, technology, and more. Our school is, as it long has been, a lively, energetic, engaging place of ideas and action.

This issue of the Bulletin seeks to capture some of the breadth and depth of the school's contributions through stories that reflect our community's scholarship, professional contributions, and per-

sonal journeys. By participating on all sides of important issues, HLS promotes the highest ideals of law and justice. Turn on the news on any given day and you will likely see HLS faculty and alumni contributing expertise and viewpoints from a broad range of perspectives. Coming at issues from many directions is more likely to bring us to truth and nuanced understanding.

In this edition of the Bulletin, we also mark the life, accomplishments, and passing of beloved friend and colleague Professor Emeritus David L. Shapiro '57, a professor and lawyer who personified scholarly rigor, clarity of thought, and a nuanced understanding of law's complexity. A legendary teacher and giant in the field of federal courts, David has inspired countless students as well as colleagues—and I count myself among them—with his passion for the field and his deep integrity and generous humanity.

In every aspect of human endeavor, you find Harvard Law School contributing in significant ways. That's been core to our history and remains a critical part of who we are today.

I wish you all the best in your own endeavors and in the new year!

By participating on all sides of important issues, HLS promotes the highest ideals of law and justice



Letters

WOW FACTOR

Kudos for the latest Law Bulletin. It makes HLS seem like the great place it is. Wow.

PROFESSOR EMERITUS
ALAN A. STONE
Cambridge, Massachusetts

FRAUD IS NOT EVERYWHERE IN THE PRIVATE SECTOR

Your “Collecting on Dreams” article in the Summer 2019 issue was quite well done and reflects very well on HLS students and alumni who so fervently pursue their commitment to public service. Without a doubt, the subjects of the article are making a positive difference for many when redressing demonstrated fraud, and have earned my respect and admiration. However, the express and implicit premises of the article demand a response.

First, the statement regarding the “defunct” for-profit colleges is incomplete insofar as it neglects to mention the schools’ demise as resulting in large part from the intense hostility of the Obama administration toward for-profit education. Reasonable minds can differ as to whether this hostility was justified by the particular schools’ practices, but the situation begs the question of whether the aggrieved students benefited in any way from the effort to bring down the schools. Whether or not the schools were issuing “worthless” degrees to start with, there can be no doubt that the demise of the schools further undermined the value of the degrees as a result of the stigma which was created (or at least increased). Is this an example of a government policy hurting those it is intended to help?

Second, the use of the class action approach raises questions



about various issues of individual responsibility. While it is undisputed that there was some fraud perpetrated by these institutions, the inherent premise of a class action, that there is great similarity among the class

members, is a troubling one. I cannot accept that in the case of every student of these institutions, their problems result from fraud. Surely, there were some students who received a legitimate education and have encountered problems in their lives for reasons unrelated to their education. Blaming everything on business fraud becomes an overly convenient crutch for far too many and interferes with fundamental incentives.

The broader debate in society regarding forgiveness of student debt in general reflects this mentality, that any difficulty in repayment is the fault of the proverbial “someone else.” It is quite apparent that many students who obtained degrees from traditional schools and are nevertheless struggling, failed to pursue worthwhile studies or sufficiently apply themselves to fields that do have value. There is no reason that society—i.e., taxpayers—should presumptively or conclusively foot the bill for every struggling person. The importance of individual responsibility is also a fundamental theme.

Third, an implicit premise of the article is that for-profit education is inherently bad. Many would disagree, and the existence of the student-debt problems with respect to graduates of traditional colleges and universities bespeaks reason for concern about the value of education provided in that sec-

tor. We must insist upon lawful, ethical behavior from for-profit institutions, but for many, their model is a useful alternative to the traditional one and is well worth preserving.

The Project on Predatory Student Lending serves a commendable purpose in redressing individual fraud, but it is essential for the clinic managers to keep in mind that fraud is not everywhere in the private sector and that individual choices and implementation also have a large role to play in individuals’ life experience and satisfaction. Not all lending to students, or otherwise, is predatory lending.

MARTIN B. ROBINS '80
Chicago

Toby Merrill '11, director of the Project on Predatory Student Lending, replies:

We represent over 1 million former students of for-profit colleges. Our perspective is naturally different from the letter writer’s, and we strongly disagree with several of his contentions. Notably, we do not see a failure of personal responsibility amongst the thousands of students whose stories we have learned. To the contrary, not enough responsibility is taken by actors with the power and obligation to do better. Where the incentives are misaligned is in the distribution of risk-free taxpayer money to institutions without any meaningful check on the value or quality they deliver.

A BETTER BULLETIN

I want to compliment all of you for the substantial improvement in the appearance, tone and content of the Harvard Law Bulletin. It is much more informative than in years past. It also appeals to the eye. Good work!

MICHAEL POLELLE '63
Sarasota, Florida

WRITE to the Harvard Law Bulletin: bulletin@law.harvard.edu; 1563 Massachusetts Ave., Cambridge, MA 02138. Letters may be edited for length and clarity.

Letting Go

How forgiveness might reshape the modern legal system



“OURS IS AN UNFORGIVING AGE, AN AGE OF RESENTMENT,” writes Martha Minow, the 300th Anniversary University Professor at Harvard, in the opening of her new book, “When Should Law Forgive?” In what follows, that reflection jump-starts a compassionate yet clear-eyed reexamination of law’s basic aims.

From the treatment of young people in the criminal justice system to how we handle debt to the possibilities embedded in pardons and amnesty, Minow asks whether law can and should promote forgiveness, and whether law itself should forgive. The work builds on Minow’s 1998 book, “Between Vengeance and Forgiveness,” where she explored ways of responding to collective violence and genocide.

“Forgiveness within the law, exercised wisely and fairly, strengthens the law and justifies people’s faith in it,” writes Minow in her new book.

“Many people asked me: ‘Why are you looking for an alternative to forgiveness? Why isn’t forgiveness itself a good thing?’” she said. These questions led her on a journey to examine how law might allow for letting go of justified resentment, as she has come to define forgiveness.

“The capacity to acknowledge wrongdoing but also to use ritual as a mechanism for letting go,” she said, is a theme she found again and again while looking into the role of forgiveness across ages and cultures. Examples abound in her book: the Quran’s allowance for adjusting when a debt comes due, the biblical Jubilee’s periodic debt forgiveness, Shakespeare’s reminder in “The Merchant of Venice” that mercy can

benefit all sides, South Africa's pursuit of truth and reconciliation with the fall of apartheid, and Colombia's negotiated peace agreement with revolutionary armed forces.

"Finding that many societies, many civilizations in history, have pursued forgiveness either in specific moments or just as a general practice, I think, reinforces this recognition that it's a human resource," Minow said.

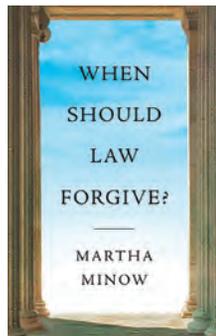
And yet, for Minow, the use of that resource seems to ebb and flow, with its tide hitting a low point today. "I do think that in the United States in particular we are at one stage of a cycle where we're in a largely unforgiving phase," she said. Mass incarceration is just one example she cited: The United States now incarcerates people at a higher rate than any other society in human history. Yet so far, Minow writes, "the yearly ritual of a presidential Thanksgiving pardon for a live turkey has had more cultural resonance than pardons or commutations for prison inmates."

Minow considers how other justice models might contend with wrongdoing while providing more hope of liberation from the past.

Take communal restorative justice initiatives for former child soldiers. These are processes where everyone affected by a crime—with emphasis on victim participation—works to find a strategy that will repair the harm done. "Communal processes focus less on assigning individual guilt and innocence than on gathering the experiences and feelings of the former child soldiers, working on a shared narrative about the political and social contexts that make young people into soldiers ... and pursuing rituals and practices that could restore their membership in larger communities," Minow writes.

Accountability isn't lost in this picture. For instance, Minow describes her fear that failing to impose consequences on former child soldiers who show some agency "may impair development over time of their own identities as moral agents." This leads her to look for a middle ground that aims for rehabilitation and reintegration alongside accountability.

Likewise, Minow worries about accountability with debt forgiveness, wrestling with the fear of creating what economists call "moral hazard," where forgiveness could induce risks by suggesting people won't bear the costs of their borrowing. Yet, with such hazard in mind, she still asks whether more could be done to empower less sophisticated borrowers, encourage responsible lending, and involve a broader circle of actors when they are implicated in either the problem



of crushing debt or its solution.

And there are instances when Minow suggests blanket forgiveness might be ideal. Take presidential pardons or amnesty, which she thinks might be appropriate especially when they can lessen existing unfairness or ease a political transition. Pardons in particular run the risk of corruption, she acknowledges. President Bill Clinton, for example, pardoned a major Democratic donor's former husband, Marc Rich, accused of tax evasion and more, without relying on the Justice Department's established review process. President Donald Trump pardoned his political supporter Joe Arpaio after Arpaio violated a court order prohibiting him from engaging in unconstitutional racial profiling. But the solution isn't to do away with the pardon, Minow argues. Rather, she wants to see the development of substantive criteria that would reject pardons based on corruption or promotion of unjust lawlessness.

Here, a reader might start to sense a broader theory emerging for how forgiveness can strengthen the law. Minow quotes former Supreme Court Justice Anthony Kennedy '61, who reflects on the declining use of the pardon power: "A people confident in its laws and institutions should not be ashamed of mercy." Minow embraces this claim but also goes further, arguing that thoughtfully applied mercy is not just an indication of, but also a contribution to, law's good health. "Forgiveness within the law, exercised wisely and fairly, strengthens the law and justifies people's faith in it," she writes.

In this sense, forgiveness emerges as a kind of exception that doesn't just prove, but also improves, the rule of law. —AYSHA BAGCHI '17



The Journey of an Idealist

Living life one step at a time, Samantha Power has traveled far



IN THE SPRING OF 1995, WHEN SAMANTHA POWER WAS reporting on the war in Bosnia in the hope of spurring a U.S. intervention, she received an acceptance letter from Harvard Law School. Intrigued by the growing movement around what would become the International Criminal Court, Power had applied with the intention of eventually bringing war criminals like Radovan Karadzic and Ratko Mladic to justice.

Samantha Power '99 outside her home in the Boston area

But a friend and mentor who saw Power's future differently called to intervene. "You do not need a piece of paper to legitimize yourself," Richard Holbrooke, then U.S. assistant secretary of state, told her, offering her a job as a junior aide.

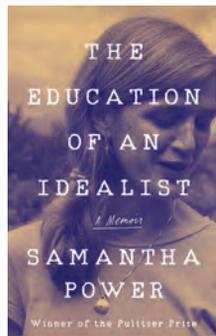
Power was over the moon—she could influence policy much more directly by working with a senior government official than was possible through journal-

ism. But in the end, she turned down the dream job: “I had begun to fixate on the notion that in law school I could acquire technical, tangible skills that would ultimately equip me to make a bigger difference than I would by putting words to paper, even as an aide to a U.S. envoy,” Power ’99 writes in her recently published memoir, “The Education of an Idealist.”

Reading it, one is struck again and again by similar inflection points that have influenced her life’s trajectory. “Education” ranges from Power’s earliest years in Dublin to her immigration to the United States at the age of 9; from her awakening to life-or-death implications of international events during the Tiananmen Square protests to the decision to become a freelance journalist; and from the publication of her Pulitzer Prize-winning book, “A Problem from Hell: America and the Age of Genocide,” to a 2005 dinner with then-Sen. Barack Obama ’91 that ultimately brought Power to Washington—first as a foreign policy fellow on his Senate staff, then as a senior adviser on his campaign, and then as a special assistant on human rights and multilateral affairs. In 2013, she was named the 28th U.S. ambassador to the U.N.

“When I left government, I had no plans to write a book,” says Power, reached by phone just before the start of her book tour. But by the late spring of 2017, she felt the nagging need to make sense of her time in government. Back at HLS and the Harvard Kennedy School, where she has a joint appointment, Power also heard many of the same questions: What did you learn? What did you wish you’d known going in? “That’s when I decided I wanted to try to distill the experience and what I took away from it—with my students in mind,” she says. “The number one variable that will determine whether we’re going to be OK as a country is whether or not our talented young people dedicate themselves to improving their communities or getting involved in public service.” By recounting her experience as a relative newbie and showing the possibility in government, Power hopes to inspire at least a few to do so.

Readers will also enjoy a refreshing takeaway: Power’s career success has



Casting the U.S. vote for the U.N. Security Council sanctions against North Korea after the country’s nuclear tests in 2016

arisen less from any carefully plotted calculations than from intuition and what she refers to as the “X test”—in other words, if, in trying to achieve Y, the most you achieve is X, is an action still worthwhile?

While attending HLS, for example, Power realized that she was not interested in sitting for the bar. “That was very freeing for me,” she says. “I just treated the experience as this amazing bounty.” She took courses on negotiation, never imagining that one day she would be an ambassador. In a class she took on the ethics of the use of force, Power wrote a paper that would become the earliest beginnings of “A Problem from Hell,” drawing on her coursework in international law.

“The most lasting impact of my time at law school is that it taught me how to step outside myself and think through any counterargument in an equally forceful way,” she says. That skill made the argument and writing in “Problem” “tighter,” she says, and was also helpful later on: “In government, people of very similar values and worldviews can come to such different conclusions about what should be done. If you’ve thought about those other, different perspectives in advance and armed yourself to address them, you can be much more effective.”

For anyone who has ever wanted to be a fly on the wall in high-level government meetings, Power’s



AP PHOTO/SETH WENIG



Interviewing Bosnian military officers, in a Muslim enclave surrounded by Serb forces



An insider's view of the Obama administration's struggles



With her parents in Dublin

newest book offers a blow-by-blow view into how the Obama administration arrived at its position on a number of critical international challenges, including its response to Libyan leader Muammar el-Qaddafi's assault on his political opponents and to Syrian President Bashar al-Assad's use of chemical weapons against his own citizens.

Power vividly depicts the compromise, heartache, and exhilaration of working on these and many other issues. "I had gone from being an outsider to an insider," she writes. "From within government, I was able to help spur actions that improved people's lives. And yet we were failing to stop the carnage in Syria. I was at risk of falling prey to the same mode of rationalization I had assailed as an activist." Even so, Power makes it clear that the "education" referred to in her book's title is not the story of an idealist reformed by the harsh forces of the real world. The reality of her experience—of her education—unfolds through the stories she tells, which are full of the complexities, compromises and nuance of day-to-day life.

Power includes all aspects of that life, too, writing of the loss of her father to alcoholism, her struggle with anxiety attacks and her attempts at therapy. We're there as she falls in love with Cass Sunstein '78, a colleague from the Obama presidential campaign and now on the HLS faculty, and for the joyful birth of their son, Declan, as well as the sorrow of repeated miscarriages before the birth of their daughter, Rian. We learn what it's like to raise children at the former U.N. ambassador's residence in the Waldorf Astoria hotel, and how punishing a career in government can be to any semblance of "work-life balance."

"I lived in a privileged position. So many people don't find themselves with a sane level of support," Power says. "Even so, I felt the best contribution I could make was to simply show, as well as tell, that all we can do is our best." Today, Power is enjoying more of that ever-elusive "balance." A die-hard baseball fan, she serves as her son's warmup pitcher for an hour every morning before he goes to school. This spring, she is teaching two courses: Geopolitics, Human Rights, and the Future of Statecraft, and, with Sunstein, *Making Change When Change is Hard: the Law, Politics, and Policy of Social Change*.

Not surprisingly, Power doesn't have a ready answer to the question of where she'll be focusing her energy in the years ahead. "I have no one-year plan, never mind a five-year plan," she says. Instead, she will continue to apply the "X test" to whatever opportunities might come her way. "You'd be amazed by the things that can happen if you just keep rolling and learning," she says. —JULIA HANNA

COURTESY OF SAMANTHA POWER (TOP AND BOTTOM); PETE SOUZA (THE OBAMA WHITE HOUSE (MIDDLE))

IN BRIEF



“Conformity: The Power of Social Influences,” by Cass R. Sunstein '78 (NYU)

Conformity helps to make civilizations possible, writes Sunstein, but it can also make atrocities possible. In his book, the HLS professor examines how conformity works: People tend to be influenced by those who are confident and firm; people tend to follow the unanimous view of others, but someone who dissents from that view can have a large impact; and people will be less likely to be influenced by a group they distrust. He also explores how like-minded people can go to extremes when they hear arguments that reinforce their opinion. People benefit when they hear alternative points of view, and well-functioning institutions help promote dissent and discourage conformity, Sunstein contends.

“Taiwan and International Human Rights: A Story of Transformation,” edited by Jerome A. Cohen, William P. Alford '77 and Chang-fa Lo LL.M. '87 S.J.D. '89 (Springer)

The end of martial law in 1987 brought the first opportunity for the people of Taiwan to protect their rights and freedoms, write the editors, who present a variety of perspectives on Taiwan’s human rights performance, including from many HLS alumni. Alford, professor and director of the East Asian Legal Studies Program at the school as well as the founding chair of the HLS Project on Disability, co-writes an essay on protecting people with disabilities, while Cohen, professor at NYU School of Law who introduced the teaching of Asian law at HLS, writes on his personal experience of Taiwan’s human rights history. Lo, former grand justice of the Constitutional Court of the ROC (Taiwan) and former dean, National Taiwan University Law School, contributes two chapters:

on the introduction of international human rights norms into constitutional interpretations, and on gender equality issues. The editors point to the high standards of Taiwan’s human rights protection even as it is barred from joining international human rights conventions.

“Equity and Law: Fusion and Fission,” edited by John C. P. Goldberg, Henry E. Smith and P. G. Turner (Cambridge)

The book’s essays examine the ways in which law reform starting two centuries ago through the mid-20th century “fused” common law and equity, and ways in which they have remained distinct. With historical, comparative, and theoretical analysis, the book seeks to show equity’s place in the modern common law system and explores whether equity should be distributed throughout the law. The ideas emanated from a seminar co-hosted by HLS’s Project on the Foundations of Private Law, which is directed by Professors Smith and Goldberg.

“Felony and the Guilty Mind in Medieval England,” by Elizabeth Papp Kamali '07 (Cambridge)

The concept of *mens rea*, or guilty mind, factors into how we determine criminal responsibility in modern law, writes legal historian and HLS Assistant Professor Kamali. The same was true in medieval England, according to Kamali, who shows how jurors considered defendants’ *mens rea* in reaching verdicts and conveying mercy. In addition, she explores how “felony” became a legal term of art, how anger as a fact pattern could affect adjudication, and how confession underpinned convictions and pardons. Judges and juries too were expected to approach their task “with the right orientation of heart and mind.”





JULIAN MORIMOTO '21 WAS BORN and raised in Honolulu, where he shared a two-bedroom apartment with nine family members including his mother, a waitress, and his stepfather, a cook. He sometimes studied in the stairwell because there was no other space, and the neighborhood could be violent. “A lot of people have the impression that Hawaii is this really magical

STUDENT VOICES

First Class

An organization started by Harvard Law students offers community and resources for low-income and first-generation college students at the school

place, but if you're not rich or if your parents aren't well connected, the Hawaii you live in is different,” says Morimoto.

As he headed to Harvard Law School, Morimoto says he really wanted to make sure he could find a space where he “could share these experiences and be around people who could understand them better,” and with whom he

could bond. A new student organization, First Class, is the space he sought.

First Class was launched in the winter of 2017-2018 by Li Reed '20, Ariel Ashtamker '19, and Richard Barbecho '19, who saw a need for support, community, and advocacy for first-generation college and/or low-income students. (It followed on Supero, a similar organization started several years earlier.) First Class holds monthly dinners and an annual welcome dinner; advocates for tailored programming at the law school; and supports members in their career aspirations. The organization currently has about 160 members.

"I think the most important thing was creating community for a group of people who otherwise

Li Reed '20 (below) and two other students launched First Class during her 1L year. Julian Morimoto '21 (left) is now co-executive director.

didn't have an easy way to connect with each other," says Reed, the 2019-2020 president of the Harvard Legal Aid Bureau, who, like many in First Class, describes herself as both first-gen and low-income. "Being from a low-income family or being a first-generation student is not a visible affinity group," she says, yet these students often face similar challenges, from seemingly small things, like not being able to connect socially with section mates due to budget constraints, to not having lawyers in the family to ask basic questions about the profession.

The organization exists to serve its members, its board members emphasize. About 40 to 50 students attend each monthly dinner, which—like all of First Class's

events and services—is free. The dinners are also a time when students can get information about things they may be unfamiliar with, such as how to compete for the Harvard Law Review or a position at the Harvard Legal Aid Bureau, says Morimoto, who this year serves as co-executive director.

Last year, First Class created a "Low-Income Survival Guide," which provides tips and resources to help students from low-income backgrounds navigate the financial demands of law school and life in the Cambridge area—everything from strategies for finding affordable housing in Cambridge to information on scholarships and financial aid. (HLS provides tens of millions of dollars in financial aid annually, all of it need-





“People seemed to have some kind of rule book ... you don’t have access to.”

who graduated from the University of Michigan Law School, has been a force behind starting and supporting the organization, and he was the keynote speaker at this year’s First Class welcome dinner in August.

“Enter Harvard Law School with your whole self, and explore each and every thing this venerable place has to offer,” said Jefferson in his keynote. “Everything here is just as much yours as it is anyone else’s, and don’t allow anyone to convince you otherwise.” He received a standing ovation.

HLS Dean John F. Manning ’85 and Professor I. Glenn Cohen ’03, faculty director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, are also first-generation students, and both have spoken at the First Class welcome dinners that are organized by the Dean of Students Office.

“I remember what it was like to arrive here as the first in my family to graduate from college and the first to go to law school,” says Manning. “I was thankful to be able to learn from other students as I figured things out. I’m very grateful to First Class members for all they do.”

“Neither of my parents finished high school,” says Cohen. “I couldn’t be prouder of or more grateful to them, but as with many first-gen students, I definitely felt there was a steep on-ramp to law school as a result. I’m so glad the students and administration have supported this effort to make the

based, and is one of only two law schools in the country to provide 100% need-based aid.)

First Class members also successfully advocated last year for the elimination of the minimum borrowing requirement for need-based grant recipients. Changes the school has made to its policy now allow students who reduce their living expenses to also reduce their student loans.

First Class is also looking to create a fund to assist students in purchasing clothes for job interviews.

The organization has worked with the Office of Career Services and the Office of Public Interest Advising to develop programming tailored to first-generation and low-income law students, such as presenting them with options if a student can’t afford to travel for a job interview.

The HLS administration was strongly supportive from the start, says Reed. Mark C. Jefferson, assistant dean for community engagement and equity, a first-generation college student

Joey Bui ’21, co-executive director of First Class

law school more welcoming to first-gen students.”

Joey Bui '21 is the daughter of Vietnamese refugees who lived in refugee camps after the Vietnam War before they immigrated to Melbourne, Australia, where Bui was born. After attending NYU Abu Dhabi on full scholarship, Bui, the first in her family to go to college, decided to become a lawyer and headed to Harvard Law School. When she landed on campus, she felt that, in terms of navigating legal education and the profession, “people seemed to have some kind of rule book or outside resources you don’t have access to,” she says. By connecting with other students in First Class, “I felt so much better because I was really dreading that I would be a

Juan Espinoza '21 joined First Class because he was looking for community. As a board member, he now welcomes other students.

fish out of water,” says Bui, who is this year’s co-executive director with Morimoto.

Juan Espinoza '21, whose parents are farmers and in the service industry in Palm Springs, California, says, “Not many of my peers here understand what it means to be working-class.” He joined First Class because he “was looking for community,” he says, for students who would understand “what it means to be low-income at an elite institution.” Before he chose HLS, Espinoza attended a reception for Latinx students at another Ivy League law school, where a student mentioned that his aunt and uncle were justices in the Venezuela courts. “That’s very different than to say, ‘My parents are farmers or in the service industry and have

never gotten a formal education,’” says Espinoza, who is studying law in order to analyze power structures that maintain systems of poverty and disenfranchisement.

Even though First Class is growing, student outreach presents a bit of a challenge, Bui says. “Some people may not want to be known as low-income, and we want to respect that as well even though we hope some people will find pride in growing up in low-income backgrounds and being able to make it here,” she says. And, she adds, while each student’s personal history informs who they are, “now that we’re at HLS, we are extremely privileged people. The question is, What are we going to do with that privilege?”

—ELAINE MCARDLE



IN THE CLASSROOM

Status Update

Following a new course on social media and the law



FOR MILLIONS OF PEOPLE, SOCIAL media is a quick way to keep up with the activities of a faraway grandchild or check out a neighbor's vacation photos. Yet it can be equally effective when used for nefarious purposes. In 2018, news reporting revealed that Myanmar military officials had been using fake Facebook accounts with a collective 1.3 million followers to spread anti-Muslim propaganda for over half a decade, inciting violence against the country's Rohingya minority. The accounts, which Facebook took down, have been globally condemned for their role in the forced migration of over 742,000 Rohingya.

Monika Bickert '00, who joined Facebook in 2012, brought an insider's view to co-teaching the HLS class.

This and a number of other scenarios, including Russia's interference in the 2016 U.S. presidential election, raise the question: How can regulation prevent social media from doing serious harm? A new course in fall 2019, *Social Media and the Law*, took on that inherently complex question. Taught by Professor Noah Feldman and Monika Bickert '00, lecturer on law, who also serves as Facebook head of global policy management, the course delved into the difficulty of crafting policy on topics that intersect with social media, including hate speech; terrorism, extremism, and incitement to violence; pornography, nudity, and

harassment; and misinformation, polarization, and democracy. In addition, readings and discussions focused on the current legal environment; antitrust issues; the effectiveness of automated solutions; social media in China; and issues of privacy. The potential remedies of internal governance and the role of appeal processes and oversight were also considered. In fact, Feldman notes, he and Bickert met thanks to his work advising Facebook on the formation of its own content oversight board—the decision-making body that determines what is left up on the site and what is taken down.

“The course combines theo-

retical discussion of the right thing to do and different ways to look at an issue critically—all of those features that a good academic course should have—with the very applied consideration of, *How does it work in real life?*” says Feldman, whose scholarly interests include constitutional law and free speech. “A very exciting educational aspect of this course is that we don’t have to read an article to find out how something works in real life, because Monika is right there.”

Bickert joined Facebook in 2012 as its lead security counsel, advising the company on data security, and moved into her current role a year later. When she graduated from HLS in 2000, social media didn’t exist; in fact, she wasn’t even that interested in technology, she says. Instead, she pursued a career as a prosecutor, serving as assistant U.S. attorney in the Northern District of Illinois and as resident legal adviser at the U.S. Embassy in Bangkok. “I’m encouraged by the breadth of perspective students bring to class and their willingness to advocate positions that are likely different from their

“The course combines theoretical discussions of the right thing to do,” says Professor Noah Feldman, “with the very applied consideration of, *How does it work in real life?*”

opinions,” Bickert says. “It makes for a more interesting conversation and helps us get deeper insights into the policy challenges social media companies face.”

Enrollment in the class included students from a variety of countries, Feldman notes, which added to the range of perspectives. On the first day, the question was raised of whether a global social media company should have different content standards for free expression in different regions of the world. “One person from sub-Saharan Africa said that they should have different standards, due to the danger of First Amendment imperialism,” he says. Another, raised in Vietnam, described how highly his mother values free expression. “It was an incredible opportunity to see and hear perspectives you could gather by traveling around the world,” Feldman says, “but we had them all in real time, in the classroom.”

A native of Colombia, Isabella Ariza Buitrago LL.M. ’20 says that she was fascinated by the legal cases involving nudity, pornography and feminism-related issues. “I’ve learned that if a social media com-

pany doesn’t have a detailed policy around nudity, it’s a de facto porn site,” she says. “More broadly, it’s also been interesting to discuss the ways in which social media companies are more like a state or global entity than a corporation. Their policies govern so many relations. So, could they be considered a democracy?”

Before HLS, Princess Daisy Akita ’20 worked as a corporate strategy and development manager at Microsoft. “What fascinates me most is how the law will evolve alongside the advance of technology,” she says. An assignment to craft a hate speech policy made her realize just how challenging it can be not only to come up with a policy, but also to enforce it: “How do you ensure that your definition of terrorism prevents radicalization but doesn’t stop activists from taking a stand and sharing their story?” she asks. “It’s easy to discuss legal issues in a theoretical way, but there are so many questions that come up once you sit down to write a policy.” A location-specific approach, for example, doesn’t work when people are commenting on the same post from different parts of the world.

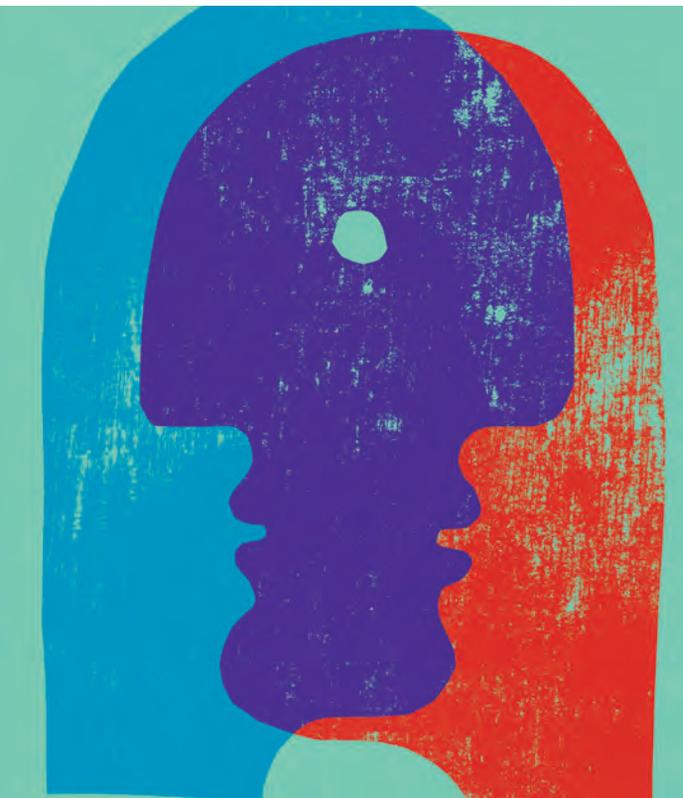
“I don’t know that I’m walking out of the class with all of the answers,” Akita adds. “If anything, I’m leaving a little more confused and a little more open to the gray.”

And that, she reflects, is no doubt education’s purpose—to open minds to the subtleties of the issues at hand to gain a full appreciation of their complexity.

“Does Facebook do good in the world?” Feldman muses. “I’m convinced the employees and senior management want it to, but whether you want it to be a force for good or it *is* are two different things. It’s a question we constantly discuss, and we do so politely, because one of the professors is from Facebook. But the topic is very much on the table.” —JULIA HANNA



HEARD ON CAMPUS News and views from speakers at HLS



“ The mind-expanding part of law school is to surround yourself with people who think differently from you and to try to figure out why they think that way and to be open to changing your mind sometimes and to have the experience of changing their minds sometimes.”

—**U.S. SUPREME COURT JUSTICE ELENA KAGAN '86**, speaking to students at Harvard Law School as part of the orientation program, Aug. 29.

“ Every successful negotiation is defined as both parties leaving with an acceptable outcome. ... If you ever think about a negotiation as a win/lose, you're going to have a terrible experience, you're going to be very dissatisfied, and not very many people are going to want to deal with you.”

—**REX TILLERSON**, former U.S. secretary of state, speaking at an event at Harvard organized by the American Secretaries of State project, a joint initiative of HLS, the Harvard Kennedy School and Harvard Business School, Sept. 17.

“ Technology is intentionally developed to resolve social conflict in favor of the party implementing the technology.”

—**HLS PROFESSOR YOCHAI BENKLER '94**, from his keynote at “*Innovation, Justice and Globalization*,” a conference at HLS focused on intellectual property issues, Sept. 26-27.

“ At 8 o'clock the assembly started. Maj. Yanai was giving a pep talk: ‘This is the day you prove your patriotism to the emperor. Do your best,’ and so on. We said, ‘Yes, sir! We'll do our best.’ Then, at that second, I saw the blinding blueish-white flash in the window, and I had a sensation of floating up in the air. ... I speak because I feel it is my responsibility as someone who has intimate knowledge of what these horrific things can do to human beings. ... I consider it my moral responsibility.”

—**SETSUKO THURLOW**, an activist with the International Campaign to Abolish Nuclear Weapons, speaking at an HLS event organized by the school's Armed Conflict and Civilian Protection Initiative, Oct. 8. Thurlow was a 13-year-old student in Hiroshima, Japan, in 1945, when the U.S. dropped the atomic bomb on the city. In 2017, she accepted the Nobel Peace Prize for ICAN.





“ I have come here because the topic we will be talking about directly refers back to topics I am focusing on in my presidency: the future of liberal democracies. How does the internet—how do Facebook, Twitter, algorithms and anonymity on the internet—how do all of these things change the democratic culture of debate which is of such great importance to us?”

—GERMAN PRESIDENT FRANK-WALTER STEINMEIER, leading a discussion at HLS on “Ethics of the Digital Transformation,” hosted by the Berkman Klein Center for Internet & Society at Harvard, Nov. 1.

“ The 9/11 fund was absolutely the right thing to do, an innovative response to a national horror. But you’ll never see that again; it was one for the history books rather than the legal books.”

—KENNETH FEINBERG, special master of the 9/11 Victim Compensation Fund, on a panel sponsored by the Program on Negotiation, “Innovative Models for Resolving Disputes after Mass Disasters and Catastrophic Harms,” at HLS, Oct. 22.

“ Tragically, we have moved away from federalism and separation of powers under the leadership of the Houses of Representatives, of Senates, and of White Houses of every conceivable partisan combination.”

—MIKE LEE, U.S. senator from Utah, offering his perspective on the current state of constitutional law in the U.S. at an event sponsored by the Harvard Federalist Society, Nov. 8.

“ The tale I’ve told is a sad tale, in many respects. I mean, look at what prompted David Walker to write his appeal [‘to the Coloured Citizens of the World,’ 1829]. He wrote it because of racial slavery. ... But the tale is not an entirely forlorn tale, because the appeal survived. And it continues to live. And that is so in large part because of public opinion rallying around the banner of freedom of expression. Public opinion was the saving grace—not the courts. Public opinion in the 1830s, actually, was way ahead of judicial willingness to protect freedom of expression. And it seems to me that this ... should be a key lesson. ... Public opinion is really going to be the ultimate and the most important bulwark for the values that we cherish.”

—HLS PROFESSOR RANDALL KENNEDY, taking the long view on attempted censorship of an abolitionist tract, in a talk at HLS on “American Slavery/American Censorship,” part of a lecture series on censorship held during Banned Books Week, Sept. 25.



Translating



ONE NEW BOOK BY LAWRENCE LESSIG EXPLAINS
A CORE VIRTUE OF THE SUPREME COURT; A
SECOND EXPLORES AMERICA'S PERILOUS POLITICS
— WHICH PUT THAT VIRTUE AT SERIOUS RISK

The Constitution

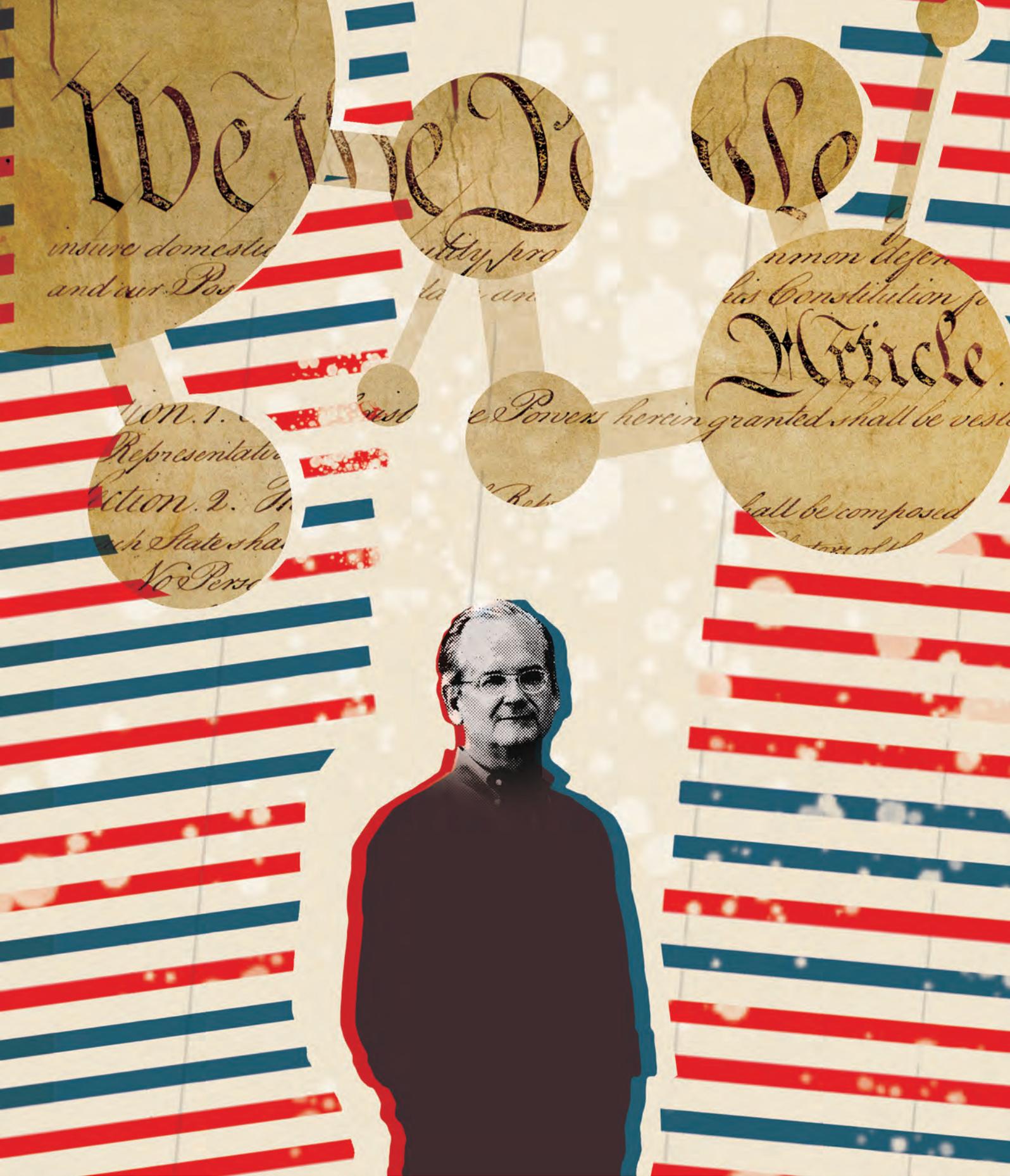


With



Fidelity





At the start of his recent book “Fidelity & Constraint: How the Supreme Court Has Read the American Constitution,” Harvard Law Professor Lawrence Lessig asks the reader to assume “the very best of the justices.” He writes: “Put your politics in a box and lock it away. Don’t approach this story from the Left or the Right; approach it as an enlightened anthropologist would, and listen, engage, and try to understand it as the work of judges trying to do the best they can do at the time in which they work.” That is a startling requirement, for it seems to ignore lessons about the pervasive effects of America’s unruly politics on the legitimacy of our core institutions, including the Court. Lessig has campaigned intensely against these threats to democracy, and in the process he has become an intellectual celebrity.

Lessig has courted attention as part of a crusade to curb the corrupting influence of money in politics. His prominence spiked in January 2014, when he started on a 190-mile walk of protest from north to south through the state of New Hampshire, as the site of the nation’s first presidential primary every four years. In May that year, with Mark McKinnon, a Republican political strategist, Lessig took another step and founded a super PAC now called Mayday America. It began as a grassroots effort to elect a Congress that would pass reforms limiting the dominance of big donors in politics. Its goals have broadened to include defending voting rights of minorities and ending partisan gerrymandering, as part of a quest to save American democracy.

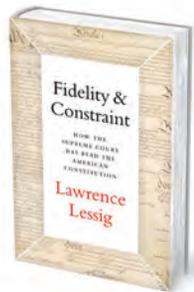
That moved Lessig to enter the race for the Democratic nomination for president in the 2016 election. He pledged to be a “referendum candidate”: He would resign as president if Congress passed “a package of fundamental reforms that would crack the corruption that had captured our government.” The promise proved to be a

LESSIG FIRST LAUNCHED HIS CRUSADE TO CURB THE CORRUPTING INFLUENCE OF MONEY IN POLITICS AFTER THE SUPREME COURT’S RULING IN CITIZENS UNITED.

major distraction, as he recounted on the New Yorker website: It helped “sink the campaign,” which ended shortly afterward. What guaranteed its end, he wrote, was the decision by the Democratic National Committee to retroactively change the rules about when a candidate had to qualify to be permitted to participate in a presidential debate, effectively excluding Lessig from the stage. A friend wrote him, “And thus was Larrymandering invented.”

In late 2016, Lessig founded a new nonprofit, nonpartisan group called Equal Citizens “to fix democracy by establishing truly equal citizenship.” Through the organization, his latest effort in helping fix democracy is a petition asking the Supreme Court, in review of contradictory rulings from the states of Washington and Colora-

do, to address the workings of the Electoral College. (He organized a related conference on the topic at HLS in the fall.) He called the mechanism one of the “least understood disasters at the core of our Constitution,” which, five times in American history including in 2016, has chosen a “president based on an unrepresentative minority.”



With the lawyer David Boies, who represented former Vice President Al Gore in *Bush v. Gore*, Lessig and Equal Citizens are also spearheading several lawsuits to persuade the federal courts to apply the principle of one person, one vote to the Electoral College. The goal is to have each state allocate its electors proportionately, so the percentage

of electors from a state voting for a candidate is the same as the percentage of voters for the candidate in the state.

Lessig immersed himself in politics in large part because of the Court’s momentous 2010 ruling in *Citizens United v. Federal Election Commission*. By a vote of 5-4, with the conservatives in the majority and the liberals in dissent, the Court struck down restrictions on independent spending of corporations, unions, and other organizations in political campaigns—spending not coordinated with campaigns, yet about issues important to them. The conservative majority also affirmed the view that money equals speech. That makes regulation of spending on politics a matter of free speech protected by the First Amendment, so only a compelling interest of the government can justify the regulation.

The Court recognized combating political corruption as a strong interest that justifies limits on campaign spending. But as Lessig wrote in the *Boston Review*, the “only corruption the Court found that justifies suppression of political speech is ‘quid pro quo’ corruption”—trading a political favor for money or some other benefit. There was no evidence of that in *Citizens United* because, as a result of the unusual nature of that litigation, there was no evidentiary record in the case.

He called the quid-pro-quo understanding of corruption “extremely narrow and mistaken.” It ignored “institutional corruption,” what he describes as “an influence, financial or otherwise, within an economy of influence, that weakens the effectiveness of an institution, especially by weakening public trust in that institution.”

Lessig has done extensive research on the conception of corruption held by the framers of the Constitution. Of 325 recorded uses of the term in 18th-century debates about the Constitution’s creation and ratification, he and colleagues found, 56% referred to corruption of an entity like a representative body, such as Congress; 44% referred to corruption of individuals, including the quid-pro-quo kind. When Lessig submitted this research to the Supreme Court in 2013 in an amicus brief, he argued that the Constitution’s framers had “a very specific conception of the term ‘corruption’ in mind.” They were especially concerned about “improper dependence” of institutions, like Congress, in an economy of influence. For Lessig, the brief emphasized, “The Framers viewed corruption as one of the greatest threats to government.”

In “Fidelity & Constraint,” Lessig describes justices on the Right and the Left, who are guided by a fidelity to the Constitution and to the institution of the Court.

“Fidelity

& Constraint” is a surprisingly admiring account of the workings of the Court. Lessig makes the case that justices with opposing philosophies

have used the same method to decide cases. Conservative justices, to safeguard liberty, have limited the power of government to regulate the economy. Liberal justices, to protect the same value, have limited the power of the government to regulate social behavior. He describes how justices on the Right and the Left have reached different kinds of results that matter to them, by interpreting the Constitution with fidelity to its text and with fidelity to their role—to the institutional responsibility of the Court.

These fidelities make up a two-step process of interpretation, which, together, he writes, “make understandable the twists in the history of that institution that are otherwise suspicious.” During the four decades

from the end of the 19th century through the Great Depression, for example, when justices in the Court's conservative majority favored what they called liberty of contract (others called it laissez-faire economics), they demonstrated their fidelity to meaning as they read the Constitution.

The switch in time that saved nine, as it's often been called, occurred when the unpopular Court of the 1930s stopped striking down legislation passed to help revive the American economy during the New Deal. That switch, according to Lessig, is "the most difficult challenge for constitutionalists trying to justify the practice of American constitutional law across its history." If the Court's many rulings reflected its faithfulness to the Constitution's meaning, how did these reversals fit? They didn't, he writes. Instead, they reflected "fidelity to role," in his words. That pushed "the Court away from fidelity to meaning," to concentrate instead on hewing to the role the framers had in mind for it as the least dangerous branch, which should generally be deferential to the legislative and executive branches.

A choice about law that a justice faces arises about facts reflecting a specific moment in time, Lessig goes on, so the context of the choice, or the context's "social meanings," enable and constrain the justice's application of both fidelities. Lessig calls himself a two-step originalist, though

LESSIG EXPRESSES FEAR THAT THE NATION IS NOT FAR FROM A TIME WHEN THE COURT WILL BE "PERCEIVED BY US ALL TO BE POLITICAL."

his brand of originalism allows a justice interpreting the Constitution to read it in a way that fulfills what he understands its purpose to be, going beyond what a one-step originalist would see as its meaning.

A one-step originalist, as he writes, "understands the text in its original context." Lessig's second step of originalism involves carrying "that first-step meaning into the present or target context." Lessig clerked for the late Supreme Court Justice Antonin G. Scalia '60, a champion of originalism, who famously called himself a "fainthearted originalist." Lessig quotes him as saying in that spirit, "I am an originalist, but I am not a nut," meaning Scalia would not defend an understanding of the Constitution's framers

that, as Lessig puts it, "most people" in the 21st century would deem "crazy" based on strong precedential, moral, or other considerations.

The two steps of Lessig's originalism are different from the two steps of his theory of constitutional interpretation, yet they make up an essential element of that process. His is a golden-mean theory, between the rigidity of one-step originalism, which is at once influential and often challenged as a school of interpretation, and the elasticity of the concept of the living Constitution. The practice of this two-step process involving fidelity to text and to role has made the Court "an extraordinary institution within our constitutional tradition," Lessig argues, working closer than either Congress or the executive branch to "the Framers' design."

Mention of

Citizens United appears in "Fidelity & Constraint" only on the second-to-last page of the body of the book. Lessig im-

plies there, without spelling it out, that the corruption of government, which has preoccupied him for the last decade, has affected the Supreme Court as well and that the ruling in that landmark case is an important piece of evidence supporting his view. When former Harvard Law School dean, now-Justice Elena Kagan '86 replaced John Paul Stevens on the Court in August 2010, it was the first time in American history that the institution's ideological divide was between justices picked by Republican presidents (the conservatives) and by Democrats (the liberals).

Lessig writes that the nation has "allowed partisan norms to infect the institution of the judiciary." He expresses fear that the nation is not far from a time when the Court will be "perceived by us all to be political." He says that "the practice of constitutionalism," which his book celebrates, "will not survive" if "justices are openly appointed to reverse the decisions of an earlier Court," like in *Citizens United*, and "if the perception that the work of the Court is only and always inherently partisan continues



to climb.” He is bluntly pessimistic about those ifs.

You might expect an ambitious scholar this alarmed about partisan norms infecting the judiciary to address that development fully in his major work about how the Court decides cases. Lessig does not. The book is full of the context of cases decided over hundreds of years, of course. But the background for any major book about the Court today is the extreme turbulence in American politics, which Lessig has brilliantly schooled us to regard as a primary threat to the nation’s governance. A book about fidelity to the Constitution that touches on *Citizens United* only as an afterthought has not addressed or explained the peril of a critical context for today’s Court decisions, which Lessig acknowledges.

One explanation for this omission comes in the book’s afterword: Lessig began the book back in 1997. Then 36, he had published a law review article called “Fidelity and Constraint,” put the project aside, and became a star in the legal academy because of his pathbreaking work on the internet. After returning to the Court book “from time to time,” he decided to publish it now, at 58. In a recent conversation about the book for this article, he emphasized what he wrote at the end of it: “I’ve got to bring it to a close and get it published, because I’m deeply anxious about whether the Constitution and the Supreme Court, as I’ve conceived of it, will survive.”

“IF I HAD TO MAKE THE ARGUMENT THAT THE COURT AND THE CONSTITUTION WILL SURVIVE, IT WOULD PUT CHIEF JUSTICE ROBERTS AS THE NUMBER ONE REASON.”

Another explanation comes in a second book Lessig published in 2019, “They Don’t Represent Us: Reclaiming Our Democracy.” “Fidelity & Constraint” is the equivalent of a dazzling academic lecture, for scholars, law students, and lawyers who closely follow the Court. With incisive prose and intellectual virtuosity, Lessig presents an ingenious framework and an intricate theory for understanding the Court’s work. The book has a timeless quality. “They Don’t Represent Us” is the equivalent of a super TED talk, for anyone concerned, as he writes in the preface, that the “crisis in America is not its president,” meaning Donald Trump, because the “president is the consequence

In “They Don’t Represent Us,” Lessig argues that American democracy today is as vulnerable as Communism was just before it collapsed in the Soviet Union.

of a crisis much more fundamental.” The second book is about the context for the first.

Lessig argues that the state of American democracy today is as vulnerable as that of Communism just before it collapsed in the Soviet Union, because democracy now caters to the nation’s elite and no longer works for the *demos*—the people. The book contains a mea culpa. In the past decade, he says, it was a mistake for him to call money “the root to the problems of this Republic.” Campaign funding *is* a problem, he writes, but as “just one example of a more fundamental problem: unrepresentativeness.”

Voting doesn’t represent citizens equally, because the clear effect of expanded requirements of voters, like voter-identification laws, has been to diminish participation of Democrats, especially minorities, with little deterrence of Republicans. So-called representatives, like members of Congress, don’t represent citizens equally because gerrymandering of districts favors candidates with extreme positions in primaries and drives out moderate politicians who would represent moderate voters. The Senate, by definition, which has two members from each state, heavily favors small states over big ones and, because of Senate rules, allows 41 senators representing only 10% of Americans to block legislation backed by 90%. The Electoral College, which has a 20% likelihood of picking a president who loses the popular vote in a close election, gives older, whiter voters added influence because they dominate in swing states, which determine the outcome of presidential elections.

The upshot is a government that no longer addresses the country’s biggest challenges, Lessig argues. For two decades, a majority of Americans have recognized climate change as a crisis, but Congress has failed to take comprehensive action. The American Society of Civil Engineers says that the country’s infrastructure is “mostly below standard,” but Congress has yet to deal with the problem on the scale it requires. The economy buoyantly serves a narrow segment of the population, while ill-serving the vast majority, because the weakest part of the economy is now the political system that shapes it, which favors that elite. Fixing deep structural flaws of the economy requires major

changes in national public policy. The incapacitating corruption of the political system now makes those changes impossible.

In “They Don’t Represent Us,” Lessig explains why this calamity has happened—why (quoting the scholar Kirby Goidel) “‘We the people’ are simply not up to the task of self-governance.” The heavy reliance of American media on advertising revenue pushes them to favor content that attracts eyeballs, rather than the kinds of facts and opinions citizens need to make informed choices about politics, policies, and public affairs. In addition, the unifying source of information that Americans had when the broadcast media of radio and television reached a high percentage of news consumers has given way to narrowcasting and fragmentation in the digital age. Many more sources of content now compete for consumers’ time and attention. Consumers can choose what to tune in to and what to tune out. They inhabit bubbles reinforcing their biases. “On many issues,” Lessig writes, “we are fundamentally divided, in part because our values are different, but in the main because our understanding of the facts is radically different. What ‘we know’ we won’t know in common. And that fact affects fundamentally how we get represented.”

The bubble

problem besets the Supreme Court, buffeting its legitimacy. In June 2019, when the Supreme Court blocked the

Commerce Department from adding a question about citizenship to the 2020 census, Mark Levin, an extreme and influential conservative commentator about the Court, tweeted to his 1.76 million followers, “John Roberts becoming a laughingstock as a Chief Justice.” Levin has the force of conservative populism on his side.

In “They Don’t Represent Us,” Lessig writes: “I am a populist who does not rage. I feel the emotion of this moment as fully as any. But the fearful urgency of now calms me.” A third explanation why Lessig didn’t include much about *Citizens United*

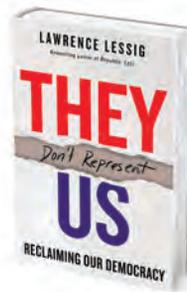
in “Fidelity & Constraint,” he said, is that the ruling’s ideological nature doesn’t set it apart. While “you could say that there’s a deep ideological frame to everything the Court does,” one of the points of the book “is to get a reader to recognize the way that deep ideological frame has constantly affected the way the Court bends the law or just shifts the direction of the Constitution.” He doesn’t think the Court is corrupt in the sense that he’s “describing Congress as corrupt,” nor does he think the ruling “is a product of corruption.” In time, he expects the Court to revise its views about regulation of campaign finance.

If he could add a case to “Fidelity & Constraint,” he said, it would be the subject of Levin’s laughingstock tweet, *Department of Commerce v. New York*. There, by 5-4, the Court found that the reason the secretary of commerce gave for including that question about citizenship “seems to have been contrived.”

Chief Justice John G. Roberts Jr. ’79 wrote the opinion of the Court. Its four liberal justices supported the section of the opinion about the secretary’s pretext. According to Lessig, “It’s quite clear that the citizenship question represents the grossest kind of manipulation for partisan reasons, and the Court just wasn’t going to be a party to it.” He went on to say that the chief justice did that “for the kind of fidelity-to-role reasons that I am trying to elevate as central to our understanding of the Supreme Court”—to institutional responsibility.

“I’m a big fan of Roberts,” he said, “not because I like his politics but because I think that he’s a deeply institutional chief justice. If I had to make the argument that the Court and the Constitution will survive, it would put Chief Justice Roberts as the number one reason.”

Lincoln Caplan ’76 is a visiting lecturer and a senior research scholar at Yale Law School and the author of six books, including “American Justice 2016: The Political Supreme Court.”



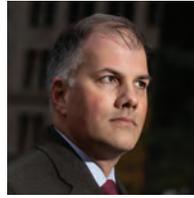
Prepared

As students, they participated in the Harvard Immigration and Refugee Clinical Program. As lawyers,

for the

they have continued the work in a field that is increasingly challenging—and fulfilling | BY CARA SOLOMON

Challenge



It was just the seed of an idea 35 years ago: a clinic that would train students to work in the emerging field of immigration law. Back then, asylum law was only a few years old.

Today the Harvard Immigration and Refugee Clinical Program, or HIRC, is a leader in the field. The program trains more than 130 students a year in direct representation, policy advocacy and appellate litigation; represents more than 100 clients annually; and supervises a student practice organization, the HLS Immigration Project.

But in the beginning, it was just Deborah Anker LL.M. '84, who co-founded HIRC with John Willshire Carrera and Nancy Kelly to fill a critical gap in legal services for immigrants and refugees. Although immigrants have a right to counsel in immigration proceedings, it's at their own expense. And many can't afford a lawyer. HIRC's bottom-up approach of representing individuals through all stages of the immigration process—from the trial level up to the Supreme Court—reflects its client-centered practice.

As the law itself has evolved, so too has HIRC. Anker continues to support the program as founding director, and former Assistant Director Sabrineh "Sabi" Ardan '02, who specializes in trauma and refugees, now leads the program as HIRC's recently appointed faculty director. Phil Torrey, managing attorney and lecturer on law, joined the team in 2011 and created HIRC's Crimmigration Clinic, expanding the program's docket to tackle the intersection of criminal law and immigration, given how intertwined the fields have become. Several years ago, HIRC became among the few clinical programs to hire a social worker to support the needs of clients, students and staff.

Through the years, HIRC challenged the immigration policy changes of five administrations, from the near-ban on Central American and Haitian asylum claims under President Reagan to the increased immigration enforcement that earned President Obama the nickname "deporter in chief."

Still, nothing could prepare HIRC for the Trump administration, which has escalated detentions and issued a flood of

new directives aimed at deterring refugees and immigrants from coming to the U.S. For years, Anker advocated to get gender-based violence designated as grounds for an asylum claim, ultimately working with the government to issue historic guidelines that set the stage for similar measures internationally. Then in one fell swoop, U.S. Attorney General Jeff Sessions issued a decision in 2018 that attempted to rewrite asylum law to prevent people fleeing gender-based and gang-based violence from getting protection in the U.S. at all.

"We've got a real fight on our hands," said Anker, who wrote the seminal book on asylum law. "But we're up to the task."

HIRC has been in overdrive, challenging everything from the intentional separation of thousands of families to the closing of the southern border for the vast majority of asylum seekers.

In addition to direct representation, staff and students are filing appeals in federal court on issues such as gender-based asylum and immigration detention; conducting policy advocacy on everything from sanctuary cities to solitary confinement in detention; and filing amicus briefs that challenge asylum bans and Immigration and Customs Enforcement courthouse arrests. They're leading Know Your Rights trainings all around Greater Boston. And they're staffing a Harvard-funded initiative, created in 2017, that provides immigration and legal support to any member of the Harvard community.

"In a constantly changing legal landscape, we're working as hard and as fast as we can to meet the need," said Ardan. "It's encouraging to know so many of our alumni are out there, doing the same thing."

Indeed, HIRC alumni are working all across the immigration field, from government to academia to private firms to advocacy organizations. In interviews with several, they framed their work as urgent and necessary—both harder than ever and extremely fulfilling. They also described HIRC as an essential training ground, not only for learning the legal basis of the work, but for understanding the care and compassion it takes to do it well.

Here are a few of their stories. →

CARA SOLOMON is founder and director of Everyday Boston, a nonprofit that teaches people of all ages and cultures how to reach out for each other's stories.

BRIANNA RENNIX '18

Staff Attorney, Dilley Pro Bono Project, Dilley, Texas

In a small trailer, surrounded by hundreds of other trailers, encircled by a fence, in the middle of South Texas scrubland, Brianna Rennix does her work. Sometimes it takes 12 hours. Sometimes it takes more. At some point each day, she leaves the largest family detention center in America, drives five minutes through the small town of Dilley, and settles in to work some more at home.

“It’s more of a lifestyle than a job,” said Rennix, a staff attorney with the Dilley Pro Bono Project, which provides universal representation to thousands of asylum-seeking families, mostly Central Americans, who are detained at the center each year.

Rennix first visited the detention center, formally known as the South Texas Family Residential Center, in the summer of her 1L year. And what she saw there, and heard there, she could not get out of her

“Policies that are words in the news impact our work within 24 hours and alter what our clients have to prove.”

mind. Back at school, she immersed herself in HIRC, grounding herself in the legal standards, learning to develop arguments, and working under some of the strongest immigration advocates she knows, including Willshire Carrera and Kelly.

“John and Nancy really exemplify what it means to dedicate your entire life to a moral cause,” she said.

Rennix’s first client as a 2L fit the description of so many of her clients now: a woman fleeing Central America with her child after surviving severe domestic violence. HIRC specializes in these gender-based claims, an overwhelming majority of which they win.

At some point in the process, it occurred to Rennix that her client was not just fighting for asylum. She was fighting for stable housing, for mental health support, for work that would not exploit her, for relationships that would be safe.



“She had so many other stressors that made her daily life hell to live,” said Rennix.

In keeping with its holistic approach to client work, HIRC provides as much support as it can. A social worker, Liala Buoniconiti, works closely with clients, as well as students and staff, to connect them to re-



sources and provide trauma-sensitive support. Before difficult meetings, she'll lead clients through breathing practices and other calming techniques.

"I do think that's so valuable to have those resources," said Rennix. "I work in an environment now where nothing like that is possible."

That environment reminds her of a Japanese internment camp, she said, with trailers set up for people who are detained, and a trailer provided for lawyers, without so much as a sign to let people know the services provided inside.

"We have to rely on people magically knowing we're

Photograph by
MATTHEW MAHON

there and coming to see us,” said Rennix.

As a staff attorney, she spends most of her days preparing clients for credible fear screenings or for reviews of negative decisions in immigration court; training groups of new volunteers, who arrive every week to provide support for five days; and reading through the latest news.

“A lot of the policies that are words in the news impact our work within 24 hours and completely alter the face of what our clients have to prove, and the likelihood they’ll be deported,” she said.

In July, it was the attorney general’s decision to limit asylum claims based on family membership. In September, it was the “third country transit ban,” barring most people from asylum if they travel through a third country on their way to the southern border of the U.S.

Add to that procedural changes that made it harder for families to access counsel and gather evidence for their cases, and all of a sudden, said Rennix, success rates for credible fear interviews at Dilley dropped drastically from 99 percent.

Still, there are good days at Dilley, particularly with colleagues so united in what they do. Last year, Rennix said, a group of attorneys from several firms and organizations advocated for a group of families who were previously separated under the government’s “zero tolerance” policy and detained at Dilley for many months; the lawyers reached a settlement with the government that allowed the mothers another chance to be interviewed.

All of the women passed their credible fear interviews, allowing them to pursue their asylum claims, and the mothers and children were finally released from detention.

“We got to take them all to the airport and see them off,” said Rennix. “So that was really nice.”

But of course there are the bad days, when families are deported or separated, and Rennix can do nothing at all. Recently she drove hours to visit a woman who was removed from Dilley, separated from her son and sent to an adult detention center alone.

“That was a really painful meeting,” she said. “The woman basically said, I would rather be dead than have this happen to me.”

And yet there is nothing Rennix would rather be doing with her life. She has the skills to do this work; it feels, she said, like her moral obligation to use them. It makes no sense to her, the way the Trump administration is targeting Central American immigrants.

“The whole legal system is stacked against them,” said Rennix, speaking of her clients. “You have to do anything you can to throw yourself in the way of that—sometimes to make the bad laws better, sometimes to stop the bad laws from working at all.”

MARK FLEMING '97

Partner and Vice Chair, Appellate and Supreme Court Litigation Practice, WilmerHale, Boston

Five cases argued before the U.S. Supreme Court. Twenty-two years of work as a lawyer. And still, Mark Fleming will never forget the woman from Congo, the first client to trust him with her life.

It was his 2L year. Fleming, a Canadian, had enrolled in the clinic with a personal interest in immigration law; he was a green-card holder himself. But he also found the field intellectually interesting—a mix of constitutional law, administrative law, litigation, civil rights and international law. And there was no better guide to it than Anker.

“She’s just a phenomenal teacher,” said Fleming. “One really got the sense of somebody who had not only mastered this area of law from an academic point of view, but also understood the practice of it.”

At first, when Fleming and his client met in the cramped office, the client was shy and reserved. But Fleming knew her language—French—and began to speak it. From that point on, everything shifted.

She opened up. She asked to read the materials he

“The client deserves—and should be given—a direct role. The result is better for it.”

prepared. She provided comments. It was a lesson he would carry with him throughout his career.

“The client deserves—and should be given—a direct role,” he said. “The result is better for it.”

Decades later, Fleming is a partner at WilmerHale, an appellate generalist who argues cases on everything from intellectual property to complex business disputes. But immigration cases remain a large part of his pro bono practice.

It’s a particularly tangled area of the law, he said, which means appellate courts are often setting the agenda on any number of issues, and disagreeing; occasionally, the matter moves up to the Supreme Court. Soon Fleming will argue his sixth case before that Court, *United States v. Sineneng-Smith*, challenging a statute that makes it a federal crime to “encourage” someone who is in the U.S. without immigration status to remain in the country.

“There’s no shortage of opportunity to find areas



Photograph by
MARK OSTOW

where you can actually make a difference,” he said.

In his first immigration case to reach the Supreme Court, *Judulang v. Holder*, the Court unanimously ruled that a Board of Immigration Appeals policy denying certain lawful permanent residents the opportunity to seek relief from deportation was “arbitrary and capricious.” The ruling affected thousands of people.

But Fleming was most concerned about one: his client, Joel Judulang. Before the Supreme Court agreed to hear the case, Fleming warned him it was a long shot. He advised Judulang to prepare to be deported any day.

“Hug your mother,” he advised his client.

Then came the break: The Court agreed to hear his case. In a move that impressed his lawyer, Judulang requested a copy of the Supreme Court’s notice, so that he could bring it to his check-ins with ICE officials, as proof that he shouldn’t be deported. He became something of a celebrity—the client with the case at the Supreme Court. Every time he checked in, ICE officials would ask how it was going, until the day he could finally tell them the good news:

We won.

GEEHYUN SUSSAN LEE ’15

Appellate Counsel, Center for Appellate Litigation, New York City

It helped that she was a first-generation immigrant herself. Sussan Lee could settle into a conversation with her client, a West African immigrant, about the oddities of everyday American life. They had that kind of newness in common.

But the similarities ended there. Lee had emigrated from Korea easily as a child. Her client was pushing through a years-long process. Strangers were asking him to detail the ways in which he was persecuted for his sexual orientation—first one pair of students, then another, and then finally, at the end of the process, a judge.

“It affected me a lot to see how I had sort of sailed through the immigration process based on my parents’ work, when this person who was right around the same age as me, and really arguably needs to stay in the U.S. a lot more than me, has to jump through a lot more hoops to do so,” Lee said.

After graduation, Lee became a fellow with the Immigrant Justice Corps, the country’s first fel-

lowship program dedicated to meeting the need for quality legal services for immigrants; she worked mostly with Korean and Chinese immigrants at the MinKwon Center for Community Action in Queens. From there, she moved to a public defender office in Queens, where she provided noncitizen defendants with immigration consequences advice.

It was frustrating work. Many of the defendants came in with deportable offenses already on their records—a result of poor legal advice early on. And though the offenses were often minor, and decades old, the only way to help them avoid deportation was to refer them to a public defender at the appellate level, who could then work to vacate their prior convictions.

So when Lee spotted an opening at the appellate level, she jumped at the chance to do the work herself.

“It really feels like the Hail Mary pass,” said Lee, of vacating prior convictions. “For a lot of our clients, this is the only thing that can potentially give them an avenue for staying with their families.”

It takes time—tracking down the original defense attorney, trying to locate a case file that’s often decades old. And in today’s immigration court, Lee said, there is not much time to go around. Judges are under pressure; cases are moving forward fast. And there are other complications that came with the new administration.

There was a time, not too long ago, when the courthouse was a safe space for Lee’s clients. Of all the obstacles they faced as immigrants charged with a crime, they did not have to worry about the walk to the courtroom. They did not have to worry about getting the opportunity to present their case.

Now plainclothes ICE officers have taken to waiting in courthouses, arresting immigrants charged with deportable offenses as they walk in. Since 2016, New York has seen these arrests increase 1,700 percent.

Given that, Lee said, lawyers are forced to make

She had sailed through the immigration process, and it seemed unfair her client had to jump through so many hoops.

their clients aware that, if they fight the charges against them, they are putting themselves at risk by having to return to court repeatedly as the case progresses.

“It really puts them between a rock and a hard place,” said Lee, who helped write a New York City Bar Association report on this issue. “Some people are so petrified at the prospect of getting arrested that



Photograph by
BETH PERKINS

they'll say, 'I just want to be done with this and never come back and not put myself at that risk.'"

The directive has been challenged in a number of jurisdictions, including in New York and Massachusetts, but the practice is ongoing. HIRC filed an amicus brief challenging it, arguing that the chilling effect prevents immigrants from asserting their right to due process.

Despite the obstacles facing her clients, Lee's office has a high success rate. And when she finds herself in a tough spot, Lee herself has a mentor: Phil Torrey, director of HLS's Crimmigration Clinic.

"Because I know him to be the subject-area expert, I sometimes reach out to him about cases I have here," said Lee. "My hope is that if he ever has clients that have New York convictions, I'll be able to return the favor."

GIANNA BORROTO '11

Senior Attorney, National Immigrant Justice Center's Federal Litigation Project, Chicago

Every week, the woman from Guatemala would bring her children. First, she would settle them into chairs to play with their toys. Then the woman, a small-business owner in her home country, would walk into the office, close the door and sit down to review some of the worst days of her life.

Over the course of several months, under the supervision of Ardalan and Anker, Gianna Borroto and another student attorney interviewed the woman, piecing together an affidavit; researching the country conditions; working on the legal argument; and representing the woman, finally, in her successful asylum hearing.

Borroto carried all these legal skills and experiences with her into a career at the National Immigrant Justice Center in Chicago. But there was something else she carried.

"The way Sabi interacts with clients, her human approach to working with clients, I think that's stayed with me throughout all my work—especially my work with kids," Borroto said.

Borroto had always wanted to work in human rights; the only question was where. Once she joined HIRC, the work seemed like a natural fit. Born in Cuba and raised mostly in Miami, Borroto was familiar with the experience of leaving her home country at a young

age, like so many others in that multicultural city.

At NIJC, she worked mostly with unaccompanied minors—visiting shelters, giving Know Your Rights presentations, representing young people in their claims, often from start to finish.

Many of the young people have no family in the U.S., and no social support. For years, Borroto helped connect them with therapy. She signed them up for school. She saw them through the height of the Trump administration's 2018 zero tolerance policy, which included family separations.

"Sometimes, the little kids seemed OK on the surface, but we would hear that they were wetting their beds or showing trauma in other ways," said Borroto. "Speaking with the mothers was even harder because they could tell us how much they were suffering."

One boy stands out from that time—an 11-year-old released from custody and referred to Borroto with only a few days to prepare for his asylum hearing. Together, on that tight timeline, they teased out the story of his life and prepared him for his interview with the Asylum Office. He won asylum a few weeks later.

Borroto still remembers the day they delivered that good news to the judge in the boy's removal proceedings. There her client stood, a little boy wearing a suit.

"And people started clapping—the attorneys, everyone in the courtroom," she said.

The work was meaningful and fulfilling. But a couple of years ago, something shifted. That's when Borroto joined NIJC's Federal Litigation Project.

"Under this administration, seeing all the policy changes and how they were directly impacting my clients, I felt like I needed to do more to create change on a broader level," she said.

Last month she was at trial with a federal class-action lawsuit against the Department of Homeland Security and U.S. Immigration and Customs Enforcement for transferring unaccompanied minors who reach their 18th birthdays to ICE adult detention facilities without considering less restrictive placements.

She's also part of lawsuits challenging a November 2018 ban on access to asylum for anyone who enters the United States without being authorized to enter at an official port of entry, and the more recent third country transit asylum ban.

The work is tougher than ever. In response, NIJC has increased training on self-care and organized yoga sessions. Borroto has also found a creative outlet to distract her: learning to play guitar.

And when all else fails, there's the relief of the holiday season, when so many of the young people Borroto represented reach out to let her know they're in school; they're at work; they're getting married. They're OK.



Photograph by
PAUL ELLEDGE

Jimmy Hoffa loomed large over the Teamsters union. After his disappearance in 1975, the FBI decided that his right-hand man, Charles O'Brien, was involved and leaked its suspicions to the media. O'Brien's stepson says that ensuing stories were riddled with false information.



JIMMY HOFFA'S DISAPPEARANCE REMAINS A MYSTERY.

HARVARD LAW PROFESSOR JACK

GOLDSMITH SET OUT TO SOLVE IT THROUGH

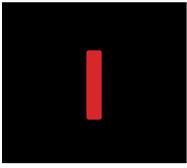
THE PRIMARY SUSPECT — HIS BELOVED

STEPFATHER, FROM WHOM HE HAD

BEEN ESTRANGED FOR 20 YEARS

T H E
STEPFATHER,
PARTS I,
II AND III

BY ELAINE MCARDLE / ILLUSTRATION BY DANIEL ZALKUS



IT'S ONE OF THE MOST NOTORIOUS UNSOLVED crimes in American history: the mysterious disappearance, in July 1975, of Jimmy Hoffa, charismatic former president of the powerful Teamsters union, beloved by

union members, and a seminal leader in the American labor movement. Hoffa's tight relationship with the Mafia became an obsession for Attorney General Robert F. Kennedy, who in the 1960s created a "Get Hoffa" team that resulted in Hoffa's five-year prison stint. Four years after being pardoned by President Richard Nixon, Hoffa disappeared. Though he was declared legally dead in 1982, his body has never been found, and his exact fate remains unknown despite vigorous efforts to uncover the truth by law enforcement, journalists, and filmmakers.

Seven years ago, Jack Goldsmith, Harvard Law School professor and a former assistant attorney general in the George W. Bush administration, set out to solve the case. His motives were deeply personal: For 38 years the spotlight of suspicion had shone on Hoffa's closest confidant, Charles "Chuckie" O'Brien, a rough-hewn union man with close Mafia ties and the inspiration for the consigliere character Tom Hagen in "The Godfather." O'Brien, who has always proclaimed his innocence, is Goldsmith's stepfather. If he was clean—and Goldsmith had no idea if he was—Goldsmith hoped to clear his name. It was, in many ways, an act of penance: In order to further his own legal career, Goldsmith for 20 years had refused any contact with his loving and supportive stepfather.

With the aid of his stepfather's inside knowledge, Goldsmith was certain he would succeed where others failed. Now, after conducting dozens of interviews with FBI agents and other Hoffa experts, poring over thousands of pages of government documents including transcripts of illegal wiretaps, and spending thousands of hours in often-painful conversations with O'Brien, Goldsmith has written "In Hoffa's Shadow: A Stepfather, a Disappearance in Detroit, and My Search for the Truth." Published by Farrar, Straus and Giroux in the fall, the memoir-cum-whodunit has garnered rave reviews for its historical relevance, exquisite writing, and raw depiction of the complex relationship between Goldsmith and his stepfather. Bill Buford, former fiction editor of *The New Yorker*, calls it a "thrilling, unputdownable story that takes on big subjects—injustice, love, loss, truth, power, murder—and addresses them in sentences of beauty and clarity informed by deep thought and feeling." HLS Professor Lawrence Lessig says, "This book will make you weep, repeatedly, for the injustice, and for the love."

GOLDSMITH HAD ONE REQUEST OF HIS STEPFATHER: "YOU HAVE TO TELL ME THE TRUTH." THAT WAS COMPLICATED.

"In Hoffa's Shadow" is peopled by the parade of famous and sometimes-treacherous characters who touched O'Brien's life: Robert F. Kennedy, Richard Nixon, major mob figures, federal prosecutors. In Goldsmith's examination of some of the darkest aspects of 20th-century America—the violent history of organized crime, the growth of the surveillance state, the rise and decline of organized labor—he pulls no punches, especially when revealing his stepfather's flaws, and his own. The most unusual aspect of "In Hoffa's Shadow" is that it was born through a complex cat-and-mouse game between two men who love each other but have very different concepts of truth. "I had no expectations about what would happen when I started out on this book," says Goldsmith in an interview with the *Harvard Law Bulletin*. "I really thought [Chuckie]

had been given a bad shake." Goldsmith believed that by pressing his stepfather for what he knew, and exhaustively analyzing all the evidence, he could at least "give him a fairer shake. That was my main ambition." But he reveals a more wrenching motivation. "I wanted to make up for my past mistreatment of him," Goldsmith admits. "I wanted to give him a fair shake because he had had terrible luck his whole life in terms of not just what happened to him with [Hoffa's] disappearance but just about everything."

While working on the book drew the two men closer than they'd ever been, "I had no idea what an ordeal it was going to be," Goldsmith says. He had one request of his stepfather: "You have to tell me the truth." It turned out to be a complicated request.

"Chuckie was committed to Omertà, I was committed to its opposite, but we were both committed to each other. . . . He was always on guard for forbidden topics, and was brilliant, when he wanted to be, at resisting my probes."
—"In Hoffa's Shadow"

For O'Brien, born in Detroit to a Sicilian mother with close mob ties, unvarnished truth-telling takes a back seat to Omertà, the Sicilian code of silence. Omertà "really ordered the way Chuckie looked at the world," says Goldsmith. "It was at the core of his identity because it constituted honor and loyalty, and I think those are the two things he cares about most." As Goldsmith pushed him to share what he knew, his stepfather's reluctance to be forthright "wasn't because he feared having to go to [witness protection] or he feared death," says Goldsmith. "I think it was [because he thought] it wasn't the right thing to do." Things that his stepfather didn't want to talk about—including exactly how much he knew about Hoffa's fate—"were the things that I wanted to talk about most," he says.



HLS Professor Jack Goldsmith, author of "In Hoffa's Shadow"



Jimmy Hoffa (left) with Charles "Chuckie" O'Brien, his closest confidant and Jack Goldsmith's stepfather

While he found it frustrating, “Over time, in a kind of perverse way, I grew to admire this,” says Goldsmith, “not because I admire what it represents in the organized crime world but because it was a principle that [Chuckie] really gave everything for in his life, and that he held on to for his entire life.”

“Chuckie was my third father, and my best.”
—“In Hoffa’s Shadow”

Before Chuckie O’Brien married Goldsmith’s mother, in 1975, Goldsmith had no consistent male figure in his life. “I was doing OK, but I wasn’t doing great,” recalls Goldsmith, whose birth father abandoned his family, and whose first stepfather, “distant but stern,” divorced his mother when Goldsmith was 11. His new stepfather was a steady force, physically strong and, “in a strange way, even though it’s not true of many aspects of his life, a morally strong person. I mean he had a strong sense of right and wrong.” Because of him, says Goldsmith, “I grew as a person and kind of on the right path in a way I’m sure I never would have.”

O’Brien’s unconditional love was all the more remarkable because of the intense stress he faced: Shortly after O’Brien entered Goldsmith’s life, Hoffa disappeared. The FBI quickly decided O’Brien was involved and leaked its suspicions to the media to pressure him into cooperating with the investigation. “And yet despite all that stuff going on, I remember those five or six years as a time of happiness and stability, strangely enough, and that’s all due to him,” Goldsmith says. In return, Goldsmith loved and admired his stepfather, “and of course that means that I came to admire the things he admired. I admired the Teamsters. I kind of had a sanguine attitude about what I understood as a teenager about the Mafia.” In fact, as a teen, Goldsmith knew Mafia boss Anthony Provenzano—who looms large throughout the Hoffa case—as the generous “Uncle Tony” who gave him and his brothers a pool table, and Goldsmith was treated to lunch by Anthony Giacalone, “part of my new family.” Only later did Goldsmith learn of Giacalone’s legendary propensity for violence and suspected role as mastermind in Hoffa’s case.

“When I set out on my professional path in law school, however, I renounced Chuckie out of apprehension about his impact on my life and my career. . . . Chuckie had done nothing affirmatively to hurt me, and indeed had only ever shown me love.”
—“In Hoffa’s Shadow”

GOLDSMITH PULLS NO PUNCHES, ESPECIALLY WHEN REVEALING HIS STEPFATHER’S FLAWS, AND HIS OWN.

In college, Goldsmith’s views shifted as he began reading about the mob and Hoffa’s disappearance. There was also the day when a “big, thuggish” repo man appeared at his door to repossess a car his stepfather had given him. “That, for a strange reason, scared the hell out of me,” says Goldsmith, who says that may have been the moment he decided that he couldn’t depend on his stepfather. After college, Goldsmith—who’d been legally adopted by O’Brien and taken his last name—went to court to change his name back to Goldsmith. It devastated his stepfather, and, as O’Brien’s legal troubles grew, “I basically tossed him under the bus.” Goldsmith winces now at the memory: “It was really an act of pretty extraordinary disloyalty.”



IS REJECTION OF HIS STEPFATHER ACCELERATED. During law school, Goldsmith took a job with a D.C. firm, Miller, Cassidy, Larroca & Lewin, where three of the name partners had been involved in Robert Kennedy’s efforts to get Hoffa. Goldsmith didn’t tell the firm of his own connection to Hoffa, and he now believes that he chose the firm because it included lawyers “who Chuckie knew and didn’t like, and they represented a conception of justice in the legal profession that was exactly the opposite of what [Chuckie] represented.”

Without the baggage of his stepfather—Goldsmith received security clearances after proving he’d cut off all ties to O’Brien—his career soared. In 2003, as assistant attorney general in charge of the Office of Legal Counsel in the Justice Department, Goldsmith concluded that Stellarwind, George W. Bush’s secret post-9/11 warrantless surveillance program, had serious legal problems, as he detailed in his 2007 New York Times bestseller, “The Terror Presidency.” Late one night,

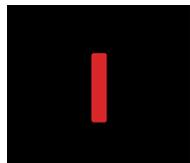
while researching the history of government surveillance, Goldsmith came upon a citation to *O’Brien v. U.S.*, which had overturned his stepfather’s conviction for stealing a statue of St. Theresa from a sunken ship in the Detroit harbor because it was based on illegal wiretaps. “Basically, it was a validation of something he had told me a lot as a kid, which is that ‘these Justice Department sons of bitches, those elite, terrible people in the Justice Department, they break every law there is. They were bugging us and wiretapping us, and they were hounding us for violating the law, but they were violating the law,’” says Goldsmith.

The parallels with Goldsmith’s concerns about Stellarwind were striking. “I was sitting there working on a program that had many of those characteristics ...

reading about something similar that had happened to him that he had always told me about that I didn't believe," recalls Goldsmith. Over time, "I changed my views on a lot of things as a result." Perhaps most consequentially, Goldsmith says, he came to "appreciate the dangers and evils of the surveillance state." While he sees government surveillance as a vital tool for security, "I learned that there were these cycles of abuses related to surveillance and the government has a tendency to cut corners the way Chuckie said."

The discovery of his stepfather's Supreme Court victory prompted another major shift in Goldsmith. "I hadn't thought about him in a long time; frankly, that was the beginning of a process that led us to reconcile."

"We had barely spoken for two decades by the time of my service in the Justice Department. I left government in 2004 to become a professor at Harvard Law School, and soon afterward Chuckie and I patched up and once again grew very close. . . . 'You don't need to apologize, Son,' he said. 'I understand why you did what you did.' And that was that. . . . For the rest of his life, he acted as if those twenty years didn't happen." —"In Hoffa's Shadow"



IN 2012, GOLDSMITH BEGAN TO RESEARCH the Hoffa case and related issues. Through his research, Goldsmith says, he gained a much deeper appreciation of the American labor movement and the American worker

that he had always had a kind of abstract academic attitude toward. "I had kind of favored employers over labor. I had a market theory about the way the world is supposed to work, and that didn't survive untouched by this examination."

His hundreds of conversations with O'Brien led to fascinating revelations about important historical events, including his stepfather's jaw-dropping account of carrying a million dollars in cash to a hotel room so that Nixon would commute Hoffa's prison sentence, a payoff about which rumors have swirled for decades. "There are a lot of things that I didn't include in the book that he told me because I couldn't verify it and I didn't want to make the book sensationalistic—a lot of things," says Goldsmith. "But that one I included because I was convinced by it."

While always careful not to breach Omertà, his stepfather did share his eyewitness accounts of other major

historical events; for one, he scoffed at longstanding rumors that Hoffa was involved in the assassination of John F. Kennedy. "I believe him on that, too," says Goldsmith, although O'Brien says Hoffa did assist in providing airplanes and equipment for the Bay of Pigs invasion. One of the book's many colorful anecdotes involves O'Brien delivering a human head from a cadaver to the editor of The Detroit News as a warning. After enormous effort, Goldsmith was able to corroborate the story, but he has no idea if it inspired the infamous horse-head-in-the-bed scene in "The Godfather."

"For some reason the gods just decided to position him where so much of his life would be chewed up in the clash between an implacable government and an implacable Mafia." —former FBI investigator Jim Dooley, —"In Hoffa's Shadow"

But the key mystery, of course, was Hoffa's fate. "What is truth when it comes to the Hoffa disappearance? This is one of the many frustrations I had in writing the book," Goldsmith says. "There are literally 45 years of encrusted misinformation that has grown up in the public about what happened to Hoffa," in large part due to strategic leaks to the media by law enforcement.

Ultimately, Goldsmith was unable to unmask what happened to Hoffa. However, after a meticulous scouring of all of the evidence, he is convinced his stepfather wasn't involved in Hoffa's death. "I don't think he would have done it. That would have been the ultimate conflict for him, Omertà versus his love of Hoffa. I don't think he had to face that." Nor does he believe O'Brien actually knows who acted on the afternoon of July 30, 1975. "I think he knows more than he told me, but I don't think he knows that."

Key FBI investigators also became convinced that O'Brien wasn't involved in Hoffa's disappearance. One agent in particular offered to help clear O'Brien's name; the FBI agreed that if he came in for one more interview, they would give him a letter exonerating him. Though in ill health and skeptical of the offer, O'Brien agreed, and Goldsmith accompanied him to the meeting. But for inexplicable reasons—perhaps embarrassment over the government's having fingered the wrong man for so long—then-U.S. Attorney for Michigan Barbara McQuade refused to follow through.

"The world still thinks he did it, but the government came to believe he had nothing to do with it," says Goldsmith. "I so wanted him to have that letter for all the pain he had gone through. I was absolutely furious, but there was no recourse."

HIS STEPFATHER DESCRIBED CARRYING CASH TO A HOTEL ROOM SO PRESIDENT NIXON WOULD COMMUTE HOFFA'S SENTENCE.

T

HERE IS A PARADOX AT THE HEART OF this story that may help assuage Goldsmith's regret for the way he treated his stepfather: Had he not rejected his stepfather for two decades, it's unlikely Goldsmith's legal

career would have carried him to a top position in the Justice Department. And without those prestigious credentials, would the FBI have assisted him in his research? Would the U.S. attorney have agreed to meet with Goldsmith as he urged them to exonerate O'Brien?

"There is no doubt that these people knew who I was from the Bush administration, and there is no doubt that they talked to me and arranged this deal and we had these conversations and they trusted me in part because of that. ... [T]hey might not have done that for just anyone," Goldsmith agrees.

Still, it wasn't enough. O'Brien, who never trusted the feds' offer, was perhaps less disappointed than his stepson.

O'Brien, who recently turned 86, lives in Florida with Goldsmith's mother, Brenda, and is a doting grandfather to Goldsmith's children. "We talk every day, and he is a great guy and my children love him," says Goldsmith. "He has just got this weird charm and integrity. It's very hard to explain." Goldsmith planned to publish the book after his stepfather's death. But a new Martin Scorsese movie, "The Irishman," was scheduled to be released in the fall of 2019, and, like so many films and books, it portrays O'Brien as complicit in Hoffa's vanishing. O'Brien wanted his truth to be told.

"He knew that I had a lot of evidence that cleared him from the charge, so he wanted the book out," says Goldsmith, who shared the manuscript with his stepfather last spring. "I said, 'What do you think?' And he had a very sad face, and he said to me: 'I read every word. You wrote a great book. Congratulations.'" Goldsmith, always alert to his stepfather's truth-shaping, wonders: "Did he actually read every word—is he OK with it? Did he not read it because he didn't want to know? Did he read it and hate it, but he loves me so much he wants me to publish it? I don't know. I still don't know."

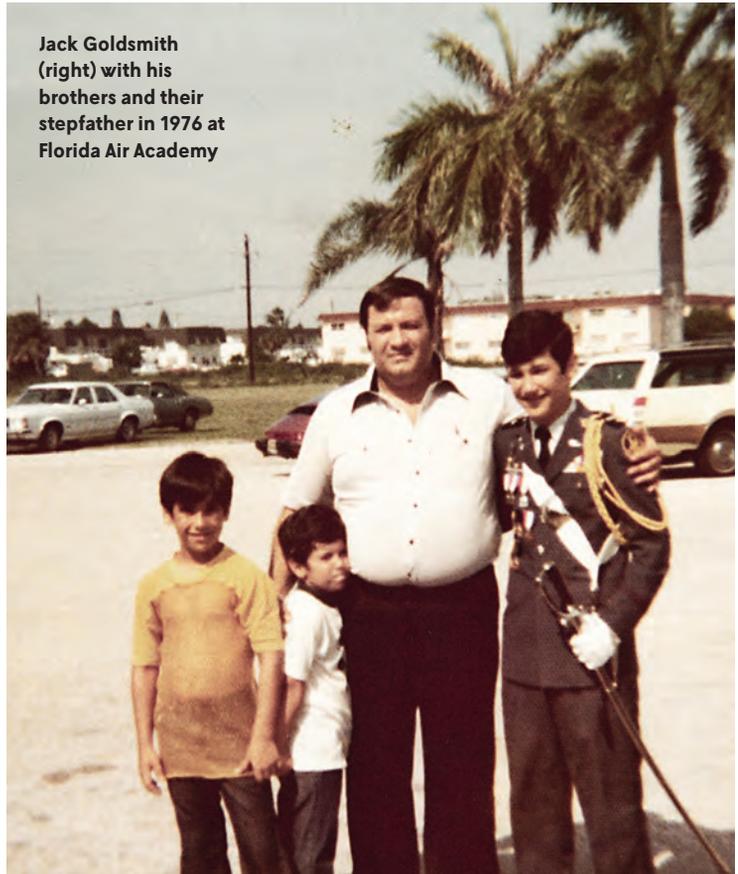
"I wasn't looking out for Chuckie [in the past and it] made me wonder how much I was looking out for him in writing this book." —"In Hoffa's Shadow"

While Goldsmith says he'd worried about reactions to the book and how they might affect his elderly stepfather, O'Brien was delighted with reviews that believed the ev-

idence cleared him of involvement in Hoffa's disappearance. Still, there are "a lot of other ways it might be viewed and a lot of mean things that might be said about him and me," Goldsmith says.

But he has no uncertainty about his stepfather's feelings for him. "My favorite picture in the book is Chuckie wearing his Harvard T-shirt," he says. Although Goldsmith has worked for institutions O'Brien doesn't think much of

Jack Goldsmith (right) with his brothers and their stepfather at Florida Air Academy



(such as Harvard) or that he outright hates (the Department of Justice), nonetheless, "He is very proud of me, and it makes me very happy," says Goldsmith.

"We ended up in a very, very amazingly great place as a result of this, but it was not ... a single easy line. It was an extremely complicated experience." As for the Hoffa disappearance, now that the book project is completed, Goldsmith says, "We haven't talked about it since."

Elaine McArdle is a freelance writer based in Portland, Oregon.



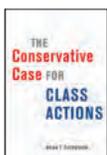
SELECTED ALUMNI BOOKS



“Breathe: A Letter to My Sons,” by Imani Perry '00 (Beacon)

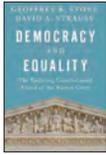
Perry conveys the joys and challenges of life to her two sons, framed by a recognition that to be black in America brings “never-ending questions about your abilities and quests to prove your inabilities.” While she shares her hope for her sons and shows her pride in them, she also expresses her fear for them, as she relates the history of injustice against black people that persists today. She recollects her own history, including her youth spent in Alabama, Chicago, and Cambridge, and expounds on her values, writing, for example, about her doubts about religion while

embracing the message of Jesus. And she offers maternal guidance: Forgive yourself for your failures; don’t reconcile yourself to injustice but don’t be devastated by it; be courageous, not reckless; enjoy the small things in small moments, like drinking through a straw.

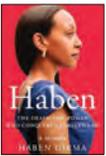


“The Conservative Case for Class Actions,” by Brian T. Fitzpatrick '00 (Chicago)

Private class-action lawsuits, which President Jimmy Carter once sought to largely abolish, now have been targeted for elimination by many conservatives, according to Fitzpatrick. But the Vanderbilt Law School professor, who calls

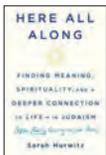


himself a lifelong conservative, contends that class actions are both the most effective and the most conservative way to hold corporations accountable. Markets alone can't do that, he argues, and favoring government action rather than private lawsuits contravenes conservative principles, as do complaints that these lawsuits are driven by the profit motive. He also recommends new rules to address valid concerns about class actions, noting that it is better for conservatives to mend the practice than to end it.



“Democracy and Equality: The Enduring Constitutional Vision of the Warren Court,” by David A. Strauss '78 and Geoffrey R. Stone (Oxford)

The Warren Court ended with the retirement of Chief Justice Earl Warren in 1969. Yet its impact still resounds today, assert Strauss and Stone (both University of Chicago professors), who analyze the Court's most influential decisions and rebut criticisms that it overreached. From *Brown v. Board of Education* in 1954 through the free-speech case *Brandenburg v. Ohio* in 1969, the Court reinforced American traditions of equality, democracy, and respect for the dignity of individuals, and relied on the lessons of the past to extend rights to people who had been excluded, according to the authors. The Court adhered to democratic principles by being reluctant to strike down congressional acts, and its decisions were “principled, lawful, and consistent with the spirit and fundamental values of our Constitution,” they write.



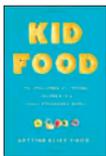
“Haben: The Deafblind Woman Who Conquered Harvard Law,” by Haben Girma '13 (Twelve)

A memoir of the first deafblind person to graduate from HLS, the book details the story of a child of Eritrean refugees who were determined to protect their daughter while she was determined to show them and the world what she could accomplish. She would help build a school in Mali, climb an iceberg in Alaska, and give a speech at the White House celebrating the 25th anniversary of the Americans with Disabilities Act, and on that occasion President Barack Obama '91 would type his greetings to her on her Braille computer. Now an advocate for disability rights, Girma writes that technology can forge relationships across differences as can efforts to facilitate inclusion of people who too often have been marginalized.



“Here All Along: Finding Meaning, Spirituality, and a Deeper Connection to Life—in Judaism (After Finally Choosing to Look There),” by Sarah Hurwitz '04 (Spiegel & Grau)

Going to Hebrew school as a child led Hurwitz to grow disillusioned about Judaism. So she did not expect that taking a class on Judaism in her 30s would lead her to immerse herself in the study of her religion. Now she shares her reflections in a book “that teaches the basics while also uncovering some of Judaism's most profound ideas.” She offers an overview of Jewish history and the “interpretive tradition” that gives the religion vitality in



current times. She highlights the reasons she and others choose to embrace Judaism, such as its emphasis on questioning and debate; its ethic of engaging with and bettering the world; and its aversion to dogma. Having achieved a career dream by becoming head speechwriter for first lady Michelle Obama '88 and senior speechwriter for President Barack Obama '91, Hurwitz still felt that something was missing from her life. Reconnecting with Judaism helped her find it.

“In the Cauldron: Terror, Tension, and the American Ambassador's Struggle to Avoid Pearl Harbor,” by Lew Paper '71 (Regnery History)

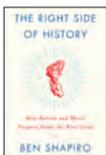
After serving as U.S. ambassador to Japan and living in Tokyo for nearly 10 years by 1941, Joseph Grew understood perhaps more than anyone the imminent danger of a Japanese attack against the U.S. Informed by myriad primary sources and interviews, Paper reveals the intricacies of Grew's ultimately unsuccessful efforts to stave off the deadliest foreign attack on U.S. soil at the time, on Pearl Harbor. The book covers Grew's attempt to broker a meeting between President Franklin D. Roosevelt and the Japanese prime minister, his intervention with Japanese and U.S. officials amid rising tensions between the countries, and the aftermath of war with Japan.

“Kid Food: The Challenge of Feeding Children in a Highly Processed World,” by Bettina Elias Siegel '91 (Oxford)

When Siegel learned that her child's school served animal crackers for breakfast, she began researching school food. Later she would write a blog on the subject, thus launching an unlikely career as a former attorney turned expert on “Kid Food.” In her book, she examines how the food industry promotes unhealthy food, often directly to kids; why school food remains highly processed despite attempted federal reforms; and how “treats,” typically junk food, are given to children to modify their behavior. She also strives to give parents and consumers the tools to improve the food environment for kids and recommends government actions including free school meals.

“The Right Side of History: How Reason and Moral Purpose Made the West Great,” by Ben Shapiro '07 (Broadside)

Shapiro was motivated to write the book after a near riot broke out when he gave a talk in 2016 at California State University at Los Angeles. That incident, writes Shapiro, a conservative writer and radio host, and other attacks on free speech demonstrate that something has been lost in our society, and his book is an attempt to regain it by reclaiming “Judeo-Christian values and Greek natural law.” The author offers an accessible survey of Western philosophers and history, including an examination of the Bible as well as modern thinkers like Dostoyevsky and Nietzsche. He concludes with an entreaty that “we become defenders of valuable and eternal truths” and train our children to be that as well.



‘My Whole Life Has Been Cross-Discipline’

Private equity pioneer
Steve Klinsky '81 leverages
his creativity to find
solutions to the high cost
of college education

Starting and growing successful businesses, and devising solutions to some of the toughest problems in public and higher education, have more in common than may appear at first blush. Both require creativity, and both offer the opportunity to better the lives of other people, says Steve Klinsky '81.

Around 38 years ago, Klinsky co-founded the first private equity group at Goldman Sachs. He then went on to be one of the original five partners of the pioneering PE firm Forstmann Little. In 1999, he left to start his own private equity firm, New Mountain Capital, which now oversees more than \$20 billion in assets and where he serves as CEO. For the past 25 years, Klinsky has also been deeply involved in education reform. In 1993, he established the Gary Klinsky Children's Centers after-school program in some of the most disadvantaged public elementary schools in New York City. Those centers, created in memory of his deceased older brother, Gary, have now served thousands of children as part of one of the longest-lasting and largest public-private partnerships in the city's schools. In 1999, he took time away from his traditional career to write the application for and organize the very first and longest-surviving charter public school in New York state—the Sisulu-Walker Charter School of Harlem—in partnership with famed civil rights leader and Harlem minister Dr. Wyatt Tee Walker. That story was told by Mary Bounds in her book, “A Light Shines in Harlem,” which won the Phillis Wheatley Book Award.

Today, Klinsky has taken on the issue of making higher education more affordable through a philanthropy he conceived of in 2012 and publicly launched in 2017, the Modern States Education Alliance. Modern States, which Klinsky describes as “like a digital public library of higher education,” is now the largest free college program for credit in the nation, with more than 175,000 registered users. Through its website, ModernStates.org, the charity offers free state-of-the-art online college courses from top university professors, free online textbooks and course materials, and full reimbursement for the College Board's College-Level Examination Program (CLEP) exams. Students who take the

free Modern States courses and then pass the CLEP exams can enter college with credit for those courses in hand, and save up to a year or more of traditional college time and expense, at more than 2,900 colleges and universities. “Even if only a few percent of all courses are taken this way,” says Klinsky, “it could save families and taxpayers a tremendous amount of money because the problem is so big.”

Student debt in the U.S. now totals over \$1.5 trillion, and college education for credit is one of the only forms of information that has not become less expensive with the internet, says Klinsky. About 5 million college students (or 30% of all students) already take their courses online, but they generally pay the same high price for the courses as students who study on campus. Free online college courses available before Modern States did not have a path to credit. As he was developing the ideas behind Modern States, Klinsky specifically wanted to solve the “for credit” issue, making the courses truly useful for students and giving them a path into the traditional college system.

Klinsky, who serves as chair of the advisory committee of Harvard University's Program on Education Policy and Governance (a position previously held by Jeb Bush), began by going to Washington and trying to change the accreditation system itself but hit a political dead end. He then turned his attention to the idea of using the College Board exam system as the credit mechanism. A public school kid from Michigan, Klinsky had himself graduated from the University of Michigan in just two and a quarter years instead of four, in part by using Col-

Klinsky likens Modern States, the philanthropy he launched, to a “digital public library of higher education.”



Steve Klinsky and his wife, Maureen Sherry Klinsky, endowed the first professorship of practice at HLS to bring visiting professors from a wide range of fields to campus.

lege Board Advanced Placement exams for credit. Ultimately, he decided the simplest and most practical answer was to combine the power of great, free online courses (which had to be produced only once and could then be used by an unlimited audience online at no extra cost) with reimbursed (i.e., free) credit-bearing exams. He focused on the CLEP exams, which have been widely accepted for credit for 50 years but can also be taken by anyone of any age on any day, in contrast to the AP tests, which can be taken only by high schoolers during the month of May.

There are CLEP exams in 32 subjects, ranging from college algebra to chemistry to Spanish. The 2,900 schools that accept CLEP for credit include most major state universities (such as SUNY, Ohio State, Penn State, and Texas State) as well as private colleges (such as Morehouse) and community colleges. Klinsky and his team spent over two years producing a full library of new college courses that were “reverse-engi-

neered” to cover all the material needed to pass the CLEP, including free online textbooks and practice questions from the College Board. Modern States hired “the best college professors we could find to teach a state-of-the-art course in each of the CLEP subjects,” he says, from schools including Johns Hopkins, Columbia and Purdue. Modern States also offers AP courses in partnership with edX, the online learning platform founded by Harvard and MIT. Each Modern States course taken and passed can save a student and their family up to \$2,000 in traditional college costs. Meanwhile, the charity has no marginal cost except the test fees, and no taxpayer dollars are needed.



Klinsky and Modern States have now paid for about 30,000 CLEP exams, saving students \$30 million or more in traditional college course costs. The pass rate for the CLEPs at Modern States has been about 75%, well above the national average. Other users of the site may have paid for the exams themselves, or simply used ModernStates.org like a supercharged, professor-taught version of Khan Academy. University systems like SUNY and Texas State have become allies of Modern States as a way to enhance their own affordability efforts, and foundations like the Starr Foundation have joined the alliance as well. The Modern States materials can be used for free by anyone, including students in public school systems. The Heckscher Foundation for Children has partnered with Modern States to provide funds to New York City public schools in Harlem and the Bronx to facilitate adoption of the courses and tests. In New Orleans and elsewhere, some high schools are using the program so students can graduate from high school with college credits in hand. The military is offering Modern States to service members. Klinsky believes that the same paradigm of free online courses plus credit-bearing exams might also one day be expanded to reduce the cost of very expensive vocational courses and other high-cost job training.

Klinsky has been blazing paths throughout his career. The first leveraged buyout of a publicly traded company occurred in 1979 while he was at Harvard, where he received both an M.B.A. from the Business School and a J.D. from the Law School through the joint J.D./M.B.A. program. He wrote his thesis about the newly emerging private equity field. When he co-founded Goldman Sachs' private equity group and joined Forstmann Little, there were only about 20 private equity firms in the world. Today, there are 5,000 firms owning 15,000 companies, and Klinsky speaks for his industry as chair of the American Investment Council.

Klinsky and New Mountain Capital were also innovators with New Mountain's "social dashboard," which tracks the firm's social metrics, including job growth in its portfolio companies, in reports that the firm

has compiled and published on its website since 2008.

At New Mountain, as of 2019, says Klinsky, "we've added or created over 43,000 jobs at our private equity portfolio companies, net of any job losses. We pay way more than the national average. We have spent over \$4.6 billion on R&D, software and capital expenditures. We have generated around \$35 billion of gains for workers' pension plans and other shareholders. We have never had a private equity bankruptcy or missed an interest payment."

"I am a big believer that business is a very socially positive act if done right," he says. "If you do a great job, you're finding better ways to fulfill the needs of thousands, or even millions, of people, in every area from life science supplies to information. Whether an organization is for-profit or not-for-profit, it all comes back to the same act of combining people, ideas and things together in a better way to meet the needs of others."

"I am a big believer that business is a very socially positive act if done right."

New Mountain's private equity arm currently owns and directs over 30 companies, with over 60,000 employees, and has formal social improvement "ESG" (environmental, social, and governance) plans in place at each company. Last May, New Mountain executed a \$4 billion IPO for its Avantor life sciences company, which was the largest health care-related IPO in history and the second largest IPO of the year after Uber.

New Mountain originally acquired Avantor for \$290 million in 2010, and it is valued at approximately \$14 billion today.

In 2013, Klinsky and his wife, Maureen Sherry Klinsky, former managing director at Bear Stearns and a bestselling novelist under the name Maureen Sherry, endowed the Steven and Maureen Klinsky Professorship of Practice for Leadership and Progress, the first endowed professorship of practice at HLS. Their goal is to bring visiting professors from a wide range of fields to campus to inspire and broaden perspectives. Cardinal Timothy Dolan, the archbishop of New York, gave the inaugural lecture.

"The professorship is a chance to widen the aperture of what law means," says Klinsky, who serves on the HLS Dean's Advisory Board. "I am so proud and happy to have been accepted to HLS years ago, and I have received tremendous benefit from my legal education even if I don't have a traditional legal career. My whole life has been cross-discipline, and the professorship can help others at the Law School do the same." —ELAINE MCARDLE

After escaping Nazi Germany as a child, Rya Zobel grew up to be a pioneer on the U.S. federal judiciary

‘Not Pollyanna’

PROFILE

Judge **Rya Zobel '56** of the U.S. District Court for the District of Massachusetts was among 23 women appointed in 1979 to the federal judiciary, more than double the number of women appointed as federal judges in the previous 190 years. In a group of pioneering women lawyers, her journey to the federal bench was perhaps the most remarkable.

As a child, Zobel grew up in Nazi Germany. In July 1945, Soviet troops arrested her father, and she never saw him again. “As he was leaving, he turned around and said to me, ‘Rya, take care of your mother and your brother,’” she said. Hours later, soldiers led her mother away, to spend 10 years in Soviet prisons.

And yet Zobel describes her life story as one of extreme good fortune.

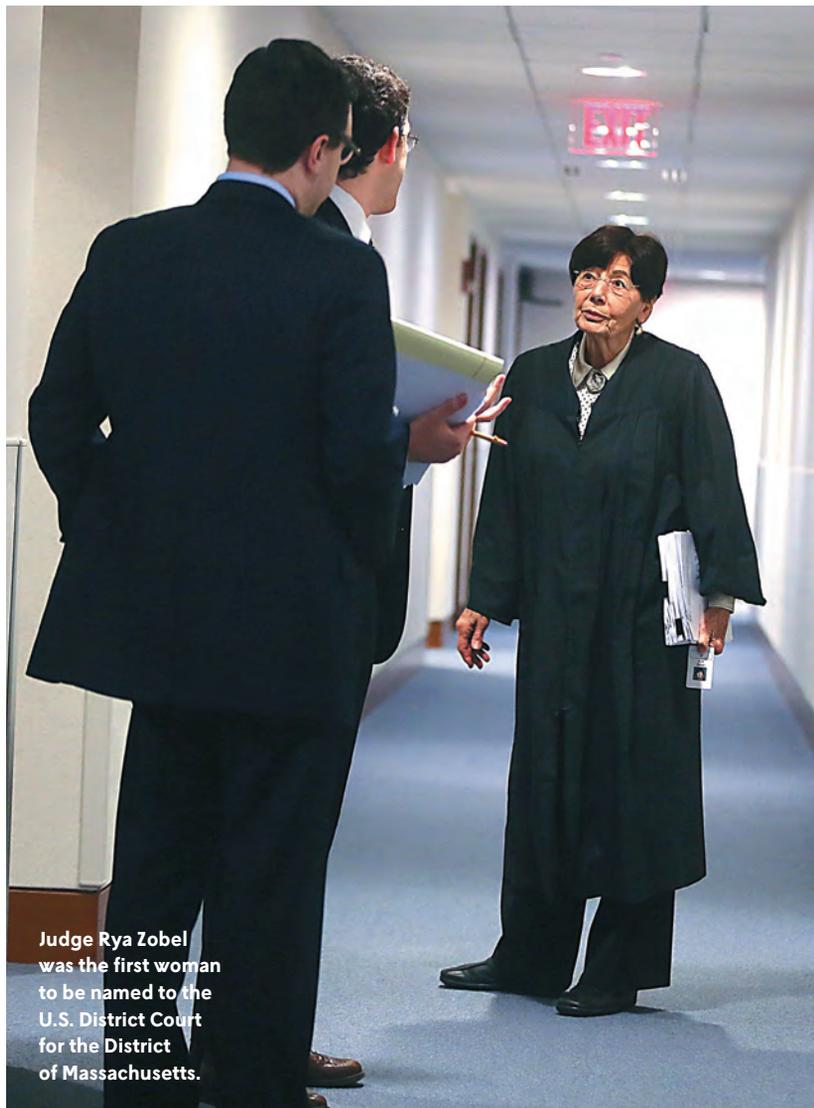
A Hungarian American uncle hurried to Germany and helped Zobel and her brother escape, initially to the Allied zone and eventually to the United States. Zobel, still a young teenager, was taught to speak only English in her new home in Long Island. Just two and a half years after arriving in America, she enrolled in Radcliffe College, and then later in Harvard Law School.

“I’ve been incredibly fortunate. I had this amazing, loving family that just took us in, cared for us, and provided us with an education,” Zobel said. “It was just an extraordinary and highly intellectual household.”

A Harvard professor encouraged Zobel to study law, which led to a 10-year stint as a law clerk for U.S. District Court Chief Judge George Sweeney. She then entered private practice and became the first female partner in one of the large Boston firms. When four new federal judgeships were created in the same courthouse in Boston where Zobel had clerked, she was intrigued.

“I knew this was something big, and I was eager to do it,” Zobel said. “I really loved this court. I had a sense that I could do the work. Judge Sweeney was a very decent, practical fellow. He also was a very good judge, and I had learned a lot from him.”

The first time she took the bench, to preside



Judge Rya Zobel was the first woman to be named to the U.S. District Court for the District of Massachusetts.

at an arraignment to a superseding indictment, “everyone in the courtroom, including the defendants, knew exactly what to do except me,” Zobel joked. But she learned to trust her judgment and keep lawyers on track.

In 2002, the American Bar Association honored Zobel with the Margaret Brent Award, which celebrates outstanding women lawyers. In 2014, she took on senior status.

“I am not Pollyanna,” she said about women lawyers’ and judges’ progress in the

profession. “I do not believe that we have arrived; I do not pretend that women have fully equal opportunities; I do not ignore the reality that discrimination remains alive and strong. But ... I wish to celebrate how far we have come.”

This piece first appeared on the U.S. Courts website on Aug. 28, 2019, as part of a series on women judges who in 1979 reshaped the federal judiciary.

An agent of change
in the judiciary,
serving the public interest

Justice for All

PROFILE

When Fern A. Fisher '78 had to list every place she had ever lived on her New York bar application, she filled two pages. She had moved frequently, as her mother, a domestic violence survivor, was pushed by poverty and evictions to move the family to new homes. On the day Fisher graduated from Harvard Law School, she learned that her mother had just lost her latest home to foreclosure.

Fisher's mother could not understand, therefore, why her daughter turned down the financial security offered by private law firms to take what was then the highly unusual path of pursuing a career in public interest.

Now, reflecting on a 41-year career that began as an attorney in Manhattan's housing court and included a 28-year tenure in New York's court system, Fisher has no regrets about the path she chose. It took her from Harlem Legal Services, where she cut her teeth in the hectic housing court; to the National Conference of Black Lawyers, where she provided free legal services to Harlem-based community organizations; to the New York Attorney General's Office, where she prosecuted fraudulent charities.

But her true calling proved to be the judiciary, which Fisher joined in 1989 as a housing judge. At the time, attorneys and judges who looked like Fisher, a black woman, were so uncommon that when she stood up one day to argue an important appellate case concerning city-owned housing, the judges on the panel mistook her for the tenant.

Fisher flourished in housing court, where the legal issues were often dizzyingly complex, and the human impact both dire and immediate. "If you don't have a roof over your head that's decent and secure, the rest of your life falls apart," she says.

After stints in various civil courts, however, Fisher finally found the true love of her life. In 1996, she became an administrative judge, and in 2009, became the deputy chief administrative judge for New York City courts as well as the director of the New York State Courts Access to Justice Program. She wore so many

Fern Fisher has been a major figure in the New York judiciary and an innovator in the access-to-justice field.



hats in those roles that when she finally retired in 2017 in order to join Hofstra University's law school as the dean's special assistant for social justice initiatives, four people were needed to replace her.

In her administrative role, Fisher could take a more systemic look at the problems that plagued unrepresented litigants and experiment with creative solutions to expand access to justice. In addition to mundane administrative duties such as ensuring that the lights stayed on in the courthouses, she took on bigger challenges. She instituted Lawyer-for-a-Day programs to help provide unrepresented litigants with counsel, upgraded judicial forms to make them more accessible, and designed a program that would connect lawyers with social workers to more holistically address complex needs. Fisher even launched a mobile justice center, a 25-foot van that traversed the city to offer free legal services directly to neighborhoods that needed them. She ran poverty simulations and cultural tours for judges to assist them

in understanding the unique issues faced by poor and minority litigants.

Having steadfastly pursued public interest initiatives for her entire career, Fisher has earned her fair share of recognitions. But among the most meaningful, and still displayed in her office, is the Gary Bellow Public Service Award, which Harvard Law awarded to her in 2006. She views the honor as "the ultimate recognition of and acceptance of the path that I chose, which is not the usual path."

She particularly appreciated the recognition that judges are not merely neutral government employees, but also can be agents of change who can serve the public interest. According to Fisher, "the law is the law" and its application to facts must be decided neutrally. But how courtrooms are run, and whether litigants feel they have received a fair shot, amount to procedural justice that can be vital in serving the public. "People want to be heard and treated with respect," she says. "If you do that in your courtroom, then you are serving the public interest." —LANA BARNETT '15

A net neutrality advocate explores the power of the decentralized web

A Legal Warrior in the Field of Technology

PROFILE

When **Marvin Ammori '03** was a child, he asked his uncle whether there was MTV in Iraq. His uncle, who stayed in the country for a while after his parents had left, said no: Iraq had only two channels, and both showcased President Saddam Hussein. The lack of options left an impression. "That seemed like an injustice," Ammori says with a laugh.

As an adult, Ammori has spent his entire career advocating for an abundance of choice. A lawyer, scholar, and activist who focuses on the intersection of the First Amendment and technology, he is best known for his role in the battle for net neutrality. At stake is the principle that internet service providers, or ISPs, should treat all internet traffic neutrally, meaning they ought not block or promote specific websites, favor certain users over others, or pick which services to speed up and which to slow down.

Ammori is a leader among net neutrality proponents, who argue that allowing ISPs to control internet traffic would threaten both economic growth and a free democracy. Its opponents argue that government regulation of the internet, by contrast, stifles creativity and growth.

For a few years, regulation won out, thanks in large part to Ammori's efforts. In 2007, when he was general counsel at media nonprofit Free Press, he sued Comcast in the first network neutrality enforcement action. Comcast, a major ISP, was accused of blocking traffic between users of BitTorrent, a peer-to-peer network that allows individuals to upload and download content directly to and from each other. Ammori wrote the complaint challenging Comcast's actions and convinced the Federal Communications Commission that Comcast had overstepped.

The war appeared to be won in 2015, when Ammori and others persuaded the FCC that the internet should be declared a "telecommunications service" under Title II of the Communications Act. Doing so cemented the FCC's authority to impose net neutrality, which had otherwise been challenged in courts—in-



Marvin Ammori, the general counsel at Protocol Labs, a blockchain research group

cluding in the Comcast case. The following year, the D.C. Circuit Court upheld the FCC's authority to regulate internet traffic, ostensibly ending the debate. But just two years later, in 2018, a new FCC chairman abruptly changed course, rolling back net neutrality rules and sparking a new round of litigation between the federal government and states that seek broader control over ISPs.

The legal and political battle for net neutrality highlights what draws Ammori to the field of law and technology: It is still unsettled. He calls the field a "war of analogies" and "platypus law," an amalgamation of disparate legal doctrines where the challenge is to help judges understand how new technologies resemble old ones that have already been examined by courts. Is Uber more like a taxi or a limousine? Is cryptocurrency a form of software, or is it a commodity? Ammori re-

calls exploring these kinds of questions at HLS with his professor and adviser Yochai Benkler '94, with whom he marveled at First Amendment textbooks' tendency to treat modern communication methods as "exceptions" to settled law, rather than recognize them as the new normal.

Ammori is now the general counsel at blockchain research group Protocol Labs, which focuses on building network protocols to allow individual internet users to store files on one another's computers. "The cloud," where most people and companies increasingly store the bulk of their data, relies on servers run by just a handful of companies, centralizing control over data in the hands of a few players, such as Amazon or Google. Ammori instead promotes a "decentralized web," where key internet services such as storage can be provided by the collective power of millions of individual computing devices.

Whether or not Ammori and Protocol Labs succeed in decentralizing the web, technology will continue to provide new legal frontiers for him to explore. He anticipates new wars of analogies emerging as artificial intelligence, bioengineering, and drone technology all evolve and play increasing roles in our lives.

All will require regulation and creative legal reasoning based on outdated technology. "There was a view early on that the internet was beyond law," Ammori says. That view was wrong, he says, citing both regimes that limit internet access and countries with sophisticated regulatory systems. "The same way the pen is mightier than the sword, for a lot of these questions, the law is often even mightier than the technology, and is essential." —LANA BARNETT '15

A conversation with Beth A. Williams '04,
Assistant Attorney General, Office of Legal Policy,
U.S. Department of Justice

'The Best Parts of Being a Lawyer'

PROFILE

In August 2017, after her nomination by President Donald Trump and unanimous confirmation by the U.S. Senate, **Beth Williams '04** became assistant attorney general for the Office of Legal Policy in the U.S. Department of Justice. At HLS, she was president of the Harvard Federalist Society. After clerking on the 2nd Circuit for Judge Richard C. Wesley, she served as special counsel to the U.S. Senate Committee on the Judiciary, where she assisted with the confirmations to the Supreme Court of Chief Justice John G. Roberts Jr. '79 and Justice Samuel A. Alito Jr. As a partner at Kirkland & Ellis, she was on the team that represented Shirley Sherrod in her defamation suit against Breitbart News. Williams recently received a top award from the Harvard Federalist Society and was designated a 2019 D.C. Rising Star by *The National Law Journal*. *The Bulletin* interviewed Williams in the fall.

Why did you go to law school?

I wanted to go to law school because I enjoyed writing and analyzing text, and also because my parents were terrified that I wouldn't be able to support myself, given that my undergraduate studies [at Harvard] focused on British history 1910 to 1914—not a huge job market for that niche!

What drew you to the Federalist Society?

I was drawn to the intellectual discussions. [The terrorist attacks of] September 11 happened the second week of my 1L year. I was in Harkness Commons and I thought, If now is not the time to be thinking about our nation's values and discussing these issues in an open-minded way, I can't imagine another time.

At Kirkland & Ellis you received the firm's pro bono award seven years in a row, putting in over 150 pro bono hours each year. What was the impetus for you?

I always believed an important part of being a lawyer is making sure you're also working for people who can't necessarily afford your

services and helping to ensure they have good representation. In one case, I represented a man named Patrick Proctor who at that point had been held in solitary confinement in New York for more than 18 years. I argued—and won, before the 2nd Circuit—that he was entitled to periodic, meaningful review of his confinement, which he was not receiving.

Tell us about your work in the Office of Legal Policy.

I serve as a primary policy adviser to the attorney general and the deputy attorney general, and as the chief regulatory officer for the Department of Justice. I also oversee the judicial nominations process for the department. I lead an office of approximately 35 people. Our office is sometimes called the think tank of the department because we work on high-priority initiatives and perform a senior coordination role when special projects implicate multiple department components. What I like most about the work is that there is never a dull day. On any given day, I can be working on violent crime policy, cyber issues, opioid initiatives, encryption, judicial nominations, or human trafficking reduction—and often all of the above.

What is most challenging?

There is often so little public attention on the positive work of the Justice Department. For example, the recent FBI statistics for the first six months of 2018 showed a significant reduction in violent crime: a 6.7% decline in murders, a 12.5% decline in robbery, and a 12.7% decline in burglary compared to the first six months of 2017. That's gratifying to see, given our relaunch of Project Safe Neighborhoods, which works with U.S. attorneys to target the most violent criminals in each district. I wish that more attention would be paid to what is working.



Beth Williams serves as a primary policy adviser to the U.S. attorney general and U.S. deputy attorney general.

What is the most interesting aspect of overseeing judicial nominations?

My favorite part is that I am able to work with some of the best attorneys in the country during the most exciting and stressful times of their careers. It's gratifying to be able to provide counsel, which to me has always been one of the best parts of being a lawyer.

What is your reaction to critics who focus on the number of President Trump's judicial nominees the ABA has rated as "not qualified"?

There are actually very few that have gotten that [ABA rating]. The overwhelming number are rated "qualified" or "well-qualified." The nominees have been overwhelmingly exceptionally well-qualified, smart, talented people.

How did you and your husband, John S. Williams '04, now a partner at Williams & Connolly in D.C., meet at HLS?

We originally met outside Pound 102, when we were opponents in Ames Moot Court—which probably ranks us among the nerdier lawyer-couple meeting stories.

Who won?

We don't know! They never told us who won! My husband gives a corny answer that he won because he met me. —ELAINE McARDLE

Classmates seek to bring peace and progress to a war-torn country

Afghanistan Reunion

PROFILE

Shortly before graduating nearly 10 years ago, Andru Wall LL.M. '10 and Saeq Shajjan LL.M. '10

spoke to the *Bulletin* about their joint connection to Shajjan's home country of Afghanistan. Since then, their paths have mostly diverged. Shajjan went back to Afghanistan. Wall, who before attending HLS had served in the country for the U.S. Navy as general counsel for U.S. Special Operations Command Central, entered civilian life in the United States. Recently, however, their paths crossed again and they saw each other for the first time since their HLS days when Wall returned to Afghanistan for a nearly yearlong stint. During that time, the classmates met regularly and got reacquainted. Shajjan, said Wall, "helped me understand Afghan dynamics quite a bit." The *Bulletin* caught up with them to talk about their lives since graduation and their work to bring progress to Afghanistan.

Saeq Shajjan

When he was studying at HLS, some of Shajjan's friends and family members back home advised him to stay in the United States and start a new life there. He returned home, however, because he believed he could make a greater impact there than in the United States.

Since then, he has practiced law, first working with the government and soon thereafter launching his own firm, the first native Afghan to do so, he believes. The firm has now grown to more than a dozen lawyers, whose work ranges from representing international clients who operate in the country to helping indigent Afghan women who were abandoned by their husbands resettle in European countries. As one of the country's few qualified arbitrators, he has given presentations on arbitration to Afghan lawyers and government officials and has prepared students for moot arbitrations.

While he often travels abroad for his business and for speaking engagements, Shajjan also mentors the next generation of Afghan



HLS classmates Andru Wall and Saeq Shajjan in the U.S. Embassy in Kabul

lawyers, offering internship and training opportunities as well as volunteering for an organization that helps local lawyers study abroad.

"I want to make sure they have guidance so we have a better pool of lawyers in the country, and ultimately the better pool of lawyers will help the judicial system get reformed," he

said. "Once you have a better judicial system in the country, I think that will be the solution to a lot of problems we have right now."

While he expresses hope for the future because of increased educational opportunities for young Afghans, he acknowledges that the judicial system, public services and security in the country remain substandard. "We get a lot

of money from the international community—billions of dollars—but when you look at the results of how much we’ve benefited from that money, it’s really disappointing,” said Shajjan.

He is concerned for his own safety but particularly that of his family. He restricts his in-country travel to Kabul; for several years, he has not felt safe enough to travel back to his native village, which is in territory currently controlled by the Taliban. Still, he says his family is blessed, particularly when he compares their lives today with his own experiences growing up. His three children all go to the same private school. His wife too has now gone back to school after being prevented from pursuing an education under the Taliban regime. When his children get older, Shajjan hopes they may have the opportunity to travel abroad for higher education, and then come back and do something beneficial for their people.

Andru Wall

When Wall went to HLS, he was no longer an active-duty serviceman. But, years later, duty would call again.

At the time it did, in 2018, he was working as a senior cyber, privacy, and data attorney for USAA, a company that offers financial products to military members and their families, and raising two children in North Carolina. As a reservist, he could always be “involuntarily mobilized,” and that’s what happened when the Navy needed someone with his background and skills: a Judge Advocate General’s Corps commander with a top-secret clearance and operational experience. It was not easy to leave his children for an extended period, particularly when his son asked him if he really had to go.

“I told them this was something I believed in and if [the Navy] needed me, I was going to go,” said Wall. “And I was going to serve honorably, and we were going to

get through it.”

When he arrived in Afghanistan, he served as deputy legal adviser to Army Gen. Austin “Scott” Miller, commander of all U.S. and NATO forces in Afghanistan, and managed an office of lawyers who provided advice to U.S. and NATO commanders. Later Miller would ask him to serve as legal adviser to the U.S. team, led by Ambassador Zalmay Khalilzad, negotiating a peace agreement in Qatar with the Taliban. What made the negotiations most challenging, Wall says, were the high level of distrust on both sides established through years of fighting and profound cultural differences that continued even during the talks.

“There were several times when [Taliban attacks] would happen I’d have to remind myself that the goal of this negotiation is to end the killing,” said Wall. “So you have to look past the day-to-day killing and focus on the fact that the goal is to try to end it permanently.” (Wall could not discuss the details of the negotiation, but according to news reports, in September the top U.S. negotiator announced a deal “in principle” that would have withdrawn U.S. troops from Afghanistan

in exchange for assurances from the Taliban that it would not allow the country to be used as a base for attacks against the U.S. and allies; the deal was canceled by President Trump shortly thereafter.)

Wall was heartened by what he saw as the genuine desire for peace among the Afghan people, shown through local peace marches, and his belief that Afghan security forces have improved their effectiveness. After 18 years of conflict, resolution will not come through military means, he said: “We can keep the status quo and we can keep killing each other for several more years, or we can sit down and try to figure out a way to resolve it politically.”

He is glad to be back home, where he no longer has to communicate with his children through video chat. But he appreciated the sense of mission and camaraderie that he experienced on the deployment, which bond those who serve. At the time of the interview, he was looking forward to a back-packing trip with fellow veterans in the Colorado Rockies. And then back to his regular life, at least until the next call of duty comes. —LEWIS I. RICE



Kabul, Afghanistan

THE HEART AND SOUL OF 'THE FEDERAL COURTS AND THE FEDERAL SYSTEM'

David L. Shapiro 1932–2019

David L. Shapiro '57, an icon of federal courts jurisprudence, died Nov. 19. He was 87 years old.

A longtime professor at Harvard Law School, Shapiro co-edited the leading casebook in the field of federal jurisdiction, Hart and Wechsler's "The Federal Courts and the Federal System" (Foundation Press). From the second edition in 1973 to the supplement to the seventh edition in 2019, he served as a link back to the roots of federal courts as a legal discipline at HLS decades earlier.

"David was the heart and soul of 'The Federal Courts and the Federal System,'" said HLS Dean John F. Manning '85, who joined Shapiro as a co-editor on the casebook for the sixth edition in 2010. "David was able to bring out the complexity and nuance of the law for judges, scholars, and practitioners, and he always did so with clarity and insight."

Shapiro studied the subject as a law student with Professor Henry Hart '30 S.J.D. '31, who is considered, with Columbia Law Professor Herbert Wechsler, to be a founder of the field. After Shapiro joined the HLS faculty in 1963, Hart invited him to join as a co-editor on the second edition, and Shapiro went on to write five revisions with several HLS colleagues,

A legendary teacher, rigorous thinker, elegant writer and warm mentor

including Manning, the late Daniel Meltzer '75, Richard Fallon, Jack Goldsmith, and Shapiro's former student Amanda Tyler '98.

"David was a giant who never viewed himself as a giant," said Fallon. "He loved to

laugh and was quick with a joke, but he was utterly, utterly serious about upholding the highest professional standards in everything that he did," he added. "I never felt more flattered professionally than when David and Dan Meltzer asked me to join them as a co-editor of what David always called 'our book.' Our collaboration lasted for four editions and more than 20 years. I wish it could have gone on forever."

At HLS, Shapiro taught statutory interpretation, civil procedure, administrative law, labor law and criminal law. "David was a legendary teacher. He also wrote with great impact across multiple fields," said Manning. "In a way, David was a classic adherent to the Legal Process approach. He believed deeply in law



David Shapiro joined the HLS faculty in 1963.

and also believed that it should be interpreted and understood, where possible, to be reasonable, to make sense."

Among his publications are dozens of articles as well as several books, including "Federalism: A Dialogue" (1995) and "Civil Procedure: Preclusion in Civil Actions" (2001).

In 1988, Shapiro accepted an appointment as deputy solicitor general in the U.S. Department of Justice. During his three years in the position, under Solicitors General Charles Fried in the Reagan administration and Kenneth Starr in the Bush

administration, he collaborated on briefs for more than 40 Supreme Court cases and argued 10 of them before the Court.

In a statement issued after Shapiro's death, Solicitor General Noel Francisco said of him, "He is remembered by those here at the Department as a rigorous thinker, elegant writer, and warm mentor—open, straightforward, intellectually engaging, and all with good humor."

Early in his career, Shapiro worked as an associate at Covington & Burling, in Washington, D.C., before serving as a clerk with Supreme Court Justice John M. Harlan. Shapiro kept a foothold in the world of legal practice and consulted on Supreme Court cases throughout his career.

Shapiro, who retired from HLS in 2006, is widely credited with inspiring many of the best scholars now working in his fields of civil procedure and federal courts.

"I don't know if it was the first or the second day, but about a week into law school, sitting in his civil procedure class, I decided I wanted to be a law professor," said Amanda Tyler '98, professor at the University of California, Berkeley School of Law. "Never in a million years did I think that this is what I was going to do with this law degree. He was that good," she said. "He underscored the importance of procedure in a way that was profound."

IN MEMORIAM

1940-1949

DARIO G. BAROZZI '40
June 21, 2019

BEN WILES JR. '40
Sept. 26, 2019

WHEELER SMITH '44 ('47)
July 22, 2019

ASHER L. WHEELER '44
July 24, 2019

GEORGE T. BOGERT '48
May 13, 2019

W. ROBERT CHANDLER '48
Sept. 28, 2019

MORTON H. FEDER '48
March 31, 2019

EUGENE J. T. FLANAGAN '48
June 22, 2019

CHARLES GORDON HAINES '48
May 16, 2019

JOSEPH P. LOGAN '48
Sept. 5, 2019

HAROLD F. "OLE" OLSEN '48
April 12, 2019

S. ROBERT WINER '48
Jan. 11, 2019

JOHN CAREY '49
Oct. 7, 2019

NORMAN D. KATZ '49
April 11, 2019

HOWARD MONDERER '49
Aug. 14, 2019

EMANUEL SHLUGER '49
July 27, 2019

DANIEL SIEGEL '49
July 11, 2019

1950-1959

A. PAUL GOLDBLUM '50
June 16, 2019

JERRY M. HAMOVIT '50
May 9, 2019

J. DONALD MCNAMARA '50
April 28, 2019

DAVID SIMON '50
June 6, 2019

HAROLD YOUNG '50
Nov. 13, 2019

JEROME P. FACHER '51
Sept. 19, 2019

ASCHER KATZ '51
March 22, 2019

PAUL D. SPAGNOLI JR. '51
April 24, 2019

JOHN GORDON FIRSTMAN '52
May 16, 2019

HUGO A. LORENZ '52
May 26, 2019

ARTHUR W. SCHMUTZ '52
Sept. 4, 2019

ROY BAYLINSON '53
June 22, 2019

JOHN R. BERGER '53
Oct. 4, 2019

KENNETH J. BIALKIN '53
Aug. 23, 2019

JACK G. CLARKE LL.M. '53
April 26, 2019

HENRY R. GUILD JR. '53
April 22, 2019

ROBERT H. HAGGERTY '53
Oct. 12, 2019

KENNETH L. KARST '53
April 9, 2019

WILLIAM C. MUNROE JR. '53
April 22, 2019

JAMES E. RYDER '53
Sept. 14, 2019

EDWIN J. CARR '54
April 5, 2019

RICHARD K. MCLAREN '54
May 5, 2019

DONALD LEE ROME '54
June 15, 2019

EDWARD J. "NED" SACK '54
May 19, 2019

HOWARD S. SATIN '54
April 8, 2019

KARL ZEISLER '54
June 21, 2019

LEONARD B. BOEHNER '55
May 14, 2019

JAMES R. DRUMWRIGHT '55
July 22, 2019

EDWARD L. FOOTE '55
May 18, 2019

JOHN S. LUCKSTONE '55
April 13, 2019

WEYMAN I. LUNDQUIST '55
May 19, 2019

ALLAN MILLEDGE '55
May 24, 2019

HAROLD OELBAUM '55
June 18, 2019

EUGENE N. ROSENBERG '55
July 14, 2019

MARVIN A. STERN '55
Aug. 21, 2019

RUTH I. ABRAMS '56
Sept. 12, 2019

CHARLES J. FRISCH '56
Aug. 5, 2019

ROBERT L. MEADE '56
April 19, 2019

LEWIS PERELMAN '56
April 2, 2019

JAMES M. PFOHL '56
June 5, 2019

ROBERT S. RYAN '56
May 7, 2019

BYRLE M. ABBIN '57
March 19, 2019

GEORGE H. ALDRICH '57
LL.M. '58
April 10, 2019

JOHN T. BALLANTINE '57
April 9, 2019

TIM L. BORNSTEIN '57
June 2, 2019

JACKSON M. BRUCE JR. '57
May 28, 2019

CARL M. COLLIER '57
April 24, 2019

RICHARD P. HOULIHAN JR. '57
June 22, 2019

ARTHUR KRONENBERG '57
April 18, 2019

DEMETRI P. MARCHESSINI '57
March 6, 2016

JOHN G. PALACHE JR. '57
Aug. 27, 2019

ALFRED C. PHILLIPS '57
April 14, 2019

JOSEPH A. ROTOLO '57
May 5, 2019

DAVID L. SHAPIRO '57
Nov. 19, 2019

WILLIAM H. STETSON '57
Jan. 3, 2019

F. EUGENE DAVIS IV '58
April 25, 2019

PAUL L. NASH '58
Aug. 22, 2019

DANIEL G. PARTAN '58 LL.M.
'61
March 29, 2019

JOHN O. STILES '58
March 31, 2019

THEODORE A. BORRILLO
LL.M. '59
Aug. 27, 2019

JONATHAN K. GREENBURG '59
March 14, 2019

JOSEPH H. HEAD JR. '59
April 24, 2019

ROBERT E. HINERFELD '59
July 29, 2019

FREDERIC I. KEYWELL '59
Nov. 22, 2018

WILLIAM K. MACKEY '59
July 6, 2019

MICHAEL F. SPICER '59
Sept. 4, 2019

RICHARD E. STEWART '59
Oct. 13, 2019

WARREN WERTHEIMER '59
April 20, 2019

1960-1969

JOHN B. BARRETT '60
July 10, 2019

EDWIN P. "NED" CONQUEST
JR. '60
May 28, 2019

WILLIAM C. EVERETT '60
May 13, 2019

RICHARD H. LANE '60
Sept. 15, 2019

ANTHONY C. PADDOCK '60
April 25, 2019

HUGO M. PFALTZ '60
Aug. 31, 2019

WILLIAM T. BOUTELL JR. '61
May 9, 2019

RAYMOND F. BURKE '61
May 31, 2019

ELMER H. CLOSE '61
September 2019

AVERY S. COHEN '61
June 4, 2019

WILEY DINSMORE '61
Oct. 7, 2019

JAMES J. GOUBEAUX '61
Oct. 5, 2019

USHER A. MOREN '61
June 22, 2019

DAVID C. PHILLIPS '61
Aug. 28, 2019

ALLEN R. SMART '61
May 24, 2019

ROBERT D. COPE '62
Aug. 13, 2019

STANLEY Z. GOLDBERG '62
June 2, 2019

JAMES A. HENDERSON JR. '62
LL.M. '64
July 2, 2019

HUGH G. E. MACMAHON '62
Sept. 23, 2019

EUGENE P. MILLER '62
Sept. 24, 2019

LAWRENCE B. THOMPSON '62
Sept. 15, 2019

G. ROBERT "BOB" WITMER
JR. '62
Aug. 18, 2019

BERNARD M. DWORSKI '63
March 18, 2019

PETER R. GILBERT '63
Jan. 22, 2019

ROBERT J. HADLEY '63
Aug. 29, 2019

MELVIN S. HIRSHOWITZ '63
May 27, 2019

WILLIAM W. LARUE '63
Oct. 3, 2019

WENDY MARCUS RAYMONT
'63
July 30, 2019

SIDNEY R. BIXLER '64
Aug. 17, 2019

ROBERT C. MEANS '64 S.J.D.
'77
Dec. 13, 2017

PAUL E. MERSEREAU '64
Aug. 17, 2019

ROBERT L. NATHANSON '64
July 23, 2019

BLAINE V. "FIN" FOGG '65
July 14, 2019

ALLEN MARTIN '65
June 19, 2019

PETER L. SILL '65
April 2, 2019

FRANCIS M. BIRD JR. LL.M.
'66
Sept. 22, 2019

HERSCHEL POST JR. '66
Aug. 25, 2018

WILLIAM G. SCHAEFER JR. '66
June 11, 2019

THOMAS R. B. WARDELL '66
June 20, 2019

ALAN D. YARBRO '66
July 20, 2019

ANITA L. GLASCO '67
Sept. 4, 2019

RICHARD A. GROSSMAN '67
May 17, 2019

LANCE R. MATHER '67
May 23, 2019

MARC I. HAYUTIN '68
June 11, 2019

THOMAS J. KELLY '68
May 14, 2019

J. DONALD MCCARTHY '68
Sept. 15, 2019

JOHN B. SHEPARD III '68
March 27, 2014

JOHN W. TIMBERS '68
May 23, 2019

MARSHALL P. BARTLETT '69
Sept. 11, 2019

HUGH L. ELSBREE JR. '69
July 24, 2019

1970-1979

JAMES H. BREAY '70
May 3, 2019

JAMES R. KRENDL '70
Aug. 21, 2019

JOHN A. BLUE '72
Aug. 23, 2019

CAROL PER LEE PLUMB LL.M.
'72
July 27, 2019

SANFORD J. HILLSBERG '73
Feb. 19, 2019

JOHN R. MAYNARD LL.M. '73
July 3, 2019

ALONZO D. SAUNDERS '73
Aug. 25, 2018

RONALD S. SENZAKI '73
June 1, 2019

RAYMOND HAMILTON '75
Sept. 2, 2019

PHILIP J. MARZETTI '75
Aug. 7, 2019

DAVID W. GREEN '76
July 31, 2019

MARY E. "MEG" GREENE '76
April 27, 2019

DAVID R. SAWYIER '77
June 10, 2019

HILLEL M. BENNETT '78
Sept. 1, 2019

MARK HEINEN '78
May 2, 2019

DAVID L. HUNTER '78
July 26, 2019

CHARLES E. CHEATHAM '79
Aug. 22, 2019

1980-1989

RICHARD ZORZA '80
April 13, 2019

MAUREEN P. MANNING '81
July 18, 2019

ENRIQUE MORENO '81
Oct. 10, 2019

JOSEPH M. QUILTY SR. '83
Nov. 9, 2017

NOE REYNA '83
May 21, 2019

JORGE SEALL-SASLAIN LL.M.
'84
July 18, 2019

JEAN EGAN '87
June 2019

JOHN P. MULHERN LL.M. '87
Aug. 25, 2019

KATHRYN A. ARNONE '88
July 5, 2019

NOAH S. SCHEINFELD '89
June 3, 2019

1990-1999

CARLOS J. CHIPOCO LL.M. '90
May 16, 2019

R. PATRICK RODRIGUEZ '97
June 2019

2000-2009

LEA MILLER KRONENBERG '02
July 30, 2019

Collector's Items

The Harvard Law School Library offers a treasure-trove for legal historians. If one wanted to peruse, for example, a copy of the first printed collection of English statutes from the 15th century, there it would be. Yet, as three recent acquisitions demonstrate, the library also presents the lighter side of the law, with items that reveal the humor and personalities behind the cases and legal decisions that make history.

A panel of HLS Supreme Court bobbleheads, from left: Stephen G. Breyer '64, David H. Souter '66, Louis D. Brandeis LL.B. 1877, Ruth Bader Ginsburg '56-'58, John G. Roberts Jr. '79



Heads of the Court

Sports fans love to go to games on days when teams give away bobblehead dolls representing their hometown stars. Fans of the law can go to the HLS Library to see bobbleheads of different kinds of heavy hitters. Issued by The Green Bag legal journal, the bobbleheads so far depict 25 Supreme Court justices, from the past such as Louis Brandeis LL.B. 1877 and the present such as Chief Justice John G. Roberts Jr. '79 (13 are in the HLS collection). Unlike on the Court, they will always appear to offer their enthusiastic assent.

HLS Library
collections
make room for
the quirky

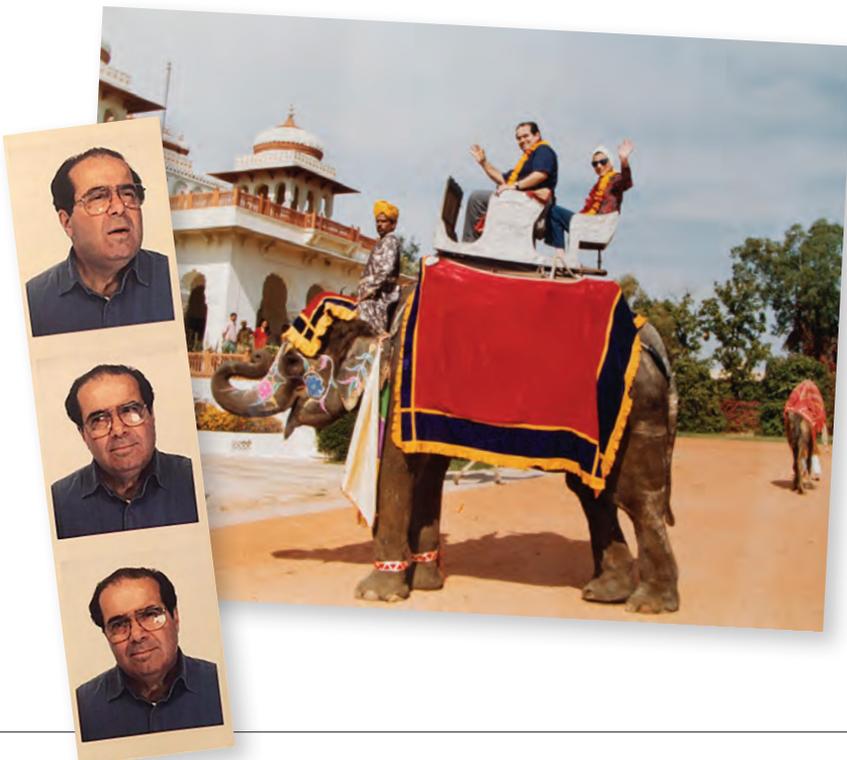
The Last Wordplay on the Law

For more than 40 years, Neil Chayet '63 analyzed legal cases in a radio segment he called "Looking at the Law," which was broadcast across the country. (He died in 2017 and produced the segment until shortly before his death.) The library provides access to more than 6,400 audio recordings all sharing the same format: He begins with a dramatic reading announcing, "This is Neil Chayet, looking at the law," offers his pithy and witty observations on each case in typically less than a minute, and then ends with a pun. A dispute over Elvis Presley memorabilia found the losing side "all shook up"; a faculty adviser of a student newspaper who was suspended because of a parody edition published on April 1 needed to watch out for those "who don't suffer April fools gladly"; a case of a person who was arrested for barking at a police dog and was later acquitted meant the police were "barking up the wrong tree."



The Bond Between Justices

In 2017, the family of the late Supreme Court Justice Antonin Scalia '60 donated his papers to the HLS Library. While the collection focuses on his judicial work, it also includes personal mementos, notably a photo of him and his close friend Justice Ruth Bader Ginsburg '56-'58 riding an elephant together during a 1994 trip to India to learn about that country's legal system. (He later quipped that some of Ginsburg's friends questioned why she would take a back seat to Scalia on the elephant; Ginsburg retorted that the seating arrangement was based on weight distribution.) A portion of the collection is scheduled to be available to the public at the beginning of 2020 and will include approximately 2,000 photos.



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Dan Eaton '89, HLSA President

“It’s about guiding people toward where they want to go, but also supporting people when they’re unsure about their direction.”

Daniel Egel-Weiss '20

“To know that you’ve had that personal connection with somebody and be able to help them is one of the most rewarding things you can do in a career.”

Nicole Sinek Arnaboldi '84

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