

/ THE NEW *EMPIRICISTS* / The great fascinator at 800 / Beating the drum for *Justice* /

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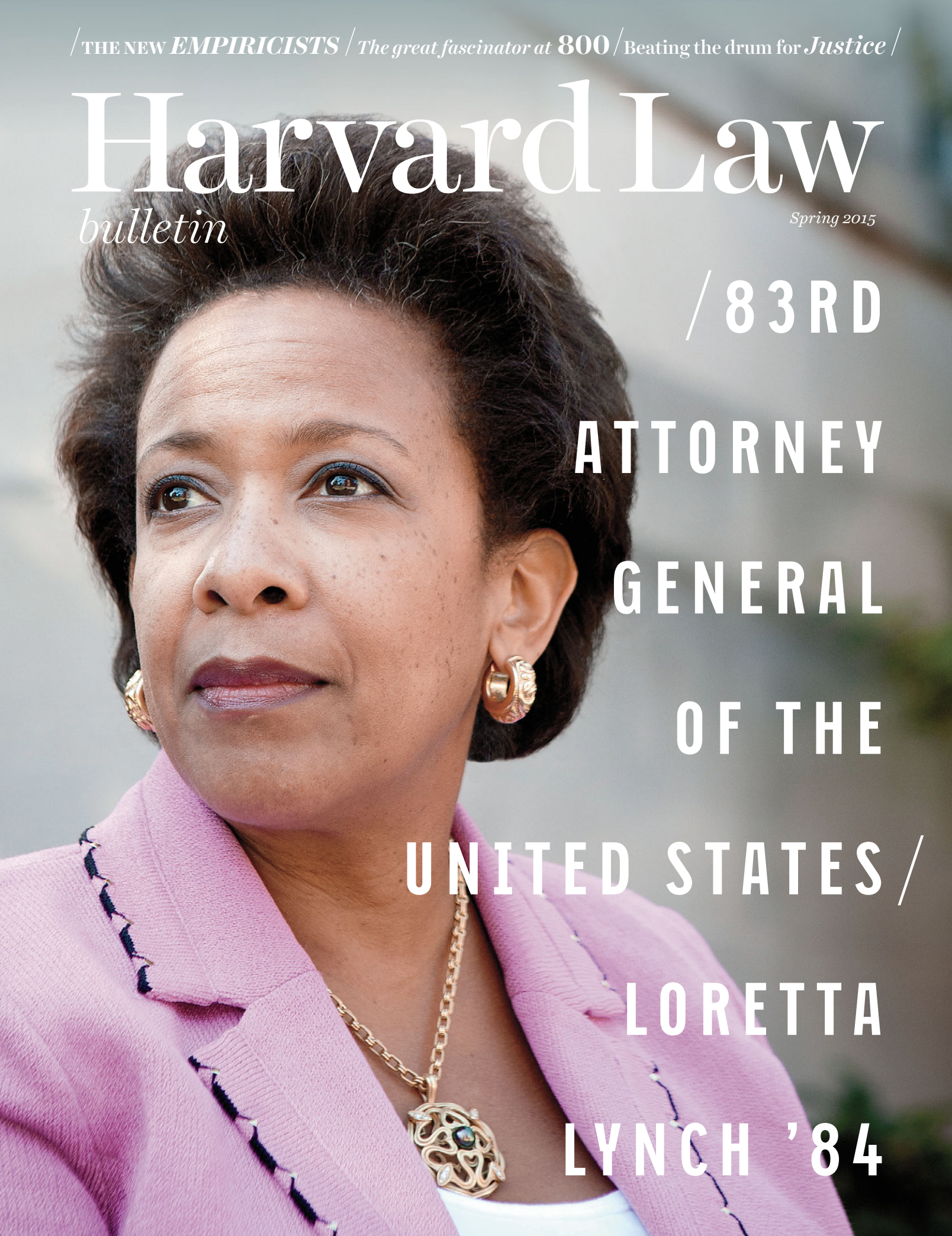
GENERAL

OF THE

UNITED STATES /

LORETTA

LYNCH '84



Assistant Professor
Crystal Yang '13
is one of the
increasing number
of empirical law
scholars at HLS.

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WEBB CHAPPELL

Bryan Stevenson '85,
author of "Just Mercy:
A Story of Justice and
Redemption" ▶



BRANDON THIBODEAUX

Amanda Savage '15 (left), Asmara Carbado '15 and Cass Luskin '15 represented clients as part of the CJI Criminal Defense Clinic, headed by Dehlia Umunna (right).

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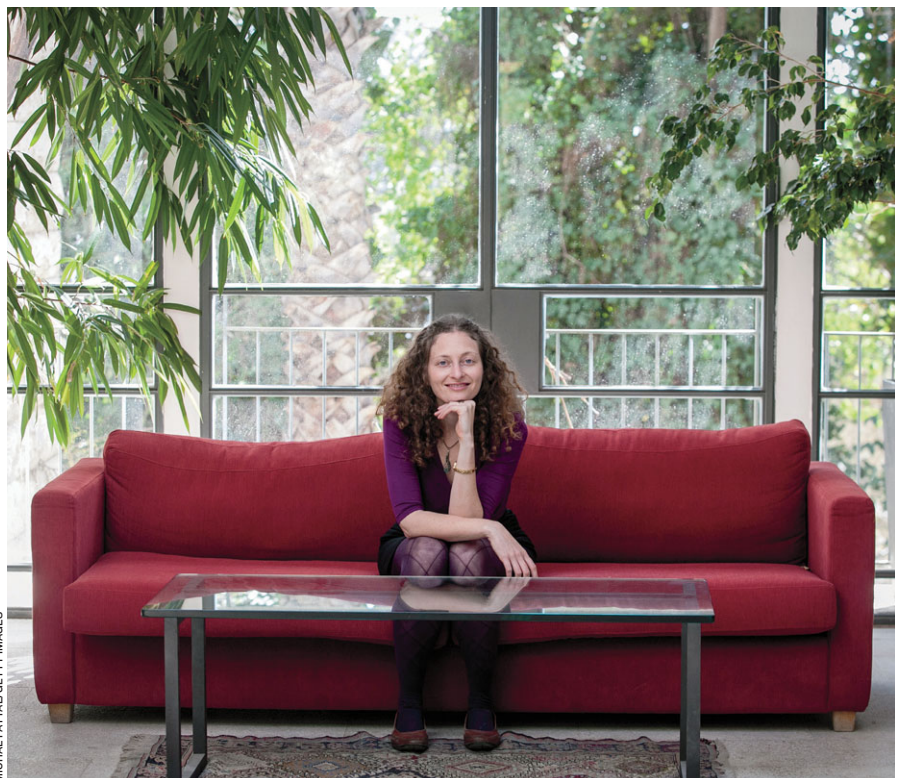
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MARK OSTOW



MICHAEL FATTAL/GETTY IMAGES

Netta Barak-Corren S.J.D. '16 launched the Empirical Legal Studies group at Harvard. "Data," she says, "can be quite a convincing tool."

A CENTRAL PURPOSE OF LAW is accountability. But who holds law itself to account? Law is designed to expose and sanction people, organizations, and nations when they violate a public norm or breach an enforceable private agreement. What should happen when law fails to deliver?

Over the past year, many people across the United States have asked this question about local, state, and national criminal justice, and about police and grand juries in particular. A part of the solution lies in the independent research and review offered by academics; another part, in the sterling efforts of outstanding practitioners. Longer-term reforms come with the recruitment and training of superb individuals to carry on the work.

This issue of the Bulletin offers glimpses of some of these avenues for law reform in this country and around the world.

Last year, HLS Clinical Professor Ronald Sullivan '94 helped the Brooklyn district attorney's office set up a conviction review unit to address the troubled history of the office. As the faculty director of the school's Criminal Justice Institute, Sullivan worked with students to design the best way to review convictions, with the focus on correct results.

Loretta Lynch '84 has served for two distinguished terms as United States attorney for the Eastern District of New York, where she and her team successfully pursued convictions of police officers involved in the torture of a Haitian immigrant, and where she prosecuted a series of individuals accused of terrorism. We salute her service and leadership upon her nomination and confirmation to serve as the attorney general of the United States.

Bryan Stevenson '85, professor at New York University School of Law, founded the Equal Justice Initiative to provide free legal representation to death-row inmates in Alabama. His organization successfully challenges life sentences for juvenile offenders and racial and economic bias in the American criminal process. His award-winning memoir, "Just Mercy," published in the fall, exposes systemic failures and at the same time raises hope with stories of his crusading efforts.

With an aim of improving the

"The classic question for government and for media is: Who watches the watchdogs? At its best, law offers essential checks. But this very ideal raises the stakes for holding legal systems themselves accountable."

legal system through instruction and through recruiting talented people to take up the work, we have expanded the Criminal Justice Institute's Criminal Defense Clinic by nearly 60 percent. Approximately 50 percent of the clinic's graduates go on to become public defenders. We are delighted that the clinic's deputy director, Dehlia Umunna, has accepted a place as clinical professor, starting this summer.

Other fields, such as medicine and technology, have made dramatic progress through the use of empirical tools and data-driven analysis. Here at HLS, Assistant Professors Holger Spamann S.J.D. '09 and Crystal Yang '13 each use empirical research tools to assess criminal sentencing practices.

We are increasing our investment in empirical research not only in criminal justice but also in consumer protection, settlement of litigation, corporate governance, securities regulation and the legal profession itself. A growing number of HLS faculty focus on empirical legal studies, and the school has expanded empirical research coursework and learning opportunities.

The classic question for government and for media is: Who watches the watchdogs? At its best, law offers essential checks. But this very ideal raises the stakes for holding legal systems themselves accountable.

We are trying to do our part by combining new and old tools—crowdsourcing, debate, research and education. The best prospect comes with talented people, propelled by visions of what could and should be. Congresswoman Barbara Jordan once said: "More is required of public officials than slogans and handshakes and press releases. More is required. We must hold ourselves strictly accountable. We must provide the people with a vision of the future." We invite your thoughts about how to promote accountability across law and society.

Maitha Minnow



KEN RICHARDSON

Territorial taxation disguises largest theft in taxpayer history

I MUST TAKE EXCEPTION TO the statement in “Tax Turn-around Time?” (Fall 2014) that “both sides agree on the need for a reduced tax rate and the move to a territorial system. ...” That is simply not true.

A territorial system would allow multinational corporations to avoid taxation on any profits they claimed they earned offshore and would put domestic companies against whom they compete at a great disadvantage. While it is true that our nominal corporate tax rate is high, the effective U.S. tax rate on multinational corporations is on a par with those of other developed countries.

No one disputes that our tax system is riddled with loopholes or subsidies which should be eliminated.

We need to adopt a system of apportioning the multinationals’ income, rather than exempting them from taxation of income they claim they earned offshore. For almost one hundred years, the states have adopted either a three-factor apportionment of taxable income based on the amount of property, personnel and sales within their boundaries or simply on the amount of sales in their state, and the U.S. Supreme Court has ruled that that is at least as accurate as using transfer pricing to determine where profits are earned.

Territorial taxation is merely a very clever way of disguising perhaps the larg-

est theft from taxpayers in our history. Is it any wonder that such a sophisticated campaign is so well-funded and -led?

Martin Lobel LL.M. '66

Washington, D.C.
Chairman of the Board of
Tax Analysts, publishers of
Tax Notes

Tax journal has wide reach

AS A CONTRIBUTING EDITOR to *Tax Notes*, I was surprised to see it referred to as an “arcane tax journal” (“Tax Turnaround Time?”). Far from being “arcane” (or obscure), *Tax Notes* is generally regarded in the tax community as the leading publication of tax news and commentary. That’s the reason why Professor Shay chose to publish his views in *Tax Notes* (“Mr. Secretary, Take the Tax Juice Out of Corporate Expatriations,” 144 *Tax Notes* 473 [July 28, 2014]). He wanted to reach tax policy-makers and practitioners. His article was subsequently referenced by the mainstream media, including *The New York Times* and *The Wall Street Journal*.

Incidentally, the *Bulletin* missed the role played in this story by an HLS alum. A key figure in developing Treasury’s anti-inversion notice [last] summer was international tax counsel Danielle Rolfes ’02.

George White '63

Bethesda, Maryland

The Story connected to a great American legal writer

NATHAN DANE, THE SUBJECT of an interesting piece in the Fall 2014 *Bulletin*, was more than just a fine lawyer

and visionary politician. He was the first great American legal writer: His eight-volume “A General Abridgment and Digest of American Law,” published in 1823, a few years before Kent’s “Commentaries on American Law,” surveyed the entire national field, and was such a best-seller that it provided the funds which enabled Dane to endow the Dane Professorship (Dane specifying that the first incumbent would be his great friend Supreme Court Justice Joseph Story).

Hiller B. Zobel '59

Boston

A backlash against feminism

IN REGARD TO “KEEPING Faith,” the article about the nonprofit law firm which represented Hobby Lobby (Fall 2014), it is becoming increasingly apparent to us that what masquerades as a religious objection to contraception and abortion is in actuality a backlash against feminism, because arguing that a miniscule embryo has the legal status of a human being is as ludicrous as the medieval debate concerning how many angels can dance on the head of a pin.

By facilitating Hobby Lobby’s refusal to offer a plan that insures certain common methods of birth control, Lori Halstead Windham is propagating the narrow-mindedness of a white religious fundamentalist minority which continually attempts to impose its will on the plurality, with dire social consequences as the result.

Shame on Windham and

her partners for perpetuating a cycle of poverty in which teenage girls are forced into having their babies, which more often than not condemns both mother and child to a grim existence during which they lack the opportunities that Windham enjoys.

Tad Kramer '76 and

Margaret Kramer

Lecompton, Kansas

We need someone of Lloyd Weinreb’s stature

I READ WITH GREAT interest Richard Fallon’s recent story about the retirement of my Criminal Law professor, Lloyd Weinreb, who even in 1967 was a superb teacher. After learning from it how he has grown in the last 47-plus years, it occurs to me that he might be just the person to help the United States out of its present standoff between many of our minority communities and their police forces.

Mr. Weinreb certainly appears to retain the energy to chair a Warren-type commission, which would recommend changes to a system of justice that might alleviate the impasse that has developed, and the expertise to be respected by both the police unions and the residents of our ghettos. Clearly, now more than ever after the senseless killing of the two officers in Brooklyn, we need someone of his stature to address the problems that the deaths of Michael Brown and Eric Garner have brought to the fore.

Richard M. Grimsrud '71

Sedona, Arizona

Power—and Peril—to the People

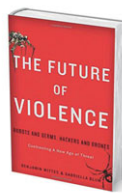
In a new world of technology, we are more powerful and more vulnerable than ever



DURING A CONVERSATION ABOUT HER NEW BOOK, Gabriella Blum LL.M. '01 S.J.D. '03 jokes that she has become paranoid. Then again, it's not paranoia if you truly have something to fear. And the book "The Future of Violence: Robots and Germs, Hackers and Drones—Confronting a New Age of Threat" covers lots of things to be scared of—as well as ways to make us safer even when danger can come from everywhere and everybody.

Blum, the Rita E. Hauser Professor of Human Rights and Humanitarian Law at HLS, and co-author Benjamin Wittes, a senior fellow in governance studies at the Brookings Institution, focus on a new world of technology that fundamentally changes long-established conceptions of security. Whereas in the past, government was primarily responsible for security, individuals are now more empowered and more vulnerable than ever before. Indeed, new technologies have allowed individuals and small groups to challenge states, they write. For example, networked computers could facilitate an attack on the financial system or the electric

Gabriella Blum and Benjamin Wittes reject the idea that we must give up liberty for the sake of security.



grid; deadly pathogens have become more widely available, as seen in the anthrax attacks in October 2001; and 3-D printing allows civilians to create their own weapons. Furthermore, technologies tend to allow attacks from greater distances and with a greater chance for anonymity.

As a corollary, distance does not protect people from harm. The ubiquity of the Internet, along with the fact that our digital information is being stored out of our hands, has increased the number of ways people can be attacked, they write. As technology advances, our vulnerability will increase. For example, should driverless cars one day take over our roads, the systems that control them could be tampered with to cause mass traffic accidents. To face these threats, the private sector will play a greater role than ever, they contend, ranging from cybersecurity initiatives to innovations such as one from a company that uses audio sensors to identify when a gunshot has been fired.

"The point is that in the future world, you are a key to security, you are a key to defense, you are

a key to threats, and each and every one of us is naked, vulnerable, menacing, and essential,” says Blum.

The authors reject the notion that, in this new age of threat, one must give up liberty for the sake of security. After all, they note, the least free countries are not the most secure. In addition, while concerns about invasion of privacy are often raised when it comes to security issues, they write that “the concept of privacy badly describes the value we wish to protect in a culture in which we routinely conduct transactions using, as currency, data about ourselves.” They cite instances in which people gratefully cede privacy in order to feel more secure, such as when a credit card company monitors customers’ transactions in order to discover fraud.



EUGENIA ELISEVA

This is surveillance, whether we commonly call it that or not, as is screening done in airports, says Blum. And the authors advocate for more of it as long as checks and balances are in place, such as ensuring that it is nondiscriminatory. In an

age of “many-to-many threats,” we need to protect ourselves from more than just the specter of an all-seeing Big Brother government, Blum says: “I’m actually comfortable with [surveillance] within bounds if it protects me from lots of Little Brothers with far less accountability than democratic government has.”

As a native of Israel who advised the Israel Defense Forces and Israeli National Security Council, Blum says that her background taught her that national security affects people’s everyday lives. Unlike in the United States, in Israel, the country’s border didn’t provide an effective line of defense. In many ways, that is now the reality under which all nations must operate. Since many threats are transnational, more states will create laws and carry out unilateral actions that will cross their borders, including more targeted killings, she says. To prevent a worldwide “Wild West,” she advocates for more international cooperation, including the possibility of a multinational police force. More than ever, the instability of one country threatens not only its own citizens but also other nations, she says.

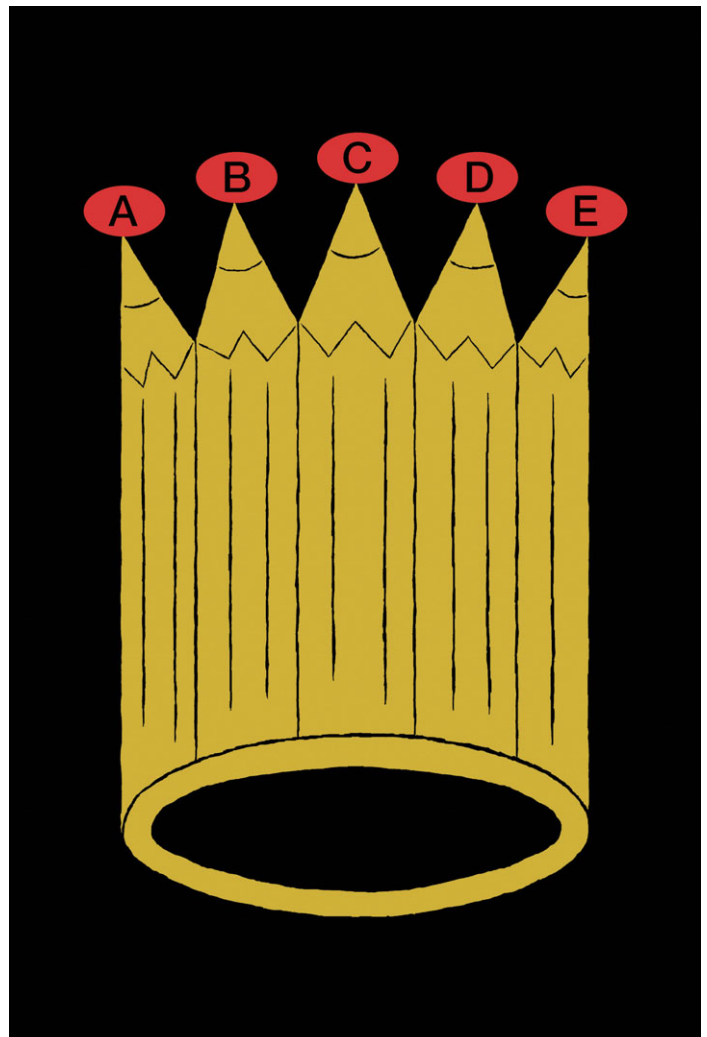
Before the book was published, students mulled its topics in a workshop Blum co-taught with HLS Professor Jack Goldsmith called National and International Security Law: New Threats. As the students embark on their careers, it’s not a question of *if* they will deal with these threats, she says, but *how*: “I can’t think of a place where these questions aren’t relevant today.” —LEWIS I. RICE

The Price of Admission

Does overreliance on standardized tests weaken college and society?

FOR LANI GUINIER, the mission of higher education is—or should be—democracy.

Speaking about her new book, “The Tyranny of the Meritocracy: Democratizing Higher Education in America,” the civil rights attorney and Harvard Law professor explained that “the goal is not just to educate the elite, but to educate the citizenry, and to educate the citizenry in a way that will not only benefit the individuals who are at the schools, but will also



benefit a broader segment of society.”

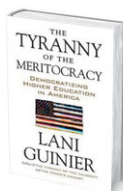
Guinier has been writing about democracy and exclusion for decades. In “The Tyranny of the Majority” (1994), she noted that voting rights alone had failed to yield policies that improved the lives of minorities, and she proposed a cumulative voting system involving multiple representatives of single districts, with each individual voter having a number of votes to cast. In “Becoming Gentlemen” (1997), she and her co-authors documented ways in which women were failing to thrive in the traditional law school classroom and proposed collaborative, problem-solving-based teaching approaches as remedies. In “The Miner’s Canary” (2002), she and Gerald Torres argued that the experiences of minorities can inform the analytical and political bases for positive social change for all Americans. And in “Who’s Qualified?” (2001), she and Susan Sturm made the case that our reliance on admissions tests like SATs and LSATs is flawed: They are poor predictors of future success; they disproportionately benefit students from privileged backgrounds; and affirmative action, the standard remedy for the monochromatic student body that these tests draw, merely perpetuates the problem.

In “The Tyranny of the Meritocracy,” Guinier builds on the idea that standardized test-based admissions reinforce a status quo stacked against the disadvantaged. Guinier calls this a “testocracy.” “The SAT is actually more reliable as a wealth test than as a test of potential,” she writes. The success of higher education, she argues, should be measured not by the test scores of the students who enter the system, but by the work and service of the students who leave.



(LONNIE TIMMONS III/THE PLAIN DEALER/LANDOV)

Lani Guinier writes, “What is urgent for our world—and thus what we should consider most closely in education—is a student’s capacity to collaborate and to think creatively.” ▲



→ “The SAT is actually more reliable as a ‘wealth test.’”

She’d like to see universities move from an emphasis on admission that’s reliant on faulty standardized tests to an emphasis on mission—a mission of expanding opportunity to students who are racially and economically diverse—and on building on their potential with mentoring and support once they are on campus.

Guinier believes this would serve individual students “and contribute to the conditions of a thriving democracy” by cultivating classes of “critical thinkers, active citizens and publicly spirited leaders.”

How it is accomplished in university classrooms, she said, is through peer-instruction, peer-collaboration and peer-support networks. When educators like Harvard physics professor Eric Mazur and University of Texas math professor Philip Uri Treisman shifted to this style of teaching in their classrooms, they found that all of their students—top and bottom—improved, that the achievement gap narrowed, and that the gender gap disappeared.

Guinier has taken a similar journey with her own teaching. “I wrote this book, in large measure, because of what I learned

from my students,” she said.

In the early 1990s, when she was on the faculty of the University of Pennsylvania Law School, Guinier agreed to co-supervise a seminar on feminism that was proposed by some of her students. “It turned out to be a remarkable experience. The students were so invested in the course because they were in a position to help draft the assumptions and expectations and goals of the class,” she said. “I was just struck by the power of learning by teaching.”

Today, Guinier said, in many of her courses at HLS, “I teach for at least a third of the class, meaning for the first three to four weeks, and then I work with small groups of students to facilitate the next sessions. So, they don’t have to spend their time listening to me talk; they are really learning by teaching.”

When diverse groups of students educate each other as peers, they become problem-solvers who know how to work together, and they are gaining the skills that they need to become participants in their democracy. “That’s the theme of the book,” Guinier said. “The power of collaboration.”

—JERI ZEDER

In Brief

“Identified versus Statistical Lives: An Interdisciplinary Perspective,” EDITED BY PROFESSOR I. GLENN COHEN ’03, NORMAN DANIELS AND NIR EYAL (Oxford, 2015). The book examines ways in which people are more likely to help those in actual danger than to protect as-yet-unidentified people from similar harm in the future. Examples of this bias range from the world of health care, where major resources are often devoted to the gravely ill, to extraordinary relief efforts such as the rescue of trapped miners in Chile. The book’s essays, including one written by Cohen, director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, on how the concept plays out in litigation, examine when the bias arises, whether it is ever justified and its practical implications.

“Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law,” BY PROFESSOR INTISAR A. RABB (Cambridge, 2015). People commonly think that Islamic law, because it is based on the divine, leaves little room for discretion or doubt, says the author, co-director of the HLS Islamic Legal Studies Program. Yet doubt, she writes, is in fact at the heart of Islamic criminal law. Using case studies and examining the development of Islamic law from the seventh century to the 16th century, she highlights how the concept of doubt was used by Muslim jurists “to form a pragmatic method of interpretation that increased their institutional power over law.”

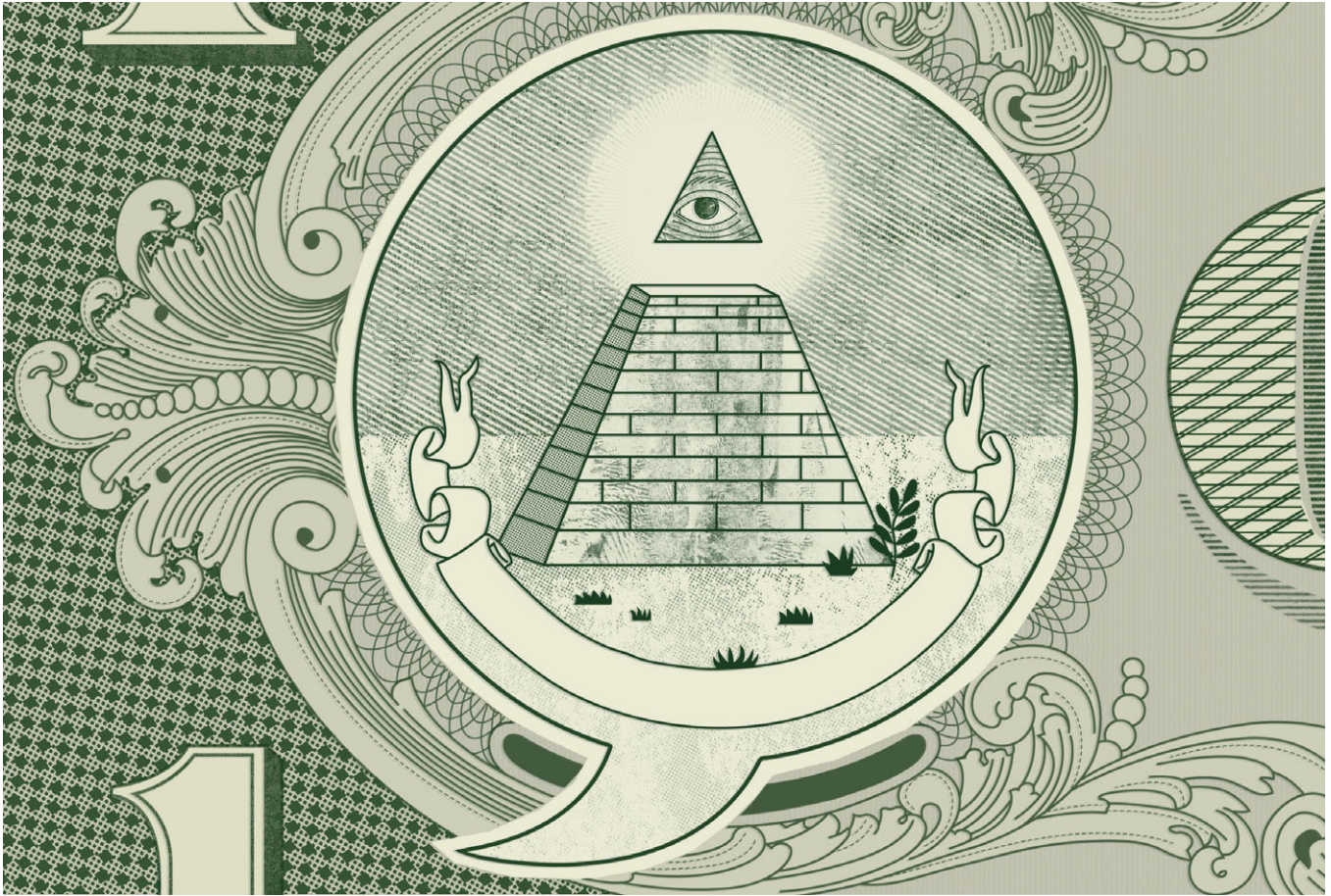
“Wiser: Getting Beyond Groupthink to Make Groups Smarter,” BY PROFESSOR CASS R. SUNSTEIN ’78 AND REID HASTIE (Harvard Business Review, 2015). As far back as Aristotle, people have been



touting the benefits of group decision-making. Yet, as the authors note, history suggests that groups are often unwise or downright foolish. In the book, Sunstein, who wrote the influential behavioral science work “Nudge,” and Hastie, an expert on the psychology of decision-making, reveal the sources of group failure, including how groups can amplify errors of individuals, adopt a herd mentality and veer toward extremes. They also detail how groups can succeed, by assigning roles and seeking outside information and with leaders who make room for others’ viewpoints. Crowds aren’t always wise, they write, but since most of us work in groups, we should understand why and when they can be wiser.

“The Singular Universe and the Reality of Time: A Proposal in Natural Philosophy,” BY PROFESSOR ROBERTO MANGABEIRA UNGER LL.M. ’70 S.J.D. ’76 AND LEE SMOLIN (Cambridge, 2015). In this book, a philosopher and a scientist tackle a subject that could not be grander: the universe and its history. Unger, a legal theorist (currently on leave from HLS to serve as minister of strategic affairs in Brazil), and Smolin, a theoretical physicist, base their inquiry on the premise that the universe is singular; that time is inclusive and real and therefore nothing in nature lasts forever; and that there is selective realism in mathematics. In connecting these ideas, the authors provide “a reinterpretation of some of the most important discoveries of 20th-century cosmology and physics, the historical character of the universe first among them.”





FACULTY VIEWPOINTS

Will Corporate ‘Speech’ Undermine Productivity?

Extending First Amendment rights to corporations is bad for capitalism, argues Coates

THE FIRST AMENDMENT PROTECTS the political speech of corporations, the U.S. Supreme Court decided in *Citizens United*. Critics say the ruling corrupts our democracy by allowing billions in corporate money to flood American elections, drowning out the voices of those without the wealth needed to compete for the attention of elected representatives.

Harvard Law Professor John Coates has other concerns about the ruling. He says that the

John Coates links the explosion of corporate First Amendment Supreme Court litigation to the influence of Justice Lewis Powell.

misguided extension of First Amendment rights to corporations—what he calls “the corporate takeover of the First Amendment”—has dire consequences not only for American democracy, but also for American capitalism.

In his new paper, “Corporate Speech and the First Amendment: History, Data, and Implications” (forthcoming in a special issue of the journal *Constitutional Commentary*), Coates argues that corporations

are increasingly using the First Amendment to attack laws and regulations intended to rein in harmful corporate activity (think consumer and environmental protection laws), and that the federal courts are, alarmingly, obliging them.

His paper contributes to the scholarly literature on the subject in two ways: by examining the rise of First Amendment litigation by corporations, through empirical data, and by reconceptualizing the trend in economic

terms—namely, “rent seeking,” the redistribution of benefits at another’s expense without added social value.

A corporate law professor and former partner at Wachtell, Lipton, Rosen & Katz, Coates first found himself drawn to constitutional law after *Citizens United* was decided in 2010. He acknowledges that crossing this boundary is unusual. Few corporate scholars know constitutional law, he has found, and few constitutional scholars know corporate law.

One of the exceptions is at the center of his article: the late U.S. Supreme Court Justice Lewis Powell LL.M. ’32. Coates sets the stage for Powell’s entrance against the backdrop of history. Until the 20th century, he shows, British and American law assumed that corporations were government creations and subject to routine and widespread government regulation. The Founders never contemplated that corporations had rights

similar to those of people—something that Coates argues should be of interest to constitutional originalists. Moreover, Coates writes, the U.S. economy historically grew into a powerhouse without a boost to business via the First Amendment.

That all changed radically in the 20th century, after Powell joined the Court. Months before his elevation on Jan. 7, 1972, and unknown to the U.S. Senate that confirmed him, Powell, a corporate lawyer, wrote a 34-page manifesto to the U.S. Chamber of Commerce. It claimed that the American economic system was under attack not only from leftists, but from “the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians.”

Powell argued that “a primary responsibility of corporate management” is to fight back for the sake of “the free enterprise system, and all that this means for the strength and prosperity

of America and the freedom of our people.” Among the strategies he urged was litigation. “Other organizations,” he noted, “have been far more astute in exploiting judicial action than American business.”

Coates, in a striking graph, quantifies Powell’s judicial influence. Between 1972 and 1987, the period of Powell’s tenure on the Court, free speech cases involving businesses doubled, jumping from 20 percent of the Court’s First Amendment docket to more than 40 percent.

The Court first ruled that commercial speech is protected under the First Amendment in *Virginia Pharmacy* in 1976. After that, Coates found, nonexpressive businesses (businesses that are not, for example, publishers or film or television companies) went from about a 20 percent win rate in First Amendment cases to a 55 percent win rate—about equal to the win rate for individuals.

In *Bellotti* (1978), the Court established the right of corporations to free expression, and then came *Central Hudson* in 1980. There, the Court articulated the test for deciding commercial speech cases: If a case involves commercial speech, and that speech concerns lawful activity and is not misleading, then, to be constitutional under the First Amendment, the law regulating that speech must directly serve a substantial government interest, and it must “fit”—that is, it must restrict no more speech than is “necessary.”

Coates writes that *Central Hudson* “provided an open invitation to courts to strike down laws ‘abridging’ speech by businesses, even if the laws serve concededly ‘substantial’ and legitimate purposes, even if the interests are served in a straightforward and intuitive

→ The Founders never contemplated that corporations had rights similar to those of people, argues Coates.



An expert in M&As and securities regulation, Coates says there has been “a corporate takeover of the First Amendment.”

STUDENT SNAPSHOT

LL.M.s for LGBT Rights

Childhood friends train together to fight Uganda's draconian anti-gay laws

AS ACTIVISTS FOR LGBT RIGHTS in Uganda, Susan Mirembe Nalunkuma LL.M. '15 and Godiva Akullo LL.M. '15 have not chosen an easy path.

They've been called names, including by some of their university teachers, and been shunned by other students, even those who support their work but are afraid to do so openly. "We had classmates saying: 'You're being paid by Western powers to kill African culture. You are spreading immorality,'" says Nalunkuma. "We did not have it easy, but many had it worse."

Uganda is among the harshest nations in its treatment of homosexuals. In 2009, American evangelical preachers helped Ugandan legislators draft a law that called for the death penalty for homosexuals, and attacks against gays spiked. In 2011, one of Uganda's best-known gay-rights activists was beaten to death with a hammer.

Born and raised in Kampala, the childhood friends became involved in LGBT rights when they matriculated at Makerere University in 2009, intent on becoming lawyers. Interested in human rights, they interned at a consulting firm, under the direction of one of their professors, a constitutional law attorney, Busingye Kabumba LL.M. '08, just as Uganda's harsh anti-homosexuality bill was proposed. Nalunkuma and Akullo soon found themselves researching efforts to oppose the law on grounds it violated the constitutional requirement for separation of church and state. The law, which made

certain homosexual acts punishable by life imprisonment, was enacted in 2013. It was overturned on technical grounds, but a new version is expected to be proposed in the Parliament.

Through Kabumba, the two students met other human rights activists in Uganda, and also studied under an outspoken proponent of LGBT rights, Sylvia Tamale LL.M. '88, former dean of the school of law at Makerere. Over the next four years, Akullo and Nalunkuma expanded their efforts, working through the university's first legal aid clinic on a case against Uganda's minister of ethics and integrity for shutting down a gay-rights conference. Nalunkuma also worked with Sexual Minorities Uganda, an NGO based in Kampala, to help provide information and support to LGBT people and organizations.

The more involved they became in the work, the more scrutiny they received. After their faces appeared on TV news during the lawsuit against the minister of ethics, administrators at their former high school called a school assembly and warned girls headed to university to avoid the pair. "And they mainly have, and we completely understand why," Akullo adds.

At the same time, they have been quietly approached by a number of students who support the LGBT movement and thank them for their efforts. More importantly, they say, queer students—kicked out of their families, ostracized by friends—have turned to them for advice

fashion, and even if the speech in question has no political or ideological content."

Case in point: *POM Wonderful, LLC*, decided in January 2015 by the D.C. Circuit Court of Appeals. The company wanted to market its pomegranate juice with unqualified health claims, based on findings from one randomly controlled study. A Federal Trade Commission order said that companies needed at least two studies; otherwise, they had to state that their claims were based on "preliminary" or "initial" research. The court scrapped that part of the FTC order, ruling that it violated the *Central Hudson* "fit" requirement.

Within this doctrinal state of affairs—and here is where rent seeking enters the picture—laws regulating corporations that are passed by legislatures and implemented by agencies with input from broad constituencies, including corporations, are being contested in court by corporate managers with narrow interests and goals. Those laws are being declared unconstitutional by judges who misapply to the corporate form the rights of individuals. The courts in these cases, Coates says, are abusing their powers of judicial review.

And when the federal courts invoke the First Amendment to strike down laws that regulate corporations, argues Coates, they are redistributing the power to regulate corporations *from* elected officials and regulators (and, by extension, ordinary people) *to* themselves for the benefit of corporate bureaucrats who are litigating not for increased productivity, but merely for increased profits.

Coates warns: "If our companies are increasingly convinced that the best way they can maximize profit is to focus on legal or political moves, and they stop focusing on productivity and value for consumers as a way of making money, then we are going to end up dragging down both our democracy and our economy."

—JERI ZEDER



on where to get legal and other help.

“And we’ve had a good number of professors who respect ... the work we do,” says Nalunkuma, adding, “I would say most opportunities I’ve been exposed to in the past few years have been because of my work with the movement.”

Susan Mirembe Nalunkuma and Godiva Akullo recall teachers who have guided their activism. They now hope to play that role for others. ▲

After passing the Ugandan Bar, the two headed to HLS, drawn by the school’s international reputation. “Credibility is important when you’re doing work of this nature,” says Nalunkuma.

This semester, in addition to studying under HLS Visiting Professor Catharine A. Mac-

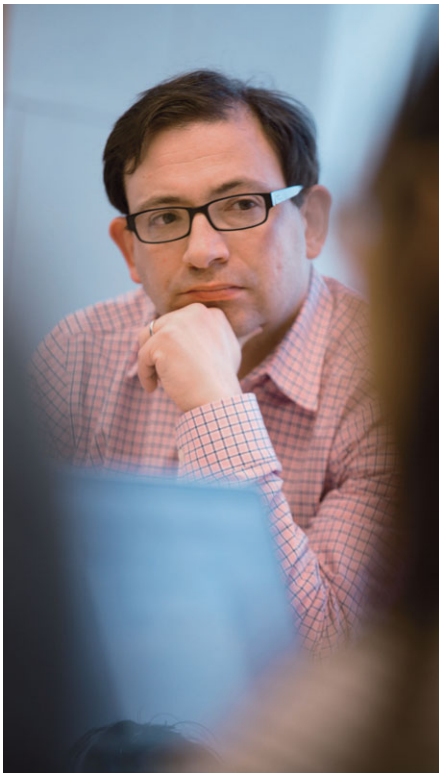
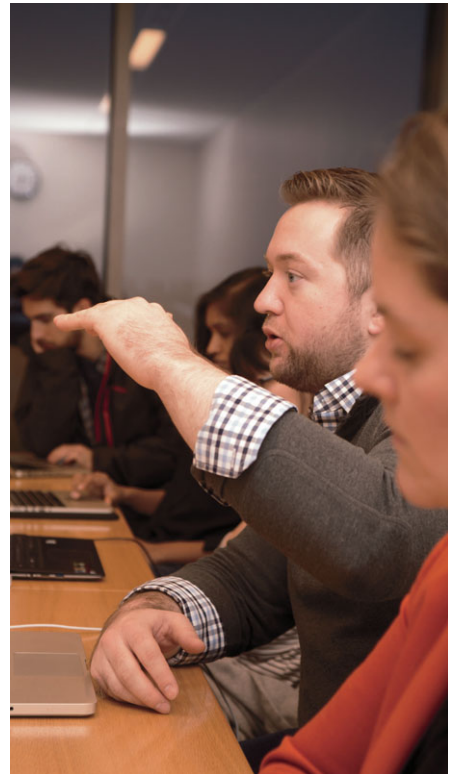
Kinnon, a renowned activist in the area of gender equality and rights, Nalunkuma has taken the Transactional Law Clinic. Akullo made a point of taking international trade law, she says, because trade sanctions are so often used to force governments to comply with basic human rights; the U.S. and other nations cut their aid to Uganda when its harsh law was imposed.

At HLS, the two have basked in the freedom to concentrate on their studies without fear. “It feels like your mind is free to be creative. When I wake up in the morning, I can think about some idea—something other than just survival instinct,” says Nalunkuma. She adds, “I didn’t realize how much stress we were under.”

Both students see the decriminalization of homosexuality as an essential step toward other basic rights for the LGBT community. Akullo notes that while she appreciates outside support, it can lead to a backlash against LGBT activists in Uganda. “The international help can be overzealous in certain situations,” she says. “I think with any assistance being offered, the first question asked should be, ‘What help do you need, and how can we help you achieve your goals?’ Because if, at the end of the day, activists in Uganda are pursuing one course of action, and international activists are doing the exact opposite, then it makes the work even harder.”

She and Nalunkuma hope to become university professors—in Uganda or elsewhere in Africa—as they continue their advocacy. “I know I was influenced a lot by my professors,” says Akullo. “I really want to have the opportunity to be that person in someone else’s life.”

“Our activism is never going to stop,” she adds. “It’s not a 9-to-5 job.” —ELAINE McARDLE



GLOBAL ENGAGEMENT

Articulating Integrity

Students write about corruption for an international audience

The Global Anticorruption Lab, taught by HLS Professor Matthew Stephenson '03, offers law students an unusual opportunity to hone concise writing skills through the crafting of blog posts that are read and commented on by high-level stakeholders around the world.

Now in its third semester, the lab is a hybrid between an independent study and a seminar. Students are required to produce independent research on anti-corruption topics and write four brief but substantive posts for the Global Anticorruption Blog. Weekly meetings are

Clockwise from left: Matthew Stephenson; Oluwafunmilayo Akinosi LL.M. '15; Melanie Emmen '16; Lauren Ross '16; Katie King '16; Jordan Moran '15; Christopher Crawford '16; Anusha Pamula '16; Center: Yi Seul Kim LL.M. '15

devoted to group discussions of students' research ideas, with classmates and Stephenson providing in-depth critiques in a workshop format.

With participants from a wide variety of backgrounds—including LL.M.s from South Korea, Egypt, Indonesia and Nigeria—who have an interest in anti-corruption, the lab generates a range of posts, from one on money laundering in Vietnam to a comparison of four recent U.S. governors prosecuted for corruption. The blog is followed by readers at the World Bank, in the U.S. government, at the U.N., and at major NGOs such as Transparency International, Stephenson says, and some of the student posts have received significant attention.

The lab itself has a following. This year, Elizabeth Loftus '16, like several of the students, is taking it for the second time. (One student is taking it for a third time.) A vice president of the executive board for the Harvard Law and International Development Society, Loftus has

written posts on topics such as allegations of protectionism in China's enforcement of its anti-corruption laws and the impact of the Nigerian government's relationship with the military on the fight against Boko Haram. She says she has learned even more than she expected to—from Stephenson, from her classmates and from working on the posts: "When you put your work out there for the world to see, you want to make sure your argument is as airtight as possible. So a 700-word blog post actually represents hours of research."

Since it is both a blog and a lab—he chose the "lab" moniker to distinguish it from more traditional seminars—Stephenson wryly refers to his course as a "blab." Each post must make a complete point in a concise way. That brevity gives him the time to provide meaningful feedback on drafts, including comments on the style and clarity of the writing.

"It's much more feasible for me to give detailed feedback on

→ The blog is followed by readers at the World Bank, in the U.S. government, at the U.N., and at major NGOs such as Transparency International.

their writing and to do hands-on editing than is possible with a 40-page paper," he says.

"I've been incredibly impressed with all critiques I've gotten," says Melanie Emmen '16, who has posted on corruption in soccer's governing body, the Fédération Internationale de Football Association, among other topics. "It's wonderful to see how generous people are in the time they spend and how much thought goes into [their comments]."

Stephenson was encouraged to start the Global Anticorruption Blog by Professor Jack Goldsmith, who co-founded Lawfare, and more recently OnLabor with Professor Benjamin Sachs, blogs which include student posts. Stephenson expanded on this idea by creating a course around his blog and having students focus on analysis as opposed to posting summaries and news roundups. He, in turn, inspired Professor Intisar Rabb as she developed her Digital Islamic Law Lab, and there are now other courses that include student blog posts, such as Professor Jon Hanson's Justice Lab, and the Food Law Lab at HLS's Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, directed by Professor Jacob Gersen.

Stephenson has found that students take their posts very seriously, in part because they know the blog contributes to actual policy debates around the world. "Students know they're writing for a small but meaningful audience."

Emmen agrees. "One thing that's really cool is that the blog has international readership," she says. With the credibility of the HLS name, "we'll hear back from people who know what they're talking about and have worked really hard on these issues." —ELAINE McARDLE

POSTED

A selection of recent GAB titles; Read these posts and explore others at globalanticorruptionblog.com or follow on Twitter at [@anticorruptBlog](https://twitter.com/anticorruptBlog)

Why Do People Care So Much About the Proposed FCPA Compliance Defense?

When Transparency Isn't the Answer: Beneficial Ownership in High-End Real Estate

Gecko v. Crocodile, Round Three: Indonesia's Ongoing Fight between the Police and the KPK

Whistling in Chorus: The Potential Impact of the Rise of Parallel Prosecutions on Whistleblower Regimes

Who Calls the Shots?: Boko Haram and the Legacy of Military Leadership in Nigeria

It's Time to Stop Branding Public Works in the Philippines

Why International Double Jeopardy Is a Bad Idea

Demand-Side Prosecutions: Be Careful What You Wish For

There Is No "East Asian Paradox" of Corruption and Development

HLS VOICES

Preventing Sexual Assault

Universities nationwide are trying to do a better job of addressing sexual misconduct on campus. At HLS, new procedures reflect many voices.

Over much of the past year, Harvard, like universities around the country, was engaged in a major review of the many policies and procedures across its schools for preventing, investigating and disciplining sexual misconduct. Last summer, the university issued a new policy and new procedures designed to follow the most recent federal

guidance from the U.S. Department of Education.

In the fall, after a number of HLS faculty raised due process concerns about the new university procedures, the entire Harvard Law faculty explored ways in which the school might adopt separate procedures to address some of those concerns. In December, after consultation with

the Department of Education's Office for Civil Rights, Harvard Law adopted new procedures for implementing the university-wide policy and also resolved a 4-year-old inquiry by DOE, which found that some of the law school's prior procedures had not met current benchmarks under Title IX.

These developments, and

their impact on the rights of the accused and on victims—and even on classroom discussions—have been the subject of widespread commentary, in publications from the *New Republic* to *The Wall Street Journal*. Below are excerpts from some of the student, faculty and alumni contributions to the debate.

“RETHINK HARVARD'S SEXUAL HARASSMENT POLICY”

THE BOSTON GLOBE

OCT. 15, 2014

→ *Letter from HLS faculty: Elizabeth Bartholet; Scott Brewer; Robert Clark; Alan Dershowitz, Emeritus; Christine Desan; Charles Donahue; Einer Elhauge; Allen Ferrell; Martha Field; Jesse Fried; Nancy Gertner; Janet Halley; Bruce Hay; Philip Heymann; David Kennedy; Duncan Kennedy; Robert Mnookin; Charles Nesson; Charles Ogletree; Richard Parker; Mark Ramseyer; David Rosenberg; Lewis Sargentich; David Shapiro, Emeritus; Henry Steiner, Emeritus; Jeannie Suk; Lucie White; David Wilkins*

 AS MEMBERS OF THE faculty of Harvard Law School, we write to voice our strong objections to the Sexual Harassment

Policy and Procedures imposed by the central university administration and the Corporation on all parts of the university, including the law school.

We strongly endorse the importance of protecting our students from sexual misconduct and providing an educational environment free from the sexual and other harassment that can diminish educational opportunity. But we believe that this particular sexual harassment policy adopted by Harvard will do more harm than good.

As teachers responsible for educating our students about due process of law, the substantive law governing discrimination and violence, appropriate administrative decision-making, and the rule of law generally, we find the new sexual harassment policy inconsistent with many of the most basic principles we teach.

“WHAT TITLE IX DOES”

THE HARVARD CRIMSON

OCT. 24, 2014

→ *Stephanie E. Davidson '13, Kristi L. Jobson '12 and Katherine L. Kraschel '12*

 As alumnae of the Law School, we are disheartened by [the Harvard Law School professors'] public dismissal of the University's long-overdue attempt to address sexual violence at Harvard. Our professors claim that the policy inappropriately expands forbidden conduct, tramples on the rights of the accused, and did not rely on sufficient input from faculty. ...

In fact, read on its face, the policy reflects an internal determination that the minimum, federally mandated requirements are not sufficient to create the environment that fosters full intellectual engagement and exploration for all members of the Harvard community. Compliance with Title IX should be a floor, not a ceiling. A university like Harvard, which prides itself on educating tomorrow's leaders, should be at the forefront of the national response to sexual assault.

“this particular sexual harassment policy ... will do more harm than good.”

“your letter has distracted ... from ... ending the scourge of sexual assault ...”

“GOING TO HARVARD IS A PRIVILEGE, BUT SAFETY IS A RIGHT”

THE BOSTON GLOBE

OCT. 31, 2014

→ Anna Byers '16, Anna Joseph '16 and Maggie Dunbar '15

[SOME HLS PROFESSORS] claim that the new policy “effectively destroyed the individual schools’ traditional authority to decide discipline for their own students” by centralizing arbitration in the university-wide Title IX Office. We believe that a university-wide structure is a fairer way to ensure that all students, regardless of school affiliation, can access a neutral arbiter. Whether a student is studying design, law, or medicine should have no effect on the protections they receive. A Title IX Office has the expertise and commitment to equality to both uphold the law and implement university policy.

We appreciate your interest in assuring that the university’s policy is fair, and we welcome your attempts to remedy its shortcomings. But we worry that your letter has distracted many in our community from an important goal—ending the scourge of sexual assault at our university. On that account, the new policy represents a step in the right direction. Instead of condemning the Title IX Office, we should now focus our energies on improving the university’s policy—always with the twin goals of preventing sexual assault and sexual harassment, and of ensuring that justice and fairness are served.

“HARVARD’S NEW SEXUAL HARASSMENT POLICY MUST CHANGE”

WBUR, COGNOSCENTI BLOG

NOV. 14, 2014

→ HLS Professor Janet Halley

[HARVARD’S] PROCEDURES ... RISK MAKING VICTIMS OF THE UNHARMED AND VILLAINS OF the innocent. They deprive accused students of due process by placing the entire decision-making process in the hands of a single university officer, who has the authority to charge, investigate, adjudicate and hear appeals, all in a single case. That officer is in the impossible position of checking, testing and reviewing her own decisions. ...

Several other crucial American values are also under threat by policies like Harvard’s. One of them is academic freedom. While the [Obama] DOE OCR has admitted—grudgingly—that public institutions must respect the First Amendment while enforcing sexual harassment bans, it makes no commitment to free expression values at private institutions, where the First Amendment does not apply. ... The broader values of academic freedom, the very lifeblood of education and research, appear not to register as important to DOE OCR at all.

“THE TROUBLE WITH TEACHING RAPE LAW”

THE NEW YORKER

DEC. 15, 2014

→ HLS Professor Jeannie Suk '02

[M]y experience at Harvard over the past couple of years tells me that the environment for teaching rape law and other subjects involving gender and violence is changing. Students seem more anxious about classroom discussion, and about approaching the law of sexual violence in particular, than they have ever been in my eight years as a law professor.

We are currently in the middle of a national effort to reform how sexual violence is addressed on college campuses. This effort is critical, given the apparent prevalence of sexual violence among students. But it’s not clear that measures taken to protect victims always serve their best interests. At Harvard, twenty-eight law professors, myself included, have publicly objected to a new sexual-harassment policy on the grounds that, in an effort to protect victims, the university now provides an unfair process for the accused. ... [This is] unfortunately of a piece with a growing rape exceptionalism, which allows fears of inflicting or re-inflicting trauma to justify foregoing usual procedures and practices of truth-seeking.

Now more than ever, it is critical that law students develop the ability to engage productively and analytically in conversations about sexual assault. ... If the topic of sexual assault were to leave the law-school classroom, it would be a tremendous loss—above all to victims of sexual assault.

“SEX, LIES AND JUSTICE”

THE AMERICAN PROSPECT

WINTER 2015

→ HLS Senior Lecturer on Law Nancy Gertner

Feminists should be concerned about fair process, even in private institutions where the law does not require it, because we should be concerned about reliable findings of responsibility. We put our decades-long efforts to stop sexual violence at risk when men come forward and credibly claim they were wrongly accused. We put our work at risk when the media can dredge up the shibboleths about false accusations of rape, a collective “We told you so” tapping into old attitudes. ... [W]e should not substitute a regime in which women are treated without dignity for one in which those they are accusing are similarly demeaned. Indeed, feminists should be concerned about fair process, not just because it makes fact-findings more reliable and more credible, but for its own sake.

EMERITUS

Legacies of Selfless Scholarship

In July, HLS Professors Daniel Halperin and Duncan Kennedy will retire. We asked two colleagues for reflections.



UNDISGUISED VALUE

DANIEL HALPERIN has shaped U.S. tax policy and tax practitioners

BY ALVIN C. WARREN JR.

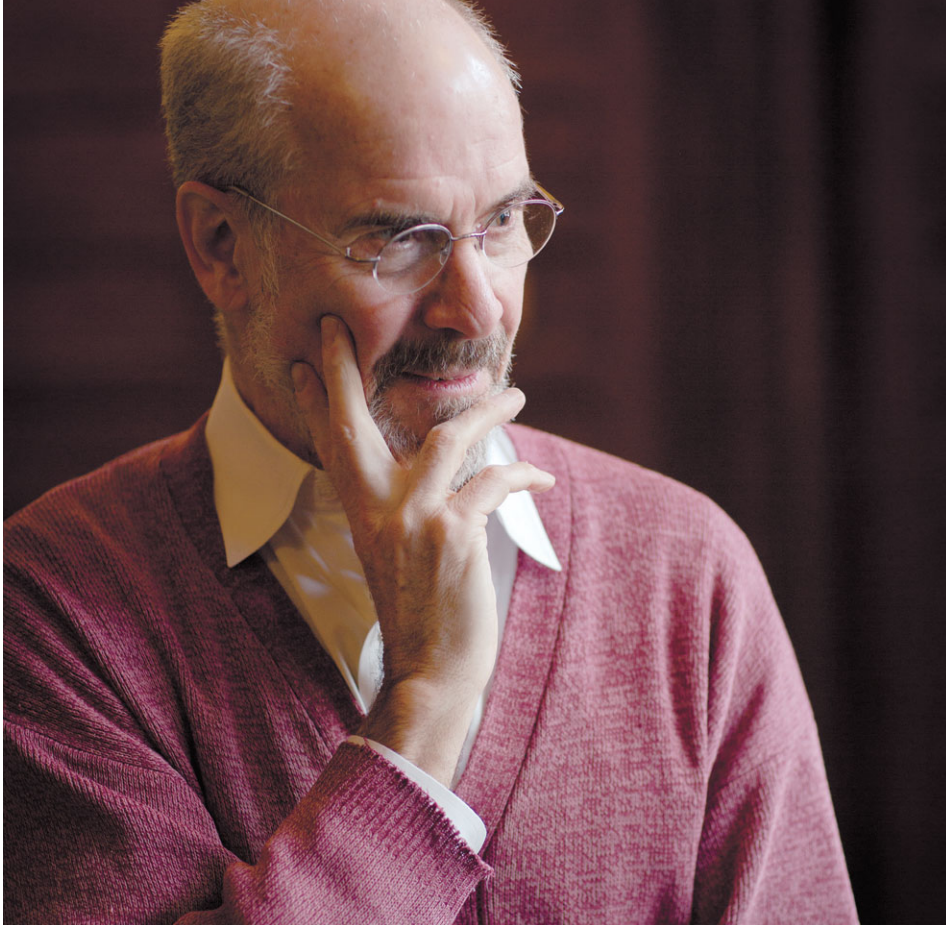
DANIEL I. HALPERIN '61 WILL retire at the end of this academic year after more than a half-century as a tax lawyer, professor and government official. Unlike most law professors starting out today, Dan worked as a lawyer for a decade—at the firm Kaye Scholer and in the government—before entering law teaching. Serendipitously, he became Kaye Scholer's expert in the new field of pension law in his second year, after the sudden departure of the only lawyer at the firm with any experience in the field.

In 1967, Dan moved to Washington to join the staff of the Treasury Department's Office of Tax Policy, which is the executive branch office responsible for tax regulations and legislative proposals. At the time, the assistant secretary of the Treasury for tax policy was Stanley S. Surrey, a legendary Harvard Law School professor who served as the principal tax policy officer for Presidents Kennedy and Johnson. (He had also been Dan's teacher in a course on the taxation of international income.)

Although tax law is frequently contested and often political, Surrey's rule was that his staff was to consider only the criteria of good tax policy in developing regulations and legislative proposals. Political issues were to be left to him, the Treasury secretary and the White House.

Dan flourished in this environment. Thanks to his practice experience, he played a key role in the development of the Johnson administration's initial bill for pension security, → *page 18*

Alvin Warren is Ropes & Gray Professor of Law at HLS.



GENEROUS AND GENERATIVE

DUNCAN KENNEDY'S influence spans the globe

BY KAREN ENGLE '89

REGARDLESS OF WHETHER THEY know it, or even like it, thousands of law students over the past four decades have been influenced by Duncan Kennedy's keen insights into the politics of law. An astonishing amount of that influence was direct. For over 30 of those years, one-fourth of every HLS entering class learned contracts, property or torts from Duncan. And many others have taken his upper-level courses, ranging from the history of American legal thought and low-income housing law to Israel/Palestine legal issues and the globalization of law. Still others

.....
Karen Engle is the Minerva House Drysdale Regents Chair in Law at the University of Texas at Austin School of Law and founder and co-director of the school's Bernard and Audre Rapoport Center for Human Rights and Justice.

have written third-year papers, LL.M. theses or S.J.D. dissertations with him. In fact, Duncan has served on the committee, often as direct supervisor, of S.J.D. students from close to two dozen countries around the globe.

To be sure, not all students agreed with Duncan or with the left, anti-hegemonic Critical Legal Studies movement in which he played the starring role. While some openly resisted CLS, others claimed not to understand how it related to what Duncan was teaching them in class. (They were often surprised by how much doctrine they learned!) Yet, even the most oppositional were shaped by their resistance.

For others, the influence has been less personal but nevertheless profound. Countless numbers of students and scholars have read at least a part of Duncan's enormous corpus (five books and dozens of articles, some of which are among the most influential—and even most cited—law review pieces of all time). Moreover, as years have gone by, hundreds of

his students have become law professors all over the world. Consciously or not, they cannot help but read and teach law by distinguishing between the deployment of rules and standards; identifying the gaps, conflicts and ambiguities in the doctrine; considering the seeming indeterminacy of law alongside the complex ways in which judges experience both restraint and freedom; searching for the ways in which power operates in both public and private law as well as through the constructed distinction between them; and thinking through the distributive consequences in terms of class, race, gender, sexuality and nationality of different legal rules, including those that often remain in the background.

A description of Duncan's influence misses the extent to which his teaching and writing have always been part of a two-way street. He has managed to be on the cutting edge of critical thinking about law during each decade of his career. That is because he never stands still. Feminism, critical race theory, postcolonialism, postmodernism and queer theory all posed critical challenges to the CLS movement that he helped pioneer in the late 1970s and early '80s. Unlike some others in CLS, Duncan encouraged the development of these critiques. More than that, he engaged directly with those who posed them, reading along with them the texts on which they relied, and then often deploying their work and insights in his own self-avowed methodologically eclectic scholarship and politics.

As a feminist arriving at HLS in the mid-1980s, I experienced firsthand Duncan's insatiable appetite for new knowledge and constructive engagement. Though he was not particularly known as a feminist in those days, he encouraged a →page 18

→ He helps you figure out how to deploy your passions in the making of legal scholarship or practice.



HALPERIN

which would evolve into the historic Employee Retirement Income Security Act, enacted by Congress in 1974.

Surrey further believed that the Treasury should not only focus on current regulatory and legislative issues, but also analyze and produce proposals for long-term reform. Dan played an important role in the evolution of these proposals, which eventually led to the Tax Reform Act of 1969. Although a lifelong Democrat, he remained at the Treasury as deputy tax legislative counsel after the election of President Nixon in order to see the proposals through to enactment.

Stimulated by his work at Treasury, Dan joined the faculty at the University of Pennsylvania Law School in 1970. His first major article as a professor, “Business Deduction for Personal Living Expenses: A Uniform Approach

to an Unsolved Problem,” 122 University of Pennsylvania Law Review 859 (1974), remains a classic 40 years later.

In the presidential campaign of 1976, Jimmy Carter famously called the U.S. income tax system a “disgrace to the human race.” After the election of President Carter, Dan returned to the Treasury, first as tax legislative counsel and then as deputy assistant secretary. In those positions, he was instrumental in the formulation of the president’s 1978 tax reform proposals, some of which were enacted in the bipartisan Tax Reform Act of 1986.

In 1981, Dan returned to law teaching, this time at Georgetown, where he would remain for 15 years. He also returned to practice as a consultant for Ropes & Gray. It was during this period that Dan’s most famous article, “Interest in Disguise: Taxing the Time Value of Money,” 95 Yale Law Journal 506 (1986), appeared. Stemming from problems he had dealt with at Treasury, this article remains the seminal analysis of a series of issues that are still not fully resolved.

In 1996, Dan was appointed the first Stanley S. Surrey Professor of Law at Harvard Law School. Over the past 19 years, he has continued to write about tax law and policy, and has taught a variety of tax-related courses, covering income taxation, tax policy, pension law, and nonprofit organizations.

Throughout his long career, Dan has always been known in the tax law community for two attributes: his analytical sophistication and his generosity. No matter how difficult the problem, Dan is usually the first to see a solution (or why a solution may be impossible). This sophistication has always been coupled with remarkable generosity. When congressional staffers, young law professors or law students have asked for his help in understanding some difficult question, Dan has never been too busy to provide the requested assistance.

What are his plans for retirement? Dan has already begun work on a book on some unresolved issues in tax law and policy. Stanley Surrey would be proud.

KENNEDY

critical feminist reading group that I helped organize as a 1L. He had read an enormous amount of feminist literature, had a keen sense of the alliances and divides within it, and was a terrific resource. When I asked Duncan to supervise my third-year paper on international human rights law and feminism (on which, at the time, fewer than a dozen articles had been written), he warned me that he knew practically nothing about international law, but that he was game to learn.

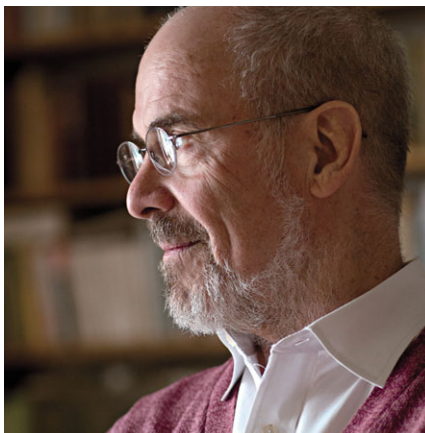
As anyone who has ever worked with Duncan on a paper can attest, it is an extraordinary experience. He has a unique gift of getting inside your head. When he talks with you, you feel as though you are the only one in the world who matters. He takes delight in getting to know you, your history, your desires and fears. And then, if you are so inclined, he helps you figure out how

to deploy your passions in the making of legal scholarship or practice.

Duncan loves nothing more than a good paradox or seemingly intractable problem. As a mentor, he pushes you to be precise, forcing you to identify block quotes to prove what you are saying about a discourse or body of law. Then he gets into the problem with you, and even sometimes obsesses about it without you. While I was in the midst of writing my third-year paper, I ran into another professor who informed me that he had spent an entire

dinner with Duncan working out some issue with which I had been struggling. When I later tried to find out what they had resolved or even which issue they had tackled, neither was able to tell me; it wasn’t even clear they remembered. In hindsight—having found myself in the same position with some of my own students—I now see that Duncan wasn’t working it out *for* me; he was just so present with me in the journey that he took on the challenges for himself.

Working with Duncan on my third-year paper prepared me for my academic career. It not only helped shape me as a scholar, but it modeled the way I work with my own students and junior colleagues on their scholarship. In my 23 years of teaching, I have asked myself countless times, “What would Duncan do?” If I have made positive differences in any of my students’ lives, it is because I have answered that question correctly.



DANCING FOR JUSTICE

Dying While Black and Brown



IN MARCH, Harvard Law School's Charles Hamilton Houston Institute for Race & Justice sponsored a dance performance at HLS titled "Dying While Black and Brown." Presented one day before the 50th anniversary of the Selma-to-Montgomery civil rights march, it dramatized the disproportionate incarceration and execution of people of color in the U.S. Performed by the Zaccho Dance Theatre, the piece was commissioned by the San Francisco Equal Justice Society as part of the society's campaign to restore 14th Amendment protections for victims of discrimination, including those on death row.

→ Watch the performance: bit.ly/Performance2015

→ "Dying While Black and Brown" is part of an ongoing series of events at HLS this year exploring issues of race and injustice.
Read more at bit.ly/AfterFerguson2015

A portrait of a woman with short, dark, curly hair, wearing a pink blazer with black stitching on the lapels, a white top, a gold necklace with a circular pendant, and gold hoop earrings. She is standing outdoors next to a brick wall, with green foliage in the background. The word "PROSECUTOR" is overlaid in white, uppercase letters on the left side of the image.

PROSECUTOR

WITH

By *SETH STERN '01*
Photograph by *JESSICA SCRANTON*

Loretta
Lynch '84
becomes
83rd
attorney
general
of the
United
States

A CALLING

Loretta Lynch '84 appeared at her

January confirmation hearing before the Senate Judiciary Committee only days after a new Republican majority openly hostile to her predecessor assumed control of the panel.

Halfway through the daylong hearing, John Cornyn of Texas, the Senate's second-ranked Republican, asked Lynch: "You're not Eric Holder, are you?" Lynch, known as an unflappable prosecutor of drug dealers, corrupt politicians and terrorists, calmly replied that no, in fact, she wasn't.

"If confirmed as attorney general, I will be myself," she said. "I will be Loretta Lynch."

Throughout Lynch's life, being herself has meant being a trailblazer, from when she was an overachieving schoolgirl in newly desegregated North Carolina through her first job out of Harvard Law School at a New York law firm in the mid-1980s, when young African-American women lawyers were so rare that she was sometimes assumed to be the stenographer at depositions. Then she found her calling as a federal prosecutor who twice served as the U.S. attorney for the Eastern District of New York, with a stint as a law firm partner sandwiched in between.

Now, after enduring the lengthiest confirmation process for a Cabinet member in 30 years and being sworn in on April 27, Lynch is poised to serve out the remainder of Barack Obama '91's presidency as the nation's first female African-American attorney general.

To understand how Lynch wound up here, go back to the

rural North Carolina farm where her grandfather, a sharecropper-minister with a third-grade education, built a church right next to his house. Inside the farmhouse, long before she was born, her grandfather sheltered African-Americans facing Jim Crow justice and told the sheriff he hadn't seen them. He hid them beneath the floorboards.

MY GRANDFATHER had eight children and no money. He was

dependent on the white farmers of the county to hire him and his sons to support them all," Lynch said in an April 2014 speech. "If justice was so important to him to risk his livelihood for it—how can I do any less? How can any of us?"

Lynch's father, Lorenzo, a fourth-generation Baptist minister, opened up the basement of his Greensboro, North Carolina, church to college students and NAACP members organiz-

ing sit-ins in the early 1960s, meetings he brought his toddler daughter to on his shoulders. Her mother, Lorine, a librarian who picked cotton one summer to pay for college, refused to use racially segregated bathrooms as a young minister's wife when they drove through rural North Carolina on his preaching assignments.

Lynch's family moved to Durham when she was 6, and there, new to town, she did so well on a standardized test at her predominantly white school that skeptical administrators asked her to retake the exam, her father told *The Charlotte Observer*. She scored even higher the second time.

Lynch graduated from high school as valedictorian, although, as she told *The Wall Street Journal*, the school insisted she be co-valedictorian alongside a white student and another black student. She then majored in English at Harvard College, where she read Chaucer in Middle English and helped found a chapter of Delta Sigma Theta Sorority,

→
Loretta Lynch was nominated by President Barack Obama '91 in November to replace Attorney General Eric Holder. In January, she testified before the Senate Judiciary Committee. On April 23, she was confirmed by the Senate in a 56-43 vote.



M. SCOTT MAHASKE/PLUTICO (TOP); ASSOCIATED PRESS (BOTTOM)

Lynch had an “uncanny ability to talk to witnesses and present to a jury in a case as explosive as [that of Abner] Louima in a way that few people can.”

whose members mentored local youths.

“We knew that she was a ‘PK,’ as you call them, a preacher’s kid, in her conduct and what she did,” said Karen Freeman-Wilson ’85, who first met Lynch at Harvard College and followed her to Harvard Law School.

W

HEN LYNCH WAS job hunting during law school, one

law firm receptionist couldn’t believe that an African-American woman was the job candidate from Harvard. Lynch and her classmate Annette Gordon-Reed ’84 both wound up at Cahill Gordon & Reindel in New York along with a third female African-American associate, Alysa Rollock, who is now a vice president at Purdue University, and the three nicknamed themselves “the triplets.”

Gordon-Reed and Lynch bonded over their shared Southern roots. Gordon-Reed would host Lynch for dinner on Friday nights, frying shrimp the way she learned to growing up on the Gulf Coast. Mostly, though, they worked “very, very hard,” said Gordon-Reed, now Charles Warren Professor of American Legal History at HLS.

In her sixth year as a litigator at Cahill, Lynch began rethinking her career path after a secretary found her passed out at her desk. “I spent the night in the hospital, diagnosed with exhaustion, with an IV drip in me, thinking about a lot of things, things like—Is this the highest and best use of my talents? Am I truly happy?” she recounted in a 2014 speech.

In early 1990, she began working as an assistant U.S. attorney for the Eastern District of New York, which has jurisdiction over Brooklyn, Queens and Staten Island as well as two suburban Long Island counties. She started prosecuting narcotics cases and then moved on to white-collar crime and public corruption.

Lynch’s highest-profile assignment came in 1998, when she joined the trial team prosecuting New York City police officers accused of assaulting Haitian immigrant Abner Louima in a precinct-house bathroom. “It was nothing to see her at all hours of the evening, all days of the week, working on the case,” said Leslie Cornfeld ’85, who met Lynch at Harvard and went on to work with her in the U.S. attorney’s office.

Lynch had an “uncanny ability to talk to witnesses and present to a jury in a case as explosive as Louima in a way that few people really can,” Cornfeld said.

“It was extremely racially and politically charged at the time,” Lynch told the Harvard Law Bulletin in 2011. “My way of dealing with high-profile cases like that is to completely separate from the press. What you have to do is insulate yourself.”

Lynch rose through the office’s senior ranks before President Clinton named her U.S. attorney in 1999. A few months into the job, she joked in a speech in lower Manhattan that when she took office: “I am sure that a long line of dead white men rolled over in their graves. But at the same time, I am sure that just a stone’s throw away from here, in the African Burial Ground, a long line of

people for whom the law was an instrument of oppression sat up and smiled.”

Lynch often talks in her public speeches about the “dual challenge” African-Americans working in law enforcement face “trying to improve a system that traditionally was one of the harshest to us.”

She faced the issue head-on at a 2011 panel on criminal justice at Harvard Law School’s third Celebration of Black Alumni, where fellow panelist Paul Butler ’86, now a professor at Georgetown University Law Center, questioned how much good African-Americans can do serving as prosecutors in a “dysfunctional, racialized system of justice.”

Lynch was unapologetic. “I view my role as protecting the people in my district,” she said. “The reality is, sometimes when people in this society have been harmed, someone has to step up for them, and I’m proud to do it—I absolutely am.” After taking Butler to task, she gave him a “big hug” when the panel ended, he recalled. “Lynch is extremely charming,” he said.

A

FTER NEARLY 11 years as a prosecutor, Lynch left the Justice Department

in 2001 and joined Hogan & Hartson as a partner in New York. Her work ethic made an impression even before her start date, when the collapse of Enron enmeshed the firm’s client Arthur Andersen.

Dennis H. Tracey III, a partner at the firm, called Lynch, who was on vacation in between

→
Loretta Lynch, about to be sworn in as attorney general of the United States in a ceremony at the Department of Justice on April 27



Lynch has talked about the “dual challenge” for African-Americans working in law enforcement “to improve a system that was one of the harshest to us.”

→ Lynch takes the oath of office as her father, Lorenzo Lynch, her husband, Stephen Hargrove, and Vice President Joe Biden look on. “It seems like such an understatement to say my heart is full,” she said, “but it is.”

jobs, and asked if she might be willing to talk and perhaps to assist the attorneys representing Arthur Andersen once she started working a few weeks later.

“She said: ‘No problem. I’ll come in this afternoon.’ She abandoned her vacation, came in, met with the client and worked on the case from that moment on,” Tracey said. “It was incredible. I’d never experienced it in all the years as a managing partner.”

LYNCH’S WHITE-COLLAR criminal defense work, involving internal investigations in matters such as the Foreign Corrupt Practices Act, “was a terrific asset to the firm,” said Ira M. Feinberg ’72, a partner at the firm, which is now known as Hogan Lovells. Feinberg said her experience as both a prosecutor and a defense attorney will prove valuable in her new role as attorney general since she understands “where the other side is coming from and [will] be in a position to evaluate it properly.”

Even at Hogan, Lynch didn’t entirely give up being a prosecutor. She assisted the International Criminal Tribunal for Rwanda on a pro bono basis, first as a trial advocacy instructor and then as special counsel in a witness-tampering investigation. She spent much of the summer of 2005 in East Africa interviewing genocide survivors who had seen their entire families killed or had survived by hiding under piles of dead bodies. She considered the work both overwhelming

and one of her “most significant and rewarding” assignments as a lawyer.

At her 30th law school reunion last year, Lynch jokingly called herself a “recidivist” when talking about her decision to return to the Eastern District of New York for a second stint as U.S. attorney after President Obama took office.

“Most people think if they’ve got a government job or a corporate job, their next job has to be of a higher rank,” said Jamie Gorelick ’75, who first met Lynch while serving as the deputy attorney general under President Clinton. “She was so dedicated to the work of the Department of Justice that she came back to the same job and did a bang-up job the second time.”

During Lynch’s second tenure as U.S. attorney, notable targets included mobster Vincent Asaro for his role in a \$6 million heist at Kennedy Airport, the former New York State Senate majority leader who embezzled federal funds from nonprofit health clinics, and terrorists planning to attack the New York City subways and plant a bomb at the Federal Reserve Bank in Manhattan.

After 9/11, the office’s focus had shifted, and increasingly its cases had an international dimension, whether they involved terrorism, like the thwarted bomb plots, or human trafficking, cybercrime, or money laundering. Lynch also made it a priority to reach out to Muslim Americans. “What I hear them saying is what so many African-Americans said in the ’50s and ’60s: ‘We’re part of America, too. We’re just like you,’” she told the Harvard Law

Bulletin in 2011.

Her work at the Justice Department extended beyond the Eastern District when Attorney General Holder appointed her as a member and later the chair of the Attorney General’s Advisory Committee, which helps set policy across U.S. attorneys’ offices.

When Holder announced plans to leave last year, Lynch quickly emerged at the top of the shortlist of possible successors, and President Obama announced her selection at the White House on Nov. 8. Two and a half months later, Lynch sat before the Senate Judiciary Committee carrying the trident medal her late older brother, Lorenzo, earned during his two tours of duty as a Navy SEAL. Supporters in the hearing room included her father; her younger brother, Leonzo, the family’s fifth-generation minister; Gordon-Reed; and a contingent of red-clad sorority sisters.

GORDON-REED SAID she realized how much had changed for her law school friend when Lynch emerged from the hearing room to a scrum of photographers with flashbulbs popping.

“Washington is tough for everybody, and I would imagine there’s nothing that prepares you for that kind of limelight,” Gordon-Reed said. “But as her performance [at the hearing] showed, she’s very cool under pressure and she’s as prepared as anyone could be for this.”

Freeman-Wilson was just as impressed by what Lynch did away from the cameras the



weekend before the hearing. In the middle of her preparations, Lynch drove out to Maryland to visit a law school classmate in poor health. “That’s a real testament to who she is,” said Freeman-Wilson, who is now mayor of Gary, Indiana.

Lynch’s Senate confirmation was held up in wrangling between the Obama administration and the new Republican majority over an executive order on immigration and legislation combating human trafficking. Texas Republican Ted Cruz ’95 said her support of administration policies would “undermine the rule of law.”

While Republican senators made Lynch wait longer for a vote than any Cabinet nominee since the Reagan administration, they acknowledged her qualifications even as they questioned whether she could be independent enough. Sen. Shelley Moore Capito, Republican of West Virginia, for example, told *The New York Times* she could hardly expect a better nominee, “not in terms of

qualifications or personal attributes,” but nevertheless wanted someone in the job less inclined to be a stalwart supporter of the president’s policies.

Ten Republicans ultimately voted for Lynch, who was confirmed by the Senate on April 23 in a 56-43 vote.

LYNCH’S PRIOR EXPERIENCE in the Justice Department makes her “well prepared” to serve as the nation’s 83rd attorney general, Gorelick said. Still, Gorelick added, there’s a learning curve for anyone assuming the job of overseeing the department’s 116,000 employees, law enforcement agencies ranging from the FBI to the Federal Bureau of Prisons, and an expansive national security portfolio. “Your domain is just bigger and more complex.”

Lynch will also have to get accustomed to serving in a position that has become more of a political lightning rod since Gorelick served as deputy to

Janet Reno ’63, the first female attorney general. But Gorelick believes that Lynch is well suited to take the helm in the second half of a president’s second term, “when it’s very important to mind the business of the department itself”

“That’s not to say she can avoid the political scrum, because she can’t, but I predict her stewardship will be less eventful than has been the case [under Holder],” Gorelick said.

Butler, who challenged Lynch about the proper role for African-Americans in law enforcement at the Harvard Law panel in 2011, predicted her approach to racial justice is likely to evolve as she becomes the second consecutive “African-American who is the chief law enforcement agent in the land.”

“If she has the same kind of focus on racial justice as an important part of her portfolio, if she becomes a race woman in the way Eric Holder became a race man, I think there’s a huge potential,” Butler said.



THE NEW EMPIRICISTS IN LAW'S NEW FRONTIERS, DATA MAY BE AS IMPORTANT AS PRECEDENT

ARE THERE GREATER racial disparities in criminal sentences now that federal sentencing guidelines are no longer mandatory? If health insurance companies are required to provide coverage for fertility treatments, will fewer children be adopted? ⚡ Do staggered corporate boards provide more or less value for shareholders? ⚡ For the growing number of empiricists at HLS, there's nothing quite so satisfying—or unimpeachable—as resolving a thorny, often contentious, legal or policy question through rigorous analysis of cold, hard data. ⚡ Take the issue of criminal sentencing. ⚡ As a student at HLS, Crystal Yang '13—appointed last year as an HLS assistant professor—set out to determine whether the mandatory application of federal sentencing guidelines resulted in more or less racial disparity in sentencing. In 2005, in *United States v. Booker*, the U.S. Supreme Court held that the U.S. Sentencing Guidelines, by which federal judges impose criminal sentences, were to be



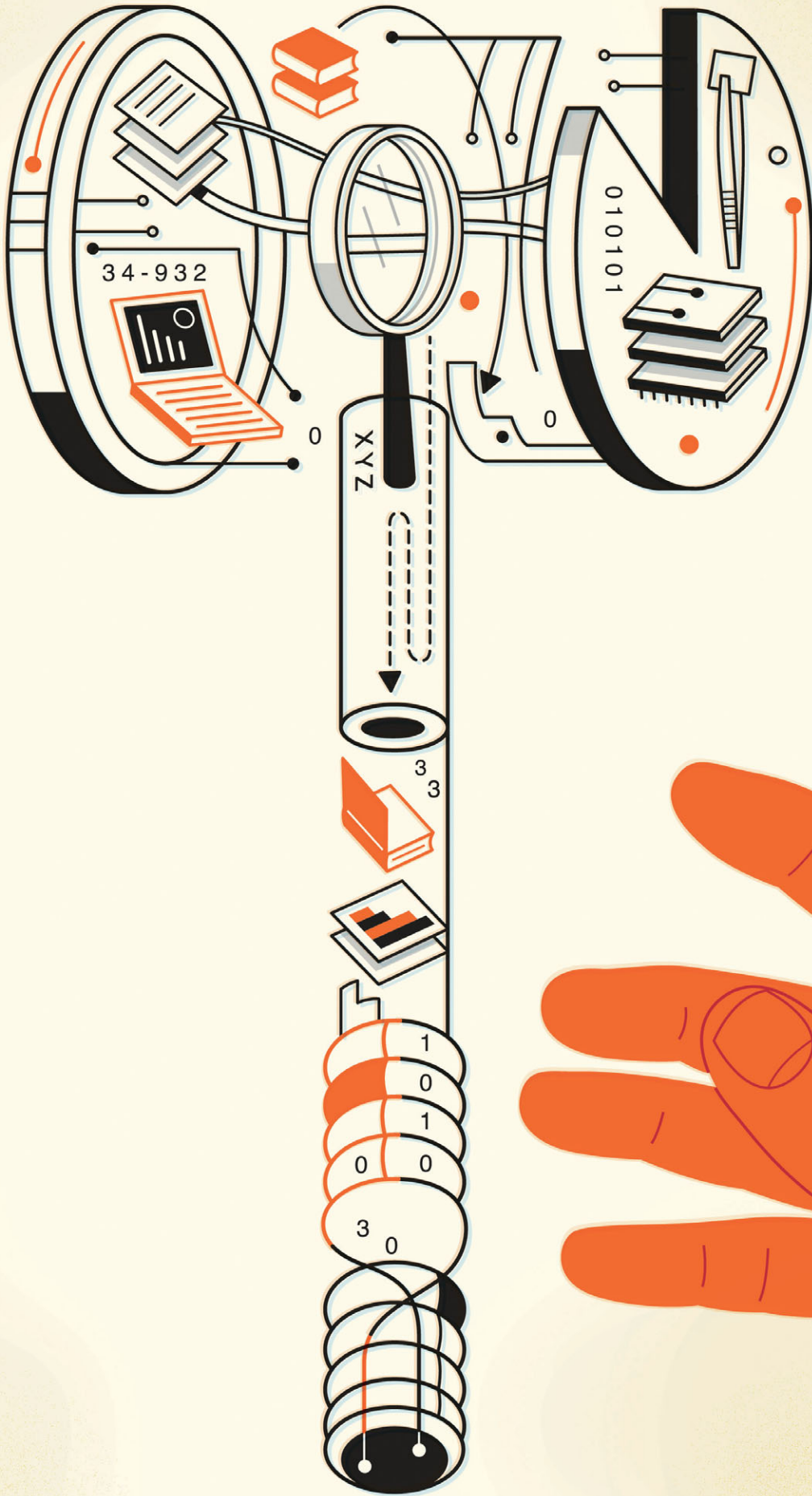
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HARVARD LAW BULLETIN
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advisory only. Comparing data from courts, Yang, who holds a master's in statistics and a Ph.D. in economics from Harvard, found that greater judicial discretion post-*Booker* has resulted in African-American defendants receiving longer sentences than comparable white defendants.

"So many policies have assumptions embedded within them, that *this* is how people respond," says Yang, whose article about her findings will be published in *The Journal of Legal Studies*. "But if we show through empirical work that that is not how something works, that's very important for lawmakers to know," so that laws and policies have their intended consequences.

Empirical legal studies is the application of data-based research methodologies, both quantitative and qualitative, to legal and law-related policy questions. Long relied upon in medicine, economics, psychology and social sciences, empirical research can take any number of forms, from analyzing huge sets of existing data (tens of thousands of records of tort cases in Massachusetts, say) to running field experiments to generate data, an approach in which HLS Professor D. James Greiner has taken the lead.

While empirical legal studies is not at all new, it is

For the empiricists at HLS, there is nothing quite so satisfying as resolving a thorny legal or policy question through the analysis of cold, hard data.

experiencing enormous growth and is arguably the hottest area of legal thought today.

"Lawyers often make claims about policy changes they think would be good or a legal problem that needs to be solved, but often those adjustments are made from an armchair," says HLS Professor I. Glenn Cohen '03. "But things in the real world don't always act as we think they should. Instead of just arguing and assuming this or that is true," he said, "let's actually find out the answer." Faculty director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, Cohen has done empirical research that has revealed, for instance, that insurance coverage for fertility treatments does not lead to a reduction in adoptions.

In corporate law and governance, an empirical approach has been prominent for at least 10 years, with Lucian Bebchuk LL.M. '80 S.J.D. '84, Allen Ferrell '95, John Coates (see Page 8), Guhan Subramanian J.D./M.B.A. '98 and Holger Spamann S.J.D. '09 among the HLS faculty producing influential research. Spamann has also used empirical methods in other areas, including to assess criminal sentencing practices.

There is also a significant intersection between ELS

and the field of law and economics, which, at HLS, is centered at the John M. Olin Center for Law, Economics, and Business under the direction of Professor Steven Shavell. Other HLS programs, including the Center on the Legal Profession, also take an empirical approach to research.

Courses involving empirical legal research have long been offered at the school. For example, Elizabeth Warren, now a U.S. senator and HLS professor emerita, taught *Empirical Analysis of Law*, drawing on her own experience as a scholar. For years, Professor Kathryn E. Spier has taught the popular *Analytical Methods for Lawyers*, as has Lecturer David Cope.

With a growing recognition that an empirical approach could be invaluable to virtually any type of legal question, HLS is giving the field even greater emphasis, reflecting not just academic trends but demand from students and even law firms.

Last year, in addition to Yang, HLS appointed two other empirically focused faculty, both with Ph.D.s in economics: Professor Oren Bar-Gill LL.M. '01 S.J.D. '05, whose field is contracts, and Alma Cohen, HLS Professor of Empirical Practice. Cohen, an empirical economist, has analyzed data that found that there is decreased value to shareholders of staggered corporate

boards, that different groups vary in their responsiveness to governmental subsidies for childbearing, and that mandatory seat belt laws do reduce fatal accidents—but not as much as the government claims.

"An empirical revolution has been taking place in all fields of

social science as well as in law," Alma Cohen says. "In many areas of legal scholarship, the share of work that is empirical or informed by empirical work has substantially increased." It's also increasingly prominent in litigation, regulatory rulemaking and legal policy discussions—a shift due, in part, to the "vast increase of data that is available and the wide accessibility that all of us now have to the computational power that is needed for most of the empirical work," she adds.

HLS now has a statistician on the library staff to assist with faculty and student research, and an Empirical Legal Studies group, known as HELS and launched two years ago by Netta Barak-Corren S.J.D. '16, which brings in top empirical scholars, offers training workshops, and serves as a community for students who conduct empirical research themselves. And there are now a range of new courses on empirical methodology aimed at budding litigators as well as scholars.

"In terms of the practice of law, empirical analysis—including valuation and event study analyses—has proved enormously important in complex business and securities litigation," says Ferrell, who recently won a prestigious prize for outstanding quantitative



ALMA COHEN AND OREN BAR-GILL, who both hold Ph.D.s in economics, joined the HLS faculty last year. Cohen's research includes empirical studies on risk, regulation and corporate governance. Bar-Gill, an expert on contracts, is currently working on a study that relies on research subjects to test how different legal protections affect how people bargain over entitlements.



CRYSTAL YANG '13, appointed last year as an HLS assistant professor, focuses on criminal law. Drawing on her background in economics and statistics, she recently wrote an article, based on empirical research, disproving some of the commonly held assumptions about the way sentencing guidelines work.

research in socially responsible investing and who teaches an empirical legal methods course with Alma Cohen. “Litigators must deal with empirical issues in terms of how the markets work, how to think about causation, and damages and settlement value on a regular basis.”

Many empiricists agree that there are long-standing assumptions in policy and law that likely rest on faulty premises, since they were not derived from actual data-based research.

“I think that’s why there’s more recognition of the need for having empirical legal studies, especially in law schools,” says Yang. Law is at the center of so much that “it is vitally important” to have lawyers who also have the methodological tools to do empirical research.

No one is suggesting that a law school course or two would prepare someone to conduct statistically valid research. Rather, the HLS courses, and the workshops through the Empirical Legal Studies group, are intended to give students fluency in understanding empirical research whether they are practicing law or are interested in getting further education in empirical methods.

“While empirical analysis is nowadays often easy to conduct, it often produces results that should be used with caution and with keen awareness of their limitations,” Alma Cohen says. “In my courses, I try to teach students how to assess the reliability and limitations of empirical findings.”

Even lawyers with statistical backgrounds find that teaming up with social scientists or economists is essential to producing reliable results that can be defended. Bar-Gill is working with a colleague at the Max Planck Institute in Germany on an experiment—his first—that relies on research subjects to test how different types of legal protections affect how people bargain over reallocation of entitlements. While he expects to do more of such experiments, he acknowledges that “there’s a big question of external validity: If you find something in [such experiments], does that mean you’d get the same results in the real world?”

That’s why James Greiner is conducting a different kind of experiment, a “field experiment,” studying people in actual legal settings. These randomized controlled trials, unusual in legal studies, have been established as the “gold standards” of empirical research in other fields. People are divided into groups, with some receiving a particular intervention and a control group that is not. In one experiment, he is working with the Boston Municipal Court to see if the default rate by defendants sued for consumer debt can



Netta Barak-Corren S.J.D. '16 in Israel, where she is conducting empirical research exploring the circumstances in which people comply with the law when it conflicts with their religious beliefs.

be reduced by sending low-cost mailers that explain the legal process and encourage people to show up for court. The answer: Yes. According to preliminary results, the mailers have at least doubled the number of defendants who avoid default.

Andrea Matthews '15, who did empirical studies at a think tank before coming to law school, chose HLS because of Greiner, and has worked with him on the Boston court study and other empirical projects. “I’d been searching for someone doing randomized experiments in law,” says Matthews, who next year will be a lawyer in the honors program at the federal Consumer Financial Protection Bureau in Washington, D.C. “I think the empirical standpoint is something the CFPB prizes and seeks,” she adds.

But empirical research costs money, and it’s unlikely that there will ever be enough resources to apply this approach everywhere it could be useful. Still, says Glenn Cohen, recognizing its importance means “at least you can prioritize important questions.” And although conducting rigorously devised and executed studies is expensive, “the social harm of not aggressively investigating what works and what doesn’t” must be weighed against the cost, insists Matthews.

As the value of this research becomes increasingly apparent to policymakers, litigators and others, empiricists expect their approach to continue to grow in all areas of the law. After all, says Barak-Corren, “Data can be quite a convincing tool.”





BRYAN
STEVENSON '85
ON RACE,
POVERTY AND
THE THINGS
WORTH
FIGHTING FOR

**Drum
Major
for
Justice**

By
Michael
Zuckerman '17



Photograph
by
Brandon
Thibodeaux

Spring 2015

HARVARD LAW BULLETIN

EARLY in his career, Bryan Stevenson spoke at a small church in rural Alabama. Throughout the talk, he kept noticing an old man in the back, staring at him severely. Afterward, people praised Stevenson and came up to shake his hand. Then the old man approached and pointed a finger in Stevenson's face.

"Do you know what you're doing?" the man asked.

Stevenson didn't know what to say.

"Do you know what you're doing?" the man asked a second time.

Stevenson could only mumble.

"I'll tell you what you're doing," the man said. "You're beating the drum for justice. You *keep* beating the drum for justice."

Stevenson has beat the drum for justice ever since. And he has been heard.

The 55-year-old lawyer graduated from Harvard Law School and Harvard Kennedy School in

1985, practiced for four years with the Southern Prisoners Defense Committee, and then founded the Equal Justice Initiative in Montgomery, Alabama, in 1989. Initially focused on providing free legal help to

death-row inmates in Alabama, EJI has grown to tackle life sentences for juvenile offenders, paltry access to legal help for poor defendants, racial bias in the criminal process, and the history of racial and economic inequality in America. Along the way, Stevenson has been named a MacArthur Fellow, joined the faculty at N.Y.U. School of Law, won the Olof Palme Prize for international human rights and, in the fall, published the award-winning memoir "Just Mercy."

"You begin to realize that you've got to stand, even if you stand by yourself."

Contemplating the yardstick of a lawyer's success in an interview with the *Bulletin*, Stevenson recalled the man in the church, who had turned his head and shown Stevenson his scars, one by one—the wounds he had suffered at Greene County, Alabama; and during the Children's Crusade in Birmingham; and during Freedom Summer in Mississippi. He had dubbed them his "medals of honor."

"There's another metric system when you're trying to achieve justice," Stevenson argues. "And it's not measured by how much money you make, or how many cases you win, or any of those things. It's measured by how much you fight for the things that someone has to fight for."

You write about feeling "disconnected" and "disillusioned" during your time at HLS.

I think a lot of my alienation had to do with my lack of familiarity with lawyers and the law. I started my education in the colored school, because black kids weren't permitted to attend the public school. And I'd heard about lawyers coming into our community and making them open up the public schools for kids like me. And that narrative was absolutely a formative one, but I'd actually never met a lawyer.

So when I showed up at Harvard, I was dazzled by the different kinds of people, and I was very excited. And my motivation was to do something

about racial inequality, about poverty, and about the injustice that I had witnessed. And it just didn't seem like—in those first few weeks—anybody was talking about race. It didn't seem like anybody was talking about poverty. It didn't even seem like anybody was talking about justice.

I think, in retrospect, when you talk about civil procedure, contracts, criminal law, there is—behind the discourse—a very real conversation about race, and poverty, and justice. But it wasn't visible to me at that time—and it wasn't highlighted, in all candor.

Has that changed?

I think it's changed a lot. This was before there was clinical legal education. This was before you had as many faculty members with practice as part of their background. Back in those days, I think there was real skepticism about having people teach who had actually practiced law. Now that's changed, and I think the advent of clinical legal education has really changed the culture of legal education generally.

You've got students now talking about meeting clients, or going into court, or working with low-income communities. And even before I graduated, I got involved with [HLS Professor] Gary Bellow and the legal aid work that he was doing. Spending time in Jamaica Plain working with low-income residents transformed my interest in the law. Being able to connect



civil procedure, and criminal law, and contracts, and constitutional law to contemporary struggles was really important in shaping my interest in the law.

I went to Georgia, spent a month meeting people on death row—people literally dying for legal assistance. And when you meet somebody who is desperately trying to get to higher ground, and is counting on you to help them get there, it will change your relationship to law study. So when I got back to Harvard, you couldn't get me out of the law library. I was in Langdell morning till night trying to figure out how constitutional law principles would apply, how civil procedure would work—all of these constructs and abstract concerns became meaningful and personal.

In "Just Mercy," you tell a story about getting to sit with [storied civil rights activists] Rosa Parks, Virginia Durr, and Johnnie Carr, and talk about EJI with them. At the end, Ms. Carr tells you, "You're going to have to be brave, brave, brave." When have you most needed that advice?

Whenever you take on something new and different, it's

scary. And the downside to public interest work, in too many places, is that there is no accountability. If you do very little, nobody will fault you. If you decide to just do the same thing all the time, nobody will fault you. There's not the same metric of success that's forced on you when you're in other sectors.

We're now doing this major project on race and poverty. It's the first project we've done that's not specific to the criminal justice system. And it was, in a lot of ways, the boldest choice we could make—to take on something broad and expansive. But five years in, I am super pleased that we've taken it on. We just issued this lynching report, and we've been inundated with hundreds of requests from people who want to engage with us on America's legacy of racial terror—these lynchings that we've documented in all of these states.

Given that legacy, is reconciliation possible, on a national scale, in America?

I think one of the great challenges we have in our criminal justice system today is that there are too many people in our society burdened with the

presumption of dangerousness and guilt that has been born out of our attitudes around race. And those attitudes persist because we haven't dealt honestly with the legacy of racial inequality. We haven't talked enough about slavery, and what it did to us. We haven't talked enough about lynching. We talk too superficially about civil rights—we just want to talk about the heroes, and the leaders, and the celebrations, and the extraordinary things that were accomplished by people, but we haven't talked about the humiliation, and the damage that was done to lots of people, day in and day out.

And so to get to that place of hopefulness, I do think you have to keep telling the truth about the challenges that our history has created. But when you do that, you see some wonderful, amazing things. And I've certainly had the privilege of seeing people I never expected take a step forward. And those steps make me believe that we can all collectively move forward, when we commit ourselves in a meaningful way to dealing with the legacy of our history of inequality and injustice, in a sober and thoughtful way.

Bryan Stevenson, founder of the Equal Justice Initiative in Montgomery, Alabama, has spent his career fighting for a fairer criminal justice system. His memoir, "Just Mercy," is a New York Times best-seller.





LORIN GRANER

Bryan Stevenson speaking at Harvard Law School on April 2. An Alabama judge had just ruled that morning that Stevenson's longtime client Anthony Ray Hinton, who had spent the past 30 years on death row for a crime he did not commit, should be set free. ▲

“We talk too superficially about civil rights. We just want to talk about the heroes.”

When have you most felt like giving up?

You know, when you represent people on death row and you don't succeed, it is surreal. You're talking to an otherwise healthy human being who is about to be executed by your state government, through a process that may be torturous. So it's just really difficult to reconcile yourself with that reality.

My first execution was in 1989. Back in those days, they were still executing people with the electric chair. And I remember being a young lawyer, desperately trying to get a stay of execution. And I was shocked when the Supreme Court denied our last stay motion. And I sat there stunned at the realization that this man whom I'd been working with was going to be executed. And it was something that I was completely unprepared for. All of the emotions, the dynamics—the confusing spectacle of having someone

pulled away, and strapped in an electric chair, and then killed in front of you.

And the most difficult thing for me was the conversation I had with this man, where we were standing

there and he was telling me about his day. You know, they would shave all the hair off your body to make you a more efficient conductor of the electricity that would kill you. And it was so humiliating for this man to be shaved by these officers in this way.

But then he started telling me about how strangely the officers had been interacting with him. And he said that when he woke up that morning, the guards came to him and said, “What do you want for breakfast?”

And they were bending over backward all day to ask him how they could help: “What do you want for lunch? Can we get you the phone to call your family? Do you want stamps to mail your last letters? Can we get you some water? Can we get you some coffee? What do you want for your last meal? How can we help you?”

And I've never forgotten how that man looked at me in the last few minutes. He said, “Bryan, it's been such a strange day.” He said, “More people have asked me, ‘What can I do to help you?’ in the last 14 hours of my life than they ever did in the first 19 years of my life.”

And, holding that man's hand, I couldn't help but think, Yes, but where were they when you were 3 years old, and you were being abused? Where were they when you were 7, and you were struggling, and suffering? Where were they when you were a young teenager, experimenting with drugs and alcohol? Where were they when you returned home after serving in Vietnam, traumatized, and mentally disabled, and on the edge of behaviors that would result in this violent crime?

And that disconnect was pretty stunning. I left the prison questioning whether this was something I could do ever again.

How do you keep going?

You begin to realize that you've got to stand, even if you stand by yourself. You've got to speak, even if everybody else is quiet, because not standing—not speaking—injures you in a way much more profound, much more devastating, much more consequential than fighting, even if the fighting is hard and uncomfortable. And that's what I've learned from the people who have fought before me in places like Montgomery.

My grandmother was the daughter of enslaved people, and I think about them when we have really difficult days. Slavery wasn't an evil defined by involuntary servitude—it was an evil defined by this ideology of racial difference, this narrative of racial difference that allowed people to believe that if you're black, you're not fully human, you're not as smart as the others, you're not hardworking. And that destructive ideology of white supremacy was the real evil of slavery, and we never really addressed that evil. The 13th Amendment doesn't deal with that narrative.

And that's why I contend slavery didn't end—it just evolved. It turned into this era of terrorism, and violence, and lynching, and convict leasing, and then Jim Crow, and segregation. And in each of those eras people had to deal with unconscionable challenges. Losing your loved one to a torturous lynching that the entire community celebrates in some public spectacle—that would be devastating. And yet people survived that, fought that, continued to challenge that. And even in the civil rights era, the lawyers who won my opportunity to go to a public school, and graduate, and go to college, had to encounter all kinds of challenges, with far fewer resources, with far less certainty that there would be safety for them.

You know, I've been doing this work a really long time, but unlike my predecessors, I've never had to say, “My head is bloody, but not bowed.” And when you think about that history, you begin to find your courage. You begin to recognize that as difficult as things become, you can, and you should, do what must be done to sustain justice.

Telling the Truth

about American Terror

A REPORT DOCUMENTS THE LEGACY OF LYNCHING



TOP: Paris, Texas, 1893: The murder of Henry Smith was carried out in front of a crowd of some 10,000 who had gathered to watch.

ABOVE: New York City, 1936: A reminder hanging from a window of the headquarters of the National Association for the Advancement of Colored People that lynchings were still happening.

Racial reconciliation in America has been an elusive dream. To Bryan Stevenson '85, the problem is that we haven't been willing to tell the truth about our nightmares.

"Lynching in America: Confronting the Legacy of Racial Terror," a report released in February by Stevenson's Equal Justice Initiative, tells its piece of that truth in unflinching detail. Its pages lay bare a scheme of organized racial terrorism that murdered at least 3,959 people across the American South—retribution for "transgressions" like one man's failing to call a police officer "Mister," or a World War I veteran's refusal to take off his Army uniform.

Images and anecdotes underscore a particularly public system of terror. A July 1919 Mississippi newspaper blares out in bold type, above the fold:

**JOHN HARTFIELD WILL BE
LYNCHED BY ELLISVILLE MOB AT 5
O'CLOCK THIS AFTERNOON**

"Thousands of People Are Flocking Into Ellisville to Attend the Event," reads the subhead.

A multigenerational crowd looks on, "enjoying deviled eggs, lemonade, and whiskey in a picnic-like atmosphere," while two victims are tied to a tree, dismembered, and eventually burned to death. Another mob gouges out a man's eyes with a scalding fire iron before shoving the poker down his throat, castrating him and slowly burning him alive.

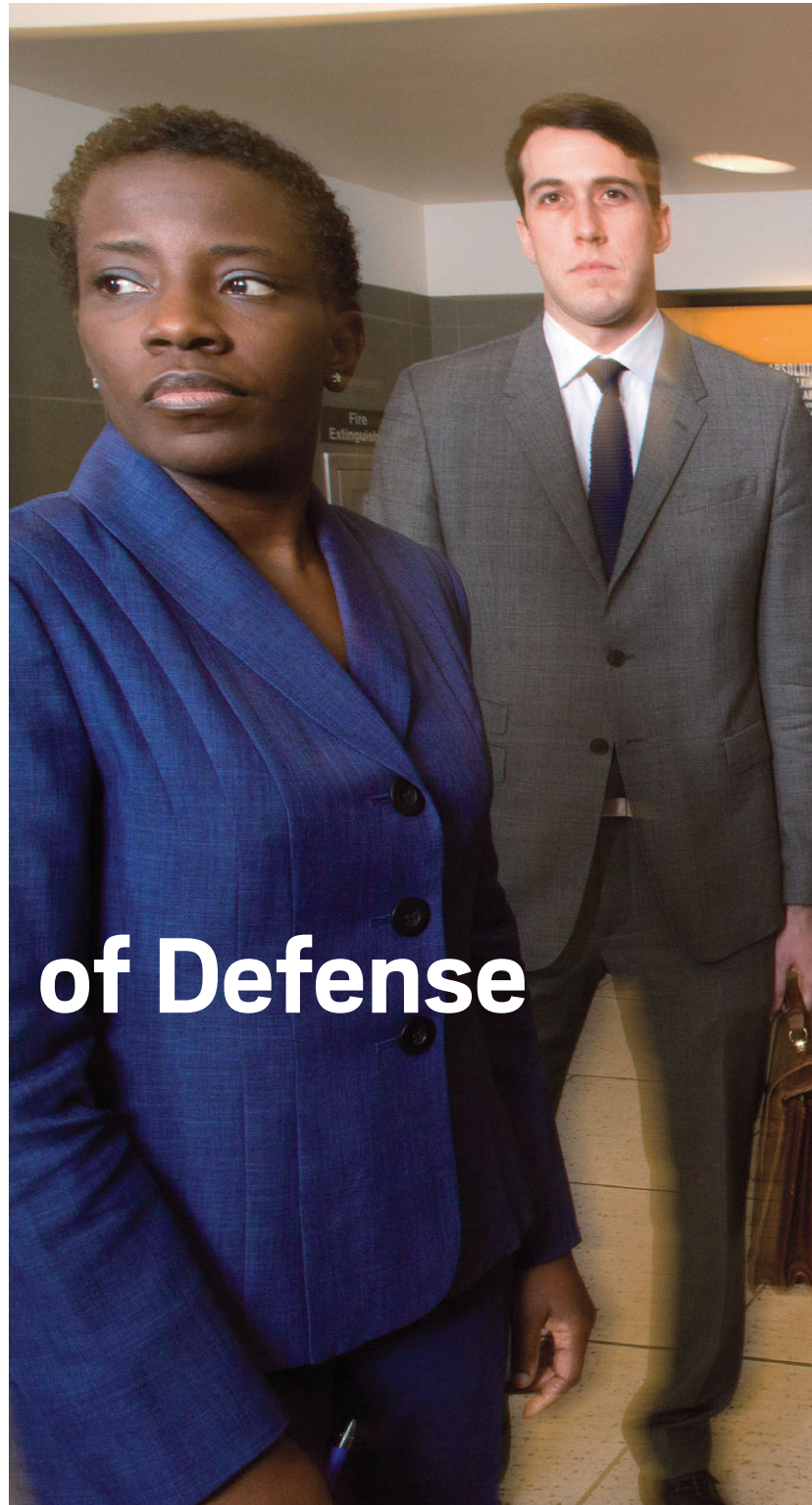
Our criminal justice system, the report argues, remains contaminated by this history. Lynchings declined only as the court-ordered death penalty expanded, it notes, while African-Americans living today in communities where lynching was common remain "over-represented in prisons and jails, and underrepresented in decisionmaking roles in the criminal justice system."

There is no comfort in looking at this history—and little hope save the courage of those who survived it. But there may be no justice, Stevenson's team maintains, until we stop looking away.

—Michael Zuckerman '17

First Line

Students represent
the indigent in courts
where judges ask,
'Is Harvard in the
building?'





TRAINING ETHICAL, ZEALOUS ADVOCATES CJI DEPUTY DIRECTOR DEHLIA UMUNNA (LEFT) WITH CASS LUSKIN '15, ASMARA CARBADO '15 AND AMANDA SAVAGE '15 AT THE ROXBURY DISTRICT COURT. THE STUDENTS REPRESENTED CLIENTS THROUGH THE CJI CRIMINAL DEFENSE CLINIC, HANDLING ALL ASPECTS OF THEIR CASES.

ON A FRIGID, snow-packed morning in mid-February, the galleries in the Roxbury division of Boston Municipal Court were jammed with people waiting for their cases to be heard, and half a dozen Harvard Law School students, part of the Criminal Justice Institute's Criminal Defense Clinic, were waiting to defend their clients.

Cass Luskin '15 was representing a man accused of assault and battery. "It's been a month, and I have just as little in my file as I did at the arraignment," he told the judge. He asked the court's indulgence to speak with his supervisor, Dehlia Umunna, CJI deputy director. After a bit of whispered advice, he continued, asking for an out-of-court compliance date for his discovery request so that the prosecution would be required to give him a copy of the evidence they had against his client before the next court date. The judge agreed to his request. Outside another courtroom, Yorda Yenenh '15 and one of her clients huddled with Umunna after the judge unexpectedly

"We let them handle the good, the bad and the ugly."

denied a motion to dismiss his case and instead set a trial date. "You know we believe in you," Umunna told the client. "We are not giving up." Yenenh and the client then

headed into a room to confer about the next steps.

The students take on anywhere from three to seven cases at a time, a mix of misdemeanors and small felonies, representing both adults and juveniles who cannot pay for their own defense lawyers—mostly in Roxbury and Dorchester courts. As the clinic has expanded in response to increased demand by students (this year, enrollment was up by 58 percent), so has the court system's familiarity with it; judges have been known to specifically request the HLS clinic.

"They'll ask: 'Is Harvard in the

building? We need them to take this case.' That makes my day," says Umunna, who was recently appointed clinical professor of law. "They know that the case is going to be thoroughly investigated, thoroughly worked up and thoroughly prepared. They know the client is going to get top-notch service."

The students' appearances in court are part of a long training process, including a course on the legal, ethical and theoretical issues encountered by public defenders. (Students may participate in the clinic only during their 3L year and must have taken both Evidence and the Trial Advocacy Workshop beforehand.) They meet with their clinical instructors to prepare for their cases and come up with a strategy of defense. This involves writing out and practicing scripts ahead of time, including motions, opening statements, cross-examinations and arguments. "I mooted the appeals over and over again, playing out what could happen in court and going over all possible outcomes," recalls Amanda Savage '15, of the case she successfully argued in December. Students also go out on their own to examine a case's evidence—visiting the scene of the alleged crime, talking with the client and with witnesses, combing through the police report, and figuring out what evidence they need to request from the prosecution.

In court, the students are responsible for all aspects of the case, from the arraignment, through filing motions, to defending the client in trial, if it comes to that. "For the most part, we let them handle the good, the bad and the ugly," says Umunna. But as Luskin says of Umunna's role: "There's a fine line between letting students figure things out on their own and making sure no mistakes are made, because someone's liberty is at stake. She walks that line really well."

Umunna points out that she and the other instructors in the clinic—Kristin Muñiz, Robert Proctor, Jennifer McKinnon and Lia Monahon—work to help their students move from being skilled fact-finders to zealous advocates for their clients. "We → page 44

Truth Seeker

Sullivan works to make the criminal justice system more accountable

In early 2014, Kenneth Thompson, the new district attorney for Brooklyn, New York, approached Clinical Professor Ronald Sullivan '94 with a challenge. He wanted him to design the best conviction review unit in the country, to help address the troubled history of an office that had been accused of manipulating evidence and using unreliable eyewitness testimony in order to win convictions.

Sullivan, whose experience includes leading Washington, D.C.'s Public Defender Service, is the faculty director of HLS's Criminal Justice Institute. As part of his work at CJI and with the help of HLS students, Sullivan studied other conviction review units and applied the best of what he saw to the new system in Brooklyn. With 10 full-time prosecutors, three detectives and two paralegals, the CRU has so far taken on about 130 cases; they've completed 38 reviews, and 12 people have been exonerated, including a man who spent more than 20 years in jail for murder, even though the main witness recanted the testimony that had formed the basis for the case.

Sullivan's goal was to shift the dynamic between prosecutor and defender toward a "nonadversarial norm." He points out that while a typical court case is necessarily adversarial, in these reviews the two sides should have the same interest—"a conjoint search for the truth." For that to happen, the two sides need to be



open to sharing information, including talking to each other's witnesses and comparing thoughts on new lines of investigation. The CRU also needs to be independent of the district attorney's office. In the system Sullivan designed, recommendations are made to an independent legal review panel, which makes the final decision on exoneration.

The work of the Brooklyn CRU has been especially painstaking, since most of the cases have not turned on

Ronald Sullivan, director of HLS's Criminal Justice Institute, designed a conviction review unit for the Brooklyn DA's office. ▲

DNA evidence; instead, the prosecutors have reinvestigated the cases: looking at the scene, reinterviewing the witnesses, re-examining the physical evidence. The process has helped reveal patterns in the wrongful convictions, including cases that have relied on a single eyewitness or a confession by a juvenile and cases where the prosecutors never visited the scene to match the physical layout of the crime with witness reports.

Sullivan hopes knowledge of these

patterns will help dissuade prosecutors from taking on certain cases in the first place. He also hopes that the Brooklyn model will be picked up by other communities. "Prosecutors shouldn't be afraid to correct their mistakes," he says. "No one should be in jail for one day—let alone decades—as a function of a wrongful conviction."

Sullivan's work with the CRU is one of many ways that the Criminal Justice Institute and its students are engaged with the outside world beyond the local courts.

For example, in response to the grand jury verdicts in the Michael Brown and Eric Garner cases, Sullivan and several students are putting together a large-scale report directed at police chiefs and legislators, looking at ways to reform both the law and police practice. Recommendations they are considering include the mandatory use of body cameras for beat police officers; making police officers personally liable for any increase in the department's liability insurance premium resulting from the use of excessive force (under current practice, they're indemnified); and the assignment of an independent prosecutor for cases in which police are involved in shootings. In these cases, Sullivan says, "The relationship between DAs and the police with whom they work every day is a classic conflict of interest."

Whether students are examining the standards for review and exoneration at conviction review units around the country or helping to think through what might be the best legal path for Michael Brown's family in Ferguson, Missouri, the issues they are working on are not theoretical, says Sullivan. "These are real life." —KATIE BACON

have an experienced, dynamic and outstanding team,” says Umunna. “Everyone takes ownership of the clinic and knows that we’re doing good and useful work.”

For students (and their instructors), that work requires enormous commitment, at any time of day. Clients might call them at 2 a.m. asking for advice because they’ve been picked up by the police, or the students might need to track down their client at a local shelter. (Asmara Carbado ’15 recalls investigating a client’s habits and hangouts so that she’d know where to find him since he had a record of missing his court dates.) “I can’t articulate how much work it is and how rewarding at the same time,” says Yenenh.

Even once the trial is over, the clinic’s relationship with the clients continues. Under the direction of Chris Pierce, a clinical social worker on staff at CJI, the clinic can help clients obtain housing, drug treatment, mental health services, therapy and immigration referrals. “We don’t just say goodbye,” says Umunna. “We want them to avoid having to come back

“I can’t articulate how much work it is and how rewarding.”

through the legal clinic. We want them to do well.”

For Elayna Thompson ’12, who is now a public defender for the state of New Jersey, the clinic provided essential

training. She represented two clients in aggravated assault trials and won acquittals for both of them. “In what I do now, there are not enough resources to have someone watching over me at every second,” Thompson says. “The clinic, with close supervision by extremely experienced trial attorneys, was the one thing that really prepared me for my work today.”

Umunna estimates that about half of the students in the clinic end up going into public defender work; for many of them, as for her, the work becomes a calling, where they feel they are helping people who often may not have



Although it’s not for everyone, says Dehlia Umunna, CJI deputy director, for many, public defense becomes a calling.

access to skilled representation to navigate their way through the criminal justice system. “There’s an emotional investment that goes into this work. It’s not for everyone—it really isn’t. For me, I don’t just view it as a job; I view it as who I am,” she says.

Umunna herself chose this profession because of her family’s experience with the justice system in England, where she grew up—the daughter of parents from Nigeria and Sierra Leone—and where her brother got into trouble with the law. “Watching him go through the system, I thought, Nobody is really standing in the gap; there’s no one to really represent him. It felt like he was just a number. So I think that fueled my desire to want to stand in the gap for other folks.”

Before coming to HLS in 2007, Umunna worked as a trial attorney for seven years for Washington, D.C.’s Public Defender Service—a path that’s well worn in both directions. Others on the HLS faculty who have worked at PDS include criminal law experts Charles Ogletree ’78, Carol Steiker ’86 and, most recently, Andrew Crespo ’08, a former CJI student.

Ieshaah Murphy ’12, who first had the chance to bring a case to trial through CJI, now works for PDS

defending clients charged with general felonies. “Coming here having already had a jury trial is a rare experience. Not many other law schools give students this opportunity,” she says.

For Amanda Savage, who plans to work as a public defender in New Jersey after graduation, one of the most valuable things about the clinic is the way it’s helped take her from a theoretical view of law to seeing the real-life disparities at work in the criminal justice system. “You can read about the laws and the cases, but it’s so different when you meet the clients, when you see how the system is stacked against them,” she says. Asmara Carbado, who will work at the Federal Public Defender’s office in California, takes this a step further.

“Never judge a book by its cover. In the context of the criminal justice system, the cover is the police report,” says Carbado. “It’s getting to know your client and seeing where they’re coming from that fills up the pages,” she adds. “When you see who they are beyond the legal text that tries to define them, you see someone like yourself. ... Our job as defense attorney is to restore their humanity or dignity, to understand their story. How can that not be something I want to do?”

HIDDEN TALENT

For his work in cryptography, Craig Gentry named winner of MacArthur Fellowship

It can occasionally be awkward when you win an award known as the “genius” grant. Especially for **Craig Gentry '98**, who works among a lot of smart people at the IBM Thomas J. Watson Research Center in New York.

“Some of my colleagues say there’s only one certified genius among us,” he said. “I don’t really know how to respond to that. I smile and hope people ignore it.”

It was hard to ignore in September, when Gentry became a recipient of the MacArthur Fellowship, which provides \$625,000 to people “who show exceptional creativity in their work and the prospect of still more in the future” (the MacArthur Foundation does not actually use the term “genius” in granting the award). He was recognized for his work as a research scientist for IBM’s Cryptography Research Group, in particular for his focus on fully homomorphic encryption.

FHE is still in the development stage, but it has the potential to help keep information private, including by improving the security of cloud computing. The subject of his thesis for his Ph.D. from Stanford University in 2009, FHE allows people to perform operations on encrypted data while it is still encrypted.

For example, Gentry said, FHE could give someone the ability to request a Google search while encrypting the search query. Google would take that encrypted query and create a response that the user would then decrypt. The result: Google would perform the search function while not recognizing what it was searching for. The technology could be used for industries such as health care,

allowing hospitals to store on the cloud sensitive data that could be searched without violating patients’ privacy. In the legal field, patent lawyers could search databases without revealing their interest in a particular invention.

“It’s great research,” said security technologist Bruce Schneier, a fellow at the Berkman Center for Internet & Society at HLS. It will make it more secure to “do remote computing on a platform you don’t trust.”

For the layperson, it may sound impossible to process information that remains hidden even from those who are in possession of the data. But as Gentry notes in a MacArthur Foundation video: “If you want a certain functionality, you might think you have to give up your privacy. But it turns out that’s false. Your common sense is wrong. Cryptography has solutions for problems that allow you to make functionality consistent with privacy.”

And it may sound improbable

that a cryptographer is also an attorney. Gentry’s path to a law degree was not something long planned. A math major at Duke University, he was “a little burned out by the abstraction of mathematics,” he said. For much of his life, in fact, he was immersed in math—even from before age 3, when he taught himself multiplication by making rectangles with Cheerios. Going to HLS was an opportunity to learn something new and, he joked, for more social engagement in contrast to the solitary work of a mathematician.

Although he enjoyed his law classes and the legal perspective he gained, Gentry didn’t embrace the practice of law. After two years working as an intellectual property attorney, he began working for a Japanese company, DoCoMo USA Labs, where, during his interview, he was shown a list of potential projects. One of them was cryptography. He didn’t know much about it but was intrigued;

this kind of theoretical computer science allowed him to use his mathematical skills and, in some surprising ways, his legal training.

Gentry described “peculiar similarities” between cryptography and law. They both involve the adversarial process, with cryptographers modeling the security of an encryption system as a game between a challenger and an adversary. Also, he said, both fields have “an obsession with defining and achieving proof.”

He expects to continue with the work he has been pursuing in cryptography to develop FHE for more widespread use (it is currently impractically slow) and has no immediate plans for using the award money. He does have another major and growing project that may get some benefit from that prize. The same month that he heard he won the MacArthur Fellowship, his daughter was born. No word yet on what she does with her Cheerios.

—LEWIS I. RICE



PERSUASION

Kannon Shanmugam on making his case before the Supreme Court



Kannon Shanmugam says the first time he argued before the Court, he was too young to realize how scared he should have been.

Many lawyers dream of the day that they can stand in front of the justices of the U.S. Supreme Court and argue a case. For **Kannon Shanmugam '98**, a partner at Washington, D.C., litigation powerhouse Williams & Connolly, that milestone came just six years out of law school, after he clerked for Justice Antonin Scalia '60 and joined the U.S. solicitor general's office. It has now been followed by 16 other arguments, three of them in the 2014–2015 term. This spring, he spoke with a Bulletin reporter about the challenges and exhilaration of Supreme Court advocacy.

Was appellate law a path you planned to pursue since your first day of law school?

It was only after clerking and spending some time in private practice that I really decided to focus on appellate work. If you had told me when I was in law school

that one day I'd wake up and have argued a number of cases in front of the Supreme Court, I would have said you were crazy.

You had your first argument before the Supreme Court when you were just 31 years old. What was it like to be so young and in that position?

I was too young to realize just how scared I probably should have been. It's a great privilege to have that opportunity, and one of the reasons is that there have been so many great advocates at that bar. The first Supreme Court argument I ever saw was by now Chief Justice Roberts ['79], and I remember thinking, There's no way I could possibly do that, because he was just so good.

What do you mean by "good"? What makes an appellate advocate effective?

The best Supreme Court advocates are the ones who have just

an overwhelming command of the law and the facts and who are able to answer the hardest questions in a way that advances the client's cause. That is a rare skill: the ability to persuade a court in cases where, almost by definition, there are good arguments on both sides. The best arguments are by those who are able to acknowledge that there are weaknesses in their positions, but show that their preferred outcome is the right one.

How do you prepare for oral argument?

There's no substitute for the work that goes into preparing for oral argument. It involves reading the briefs multiple times and reading everything that is cited in the briefs, but also spending a lot of time just thinking through the contours of my client's position and undergoing moot courts where people simulate the experience of the oral argument

and ask the hardest possible questions. It is a demanding process, and often it's less than the most enjoyable part of the process, but it's essential in the Supreme Court because it is such a smart court. If there is any weakness in the position, it will be exposed at oral argument, and you have to be prepared to deal with that and address any weaknesses you can.

What's the difference between working on an appellate brief as a writer and being the person at the lectern at oral argument?

Oral argument is the time that the Court gets to ask the questions that don't get answered in the briefing. It's the one opportunity justices or judges have to pin down questions that parties may not have been willing to volunteer answers to in their briefs. It forces the parties to answer the very hardest questions for their side. Sometimes it's really only at oral argument that you see the parties come together on an issue.

What was the most memorable case you worked on?

Maryland v. King, which was about the constitutionality of collecting DNA from arrestees. There was a moment during oral argument when Justice Alito said he thought it might be the most important criminal procedure case the Court had heard in decades, and that was an electric moment. The case was very close, as it turned out, and unfortunately, we were on the losing end. It still was a great professional experience to work on a case like that, even if you're disappointed by the result. —LANA BIRBRAIR '15

A VOICE FOR ACCOUNTABILITY

Sareta Ashraph documents violations of international law for the U.N.

For much of her career, **Sareta Ashraph LL.M. '01** has worked to uncover the truth behind some of the worst conflicts in the world. She has investigated human rights abuses including murder, torture, and rape, and has spoken to people traumatized by what they have seen and experienced. From afar, people may conclude that those who perpetrate such violence are inherently evil, she says. But from up close, she has a different view.

"I take issue with the concept of bad people," she says. "Wars are really complicated. It's easy to make snap judgments on what people do."

She is now immersed in one of the more complicated conflicts, as chief analyst on the U.N. Commission of Inquiry on the Syrian Arab Republic. Based in Geneva, it is the U.N.'s longest running investigation of this nature, she says, involving hundreds of in-person interviews of Syrian refugees displaced in neighboring countries and phone or Skype interviews of Syrians in-country (the Syrian government won't allow the commission within its borders). While the group ISIS garners much of the world's attention because of its gruesome execution videos, she notes that an increasing number of groups that resemble criminal gangs operate there, and the Assad government now conducts air bombardments after firing on protesters in the earlier stages of the conflict.

Ashraph is in charge of reporting, documenting and tracking violations, with the goal of facilitating accountability, potentially through the International Criminal Court or ad hoc tribunals. She had



Sareta Ashraph, chief analyst on the U.N. commission of inquiry on Syria, pictured here in Geneva, where the commission is based

the same role for a commission of inquiry on Libya during the final period of the Qaddafi regime, producing a report documenting crimes against Libyans and minorities. The ICC is using that report in an ongoing investigation, but Ashraph acknowledges that seeing justice done in the aftermath of international crimes can be a "very long game." When she interviews people, she says: "You're not promising them anything. You're just asking them to share their stories, and we're not giving very much in return except the experience that your story is being documented. And that is very difficult." Still, when perpetrators are called to account for their actions, "I have a very keen sense of how important these

trials are to people."

Perhaps her most high-profile assignment for the U.N. was being part of a team conducting investigations for the Fact-Finding Mission on the Gaza Conflict, which produced findings known as the Goldstone Report. Though the report was criticized for alleged bias against Israel, Ashraph says she is proud of it. In her role, she notes, she interviewed Israelis about what they had suffered. "You have to develop a hard skin if you're going to work in this area of law because there's so much politics in international law."

A native of Trinidad and Tobago, Ashraph first became energized by issues of justice in her home country, where as a teenager she advocated for wom-

en's rights. Later, she developed an understanding of law as a tool to empower people marginalized in society and she became a defense lawyer (currently her practice isn't active because of her international work). For several years, she lived in Sierra Leone as a member of the defense team representing Issa Sesay, a leader of the Revolutionary United Front who would be sentenced to 52 years for war crimes and crimes against humanity. In that case and others, those accused should have someone in their corner fighting for them, she says: "We don't drag people in the street and shoot them anymore. There should be real processes with real challenges for the prosecution."

Ashraph talked about her career with students at HLS in the fall as a Wasserstein Fellow. In her own experience as a student, her interest in human rights work was strengthened by the clinical classes, the guest speakers and the perspectives of other students from around the world.

The work can be all-consuming, and it's important to find balance in life, with friends and family, she says. Just as important is to realize that people are capable of much more than the worst you can see, she adds.

"A big part of it," she says, "is trying to find things that remind you how good people are. Because ultimately you need to be in a good place to do this kind of work and be useful." —LEWIS I. RICE

POLITICS AND SERVICE

For Freshman Senator Tom Cotton, politics and patriotism are nothing new

On the morning of the 9/11 attacks, **Tom Cotton '02** was a typical Harvard Law 3L with a clerkship and law firm job in hand and notions of being a prosecutor or perhaps following his father into the military someday. But as he watched coverage of the attacks from the Harkness Commons, Cotton resolved to serve as an infantryman in the Army.

He started an intensive regimen of exercise and reading military history before beginning his clerkship with a federal Circuit Court judge. At the end of his clerkship, he walked into a military recruiter's office in Houston in the spring of 2003 to sign up, ignoring the suggestion that he become a military lawyer.

Cotton went on to lead an infantry platoon in Iraq, narrowly escaping injury when an IED destroyed his Humvee in Baghdad in 2006. While in Baghdad, he read a New York Times story revealing a secret terrorist-finance tracking program. He wrote an angry letter to the editor saying the paper's editors should be jailed on espionage charges.

Cotton became a conservative cause célèbre after the Power Line blog published the letter. "Here was a guy leading his men on missions in Baghdad," said John Hinderaker '74, a Minnesota attorney and Power Line co-founder. "What made the letter so striking was that it was just so well written and it was very forceful."

Cotton served at military funerals at Arlington National Cemetery as part of the ceremonial Old Guard and volunteered for a tour of duty in Afghanistan before leaving the Army in 2009. Three years later, he ran successfully for

the congressional seat representing the district where he grew up on a cattle farm in Dardanelle, Arkansas.

The sixth-generation Arkansan, nearly six and a half feet tall, remembers kicking bales of hay out of his father's truck when he "was barely bigger than those bales." As an undergraduate at Harvard College, Cotton played a year of basketball and discovered "political philosophy as a way of life," as he wrote in his college thesis.

He spent a year at the conservative Claremont Institute in California before enrolling at Harvard Law, where Marvin Ammori '03 remembers him hanging a picture of Winston Churchill on the door of his dorm room.

"There was no secret that he was interested in politics," said Ammori, whose vastly different political views didn't get in the way of their friendship. "We debated politics and philosophy, and people would ask, 'How are you friends with that guy?' Conserva-

tives probably asked him the same thing."

For Cotton, a highlight of law school was reading de Tocqueville's "Democracy in America" as part of a weekly study group in Professor Mary Ann Glendon's office. Glendon remembered Cotton as "eloquent but folksy, a sympathetic but critical reader and bristling with insights into American politics."

"It was evident that he would go far," Glendon said.

Cotton's first term in the House, where he earned a reputation as a stalwart conservative, was not even half over when he decided to challenge the state's incumbent Senate Democrat, Mark Pryor. Cotton emerged the winner last November after an expensive campaign pitting conservative groups such as the Club for Growth against the Democratic establishment, including former President Bill Clinton.

In the course of his Senate campaign, he traded nasty

fundraising letters with Elizabeth Warren, who taught his first-year Contracts class 13 years before becoming the Democratic senator from Massachusetts.

Cotton said he chatted amiably with Warren on the Senate floor in January on the day of his swearing in. "She gave me a big hug and introduced me as her student," he said. "To be fair, she was a better professor than I was a student."

Cotton made national headlines nine weeks after taking office, when he convinced most of his Senate Republican colleagues to sign a letter to top Iranian leaders warning that any nuclear deal signed by President Barack Obama '91 may not have any effect beyond his presidency.

The Wall Street Journal called the letter "a kind of Senate coming-out party" for Cotton and predicted, "Whatever the letter's ripple effects, it certainly won't represent the last Washington will hear from Tom Cotton [on] foreign policy." —SETH STERN '01



Only nine weeks after taking office, Tom Cotton rallied Republican colleagues to write a letter to the leaders of Iran.

TRUST IN PROVIDENCE

Jorge Elorza wins the battle to lead the city where he fought for social justice

Jorge Elorza '03 was nine months out of college working as an auditor in New York in early 1999 when his father called with news that a childhood friend back in Providence, Rhode Island, had been shot to death.

Elorza decided to move home to Providence, a path that led to Harvard Law School; work as a legal aid lawyer, law professor, and housing court judge; and finally, his election as the city's mayor last year, at age 37.

No one would have found his ascent more improbable than Elorza himself. Having been rejected by every college he applied to, Elorza wondered if he'd wind up in the same jewelry or textiles factories where his Guatemalan-immigrant parents had worked with the hope that he would do better. "It was either work in the factories or get my act together," Elorza said. "So I decided to get serious."

He enrolled in community college and then transferred to the University of Rhode Island, where he graduated summa cum laude and landed a job with PricewaterhouseCoopers. Elorza returned to Providence after his friend's death, working with a program helping inner-city kids before enrolling at HLS in the fall of 2000.

Professor David Wilkins '80 remembered Elorza, an organizer for the "living wage" campaign for workers on the Harvard campus, as a "very engaged" student who "spoke about issues that were really of deep concern to him, mostly around fairness and equality and social justice."

After graduation, Elorza said, he "represented people on the brink

of homelessness" as an attorney in Rhode Island Legal Services' housing unit and then taught housing law at Roger Williams University.

In 2010, Providence's mayor appointed Elorza to serve on the city's housing court, where he prodded banks into fixing abandoned residential properties. He held some of the nation's largest banks in contempt for failing to properly maintain the properties, issued six-figure fines and even threatened to arrest their presidents. "All the banks except one took responsibility for the abandoned properties far beyond what I had the power to do," Elorza said.

Elorza left the bench to explore a mayoral run after the incumbent announced plans to run for governor. He formally launched his campaign in November 2013 while standing outside his childhood home, which is now part of a homeless shelter. "Just as others

have invested in me," he said, according to the Providence Journal, "I believe it is my responsibility to invest in others. And as mayor, I will fight to make sure that others have these same opportunities and supports that I've been so fortunate to have."

In what Elorza described as a "long, hard slog," he first defeated the City Council president in the Democratic primary and then, in the general election, faced Vincent A. "Buddy" Cianci Jr., who had served six previous terms as mayor—as well as four-plus years in federal prison on corruption charges.

"Jorge knew exactly what he had to do to be a viable candidate, and he went ahead and did it," said Darcy Paul '03, a friend of Elorza's since their 1L year, who himself was elected to the Cupertino, California, City Council last November.

Elorza said he raised "just shy of" a million dollars—enough to

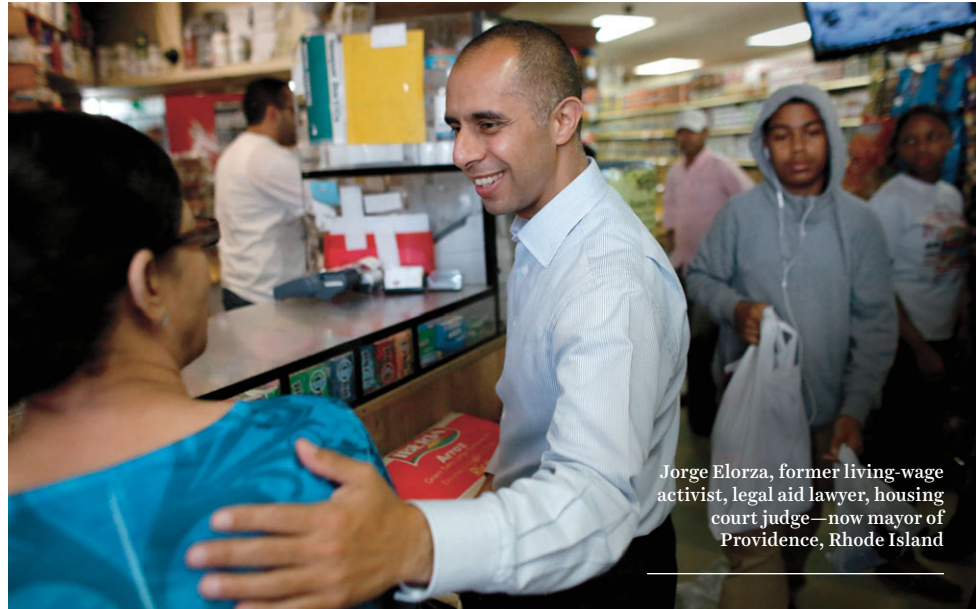
fund his first television ad only a couple of weeks before Election Day, but far less than his colorful and well-known opponent.

"It was a risky campaign," said Wendy Schiller, a Brown University political science professor. "He wanted to portray himself as the everyman mayor, someone who is sincere and didn't have a lot of flash but would be a good, honest mayor."

On Election Day, Elorza won by a 10-point margin, and he took the oath of office as Providence's 38th mayor in January. A winter blizzard almost immediately delivered the first test of his leadership.

"He's doing very well at it, and I expect him to continue to do well at it," said Schiller. "He's a very smart guy, and if he proves he can run the city well, he's attractive not only in Rhode Island but nationally. So the question is: Can we hold on to Mayor Elorza?"

—SETH STERN '01



Jorge Elorza, former living-wage activist, legal aid lawyer, housing court judge—now mayor of Providence, Rhode Island

REPRESENTING THE WHOLE CHILD

Brett Stark co-founds a medical-legal partnership to assist children who seek asylum in the U.S.



Brett Stark co-founded Terra Firma in October 2012 to better represent children who have crossed into the U.S.

supported by Catholic Charities, Montefiore Medical Center, and the Children's Health Fund, and more sources of private and public funding may become available as the issue of unaccompanied immigrant children attracts more national attention.

Stark first saw the need for a medical-legal partnership like Terra Firma while working at a refugee resettlement organization in Kenya during the summer after his 2L year at HLS. There he referred rape victims to counselors and introduced people who thought they might have AIDS to doctors. When he got back to HLS that fall, he participated in the Trauma and Learning Policy Initiative's Education Law Clinic, an experience that confirmed for Stark the effectiveness of combining legal aid with medical and psychological services.

Terra Firma has worked with around 100 children so far, and it is expecting to see twice as many over the next year. Clients in immigration cases, including children, do not have the legal right to publicly funded immigration lawyers, so the demand is great.

As challenging as the workload and nature of the cases may be, Stark says he stays inspired by his clients' tenacity. "Working with kids is extremely and extraordinarily motivating," he says. "Kids are resilient, and these kids have been through a lot and have so much potential to actualize if they just can get the right kind of help." —KIM ASHTON

When Vladimir Gongora, a deaf teenager who fled El Salvador, first met with **Brett Stark** '12 two years ago in the Immigrant and Refugee Services Division at Catholic Charities in New York, the two had to draw pictures to communicate. Vladimir had never been taught to write or use sign language, and he needed Stark to help him win the legal right to stay in the United States.

Stark found him a special interpreter, one versed in communicating with hearing-impaired people without formal language skills. He then built a successful asylum case for the teenager on the grounds that Salvadoran law forbade people with serious disabilities from marrying or even acquiring a passport.

This was part of the inspiration for Terra Firma, a project co-founded by Stark, with Dr. Alan

Shapiro and Dr. Cristina Muniz De la Pena, which offers legal and health services to unaccompanied minors who've crossed into the U.S.

Terra Firma provides a panoply of services to young people like Vladimir, to address the wide range of issues that often accompany their cases. This holistic approach not only helps to meet children's immediate needs; it helps Stark in the courtroom.

Reports by Terra Firma doctors and mental health professionals often include evidence that children were persecuted and even faced life-threatening dangers in their home countries. In addition, medical and mental health providers can help to stabilize children, preparing them to assist and testify in their own cases.

This, Stark says, is "crucial for a child's own well-being and future,

but also enhances and facilitates the legal case. We really feel the legal case gets better when children can tell their story." For these clients, he usually seeks asylum or Special Immigrant Juveniles status—a benefit for children who've been abused, neglected or abandoned.

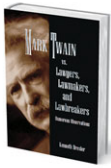
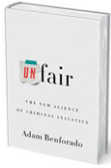
"We were working in silos, and that was really less effective than working collaboratively on immigration issues that have a medical component and medical issues that have an immigration component," Stark says.

Terra Firma now includes about 15 people—Stark and other lawyers at Catholic Charities, two doctors, a psychologist, a social worker, a nutritionist, a project coordinator and support staff.

Initially started with funding from an Equal Justice Works fellowship, Terra Firma is now

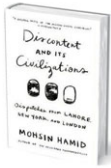
“Unfair: The New Science of Criminal Injustice,” by **ADAM BENFORADO '05** (*Crown*)

Drawing on research in psychology and neuroscience, the associate professor of law at Drexel University points to rampant injustices that stem from the legal system—not caused by corruption or ill will but simply by the way our minds work. He cites real cases and scientific studies showing how lawyers, witnesses, juries and judges can be influenced by seemingly insignificant elements or occurrences—such as an accused’s appearance or even fleeting thoughts related to death—which can lead to more severe punishment. Benforado suggests reforms such as relying more on technology and less on human memory, limiting the discretion of legal actors, and reducing the adversarial nature of the trial system.



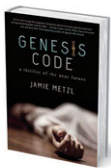
“Mark Twain vs. Lawyers, Lawmakers, and Lawbreakers: Humorous Observations,” compiled and edited by **KENNETH BRESLER '84** (*Hein*)

One of America’s foremost humorists, Twain frequently chose lawyers as a target for his sharp wit. Bresler, the principal of ClearWriting.com and a Massachusetts administrative law judge, presents Twain’s writings on the subject, gathered from books, magazine and newspaper articles, and correspondence. They include legal and political sketches, and quotations on the law and lawmakers. Among other observations, Twain compared Theodore Roosevelt to Tom Sawyer and said that Washington is the place where “rascality achieves its highest perfection.”



“The Reputation Economy: How to Optimize Your Digital Footprint in a World Where Your Reputation Is Your Most Valuable Asset,” by **MICHAEL FERTIK '05** and **DAVID C. THOMPSON** (*Crown*)

A person’s reputation was once limited to his or her social and professional circles and lasted only as long as people remembered it. Now digital technology has made reputations “ubiquitous, permanent, and available worldwide,” write the authors, leading to potential problems and opportunities. Fertik, CEO and founder of Reputation.com (and a lecturer at HLS and expert-in-residence at the Harvard i-lab), and Thompson, the company’s former general counsel, advise readers on how to shape their reputations to their advantage,



including facilitating searches for what you want people to find and hiding what you don’t. Be a careful curator of your own reputation, they advise.

“Discontent and Its Civilizations: Dispatches from Lahore, New York, and London,” by **MOHSIN HAMID '97** (*Riverhead*)

An acclaimed novelist and journalist, Hamid presents a collection of essays written over the past 15 years, blending the period’s political and social changes with the personal experiences of an author who, no matter where he lives, considers himself a perpetual “half-outsider.” The native of Pakistan writes on his life in his home country and the perception of it in the world, on living in cities devastated by terrorist attacks, and on arts and culture. And he writes on small moments that linger in memory: the taxi ride after he applies for a visa in New York City, the streets in Lahore after a showing of the movie “Avatar.”

“Genesis Code: A Thriller of the Near Future,” by **JAMIE METZL '97** (*Arcade*)

A former government official with the U.S. State Department and National Security Council, Metzl creates a fictional world of international intrigue, where the apparent drug overdose of a woman in Kansas City may be connected to an evangelical pastor, presidential politics and a U.S. government program competing with the Chinese to enhance human genetics. With elements of science fiction and noir thriller, the book touches on the dangers of technological advances and real-life implications of genetic research.

“BiblioTech: Why Libraries Matter More Than Ever in the Age of Google,” by **JOHN PALFREY '01** (*Basic*)

During an era in which vast storehouses of information are available at many people’s fingertips, the question may be asked: Are libraries still relevant? For Palfrey, the head of school at Phillips Academy and a former HLS professor who reorganized the school’s library and is a director at its Berkman Center for Internet & Society, the affirmative answer lies in a new kind of library. It utilizes digital technology (he is the founding chair of an effort to establish a national digital library system in the United States) while maintaining a physical space accessible to all. The library has been and will remain, he writes, “fundamental to the success of our democracy.”

IN MEMORIAM

1940-1949

LEONARD C. MEEKER '40
Nov. 29, 2014

ALFRED G. BOYLAN '42
March 8, 2015

LESTER A. LAZARUS '46
Sept. 24, 2011

DONALD L. AUSTIN '48
Jan. 19, 2015

THOMAS E. BENNETT '48
Feb. 26, 2015

THOMAS S. BRASWELL JR. '48
Feb. 23, 2014

JACK C. BRISCOE '48
Dec. 1, 2014

LARRABEE M. JOHNSON '48
Aug. 26, 2014

FRANK R. KITCHELL '48
Jan. 25, 2015

STANLEY LAMPERT '48
Dec. 20, 2014

STUART MARKS '48
April 13, 2014

THOMAS A. QUINTRELL '48
March 3, 2015

LEON SAVITCH '48
May 17, 2013

S. ARTHUR SPIEGEL '48
Dec. 31, 2014

WALTER E. BLACK JR. '49
Sept. 29, 2014

ROBERT R. BUELL '49
Sept. 23, 2014

MELVIN J. CARRO '49
Nov. 20, 2014

ARNOLD J. ERICSEN '49
Dec. 27, 2014

WILLIAM A. GEOGHEGAN '49
Jan. 17, 2015

LEONARD L. GRIMES '49
Jan. 4, 2015

JOHN RICHARDSON JR. '49
Dec. 26, 2014

JOSEPH C. ROBBINS '49
Nov. 11, 2014

GILBERT R. "BERT" SCHMITT
LL.M. '49, Q.C.
Dec. 25, 2014

PAUL A. SIMMONS '49
Oct. 9, 2014

ROBERT N. THOMSON '49
Sept. 22, 2014

JERRY WAGNER '49
Sept. 30, 2014

1950-1959

THOMAS L. FARMER '50
Feb. 5, 2015

CHARLES F. HARRINGTON '50
Jan. 22, 2015

MORTON KOPPEL '50
Nov. 4, 2014

VINCENT L. MCKUSICK '50
Dec. 3, 2014

CHARLES R. SIMPSON LL.M.
'50
Jan. 28, 2015

ARTHUR D. SPORN '50
2015

SYDNOR THOMPSON '50
Jan. 27, 2015

HAROLD WEINSTOCK '50
Dec. 1, 2014

DONALD H. ANGUS '51
Aug. 7, 2014

RICHARD G. BATESON '51
Feb. 12, 2015

JOHN D. MORRISON JR. '51
Feb. 6, 2015

STANLEY P. POLLACK '51
April 25, 2013

ALFRED C. SCHMIDT '51
June 7, 2012

DAVID E. CRABTREE '52
Jan. 27, 2015

MALCOLM S. ELISOFFER '52
Feb. 2, 2015

SAMUEL G. KING '52
Jan. 9, 2015

GAEL MAHONY '52
Nov. 4, 2014

THOMAS W. PEARLMAN '52
April 29, 2014

ROBERT E. RODES JR. '52
Nov. 25, 2014

EDGAR H. BOOTH '53
Feb. 21, 2015

JOHN A. CURTISS '53
Nov. 1, 2014

ALLEN E. KLINE '53
Jan. 30, 2015

NICHOLAS L. METAXAS '53
Feb. 25, 2015

ROBERT S. WEATHERLY JR. '53
Dec. 30, 2014

WARREN W. BENTZ '54
Dec. 31, 2014

MONROE H. FREEDMAN '54
LL.M. '56
Feb. 26, 2015

ROBERT L. HANDROS '54
Feb. 17, 2015

CHARLES H. HARFF '54
March 9, 2015

ISAAC HENKOFF '54
March 3, 2015

STANLEY M. LANGER '54
Feb. 18, 2014

LEONARD S. MERANUS '54
Dec. 17, 2014

WILLIAM D. PARSLEY '54
Nov. 22, 2014

COURTLAND W. TROUTMAN
'54
Jan. 6, 2015

PAUL L. WRIGHT '54
Feb. 1, 2015

JOHN F. BOK '55
Sept. 27, 2014

DONALD C. COUSINS '55
Feb. 7, 2015

CHARLES DAVID EMHARDT '55
Jan. 14, 2015

ROBERT E. HERZSTEIN '55
Feb. 12, 2015

JEROME KURTZ '55
Feb. 27, 2015

ELHANAN C. "ELKY" STONE
'55
Dec. 27, 2014

PHILIP W. COYLE '56
July 18, 2014

JOHN W. HARRIS '56
Oct. 20, 2014

RONALD S. STEELMAN '56
Dec. 6, 2014

JOHN F. COUGHLIN '57
Dec. 14, 2014

PAUL L. DAVIES JR. '57
Nov. 19, 2014

KENNETH L. EVERETT '57
Nov. 27, 2014

THOMAS J. GODFREY JR. '57
Oct. 5, 2014

NEIL L. LYNCH '57
Oct. 1, 2014

KAI A. NEBEL '57
2014

JOHN W. SEARS '57
Nov. 4, 2014

EVAN R. DAWSON '58
Feb. 3, 2015

WILLIAM H. GORHAM '58
March 2, 2015

WILLIAM H. HAYS III '58
Feb. 25, 2015

SHERMAN D. HORTON JR. '58
Dec. 3, 2014

YOSHIO SHIGEZAWA '58
Sept. 22, 2014

PETER K. GOULD '59
Nov. 1, 2014

WILLIS G. HAUGEN '59
Nov. 28, 2014

LELAND T. JOHNSON JR. '59
Sept. 18, 2014

JOSHUA M. LEVIN '59
Jan. 9, 2015

DECATUR H. "DEKE"
MILLER '59
Feb. 2, 2015

1960-1969

JOHN J. CARLIN JR. '60
Nov. 28, 2014

ALFRED K. HETTINGER '60
Jan. 3, 2015

ROBERT W. KENT '60
Dec. 21, 2014

PETER W. KILBORN '60
Dec. 28, 2014

J. SPENCER LETTS '60
Nov. 10, 2014

FLETCHER L. YARBROUGH '60
Nov. 24, 2014

C. PERRY BASCOM '61
Nov. 4, 2014

LEONARD V. GRAY LL.M. '61
June 14, 2014

RICHARD A. ROBINSON '61
Jan. 16, 2015

SARAH "SALLY" (REYNOLDS)
NEWBURY '62
Dec. 29, 2014

ROBERT PIRIE '62
Jan. 15, 2015

SONIA FAUST '64
2014

DORAN KOULACK-YOUNG '64
Jan. 23, 2015

MICHAEL J. SPECTOR '65
Oct. 31, 2014

STEVEN L. CYMROT '66
Nov. 29, 2014

H. PATRICK GLENN LL.M. '66
Oct. 1, 2014

WAYNE E. BATCHELER '67
Aug. 1, 2013

CHARLES A. JUDELSON '67
April 16, 2014

KENNETH G. PIGOTT '68
Feb. 13, 2015

JOHN DURHAM WELLS '69
Sept. 28, 2014

1970-1979

GUY M. BLYNN '70
Dec. 17, 2014

R. KIRKLAND GABLE '70
Jan. 18, 2015

ERIC S. ANDERSON '71
Nov. 9, 2014

ALLEN N. GROSSMAN '71
Dec. 3, 2014

LINDA WILLIAMS
STANDRIDGE '71
March 7, 2015

FREDERICK D. JONES III '72
Aug. 23, 2014

DAROLD E. MAXWELL '72
Oct. 7, 2014

TERRANCE R. MCKNIGHT '75
Nov. 29, 2014

WILLIAM J. ARNOLD III '76
Nov. 17, 2014

JOHN T. DOWNEY '76
Nov. 10, 2014

FERNANDO T. "JERRY"
BARICAN LL.M. '79
Oct. 3, 2014

RICHARD S. MONAGHAN '79
Oct. 27, 2014

1980-1989

HENDRIK M. "RIK" DE
CEULAER LL.M. '81
Sept. 12, 2014

JOSÉ GÓMEZ '81
Sept. 14, 2014

WANDA (DOUGLAS) THIGPEN
'83
July 18, 2014

MICHAEL L. SEIGEL '84
Jan. 1, 2015

THOMAS A. SCHWEICH '85
Feb. 26, 2015

TRACIE BUTLER GILES '88
Nov. 19, 2014

1990-1999

JAKE A. PALUMBO '99
Nov. 6, 2014

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obituaries.

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Bulletin, 1563 Mass.
Ave., Cambridge, MA
02138 or to bulletin@law.harvard.edu.

An Event Supreme

34 alumni join the Supreme Court Bar and get a tour from the chief justice

On Dec. 15, 2014, 34 Harvard Law alumni, from the Classes of 1971 to 2010, gathered at the U.S. Supreme Court to join the bar for the highest court in the nation. It was the first time HLS had organized such an event, and it was at the suggestion of Glenn Ivey '86, president of the Harvard Law School Association's Washington, D.C., chapter.

Dan Schweitzer '89, who heads the Center for Supreme Court Advocacy at the National Association of Attorneys General, moved to admit the attorneys before Chief Justice John G. Roberts Jr. '79. Before the ceremony, the group had breakfast in the East Conference Room, where Roberts, wearing his Harvard tie, gave attendees a brief tour of portraits of former



chief justices that are hanging in the room, explaining the histories of some of the lesser-known justices. As he was in the middle of telling a story, Justice Ruth Bader Ginsburg '56-'58, who had just come into the room, finished his anecdote and joked about an opinion she had read from the bench that morning.

The prior night, the group was addressed by Kannon Shanmugam '98, an appellate litigator at Williams & Connolly who has argued 17

cases before the Court (see interview, Page 49). Those who attended came almost exclusively from D.C. and included a wide range of alumni, from a stay-at-home mother who took the opportunity to re-engage with the law, to Bert Mizusawa '89, a major general in the U.S. Army Reserve who sent in his application to the Supreme Court Bar while stationed in Afghanistan.

Because of the popularity of the event, the HLS Alumni Center has booked group admission dates through 2017. The next date, in June, filled up within 24 hours and will include 50 alumni from D.C., Boston, New York and New Mexico.

Joining the Supreme Court Bar has several perks, the most notable of which involves guaranteed seats at the front of the Court on

argument and opinion days. But in December, for the HLS grads at the ceremony, the focus was on reconnecting with old classmates and colleagues, engaging with Supreme Court history and lore, and celebrating the history of legal practice.

Ivey has no immediate plans to argue before the Supreme Court but is excited to be part of its tradition. He said that standing in front of the Court after the ceremony, he was reminded of a visit he'd made in Rome to a spot where an ancient courthouse used to stand.

"It struck me that when you hear about how lawyers practiced law in ancient Rome, there is a 4,000-year tradition of lawyers ... preserving the rule of law," Ivey said. "I think we carry the torch." —LANA BIRBRAIR '15





↑ This spring, the HLSA of Northern California and Farella Braun + Martel co-hosted a panel titled “Advising Disruptive Companies.” Panelists included (second from left): Tangel Richter ’97, deputy general counsel and senior vice president of Lending Club; Candace Taylor ’09, associate litigation counsel at Lyft; Katie Biber ’04, senior counsel at Airbnb; and Jen Ghaussy ’08, counsel at Uber. Over 75 people attended the event, which focused on topics ranging from the challenges of advising companies that are hiring 50 people a week to how to network your way into a job that doesn’t exist, i.e., convincing a startup that it needs a lawyer. T.J. Duane ’02 (far right), CEO at Qollaboration, discussed the HLSA’s growing focus on programming related to “the startup and entrepreneurial ecosystem,” including the launch of the new HLSA Entrepreneurs Network, which he is chairing. Farella Braun partners Chris Wheeler ’02 (far left) and Deepak Gupta ’02 (second from right) hosted the event. Including this panel, there were four HLSA events related to entrepreneurship and startups in San Francisco, New York and Los Angeles in March.



↑ The Harvard Law School Association of the United Kingdom brought together (from left) Kenneth Caplan, head of the Blackstone Group; Sanjay Patel, head of Apollo Europe; Caroline Chang ’01, managing director of Farallon Capital Management Europe; George White ’81, partner at Sullivan & Cromwell; and Peter Krause Jr. ’12 of the Blackstone Group, on a panel titled “Globalizing Your Career: Perspectives on Business and Law for Young Alumni.” The event, attended by 40 alumni, was sponsored by Sullivan & Cromwell in London.



↑ Dean Martha Minow addressed the Harvard Law Society of Illinois at its annual meeting in November. Over 90 attended the event, which was held at Sidley Austin in Chicago.



↑ Dean Minow (center) was the guest speaker at the HLSA of Orange County’s March event at Rutan & Tucker in Costa Mesa, California. Among the 48 attending were HLSA of Orange County board members (from left) Richard Schwarzstein ’59, Ryan Fawaz ’09, Nancy Castenholz ’88, President Michael Friedland ’91, Patty Le-Narula ’96, Ben Katzenellenbogen ’99, Bill Marticorena ’77 and Josh Robbins ’04.



↑ HLSA of Houston board members (from left) Mark Yzaguirre ’97, Miles LeBlanc ’81, President Anna Rotman ’04 (second from right) and Scott Sherman ’91 (far right) with HLSA of Houston guest speaker Dean Minow. Seventy-eight alumni attended the reception held at Bracewell & Giuliani.

FROM LONDON TO IRAN AND BEYOND, Barton J. “Bart” Winokur ’64 has had a robust career as an international deal-maker and expert in mergers and acquisitions, including representing Getty Oil in its sale to Texaco and representing the Haas Family Trusts in negotiating the \$15 billion acquisition of Rohm & Haas by Dow Chemical Co. More recently, Winokur was lead attorney for Fannie Mae in connection with an \$11.6 billion settlement with Bank of America involving claims related to mortgage loans originated by Countrywide Financial Corp. and Bank of America National Association from 2000 through 2008.

But it’s his skill at leading Dechert that in 2013 earned Winokur a Lifetime Achievement Award from *The American Lawyer*. He transformed the Philadelphia-based law firm into an international law practice with more than 20 offices in the U.S. and around the world. Under his leadership, Dechert also became one of the world’s most profitable firms, according to *The American Lawyer*, and rose from 61st among firms in pro bono rankings to the top 10.

A native of Philadelphia and graduate of Cornell University and Harvard Law School, where he was a member of the Harvard Law Review, Winokur joined Dechert in 1965 after serving as a law clerk for Judge Abraham L. Freedman of the U.S. Court of Appeals for the 3rd Circuit. He served as chair of Dechert’s mergers and acquisitions and international law groups, and was the resident partner of the London office from 1975 to 1979. At Cornell, he serves as a trustee and a member of the executive committee and also as chairman of the Dean’s Advisory Board of the College of Arts and Sciences. In addition, he serves as a trustee of Brandeis University, where he was the chairman of the board. He is a member of the Dean’s Advisory Board of HLS.

How did you build Dechert from primarily a regional firm to an international powerhouse?

I don’t think it is accurate to say that I built anything. Whatever we built was the result of the efforts and vision of many. What we did was build on what were the strengths of the firm and radically upgrade the level at which the firm competed. When I joined the firm in the 1960s, most regional firms had primarily local practices. You practiced primarily in the local courts and advised mostly local clients on [the majority] of their matters. In the ’70s and ’80s, that world was disappearing. The big New York firms started coming in and taking away the most important and profitable matters for those traditional clients. The natural reaction of most firms was to try to build walls and protect their traditional clients. Certainly that was what was happening in Philly. In a world where excellence was going

to prevail over proximity, the competition was going to fly right over those walls, so the only answer was to develop our own excellence. That meant we needed to raise the portcullis, drop the drawbridge, and go out and meet the enemy on his territory in those areas where we were strongest. Then we had a real shot. Of course, that meant that our partners and associates had to up their game. It meant they had to embrace risk and go where many of them had never been—something that is not natural for lawyers or law firms. But our lawyers did, with results that surprised even many of them.

Would you say your success was built on seizing opportunity?

I’m a very big believer in change and challenges that stimulate and enrich you. In 1975, I was in Iran representing an American company on a potential large contract with the government when

I was presented with an opportunity to represent the minister of war of Iran on a major contract with TWA to buy twelve 747 airplanes for military use. I had no experience in that area and certainly no experience representing a major foreign government and U.S. ally in a sensitive arms purchase, but the opportunity was enormous. I was nervous as hell, but it was an incredible experience. It was a time when there were, maybe, three telephone lines out of Iran, so I was there on my own. Somehow I survived and went on to do further deals with Boeing, other major defense contractors and a number of foreign countries. And I soon found all kinds of new opportunities with major international companies. My world was now a different world—a world beyond Philadelphia and beyond the United States.

And then you chose another challenge?

Really another opportunity. [Later in] 1975, Dechert gave me the opportunity to move to London for four years to run that office. The firm had a very small practice there: one client [whom we billed] for \$25,000 a year, or \$75,000 over the prior three years. It was essentially a greenfield venture. The risk of failing was very high, and indeed, I was definitely failing for the first five or six months. But, with no alternative but to succeed, we eventually found opportunity.

How did you build that practice?

When I first got to London, I noticed there were few real tax lawyers in England, and the accountants who did most of the tax work tended to look at taxes on a limited jurisdictional basis. The U.K. tax accountants focused on U.K. issues; the French, on French issues. No one seemed to be looking at the interaction between different jurisdictions. It seemed to be an opportunity, so I set about learning French and German and English tax law. After about three months, I thought I could contribute. I went out and talked to the first one I’d hoped would be a client. When he was skeptical—he already had the “best, most renowned tax advisers”—I offered to take the assignment on a full contingency: He would pay me only if he thought I saved him money. Fortunately, as often happens, necessity gave birth to a solution. And the fee earned for that success was four times the firm’s revenues for the prior three years.



→ “As institutions get bigger, they tend to be more bound by rules, and those rules are often the enemy of independent thinking.”

Why did you require all lawyers at Dechert to give a minimum number of pro bono hours?

The firm had a long history of pro bono. All I did was ratchet it up, with programs that focused a lot more on it and gave people more credit and leeway for pro bono, along with requirements for all partners and associates to participate. It sounds obvious, but pro bono is extremely important for a number of reasons. We’ve all been given a privilege of practicing law, of being successful, and of living a good life, and there’s an obligation to give back. Second, on a personal level and a professional level, pro bono work is extraordinarily rewarding. When you do pro

bono, you get to work with people who are unbelievably grateful for what you do. I have always thought that the most rewarding aspect of practicing law was building relationships with people, helping those people, and seeing the tangible and intangible results. And of course, those experiences help you in everything else you do as a lawyer. Practicing law is about identifying with people, not about some abstract cause of action.

What advice do you give young lawyers today?

When I was teaching a class at Penn, a student asked whether I still thought it was possible for people to have the kind of career I

had, meaning a career that was interesting and exciting. My answer was, “Absolutely.” The challenge is the structures we have within large law firms. There are many great law firms, but as institutions get bigger, they tend to be more bound by rules, and those rules are often the enemy of independent thinking. A great career means thinking beyond and challenging those rules. That doesn’t mean ignoring the rules; it means challenging them when they don’t make sense or what you want to do is interesting and exciting and makes sense. If you’re willing to do that, the opportunity is there. There are loads of opportunities today, in some ways more

opportunities, because so many people today are held back by rules.

So if you’re willing to challenge rules—as you did in London—that’s where the opportunity is?

Exactly. See challenges as opportunity and don’t accept rules as the limit. When I was 27, I looked at everything as opportunity, and I challenged every conventional view of what an associate should do at my firm. I think I am most effective when I do what I did when I was 27, and I’m least effective when I think I’m entitled because of what I have done in the past. If you think you’re entitled because of what you’ve done, you’re on the down road.

800 years later, the 'great charter' still fascinates

ON A JUNE DAY

800 years ago, King John of England met with disaffected feudal barons at Runnymede, a meadow on the River Thames 20 miles from London. Under pressure for overstepping his authority over landowners, the king put his seal to Magna Carta, the “great charter” that in 1215 was merely a summary of customary feudal rights and guarantees. But the charter went on to have a second life as an argument for liberty more generally, and as a primer on the rule of law. Soon Magna Carta shook the world into modernity with a feudal message readily recast as revolutionary: Executive power has limits.

Handwritten in Latin on sheepskin parchment, the one-page charter drew “direct lines to some of our most fundamental principles,” according to the American Bar Association. (Included were due process, trial by a jury of one’s peers, punishments that matched crimes and habeas corpus.) Its 63 provisions also included demands for safe passage at borders, standardized measures for traded goods, fixed and independent courtrooms, fair interest rates, and the power of localities to make their own laws. HLS Visiting Professor Daniel R. Coquillette ’71 called it “our first great constitutional document” in his book “The Anglo-American Legal Heritage” (1999). Despite its not being a constitution or even legislation, he wrote, Magna Carta “remains a great symbol of the rule of law and of limitations on arbitrary

Initially merely a summary of feudal rights, Magna Carta has become a symbol of liberty and the power of the rule of law. The HLS library owns 39 manuscript copies, among them the one from the early 1300s pictured here. Included on the page is a clause confirming the freedom of the English church and another limiting the tax to be paid to the Crown after a landowner’s death.

executive power.”

The Harvard Law School Library owns 39 early manuscript copies of Magna Carta (ca. 1300 to 1467)—and many printed versions—see bit.ly/MagnaCartas. (A special exhibit is planned for the fall.) One example, a manuscript version of the abbreviated charter that was distributed to English sheriffs around 1327, is said to have been read aloud four times a year.

Magna Carta’s 1225 version was integrated into English statute rolls in 1297, and then into law books during the 16th century. But only four of its provisions survive in present-day British law. HLS Professor Charles Donahue Jr. said that more provisions of Magna Carta are in effect today in Alberta, Canada, than in Great Britain itself. Despite its enduring power as a metaphor for liberty, Magna Carta “is not a charter of liberties or a bill of rights in either the modern or the 17th century sense,” Donahue told a recent class. But it was “a good start” on the primacy that individual grievances against authority would one

day have, he said; it included provisions that “foreshadowed” the idea of a parliamentary petition; and it offered an early glimmer of what we now call the rule of law.

During the 17th century, Magna Carta inspired English Puritan rebels during “battles over the power of the king,” said Mary Sarah Bilder ’90, professor of legal history at Boston College Law School. For years after, she added, it “gets used as a way of arguing against authority.” The ancient text was invoked in the Virginia charter of 1606 and the Massachusetts Body of Liberties of 1641. Early colonists used Sir Edward Coke’s loose, colorful reinterpretation of Magna Carta as a template for laws in the New World.

John Adams used Magna Carta during arguments against the Stamp Act and the vice admiralty courts. In 1775, Massachusetts revised its seal to depict a man holding Magna Carta in one hand and a sword in the other, a version that survived until 1780. Magna Carta was used in the constitutions of at least eight of the original colonies, and its senti-

ments survive in the U.S. Constitution and the Bill of Rights.

At an American Bar Association gathering last summer, Chief Justice of the United States John G. Roberts Jr. ’79 said Magna Carta helped give rise to representative government, moderated executive authority and established the idea of an independent judiciary—vital today as a place of cool judgment, he said, within the heat of partisan debate. Last fall, at the Library of Congress, Roberts called Magna Carta a driving force behind the ideals that propelled American independence.

To this day, Americans are more “obsessed” with the centuries-old charter than the British, said Bilder. Americans regard it as symbolic of an idea woven into the fabric of the Constitution: that authority is not absolute. The American obsession—underscored by ABA pronouncements starting in the 1950s—may reflect a relatively new country seduced by the idea of such an old legal framework. “To be part of an 800-year-old tradition,” she said, “is somehow comforting.” —CORYDON IRELAND

magna Carta

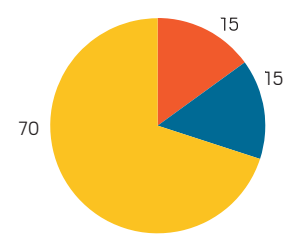
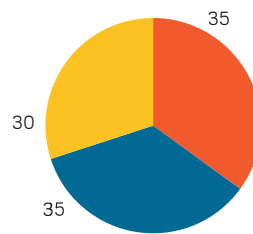
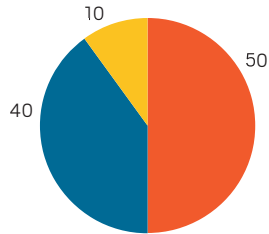
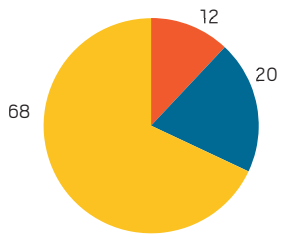
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 libertates suas illas concessit cum et dedit
 in omnibus libris Regni sui pro nobis et heredibus
 nostris iuramentum de libertatibus et consuetudinibus
 terrarum et hereditatibus de nobis et heredibus nostris
 iuramentum. **Et** hoc cum ut videmus nos
 sine aliquo iuramento de nobis recipere per
 equum amicum noscitur fuerit et cum decesserit
 erit hoc a plene etiam fuerit et volumus de
 terra hanc hereditate per iuramentum volumus fieri
 hoc ut heredes cum de terra nostra per hoc
 hoc tenent de terra nostra per hoc maneribus
 hoc nihil de feodis nostris per hoc ad plus
 et quod minus hoc minus deo secundum antiquam
 consuetudinem reddat. **Et** tunc hoc dicitur
 aliter fuerit infra ecclesiam dicitur eius non
 hanc custodiam eius in terra sine dicitur
 quia homines et agere et postquam aliter
 fuerit in custodia cum ad plene etiam eius
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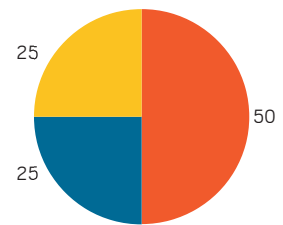
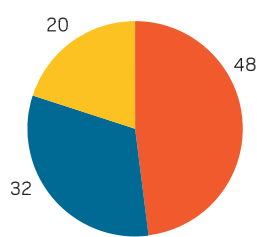
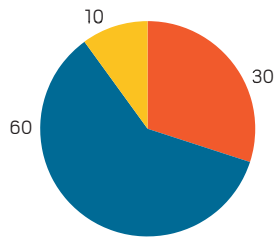
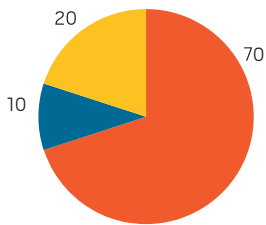
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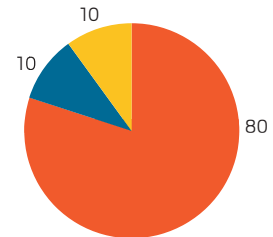
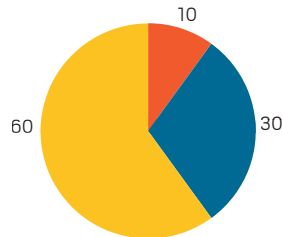
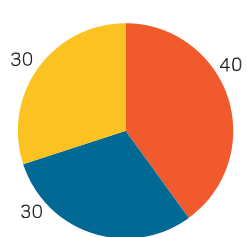
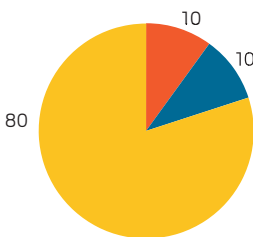
Slicing the Data



For the growing number of empiricists at HLS, there is



nothing quite so satisfying as resolving a thorny legal or policy



question through the analysis of cold, hard data.