

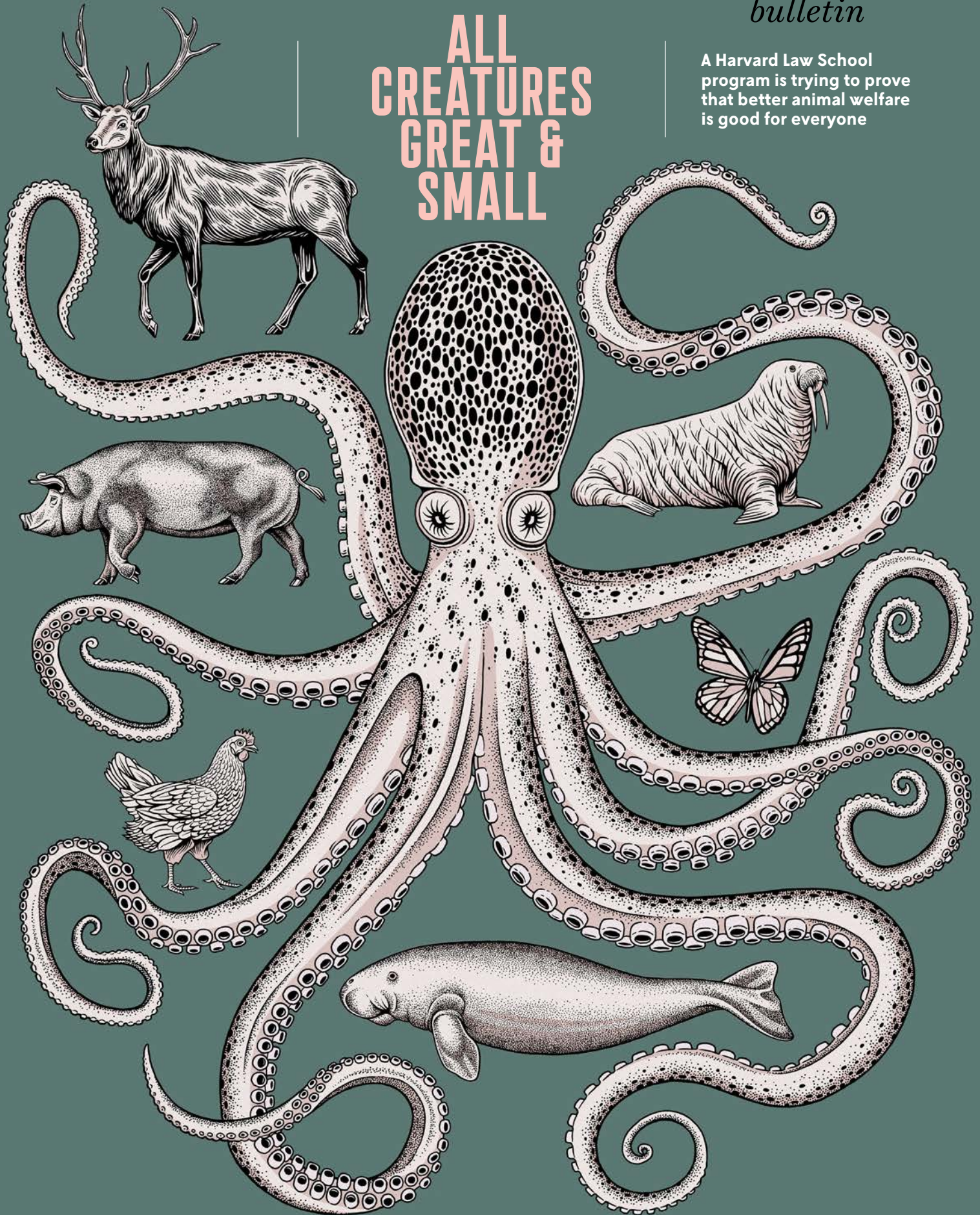
Spring 2023

# Harvard Law

*bulletin*

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GREAT &  
SMALL

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program is trying to prove  
that better animal welfare  
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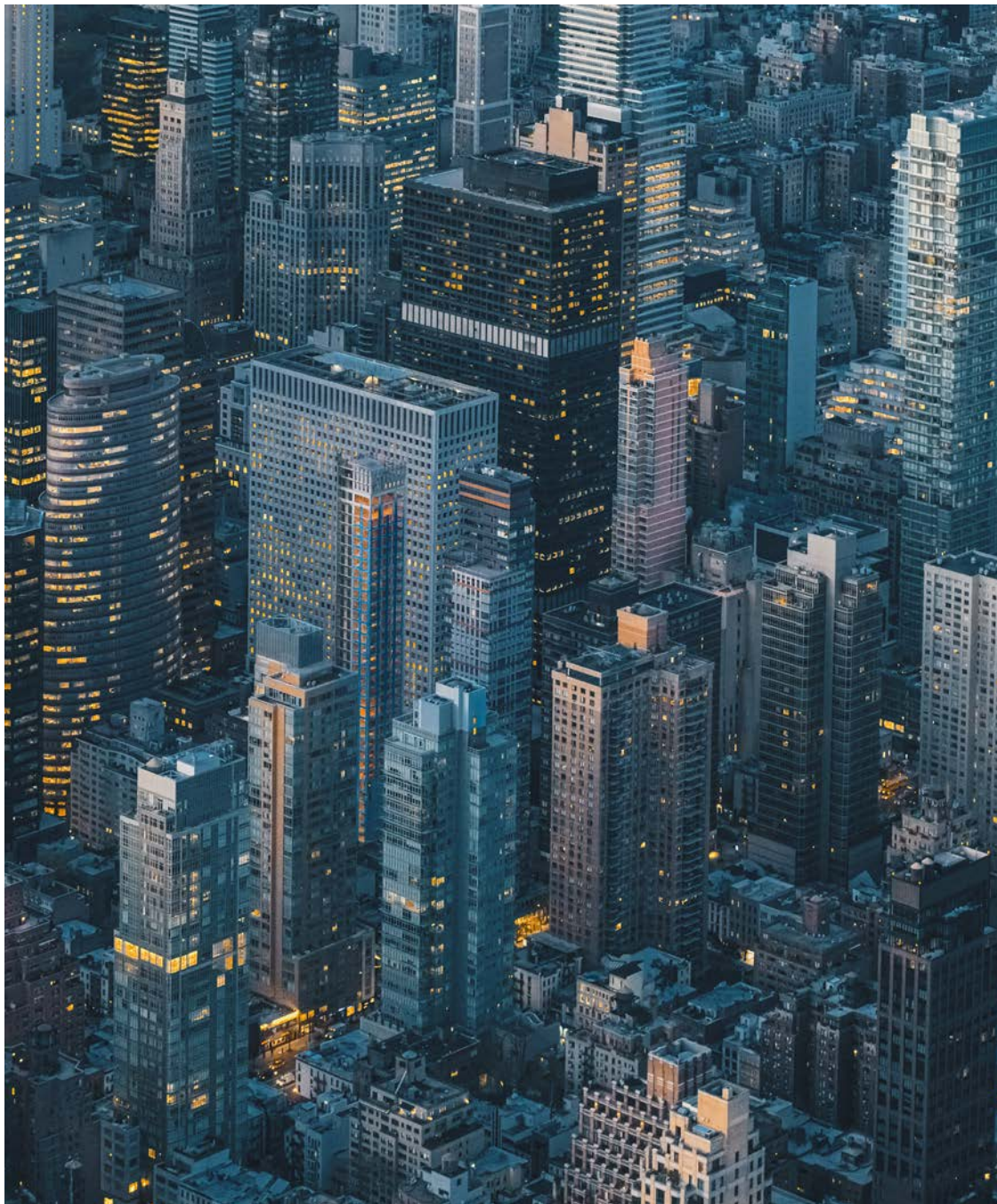
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**A seminar on the role of courts taught by a retired Canadian Supreme Court justice (top left) drew students from multiple countries and backgrounds, including a student who himself is a judge.**



**Cover illustration by Stuart Patience**

**Harvard Law Bulletin**

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**KIND REGARDS**

Congrats on your Summer 2022 issue! In the midst of an endless flow of print and online information, I read every page — and my attention wasn't based on a fear of being called on in class!

DAVID JONATHAN COHEN '78  
Washington, D.C.

**ANOTHER FIRST?**

I am responding to the fine article in your last issue about Associate Justice Ketanji Brown Jackson '96, the first African American woman appointed to the Supreme Court. I would like to note that Justice Jackson's mother-in-law, Pamela Hardee Jackson, may now also have achieved a first. A former development officer at Harvard Law School, Pam may be the first person to have worked at the school under the leadership of one future Supreme Court justice, then-Dean Elena Kagan '86, and to have become the proud mother-in-law of another.

MAGGIE PHILBRICK  
DEVELOPMENT OFFICER,  
HARVARD LAW SCHOOL, 1997-2007  
Cambridge, Massachusetts

**MORE ON SULLIVAN AND FREEDOM OF THE PRESS**

I must respond to Curt Krechevsky's unfair critique [Letters, Summer 2022 issue] of my observations on *New York Times Co. v. Sullivan* [Letters, Winter 2022 issue].

First, in the nine words prohibiting “abridging the freedom of speech, or of the press,” the First Amendment may or may not extend greater protection to the press than to speech generally, but if it does, it surely does not define the press as (in Mr. Krechevsky's words) “legitimate news reporting sources [as opposed to] biased, subjective, and even deceptive opinion platforms.” The history of newspapers, journals, pamphlets, etc., in this country demonstrates

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

‘One  
G e n e r a t i o n  
... from  
S e g r e g a t i o n  
to the  
S u p r e m e  
Court’



Ketanji Brown Jackson '96 becomes the first Black woman to serve on the Court  
By Elaine McArdle

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that the expectation that media will be truthful and unbiased and will sharply demarcate fact from opinion did not arise until roughly the middle of the 20th century and in recent years has seriously deteriorated on both the right and the left.

Second, Mr. Krechevsky mistakes my prediction as advocacy. The protection afforded by the *Sullivan* test logically rests on a foundation that the media always try, almost always successfully, to publish the truth, the whole truth, and nothing but the truth on important matters, so that they should have some protection when they commit inadvertent foot-faults in reporting on public officials. But what happens if many media outlets feel compelled by financial or political considerations (pandering to their respective bases, competing to be first in the 24/7 news cycle) to publish defamatory material without the restraint of proper research? I do not read *Sullivan* to protect what I see as reckless disregard of the truth consisting of telling readers the lies that they are eager to hear or doing slapdash verification in order to scoop other outlets. If the

nature of the media business today causes this problem to become too frequent, especially in high-profile matters, the Supreme Court may deem the professional media unworthy of special solicitude and remove the *Sullivan* protection altogether.

Finally, I part company with some of Mr. Krechevsky's assertions in his last paragraph. He wants the press to be protected from politically motivated lawsuits, while I believe that regardless of the motivation, we should judge every cause of action on its own merits. The record of the press in challenging the powerful and the perception of that are far from uniform; both have always been very dependent on political outlooks. And his clear implication that the citizenry cannot get information and think for themselves without the guidance of the press as he defines it is preposterous and is belied by the demise of the great journalistic diversity once exemplified by all the newspapers and magazines, big and small, that have gone out of business over the past 60 years or so.

ROBERT KANTOWITZ '79  
Lawrence, New York

# Boundless Enthusiasm

Professor Molly Brady shares her passion for property law / By Lana Barnett '15

It may not be immediately obvious that whipping a metal ball attached to a steel wire around your head has much in common with being a law professor, but for Louis D. Brandeis Professor of Law Molly Brady, the connection is clear. According to Brady, who captained her college track-and-field team, both blend individual responsibility over how the activity proceeds with a team environment that encourages “a mentality that we’re all in this together.”

Like most hammer-throwers, Brady says, she doesn’t take herself too seriously. This is evident on her Twitter page, where Brady, who teaches property, land use, and local government law, shares everything from a nightmare in which a front-row student turned into a werewolf to musings about legal references on television shows. (Brady was “horrified to learn” that Harvard is archiving its faculty’s Twitter pages as a means of preserving professors’ notes, though the knowledge, she said, apparently “didn’t change my conduct at all.”)

In her more professional writings, Brady, who studied medieval history at Harvard College, delves into property and constitutional law with an eye toward legal history. In one article, “The Forgotten History of Metes and Bounds,” she explores the seemingly incoherent descriptions of property boundaries from Colonial-era deeds, which marked parcels of land using natural landmarks such as rocks or trees, often clarified with

Molly Brady says a class on urban legal history in law school changed her life: “I started to see the link between choices about physical space and ultimately a city’s social development.”



references to local families and lineages. Though she initially viewed the system as quaint and mildly amusing, Brady came to appreciate that such boundaries made sense in light of what constituted common knowledge at the time, just as people today share directions not with GPS coordinates, but with instructions such as “turn left at the Bank of America.” She draws a comparison to Robert Frost’s poem “Mending Wall,” about neighbors who meet to repair the wall that delineates their property lines. “Property has that character where it’s both sort of a line in the sand [and] a place where we meet, and where you can build these kinds of social connections,” she said.

In all her scholarship, Brady, who also serves as an associate reporter for the American Law Institute’s Fourth Restatement of Property, writes with state courts and scholars interested in state forums in mind, an audience she believes is neglected by legal scholarship’s strong bent toward federal law. “You can dig up incredibly interesting things in state court decisions,” she said. “Every development that we think of as strange has some origin story that you can trace and figure out why it developed in that particular way.”

In some ways, Brady was destined for the sometimes archaic and esoteric world of property law. She grew up in Utica, New York, with a mother who sold antiques and a father who as a hobby collected artifacts tracing the development and history of Utica. Through them, Brady learned about how her home

**“I view it as critical to my scholarly mission ... to try to introduce students to all the doors property can open.”**

Brady, speaking to graduating students last spring as part of the Last Lecture Series, stressed the importance of knowing when to ignore advice.

city was shaped by the uses and misuses of property law, including eminent domain and attempts at redevelopment that went awry.

Brady settled on law after a childhood filled with people suggesting she “should be a lawyer because [she] was annoying.” At Yale Law School, she took property courses from a professor, Robert Ellickson, who taught students the history of New Haven, helping to illuminate how contemporary quirks about the city or law school could be traced to plans made decades or centuries before, including decisions to run roads through immigrant neighborhoods, thereby breaking them up.

She describes a seminar on urban legal history, which she took in part to fulfill a writing requirement, as the class that changed her life. As Brady dived deeper into the subject, she grew fascinated by the variety of approaches that different states and localities had taken in property law, and how they ultimately provided different models for shaping people’s lives. “I started to see the link between choices about physical space and ultimately a city’s social development,” she said.

When Ellickson spotted her penchant for urban legal history, he asked if she had considered becoming a professor. Brady, who ran Yale’s Law Revue, the equivalent of Harvard Law School’s Parody, and viewed herself as too irreverent for academia, initially laughed. But a stint as a legal writing teaching assistant helped her change her mind, as she realized she “just loved working with 1Ls.”

Once Brady decided to delve into academia, one piece of advice she received was not to spend too much time on teaching because her research was more important. But the hammer-thrower at heart loved both the individual focus on research and writing and the team sport of sharing her passion for property with students. She recalls how she felt when a former student told Brady that she had needed to find a 70-year-old lease for her law firm practice and was able to do so because of what she had learned from her class. “Those are the sorts of stories that warm an old property professor’s heart,” Brady said.

Teaching is also a means of keeping her beloved subject alive. Brady believes that interest in property law risks marching toward the dustbin of history as top law schools, including her alma mater, increasingly remove the subject from the mandatory first-year curriculum. “I thought it was important for the next generation of property scholars to make the case that this subject matters,” she said. “I view it as critical to my scholarly mission to be an excellent property teacher and to try to introduce students to all the doors that property can open.”



# A Tingly Sensation

When the urge strikes, Cass Sunstein writes / By Lewis I. Rice



When Cass Sunstein '78, Robert Walmsley University Professor, won the Holberg Prize a few years ago for his academic scholarship, he was cited as “one of the most wide-ranging, original, prolific, and influential scholars of our time.” A secret to his success? He loves to write, especially when an idea gives him a certain feeling that compels him to immerse himself in a topic. Known for the book “Nudge” and other writing on behavioral economics, he also has written on freedom, social media, impeachment, and topics as diverse as Star Wars. His most recent book is “Bounded Rationality: Heuristics, Judgment, and Public Policy” (written with Sanjit Dhami), and he’s working on a book on how to interpret the Constitution. Sunstein spoke to the Bulletin about how he decides what to write about, whether he’d rather write than play squash (he competed on Harvard’s national championship squash team as an undergrad), and who the best writer in his household is.

**On the HLS website, you’re credited with 70 books that you’ve written, co-written, or edited, an average of about two a year. That’s on top of hundreds of articles. How do you manage that?**

If I do something that has quality, I feel very grateful for that. If I do a lot of things, I feel maybe slightly embarrassed that there are so many. So, I don’t feel proud of the number of books. I’m hopeful that some of them are not useless. If that’s true, that’s what I feel good about. I feel that to write is a pleasure. And I don’t suffer when I write. Just before this call, my dogs woke me up early, and I was rewriting a chapter from a coming book, and I enjoyed it. To have an idea is harder. And to know what would be worth publishing, it’s important to have a filter. I have more than 10 books that failed. They just weren’t good enough, and I have a lot of pages for some of them, but I don’t like them. If you write a certain number of words every day, you will, by the end of a certain number of months, have a book, at least in terms of length.

**How do you decide on the topics you write on?**

One question is whether I have something that's a little like a tingly feeling in my neck. If I do, that's a very good clue that I have something that I should write about. Whether it should be an article or a book is unclear. For the Constitution book, I have one idea I'm excited about. It's less original than I thought, but I'm very excited about it. I just presented it at Harvard yesterday at a conference, and I felt the equivalent of the tingle. And so I'm hopeful that book, which is right now in very late draft, will work because of that. There have been projects where I've had a lot of excitement about the topic. But I've learned after maybe months of effort that it won't work, because I don't have anything interesting enough to say about it.

**People might be surprised that you've written on topics like "Star Wars" and the Beatles. Why do you gravitate toward these popular culture subjects?**

My main focus really is on more standard academic topics. The "Star Wars" book ("The World According to Star Wars") and the work on the Beatles, that was more I just was curious and loved it. I was really motivated by the topic rather than the reception. I wanted to write it much more than I wanted anyone to read it, which is I think a very good foundation for work. The book I'm now doing about constitutional interpretation, I can't say I would write it if no one read it. But I am engaged in it, with not quite the fun of Star Wars. I would write it even if very few people read it.

**"Dinner with a great friend is better even than writing, except when writing is really going well."**

**You're known in particular for your writing on behavioral economics like "Nudge" (written with Richard Thaler).****What sparked your interest in that topic?**

I can't remember any bigger tingle than the behavioral stuff: People dislike losses more than they like gains; people are present biased; people make mistakes about risk. To say it's interesting is much too weak. It's at the core of our species. And it's really fun.

**Did you have any inkling of how much attention "Nudge" would get?**

None. Thaler and I did two papers, one called "Libertarian Paternalism Is Not an Oxymoron" and one called "Libertarian Paternalism." And the interest in these papers was wildly beyond our expectations. So we thought we had touched a chord. We decided we would write a book on libertarian paternalism, be-

cause people seemed interested in that, and maybe we could do better than we did in the economics and law review papers. We had no clue it would have the resonance that it has. Even now, I'm flabbergasted to see when some nation creates a nudge or has an initiative that is really creative and really helpful for a population, which Thaler and I couldn't have envisioned but are inspired to see.

**You said earlier that you found writing fun. Have you always felt that?**

I like squash even better than writing. Dinner with a great friend is better even than writing, except when writing is really going well. Then it can be even better than squash or dinner with the friend. But I've loved it since high school. In high school, I wasn't at all like a nerd. My grades were good, but I wasn't reading and writing and staring at Dickens all the time, by any means. But I just enjoyed writing. I got interested in Samuel Beckett and Edward Albee in high school, and I wrote about them. I'm sure what I wrote was terrible, but I really liked writing it.

**Your wife is a writer too [Samantha Power '99, William D. Zabel '61 Professor of Practice in Human Rights and administrator of the U.S. Agency for International Development, who wrote the Pulitzer Prize-winning "A Problem from Hell": America and the Age of Genocide]. What is your involvement in each other's writing process?**

We read, as suits us, each other's work in draft. I read her book "The Education of an Idealist" multiple times. And she's a fantastic writer. She's a better writer than I am. I'm a more joyful writer, but she's a better writer. And I would comment on what worked and what didn't. She was actually extremely helpful with my "Star Wars" book and with my impeachment book. She had very strong views about what was structurally wrong with both books, and she made them a lot better.

**Do you feel like you're going to keep writing as long as you feel the tingle?**

You know, there are times when I'm teaching three courses, and I do things that are not academic some of the time. I work with international organizations, some on public health and safety and other issues. I really love that. So if there's a time when the writing isn't going as swimmingly as other times, that's fine. I like writing. If I stop liking it, I'll do it less. But I don't expect that to happen.

*This interview has been condensed and edited for clarity.*



## Justice Personified

A course taught by retired Canadian Supreme Court Justice Rosalie Abella asked students to ponder the role of courts and judges in democratic nations / By Rachel Reed

Reading and discussing Supreme Court opinions is a quotidian detail of law school life. But it's not every day that students have a chance to learn from the very justices who wrote those decisions.

This fall, students had just such an opportunity in several Harvard Law School courses, including one called *The Judicial Role in a Democracy*, taught by

Rosalie Silberman Abella's seminar drew students from multiple countries and different types of democracies.

retired Canadian Supreme Court Justice Rosalie Silberman Abella.

Abella, who retired from Canada's high court in 2021 and is currently the Samuel LLM '55, SJD '59 and Judith Pizar Visiting Professor of Law at Harvard, is an inspiration to many who enrolled in the class. As Hairul Hakkim LL.M. '23 puts it, "She's



the Ruth Bader Ginsburg of Canada.”

“Justice Abella is one of the reasons I applied to law school,” agrees Sean Goldman-Hunt ’23, who is Canadian. “She has been a hero of mine for a long, long time.”

The seminar explored the differences between the American and Canadian courts’ approaches to many of today’s most contentious issues, such as free speech, abortion access, and affirmative action. Abella encouraged students to think about those topics in the context of a broader fundamental question: What role can — or should — courts and judges play in democratic societies?

“These were really big-picture questions with no easy answers,” says Carolina Isaza ’24. “Justice Abella made us all think twice about our presumptions about what judges should do and about how courts can uphold democratic values.”

**“Justice Abella made us think twice about ... how courts can uphold democratic values.”  
— Carolina Isaza ’24**

Each class examined differences in how the U.S. and Canadian courts addressed similar issues. Abella invited guests — including writer Margaret Atwood and retired U.S. Supreme Court Justice Stephen Breyer ’64, who recently returned to Harvard Law and taught a class in the fall — to participate in the discussions, which often delved into the reasons courts might arrive at divergent conclusions, including historical and political differences, cultural explanations, and the founding documents of the two nations.

“I was really interested in thinking about questions of constitutional design and the extent to which we can attribute the current crisis of judicial legitimacy in the U.S. to differences between the Canadian and U.S. constitutions, versus something else,” says Lloyd Lyall ’24.

Lyall adds that the class was a way for him to stay connected to his home country of Canada while examining the problems he sees facing the U.S. Supreme Court. “I wanted to know how we could think about what’s happening in the U.S., and whether there are alternatives that we can look to in Canada or other countries that might inform how we move forward,” he says. “What do we do when one of the core pillars of government is facing a crisis of legitimacy?”

#### INSIGHTS FROM A JUSTICE

Abella, the daughter of Holocaust survivors and the longest-serving judge in Canadian history, is known for her groundbreaking contributions to human rights, constitutional law, and labor rights, among

other areas. During her 50-year career, she was a family court judge, chaired the Ontario Labour Relations Board and the Ontario Law Reform Commission, and sat on the Ontario Human Rights Commission, in addition to serving on the Ontario Court of Appeal and the Supreme Court of Canada.

“I think all of Justice Abella’s experiences came to bear on the decisions she made on the court,” says Lyall. “It was really interesting to hear her explain how her background informs how she thinks about what’s happening in the United States or Canada right now, and ultimately what the role of judges should be.”

Hakkim, the LL.M. student, is a judge in his native Singapore. He says he respected that Abella was forthright about her own belief that courts exist to guarantee the rights of citizens — particularly the most vulnerable — but also that she encouraged rich debate on the issues. “Justice Abella said, ‘This will not be a monologue.’ Instead, it was more like the Socratic method. She made sure that everybody got an opportunity to ask questions, offer input, and feed off one another.”

Isaza also appreciated that spirit of debate, particularly because the class drew students from multiple countries and different types of democracies. “I was surrounded by very, very smart people who articulated their points very effectively,” she says. “There were times when people disagreed on certain things, and we would go back and forth. But that’s what made it clear to me that there are considerations on both sides of pretty much every debate.”

The students say they valued Abella’s insights on the Canadian Court’s decisions and on the practical side of judging. “For the majority of cases we read, Justice Abella was part of the quorum. But it’s one thing to read what is written on the paper, and another to hear her speak about why they decided in the way they did,” says Hakkim.

#### MORE QUESTIONS THAN ANSWERS

Hakkim jokes that he left Abella’s course with more questions than answers — a problem he is grateful to have as he progresses in his own judicial career. “To what extent should courts settle contentious issues as opposed to legislatures? What happens when courts fail people? These are issues we need to think deeply about in a democracy,” he says.

In addition to challenging some of his views, Hakkim adds that the class reaffirmed others. For instance, it confirmed his belief that courts exist at least in part to protect rights, which means they must distance themselves from public opinion. “It’s not that we don’t care about public opinion at all,” he



says. “But we should not be afraid to rule in favor of an unpopular opinion, or in favor of unpopular people, if these are mandated by the Constitution.”

Lyll says he came into the course skeptical of the idea of wide-ranging judicial review, owing in part to recent decisions by the U.S. Supreme Court. Today, his thoughts are more nuanced. “One of the big things I think I took away from this class is that sometimes you do have to make big decisions,” he says. “There is a rights-expanding answer, and there is a rights-constricting answer. We arguably need our judges in a democracy to be bold enough and willing enough to make those big decisions.”

Isaza’s experience in the course solidified her commitment to the pursuit of justice through law, and she says she feels more strongly than ever that courts should work to expand rights, not contract them. But she adds that she also gained a greater understanding of the difficulties faced by courts in achieving that

Sean Goldman-Hunt '23, Hairul Hakkim LL.M. '23, Carolina Isaza '24, and Lloyd Lyall '24 (from left) were among the students in The Judicial Role in a Democracy class.

goal. “It’s easy to think that right and wrong are very apparent,” she says. “That becomes murkier when you look at different scenarios. What’s right is not always as obvious. At the end of the day, we are really asking, ‘Who do you want to be determining what is right and what is wrong?’”

In light of recent decisions, Goldman-Hunt came away from the class believing that courts in a constitutional democracy shouldn’t be able to restrict rights that the population believes should be afforded. “But it also convinced me that courts are an important conversational partner in constitutional dialogue,” he says.

Perhaps more importantly, for Goldman-Hunt the course was also a sorely needed reminder that lawyers can do good in the world. “If you take up the mantle of somebody like Justice Abella, and follow her example and her ideas, you can accomplish important and great things.”

“Do your job, as best you can. ... And when you’re doing it, listen to what other people say, too. It isn’t such a bad thing, when you have an opinion, to find someone who has the opposite opinion, and then talk to them about it.”

*Retired Justice **STEPHEN BREYER** ’64, sharing his advice for young lawyers, during a panel discussion also featuring Justice Syed Mansoor Ali Shah of the Supreme Court of Pakistan on serving in the judiciary, Sept. 19.*



“Dollar primacy is nothing more than a network, and all networks have tipping points. ... By the time the erosion of dollar primacy shows up in the data, it may be too late to stop the process.”

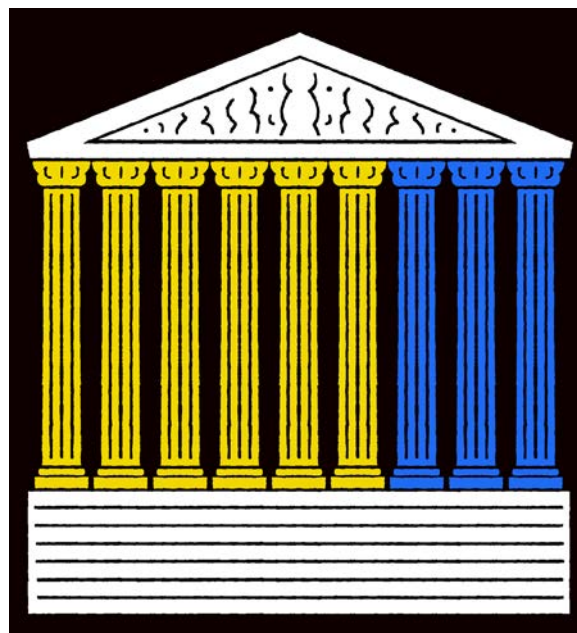
***DALEEP SINGH**, former deputy national security adviser in the Biden administration, speaking at a conference on national security and digital currencies, Oct. 14.*

“If you care, if it calls to you, if you are passionate about it, then you should get involved. Pro bono is not a resume-builder. When people around you are dying, there is a call as a human to make our community a better place.”

***JENNIFER WU**, partner, Paul Weiss, speaking at a panel at HLS on “Law Firm Pro Bono: Protecting Civil Rights,” Oct. 27.*

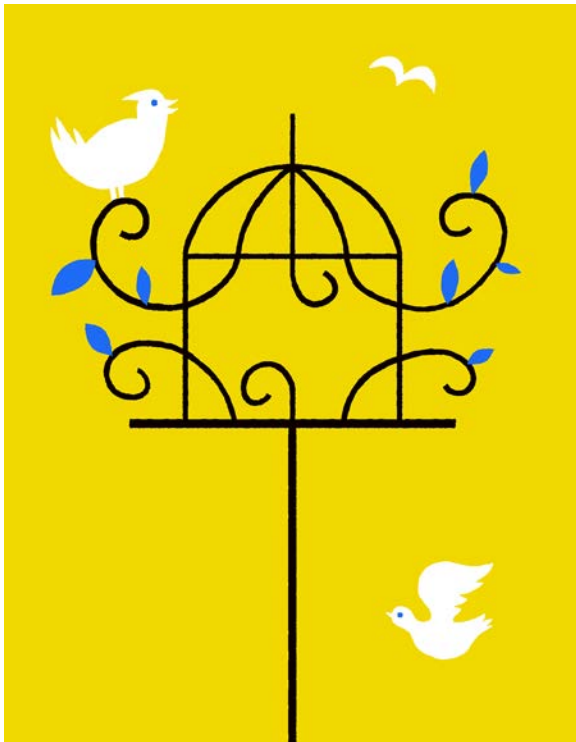
“The Supreme Court has not just been divided along the ideological lines that always existed, but divided along partisan lines, with every justice appointed by a Democrat voting more liberally than every justice appointed by a Republican. That is far from the historical norm.”

***AMANDA HOLLIS-BRUSKY**, professor of politics at Pomona College, speaking on a panel on law and politics in the Roberts Court, part of a yearlong series, “The Supreme Court in a Constitutional Democracy,” Sept. 19.*



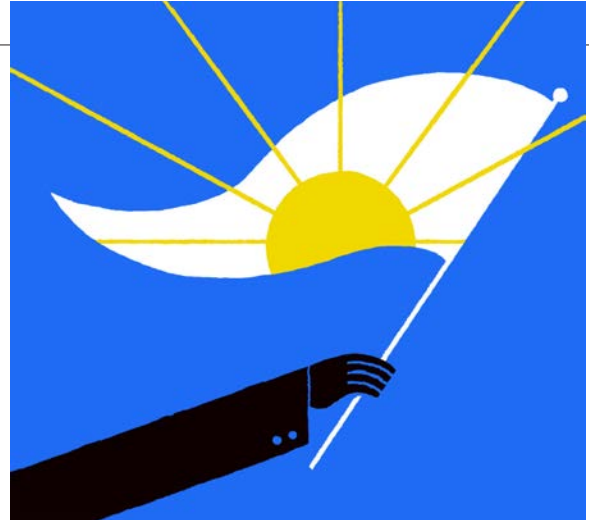
“Tell [our grandchildren] that, like these foremothers, I came here today so that ... we all might get just a little more free.”

**MARTHA S. JONES**, a professor of history at Johns Hopkins University, delivering the Belinda Sutton Distinguished Lecture about her family’s historic and ongoing connections to the institution of slavery and to several academic institutions, including Harvard, Nov. 14.



“Discussion about the tradition [of] gun regulation for muskets really doesn’t tell us anything about a world of large-magazine AR-15s.”

**KATHLEEN SULLIVAN ’81**, partner, Quinn Emanuel Urquhart & Sullivan, at a Harvard Law School Rappaport Forum focused on the Supreme Court’s reliance on history and tradition in *Dobbs v. Jackson Women’s Health Organization* and *New York State Rifle & Pistol Association Inc. v. Bruen*, Nov. 16.



“Whether you’re CEO of a for-profit or a nonprofit, there have been moments in the last few years where, as leaders of an enterprise in American society, we’ve had an obligation to speak for what is right and what is just.”

**FRED KRUPP**, president of the Environmental Defense Fund, speaking during a session of the daylong conference “Reimagining the Role of Business in the Public Square,” co-sponsored by the Harvard Law School Center on the Legal Profession, Sept. 15.

“We must not allow division or fatigue to bury us. If we stay united and work together, the U.S. and EU can achieve justice for the Ukraine.”

**VALDIS DOMBROVSKIS**, European Commission executive vice president, Oct. 15.



# The End of the Death Penalty?



*A 1972 landmark Supreme Court decision declared the death penalty unconstitutional under the Eighth Amendment. The ruling effectively nullified all existing death sentences and halted all executions ... for a four-year period.*

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‘Unintended  
consequences’  
and the legacy  
of *Furman v.*  
*Georgia*

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By Elaine McArdle

# M

ORE THAN 50 YEARS AGO, in *Furman v. Georgia*, the U.S. Supreme Court held that the death penalty was an unconstitutional violation of the Eighth Amendment ban against cruel and unusual punishment. With that, 629 people on death row nationwide had their capital sentences commuted, and the death penalty disappeared overnight.

But *Furman* didn't abolish capital punishment for very long. Four years later, *Gregg v. Georgia* and several companion cases made clear that governments could impose capital punishment under certain conditions. Those decisions were a response to the backlash sparked by *Furman*, which appeared to revive support for a practice that had been in sharp decline for years. Today, 27 states in the U.S., as well as the federal government, retain the death penalty, and as of April 2022, one source reported that there were 2,414 people on death row across the country. Despite what many would have predicted in 1972, when the *Furman* decision suggested the U.S. would become an international leader in eliminating the death penalty, today it's the only Western democracy that still imposes it.

Still, while the death penalty persists in the U.S., it's not exactly thriving. Indeed, it's once again "withering" across the country, says Carol S. Steiker '86, the Henry J. Friendly Professor of Law at Harvard Law School, who has taught Capital Punishment in America at the school since 1993. Though *Furman* (and its subsequent overruling) helped fuel the death penalty's revival, it also set in motion a long series of events that may ultimately eliminate capital punishment in the United States, Steiker says.

"*Furman* was neither a tremendous success nor a terrible failure but a complicated story of unintended consequences, and echoes of *Furman* continue to this day to have tremendous impact," says Steiker, who is co-author, with her brother, Jordan Steiker '88, of "Courting Death: The Supreme Court and Capital Punishment" (Harvard University Press, 2016) and co-editor, also with him, of "Comparative Capital Punishment" (Edward Elgar, 2019).

"*Furman* was a remarkable intervention," says Jordan Steiker, a professor at the law school at the University of Texas at Austin and co-director of its Capital Punishment Center. "Even though it was quite short-lived in suspending the death penalty in the U.S., it completely changed its course because it essentially inspired or required states to rethink how

## *Furman v. Georgia*

*In 1972, the Court held, 5-4, that the death penalty, as it existed, was cruel and unusual under the Eighth Amendment. This meant different things to the five justices in the majority.*



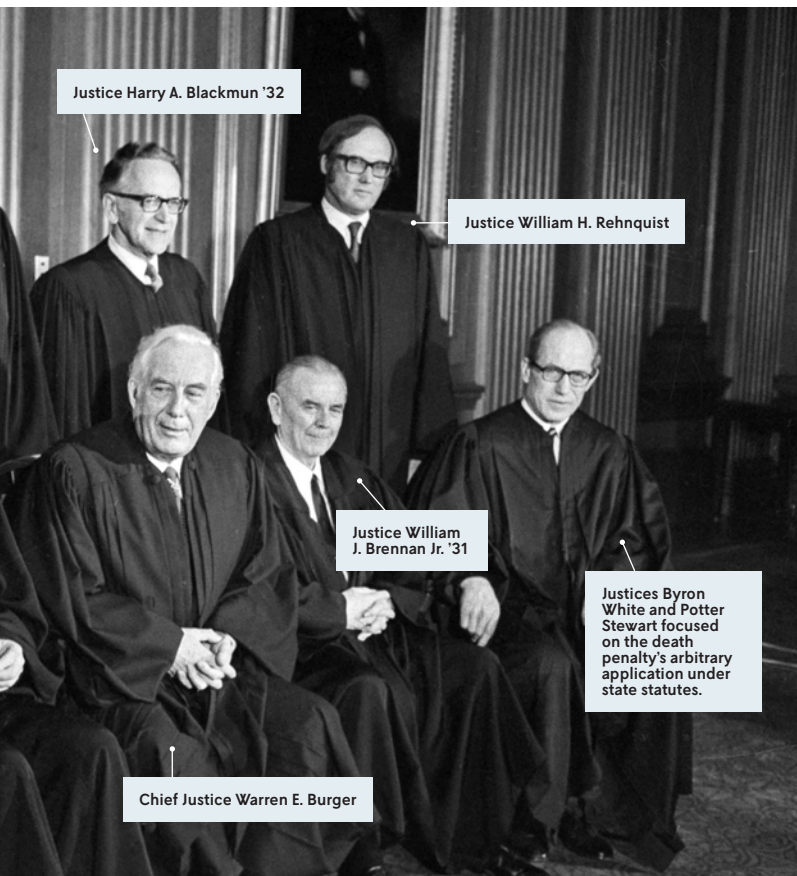
they were doing capital punishment. And ultimately, the practice of the death penalty changed substantially over time."

Given the greatly heightened public attention to the power of the Supreme Court today, the 50th anniversary of *Furman* is an opportunity to reexamine not just the history of the death penalty but the appropriate role of the Court in American life, Carol Steiker and others believe.

"Right now a lot of people are wondering how much of a role we want the courts to play in deciding what rights are guaranteed by the Constitution, and *Furman v. Georgia* is a unique example of when the Court struck down a policy that was widely prevalent throughout the states for violating the Constitution," says Gene Young Chang '24, who has been studying the death penalty with Steiker since he was a freshman in her Harvard College course *The American Death Penalty: Morality, Law, and Politics*. *Furman*, he says, "teaches us things about the role of the courts in a democratic society, the scope of constitutional rights, and the proper method for defining those rights."

Categorical abolition of the death penalty across the nation is unlikely without another *Furman v. Georgia*, "what you might call *Furman II*, which is obviously not forthcoming from this Court or anytime in the foreseeable future," Carol Steiker says. Instead, the future of the death penalty, she says, is being played out at the local level, in "a kind of guerrilla





war going on county by county, state by state, with the election of progressive prosecutors who do not seek the death penalty, state legislative activity, and state constitutional litigation under state constitutions.”

The final death knell for capital punishment will likely depend on a very different Supreme Court from the one we have today, she says. “But at that point,” given other trends in the country, “it may be more like a coup de grâce rather than what it was at the time of *Furman*.”

## History of a ‘remarkable intervention’

**I**N THE 1960S, due to a campaign by the NAACP Legal Defense and Educational Fund to challenge its constitutionality in cases across the country, capital punishment was in decline. Indeed, no one was executed in the five years before *Furman*, as states waited to see what the high court would rule. In 1971, the Supreme Court rejected a due process challenge to capital punishment. But *Furman*, argued a year later, relied on the Eighth Amendment: The LDF team argued that the arbitrary application of capital punishment — jurors, often with no guidance, had complete discretion on when to impose it — was a cruel and unusual punishment.

The Supreme Court agreed, 5-4, although the justices issued nine separate opinions, which was very unusual, as Carol Steiker notes. Justice Thurgood Marshall (for whom both Steikers later clerked) and Justice William J. Brennan Jr. LL.B. ’31 maintained that the death penalty was unconstitutional per se. Justice William O. Douglas was troubled by its discriminatory application, given overwhelming evidence that it was more often imposed on Black defendants, the poor, and the politically unpopular. Justices Potter Stewart and Byron White were troubled by its arbitrary application under state statutes, with Justice Stewart famously writing, “These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual.” He concluded that the Constitution could not “permit this unique penalty to be so wantonly and so freakishly imposed.”

But abolitionists’ hopes didn’t last long. Soon after *Furman*, 35 states rewrote their laws to try to comply with the Court’s ruling. In 1976, in a group of consolidated cases known as *Gregg v. Georgia*, the Supreme Court held that the death penalty was not per se unconstitutional. It ruled the punishment could be revived if state laws provided an objective process for deciding when to apply it and gave sufficient discretion to juries to determine whether it was appropriate. However, mandatory death penalties were unconstitutional, it held, even though some states believed that mandatory penalties were necessary to eliminate sentencing discretion.

*Furman* created an enormous backlash, the Steikers explain, so that capital punishment — which was becoming less and less popular in public opinion — resurged. It became “more of a wedge issue, part of the tough-on-crime political strategy of [President Richard] Nixon, and political entrepreneurs exploited the resentment at the Supreme Court’s intervention in the death penalty,” says Jordan Steiker, who has frequently taught at Harvard Law School, most recently in 2018 as the Touroff-Gluck Visiting Professor of Law and Psychiatry. “In the short term, the death penalty became more vigorous, there were more death sentences, and by the 1990s, there were many more executions than we were having pre-*Furman*.”

At least initially, then, “the Supreme Court intervention [in *Furman*] not only didn’t kill the death penalty but actually made it stronger when it was reinstated,” says Carol Steiker, something she sees as an “unintended and unforeseen consequence” of the case.

## Birth of the capital defense bar

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**B**UT THERE WAS ANOTHER unforeseen consequence of *Furman*, one that Jordan Steiker describes as “probably more important and long-lasting” — the birth of a large and highly skilled capital defense bar.

With the resurrection of the death penalty, new, sophisticated institutions were created and staffed by passionate and skilled anti-capital lawyers: state offices for capital representation at the trial, appellate, and post-conviction levels; capital habeas corpus units within state and federal public defenders’ offices; and numerous non-governmental nonprofits, such as Bryan Stevenson ’85’s Equal Justice Initiative. Today, “we have a whole legion of much more focused and talented advocates working on behalf of people facing capital charges or sentenced to death,” says Jordan Steiker.

*HLS Professor Carol Steiker and her brother Jordan Steiker, professor at the University of Texas School of Law in Austin, are co-authors of “Courting Death: The Supreme Court and Capital Punishment.”*

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With these developments, as well as the Supreme Court’s imposition of special procedural requirements for cases involving the death penalty, capital litigation has become far more complex, and the costs have soared. “The constitutional decisions post-*Furman* have not imposed the most rigorous scrutiny of capital practices,” says Jordan Steiker, “but they have produced institutional actors who have made the death penalty much less attractive as a practical matter because to do it reasonably well is just exorbitantly expensive.” This has helped persuade many local prosecutors to avoid seeking the death penalty and has led to an “extraordinary decline in capital proceedings,” he says.

The current Supreme Court has signaled greater willingness to affirm capital sentences than in the recent past, says Jordan Steiker, and some jurisdictions have embraced that signal. The Oklahoma Court of Criminal Appeals had scheduled nearly one execution a month between 2022 and 2024 (although at the request of the new attorney general, the pace has now been slowed to no more than one every 60 days). In Texas, on the other hand, two death sentences were imposed in 2022, which contrasts starkly with the 1990s, when Texas juries were handing out more than 40 a year, Jordan Steiker says. “The practice on the ground is withering in part because of the institutions built in response to *Furman*,” he says.

## Local prosecutors and state courts take over

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**O**THER FACTORS BESIDES COST have decreased the public’s appetite for the death penalty, including media attention to, and public awareness of, the number of innocent people sentenced to death. Since 1973, at least 190 people who were wrongly convicted and sentenced to death have been exonerated, according to the Death Penalty Information Center. For that and other reasons, including declining crime rates, there has been a dramatic decline in public support for the death penalty over the past 20 years. Though the 2021 Gallup poll found that 54% of respondents continued to support it, that is the lowest number in the annual poll since 1972.



Erica Medley LL.M. '22 was a prosecutor in the U.S. Air Force before matriculating at HLS. When she was a schoolgirl, in Oregon, two of her friends were raped and murdered by a neighbor, Ward Weaver III. When Weaver received two life sentences, "It made no sense," Medley recalls. "I thought he should have gotten the death penalty." When Medley enrolled in Carol Steiker's class on capital punishment in fall 2021, she was among the very few students who supported the death penalty, according to an informal online class poll.

But before the first class, Medley did a complete reversal sparked by reading the course materials. "I was so overwhelmed reading everything that I did a 180. It was that fast," says Medley, who was persuaded by the evidence of the racially disparate impact of the death penalty, its exorbitant expense compared with that of prison sentences, the number of people on death row who turn out to be innocent, and the fact that no other peer nations still impose the penalty.

The shifting demographics of urban counties are also having an effect on the use of the death penalty across the country, since such counties are often the only places that can afford to prosecute many capital cases, says Jordan Steiker. As these counties become less politically conservative, they are increasingly controlled by "less zealous prosecutors," he says. Harris County, Texas, which includes Houston, and Dallas County were "longstanding conservative-controlled political entities, and now they're not. Now many prosecutors run not *on* the death penalty but *away* from the death penalty. That's a very significant shift."

And, just as the resurgence of the death penalty in the 1980s and '90s paralleled public reaction to a crime surge, a drop in death penalty cases mirrors what has generally been a long-term decline in the homicide rate, as well as public concerns about mass incarceration and racial inequities in the criminal justice system, says Carol Steiker, faculty sponsor of the Capital Punishment Clinic, through which Harvard Law students are placed in externships at capital defense organizations around the country.

And the past 16 years have seen a growing legislative trend toward abolishing the death penalty. In 2007, 38 states retained it; today, there are only 27. In 2021, Virginia, which has executed more people than any other state, became the first Southern state to abolish capital punishment. It was preceded by legislative repeals in Colorado, New Jersey, Illinois, and Connecticut, among other states. In Washington



Carol Steiker teaching *Capital Punishment in America*

state, the Supreme Court found the death penalty unconstitutional under the state constitution because it was used in an arbitrary and racially biased manner.

"We now have this odd dynamic, where courts, especially the Supreme Court, are pushing in the direction of deregulating, but there's not much left in terms of capital punishment to deregulate," says Jordan Steiker.

"I think in the short term we'll end up having more executions because of the Supreme Court's reluctance to impede them, even though executions have been in as much of a decline as death sentences," he adds. But with fewer capital sentences taking place, "death row has been shrinking considerably, and at some point we'll have a death row that seems inconsequential as part of our criminal justice system."

## Furman's ultimate impact?

**I**N THE END, THEN, was *Furman* a victory for those who brought the case? "That's a good question," says Jordan Steiker. "There's one point of view that I'm sympathetic to, that says that *Furman* revived a practice that was dying on the ground, and had there been no intervention, we might not have had a revival and then a second decline."

On the other hand, when Michael Meltsner, one of the lawyers on the LDF team who brought *Furman*, speaks to Carol Steiker's capital punishment class each year, he emphasizes that there were 629 people on death row in 1972 whose lives were saved by *Furman*.

"So in that sense, it was a tremendous victory," says Carol Steiker. "It was a reset moment."



The HLS animal law program works to improve the treatment of a wide range of creatures, including pigs and other farmed animals.

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**All Creatures Great  
and Small**

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A Harvard Law School  
program is trying to  
prove that better animal  
welfare is good for  
everyone

*By* RACHEL REED

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Octopuses play, explore, and even recognize individual people. But, unlike other creatures used in federally funded laboratory research, they and other cephalopods don't have to be treated humanely. The HLS animal law clinic is trying to change that.

# H

ARVARD LAW'S Brooks McCormick Jr. Animal Law & Policy Program and the affiliated Animal Law & Policy Clinic work together to harness the legal system to improve the treatment of animals — in captivity and in the wild.

Through education, policy and advocacy work, and direct litigation on behalf of animals, the program and clinic hope to defend and fortify the ecosystems that sustain human life — and, equally importantly, to help to build recognition that *all* living creatures have intrinsic value and are worthy of protection.

That includes beings who don't usually get much attention in popular discussions of animal rights — like the octopus. Known for having eight arms and soft, round bodies, for being able to squeeze into tight spaces, float languidly in the water, or propel themselves at speeds of up to 25 miles per hour, octopuses are also highly intelligent. They have a relatively large brain and bundles of neurons in each appendage that enable them to play and explore, recognize individual people, and even navigate mazes.

That intelligence makes the octopus attractive to scientists, who are increasingly using them — and other cephalopods like squid and cuttlefish — in laboratory research, says Katherine Meyer, director of the school's Animal Law & Policy Clinic. But, unlike many other creatures used in federally funded studies, octopuses and their kin don't have to be treated humanely by researchers. That's because, as invertebrates, cephalopods do not fall under the relevant National Institutes of Health policy's definition of "animal."

"If you asked any 8-year-old if an octo-

pus is an animal, they'd say 'yes,'" Meyer says. "But not according to the NIH."

While the program and the clinic fight cruelty and inhumane conditions on factory farms, address the mistreatment of animals on public lands, shape complex regulatory schemes, and defend animal rights laws against constitutional challenge, their work is also about standing up for the octopus and other often overlooked animals in need of protection.

#### TEACHING, SCHOLARSHIP, AND LITIGATION

Animal law is not a new field, as Chris Green '04, the program's executive director, will tell you. In 2000, Steven M. Wise, an ardent animal rights advocate, taught one of the country's first animal law courses at Harvard Law. Its many fans included Green himself, who credits taking that first course with guiding his career toward animal law.

After several years as the director of legislative affairs for the Animal Legal Defense Fund, Green returned to Harvard in 2015 to work with Professor Kristen Stilt, who had recently established the Animal Law & Policy Program.

"This is an urgent agenda," says Stilt, the program's faculty director. "The U.N. secretary general talks about climate change as 'mutually assured destruction,' and animals are in the middle of all of it — both as unwitting contributors through methane emissions and also the victims, as wildlife is decimated all over the world. And the urgency has only developed. If not us, then who?"

Today, the program offers courses on wildlife law and farmed animal law in addition to its flagship animal law course and the animal law clinic.



**Kristen Stilt established HLS's Animal Law & Policy Program in 2014. "This is an urgent agenda," she says.**

Arlene Lopez '23 says the program gives students an opportunity to study an area of the law that has a direct impact on animal welfare, but also the environment, food systems, and even public health. "If I could make farmed animal law a required class for every student, I would."

As animal law has developed, so have questions about what rights animals can and should have — and who gets to enforce them.

"It's a really intellectually engaging field of law. You are dealing with difficult legal questions because the doctrine is not always clear. It's also philosophically very interesting, because you are thinking about whose bodies should be protected, whose rights should be safeguarded," says Asha Ramakumar '23.

"And when you incorporate nonhuman animals, who can't speak for themselves, how do you know what their best interests are? How do you do right by them?"

Advocates say they appreciate the opportunity to deploy creative and original legal theories. Recently, the Constitutional Court of Ecuador cited a friend-of-the-court brief filed by Stilt and Harvard Law research fellow Macarena Montes in a landmark ruling recognizing the rights of nonhuman animals — the first time a court had ever done so. "The concept of the rights of nature is not well known in the U.S., but in other parts of the world, including South America, it is proving to be an important legal tool to protect nature, including animals," says Stilt.

While a similar decision in the U.S. might seem far off, human and nonhuman interests often dovetail, as with a collaborative research project spearheaded by the program's research fellow Ann Linder

and the NYU Center for Environmental and Animal Protection examining the global regulation of live animal markets. With more than 15 international research partners, the project aims to better understand the role such markets play in the transmission of zoonotic disease, like COVID-19, in order to prevent future pandemics — and, of course, to reduce animal suffering.

Sometimes, though, the desires of humans and of animals are not so neatly aligned.

#### 'HANDS-ON EXPERIENCE'

North of San Francisco, Point Reyes National Seashore juts out into the Pacific Ocean, tracing a foggy, wind-swept coast of high bluffs and verdant forests. Tule elk, a species endemic to California, roamed the misty peninsula for 10,000 years until the late 1800s, when human activity drastically reduced their numbers. The state of California, with the National Park Service, reintroduced the elk in the 20th century, and they thrived there — perhaps too much, upsetting local ranchers whose cattle compete for the same food and water sources in the park.

To ease tensions, several decades ago the Park Service built a fence intended to restrict the elk to specific areas of the park. Recently, the elk have begun dying in large numbers, suffering from dehydration or starvation caused by the state's ongoing drought and the animals' inability to leave the fenced-in area, says Meyer.

The clinic filed a lawsuit against the Park Service to save the elk. Meyer says the case is a good example of the skills her clinical students learn in this unique field. "The students had to go out and find a veterinarian who could say that these animals were dying of starvation, and how horrific it is for an animal to die in that manner. They had to find a wildlife biologist who could say what needed to be done to help



**Katherine Meyer,**  
director of the  
**Animal Law &  
Policy Clinic**





In addition to fighting cruelty against chickens and other animals, the HLS program has focused on dietary alternatives, including cultivated meat.



Tule elk at California's Point Reyes National Seashore are dying from dehydration and starvation, confined to a fenced-in area to keep them from competing with cattle for food and water. The HLS clinic has filed suit against the Park Service to save the elk.

them,” she says. “They’re learning how to put cases together, how to build evidentiary records, with an eye toward what kind of records they’ll need if they have to file a lawsuit later.”

Before coming to Harvard to lead its Animal Law & Policy Clinic in 2019, Meyer had run a successful public interest firm that focused on animal law for more than a quarter century with Eric Glitzenstein, a lecturer on law who teaches Harvard’s wildlife law course. “There is so much going on with respect to the abuse, neglect, and exploitation of animals,” she says. “There is no shortage of things that need to be done on their behalf, so selecting projects is more of an art than a science.”

Clinic students can choose from a panoply of cases, many of which rely on existing laws like the Freedom of Information Act, the Endangered Species Act, and the Animal Welfare Act to enforce regulations or build an argument for new protections.

For Ben Rankin ’23, the journey to animal law started with a deep interest in biodiversity and wildlife as a child growing up in rural Missouri. Now in his third semester in the clinic, Rankin is the lead student attorney on a FOIA lawsuit to gain access to information gathered by the government about trade in plants and animals.

“Everyone who brings wildlife into the country or sends it out has to fill out a form, the contents of which are plugged into a database,” he says, adding that the data, which used to be readily available, is no longer automatically released. “Historically, access to this information has been incredibly important to conservation nonprofits who use it to inform their advocacy strategy. It’s also used by journalists and scientists who are trying to understand the problem on the ground caused by wildlife trafficking, which, along with habitat destruction, has been one of the most significant driving forces of extinction in plant and animal species.”

Rankin is also co-president of the student-run Animal Law Society, which hosts events — complete with vegan food — to promote animal welfare and connect peers to career opportunities in animal law. He says that his work in the clinic convinced him of the viability of pursuing animal law after graduation. “The more that I’ve been exposed to the folks that advocate for animal welfare, especially wildlife issues, the more I realized that it is a valid career path.”

Ramakumar, the Society’s other co-president, says that the uniting factor among all the clinic’s projects is the sense of independence and ownership Meyer gives students, and the freedom they have to dream up novel solutions to help animals. “Kathy puts students front and center in the work,” she says. “She really wants us to have that hands-on experience.”



**Chris Green '04,**  
executive  
director of the  
Animal Law &  
Policy Program

**PROTECTING CONSUMER RIGHTS**

Picture a summer barbecue. Sweet corn and yellow squash sizzling on the grill next to what looks — and smells — exactly like chicken. It is chicken, except for one curious thing: No animal was slaughtered to produce it.

Improving animals’ position in the food chain is another key priority. One clinic project, in partnership with Harvard Law’s Food Law and Policy Clinic, centers on cultivated meat and poultry products grown directly from cultured cell lines, which might someday offer omnivores an alternative to their favorite proteins. But just as plant-based dairy replacements have run into objections from the dairy industry on the use of terms like “milk” or “cheese” on their labels, cell-based meat producers expect — but hope to avoid — pushback on using words like “chicken” on theirs.



**Alene Anello**  
**'16, founder of**  
**Legal Impact**  
**for Chickens,**  
**a litigation**  
**nonprofit**

As a student, Kelley McGill '20 helped draft a petition urging the U.S. Department of Agriculture to wait to adopt labeling requirements for such products, instead of regulating or outright banning the use of specific terms on packaging. It was too early in the development timeline to impose such regulations, she says. "We argued that such an approach would best protect consumers

and promote American innovation while respecting cultivated producers' constitutional commercial speech rights, as protected under the First Amendment."

In a win for meat alternatives, one cultivated meat product recently became the first to receive initial clearance from the Food and Drug Administration. The USDA also agreed with much of the clinic and McGill's argument, referencing the clinic's petition on labeling extensively in its published notice in the Federal Register. McGill, who is now a food policy consultant, says the experience was formative: "I'm grateful for those clinical experiences and the communities around them because they have helped me to strengthen my legal skills, access impactful opportunities and networks, and contribute to positive change."

The program is also active in defending California's Proposition 12, which requires that certain meats sold in the state come from animals raised in cages and pens that allow them to at least stand up, lie down, turn around, and extend their limbs. The pork industry has challenged the law, and the case is currently before the U.S. Supreme Court. Itching to return to direct impact work, alumna Rebecca Garverman '21 left her job in private practice and returned as a clinical fellow this year. Her first task was to draft the clinic's amicus curiae brief in support of the law.

"We wanted to show the impact on the pigs, who are incredibly intelligent animals," says Garverman. "We also wanted to highlight that Californians had gone to the ballot boxes and said, 'We don't want the product of this cruelty to be on our grocery shelves.' And we can, and should, respect that."

#### **PIONEERING ALUMNI**

Food systems are also very much on the mind of Alene Anello '16, who says that her experiences with the Animal Law Society and the animal law survey course influenced her desire to launch Legal Impact for Chickens, a litigation nonprofit. After graduation, Anello worked at the Animal Legal Defense Fund, but she always knew she wanted to start her own firm.

Inspired by the philosophy of effective altruism — the idea that one should try to maximize the amount of good one can do for the greatest number of beings — Anello set her sights on poultry. "Each year, the U.S. kills 9 billion chickens, which is by far more than the number of humans on Earth. And a lot of these chickens have really, really hard lives on factory farms," she says.

Bolstered by an initial grant from Harvard Law's Public Service Venture Fund, Anello uses existing anti-cruelty laws — and companies' own animal welfare commitments — to improve conditions for farmed chickens.

"In the U.S., we have laws against animal cruelty and neglect, and these laws are basically ignored on factory farms," she says. "While there are agricultural exemptions in a lot of the anti-cruelty laws, not all states have these exemptions. And even when they have them, they are usually not complete exemptions. In any case, I believe there's a huge amount of illegal animal cruelty and neglect that is happening on factory farms, which has long gone unaddressed."

Other animal law alumni have established careers in private practice, at major animal rights and welfare organizations, and in food and environmental nonprofits. The HLSA Animal Law & Policy Network, a new shared interest group spearheaded by Alicia Rodriguez '15, serves to connect alumni across the country.

And the program's reach is, in fact, nationwide. Justin Marceau '04, a professor at the Sturm College of Law at the University of Denver, says an early Harvard Law animal law course complemented his existing interests in constitutional law and social justice.

In the course of his career, Marceau has been instrumental in broadening the field of animal law through his own program and clinic supporting animal rights activists. "I am a big believer in practical training for lawyers. I am also a believer that animal law has been framed too narrowly," he says. "There is this notion that prosecuting an animal abuser is, of course, animal law, but a similarly strong sentiment that defending grassroots animal protection advocates is civil rights work. I think that defending activists is a central part of animal law, and our new Animal Activist Defense Project at the University of Denver will change the definition and image of animal law."

Marceau, who is currently working with Stilt on an animal law casebook, says that cooperation defines the animal law community. "Animal law is growing precisely because of the collaborations that are developing between schools," he says. "I collaborate frequently with Chris Green and Professor Stilt. We view this as a collective project rather than a competition, and the result has been some really terrific research and events."



**Asha Ramakumar '23 recently led a congressional briefing on the need to extend protection for laboratory animals to octopuses.**

#### **'WE WILL KEEP PUSHING'**

So, what is next for the octopus, that smart, strangely charismatic creature that fascinates researchers and the public alike?

Meyer says she and her students have submitted a petition on behalf of a coalition of the world's leading experts on cephalopods and animal rights advocates asking the NIH to change its policy. And recently, Ramakumar, the clinical student, led a virtual congressional briefing on the need to extend protection for laboratory animals to octopuses and other cephalopods. Although the NIH has not yet given its answer, the work caught the attention of 19 members of Congress, who have since called on the agency to make the change.

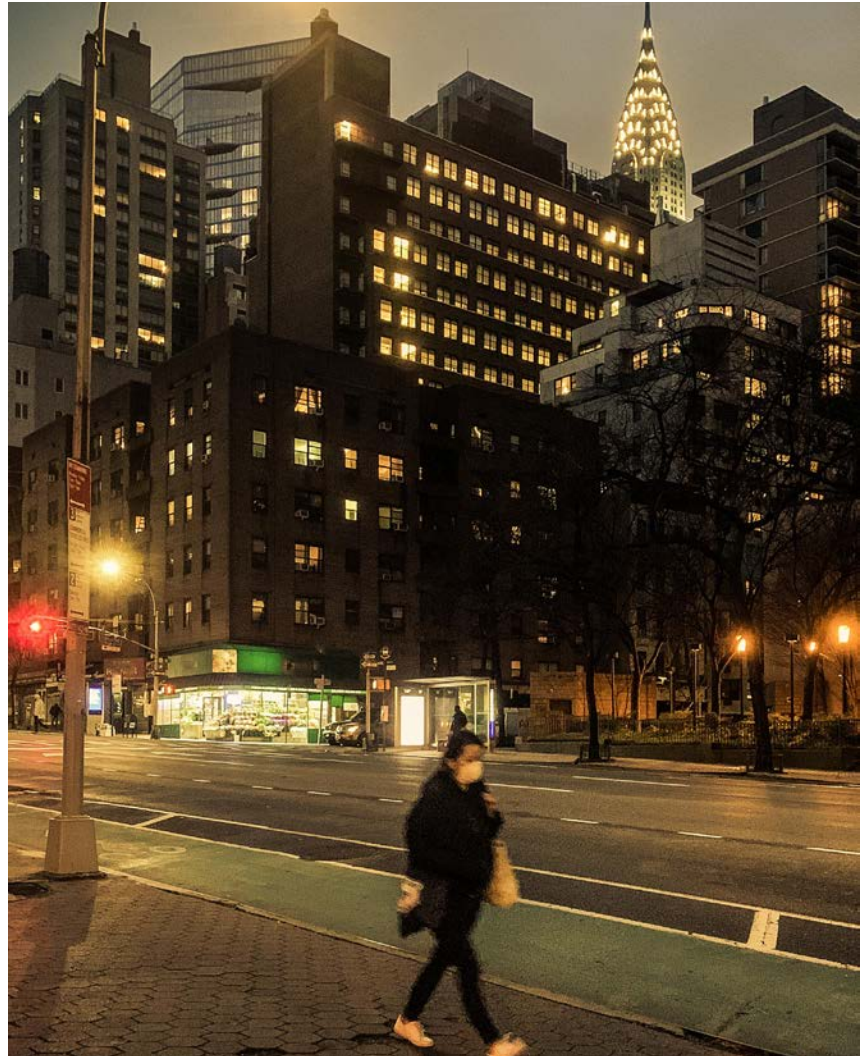
It is not a full victory, at least not yet, but it is emblematic of the strategic, steady, and meaningful progress for which those in the animal law program and clinic are fighting. "We hope NIH will do the right thing," says Meyer. "But if it doesn't do the right thing, we will keep pushing."

Stilt says that the program will continue pushing forward, too. She believes that policymakers and institutions "can no longer ignore what scientists have been telling us for a very, very long time" about the connection between factory farming and climate change, and about the problems caused by live animal markets and other detrimental practices. She and others in the program are excited about the potential for new partnerships with Harvard's food law and environmental law clinics, and about what a recent history-making gift of \$10 million means for the future of the program and clinic.

It is a future ripe for animal law attorneys and advocates. And a future they hope includes not only human beings, but the creatures that make up our world — and make our world possible.

New York City  
during the  
height of the  
pandemic

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# THE BELOVED CITY

**HOW THE PANDEMIC HAS  
TRANSFORMED  
URBAN AMERICA:  
PERSPECTIVES  
FROM HLS MAYORS  
BY LANA BARNETT '15**

American city life changed drastically when the coronavirus arrived in the late winter of 2020. Almost overnight, offices emptied, bars and restaurants shut down, and droves of people whose jobs or finances allowed it packed up and moved away. Now, three years later, cities are ready for a comeback, say several Harvard Law School alumni who have served as mayors of cities ranging in size from 100,000 to nearly 2.3 million people. And if local leaders do things right, they say, cities can come back stronger than ever before.

# U

rbn America faced hard times long before the pandemic. Growing wealth inequality, suburban flight, and outdated infrastructure had already left many municipalities with strained finances and uncertain futures. But the pandemic, in addition to exacerbating the issues cities were already dealing with, posed a brand-

new, nearly existential challenge of its own. In an October 2022 lecture marking his appointment as Steven and Maureen Klinsky Visiting Professor of Practice, Julián Castro '00 described the dismay he felt when headlines of stories published in the early days of the pandemic repeated the conventional wisdom that cities were dying.

What once made American downtowns magical — bustling bars and restaurants, crowded concert venues, sports arenas full of cheering fans — now turned them into nightmares. Cities were left facing their “toughest years,” said Castro, a former mayor of San Antonio and sec-

## City leaders now confront a backlog of challenges, from the affordable housing crisis to climate change to public safety.

retary of Housing and Urban Development under President Barack Obama '91.

As the pandemic disrupted and displaced lives, cities struggled with evictions and homelessness, rising crime rates, and shuttering businesses. As jobs and people left, tax revenues dried up, and local governments struggled to provide basic services. COVID-19 threatened the very point of cities, says John Cranley '99, who served two terms as mayor of Cincinnati from 2013 to 2022. “The archetypal virtue that urbanists believe in is bringing people together in the beloved city,” where people of different backgrounds can work and live alongside each other, Cranley said. “And COVID sent the message for years for people to spread out and stay away from each other.”

But as COVID's immediacy wanes and the world begins to adapt to the endemic, local leaders must confront a backlog of challenges. The mayors of cities both big and small agree that while the problems faced by each differ in scope

— as do resources available to solve them — cities nationwide are dealing with largely the same sets of issues. “We all do the same thing,” said Houston Mayor Sylvester Turner '80, who for the past seven years has led the fourth-largest city in the nation. “Whether it's COVID, monkeypox, flooding issues, homelessness, or public safety, we all have to address those issues in real time.”

### HOUSING AND AFFORDABILITY

Top of mind nationwide is the growing housing affordability crisis. Prices for single-family homes in the United States have skyrocketed in recent years, with pent-up demand during COVID pushing prices far past what many residents can afford. Home prices have increased by double-digit percentages, climbing as high as 37.1% year over year in Detroit. Rental markets have often followed suit. Though housing markets are expected to cool as mortgage interest rates climb, residents nationwide still struggle with affordability.

Despite record-breaking federal investment in state and local infrastructure, neither Rome nor Richmond can be built in a day. So, many cities, inspired in part by creative uses of public lands that arose during the pandemic, are trying to reuse and reimagine existing, but underutilized, spaces. As one example, Castro cites California's Project Roomkey, an initiative that helped secure temporary housing for homeless people in unused hotel and motel rooms. The program later transformed into Homekey, involving the purchase and renovation of entire hotels, which can then provide permanent housing and support services for vulnerable communities.

In Boston, where little land remains open for development, Mayor Michelle Wu '12 is focused on finding opportunities to build climate-resilient, accessible, and affordable housing on underutilized city-owned land. “We will never be successful as long as the challenge is how to most fairly or least painfully allocate a shrinking pie or even one that is of a fixed size,” Wu said in an October interview in *The New York Times Magazine*. “We have to grow it.”

In nearby Lynn, Massachusetts, the city has created an affordable housing trust fund with



Clockwise from top: Boston Mayor Michelle Wu '12; Jared Nicholson '14, mayor of Lynn, Massachusetts; Julián Castro '00, former mayor of San Antonio and secretary of Housing and Urban Development; former Mayor of Cincinnati John Cranley '99; Houston Mayor Sylvester Turner '80

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input from renters, developers, and other stakeholders, says Mayor Jared Nicholson '14. The purpose is to raise and allocate funds from a variety of sources aimed at building more affordable housing. Lynn is also focused on ensuring that there are enough homes for residents of all income levels, and the city has attracted nearly \$500 million in private development to build additional residences, says Nicholson.

Though housing is a nationwide problem, Nicholson says, local solutions are still needed. "It is important to not let the fact that an issue is bigger than just the city of Lynn be an excuse for not addressing it," he said. "We can want to see and advocate for everybody to step up and help solve this problem and continue to do more for ourselves because it's our residents who are struggling with the issue."

#### POLICING AND PUBLIC SAFETY

The murder of George Floyd, and the protests against police brutality and racism that followed, sparked a national debate about the role of police and inspired calls for shifting funding from police departments to social services. In his Klinsky lecture, Castro cited Denver as having implemented one particularly successful example of this approach to criminal justice reform. In June 2020, Denver launched the Support Team Assisted Response program, an initiative



“There’s an opportunity [to take lessons] learned during the pandemic ... to deliver health care more effectively.”

that has sent mental health workers and EMTs to respond to crisis calls that previously drew a law enforcement presence. The program, which has responded to approximately 6,000 calls so far, is expanding due to its success, with one study finding that it resulted in significantly fewer criminal offenses and large cost savings. Inspired by such examples, Lynn is currently working on creating a similar unarmed crisis response team, according to Nicholson.

Rising crime rates, however, have posed a challenge, and, tasked with maintaining public

safety, cities have continued to lean on traditional law enforcement responses. In Houston, a \$53 million investment from the American Rescue Plan Act of 2021 has funded a larger police presence, a gun buyback program, additional domestic violence prevention outreach efforts, and an increased focus on youth services designed to draw adolescents away from juvenile crime and gang involvement. According to Turner, these initiatives appear to be succeeding in his city, with homicides and violent crime rates beginning again to trend downward.

Going forward, cities must learn to navigate these challenges with care and creativity, says Cranley. Work begun in his own city two decades ago may serve as a case study. In April 2001, a white police officer in Cincinnati shot and killed

A woman holds up a sign offering free masks to protect against the spread of COVID, during one of the protests in Cincinnati in spring 2020 after the murder of George Floyd.



19-year-old Timothy Thomas, an unarmed Black man, while attempting to arrest him for non-violent misdemeanors. The killing set off four days of rioting and civil unrest and marked the largest urban disturbance in the U.S. since the 1992 Los Angeles riots that erupted after a jury acquitted police officers who had beaten Rodney King. In response, Cincinnati launched police department reforms known as the Collaborative Agreement, which brought police and local residents together to work collaboratively on questions concerning law enforcement within the Cincinnati community. “It completely changed the culture and ethos of our police department, and while the police resisted it 20 years ago, they now brag about it and are converts,” Cranley said.

He believes that the efforts have made a difference. After the murder of George Floyd, Cincinnati residents engaged in weeks of peaceful

protests, and the city experienced relatively little of the unrest that plagued other urban areas. “All of our communications and relationships that we’ve built in 20 years paid off,” said Cranley, who shared the lessons learned with other mayors. “We’re not perfect, but we’ve made real progress, and I think it’s a role model for other cities.”

## PUBLIC HEALTH LESSONS FOR THE FUTURE

Though COVID’s impacts reached every sector of life, at heart, the pandemic was a public health crisis for which the country was woefully unprepared, say alumni mayors. “The pandemic really showed that the country’s public health infrastructure was underdeveloped,” said Nicholson. In response, he said, Lynn grew its public health team. The Lynn Public Schools also hired dozens of social workers and clinicians to address the related mental health crisis that became starkly apparent as the pandemic isolated individuals and families and disrupted every facet of normal life.

Cranley notes that throughout COVID, personal protective equipment and vaccines were distributed locally rather than federally, leaving cities to address a problem the country had not seen in more than 100 years. “Many people, myself included, were kind of uneducated on the role of public health because it had been so long since there was a major pandemic,” Cranley said. “There was no manual, and though we ultimately got money from the federal government, which we needed, we had to build the infrastructure ourselves.”

Castro is optimistic that, now that the infrastructure is in place, cities can use their more robust public health awareness, experience, and community engagement to improve health outcomes even in the absence of a crisis. He notes that, before the pandemic, people in poor communities often used emergency rooms in lieu of primary care physicians. That could change, Castro hopes, as an indirect result of successful, widespread vaccination campaigns, which brought preventive care to underserved communities. “There’s an opportunity in the realm of public health to take some of the lessons that were learned during the pandemic about being transparent and communicating with residents and ... harness that in the future to deliver health care more effectively and to more people in a life-long process,” he said in an interview.

## COMBATING CLIMATE CHANGE

As many learned acutely during the pandemic, cities, despite their size, often face challenges that are national or global in scope. Perhaps the starkest example of this dynamic is climate change, a global problem that forces local communities to grapple with how to keep their resi-

# The future of cities depends not just on attracting resources, but on using them to build more equitable communities.

dents safe when rising temperatures contribute to extreme weather patterns and natural disasters.

Four months into Turner's first term as mayor, Houston was hit with a devastating flood during which almost 24 inches of rain fell in 24 hours, flooding tens of thousands of homes, killing multiple people, and causing millions of dollars in

damage. The following year, Hurricane Harvey brought approximately 52 inches of rain to the city. Houston has had to deal with seven federally declared disasters in the last seven years.

Turner has tried to turn these catastrophic events into an opportunity for big changes. Hurricane Harvey, which brought devastation straight to the country's energy capital, helped

kickstart a flurry of climate initiatives, he says. The famously sprawling city began building higher while adding environmentally sustainable and flood-resilient infrastructure. Houston partnered with energy and utility companies to convert all municipal operations to renewable energy

sources. "The reality is, when you're dealing with challenges or events that you either can't foresee or you can't prevent, cities and mayors simply have to manage the situation," Turner said. "And if you weren't someone who was just caught up on the environment, you had to look at the economic consequences of a failure to act."

And while no one municipality can sin-



A school bus makes its way down a Houston street in the wake of Tropical Depression Imelda, September 2019.

Wu addressing a crowd  
at the reopening of  
Boston's renovated City  
Hall Plaza in November

gle-handedly reverse climate change, by virtue of their size, cities can take quick actions that still have significant effects, says Cranley. When the United States pulled out of the Paris Agreement in 2017, for instance, Cranley, like many mayors, vowed to make carbon emissions reductions anyway. By October 2021, Cincinnati had built the nation's largest municipally owned solar farm. "Cities are far more direct, nimble, and on the ground," Cranley said. "I could just do my thing on my own."

### THE FUTURE OF CITIES

Cities, like just about everything else, are different now. Cranley's biggest fear is that, with the rise of remote work, they may never look again quite like they did before COVID. In 2020, Cincinnati's population had just grown for the first time in 70 years, reversing a trend of decline that is widespread in the Midwest. But if people can live elsewhere without losing their livelihoods, Cranley fears there will be a return to population loss and urban decline. "For cities like Cincinnati, a permanent move to remote work by some significant portion of the workforce is an economic and existential threat to the viability of cities, which are premised on density and the proximity of where people live, work, and play," he said.

But this is not the first time cities have had to adapt to a changing world. Nicholson points out that Lynn was once a proud industrial center (known as the shoe capital of the world), but the factories that once employed tens of thousands of residents have closed or scaled down and are unlikely to return to the same scale. So, Lynn has had to learn to pivot. Capitalizing on its proximity to Boston, Lynn has worked with trade groups to attract life sciences employers while simultaneously developing workforce programs to build necessary skill sets for the industry.

U.S. Supreme Court Justice Louis Brandeis LL.B. 1877 once described states as places that could "serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." These days, Castro is optimistic that cities can play much the same role. One experiment he hopes they will undertake is to begin looking beyond their own boundaries and cooperate with suburbs to address issues as regions, rather than as individual localities. Regional economies are simply stronger than municipal economies, and regional solutions to



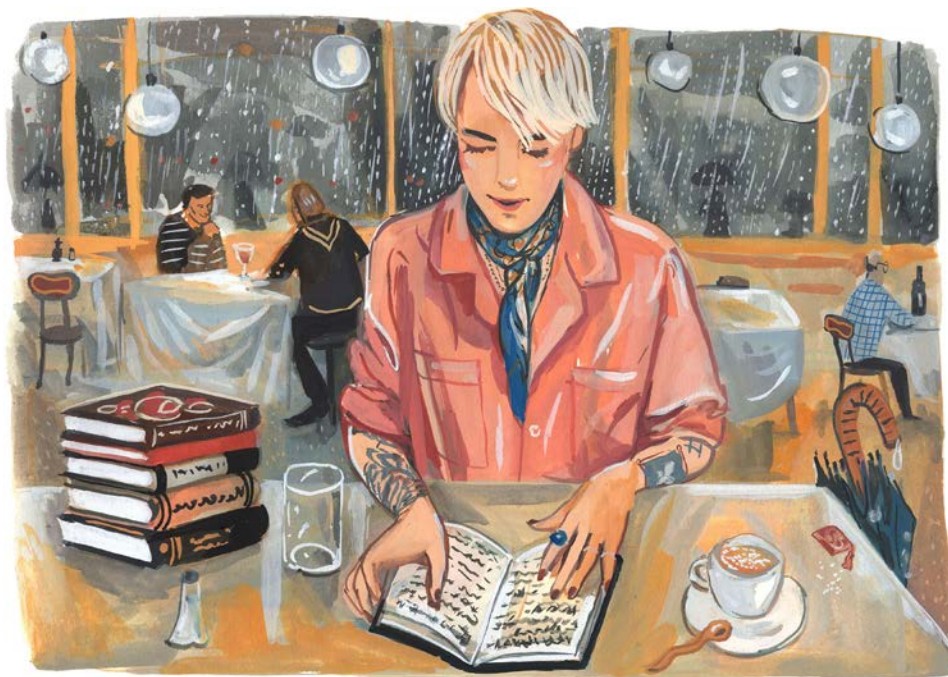
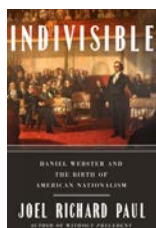
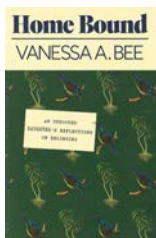
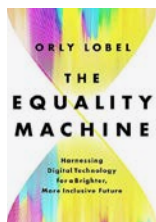
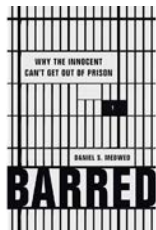
problems are more likely to be successful than localized ones, Castro remarked during his Klinksky lecture. "The smartest cities are those that can find a way to begin a dialogue and ultimately to act in a regional way on economic development, on affordable housing, and on linking that affordable housing to transit opportunities and job opportunities," he said.

To a large extent, the ability of cities to successfully navigate these challenges will depend on more than just their willingness to collaborate with neighbors. Many cities' fates rest on decisions made far beyond City Hall. In the past few years, urban centers have benefited from unprecedented sums of federal funding, including most recently from the Inflation Reduction Act of 2022, which directed hundreds of billions of dollars toward energy security and climate change, much of which will be allocated via grants for local projects. But these funds will eventually and inevitably wane, particularly if feared significant economic decline comes to pass. "All water flows downhill, so whatever happens at the federal level, and whatever happens at the state level, cities will have to deal with whatever decisions are made above them," Turner said.

But whether revenues rise or fall, Nicholson is optimistic that resourcefulness, creativity, and grit will help places like Lynn pull through whatever economic challenges arise. "The limits of the city's ability to raise revenue certainly is not a limitation on our imagination about how we can serve our residents," he said.

For Castro, the future of cities depends not solely on the resources that they can attract from state and federal coffers, but also on how they can use them to build more equitable communities. He hopes local governments will treat COVID as more than a temporary crisis, and instead as an opportunity to reimagine approaches to economic development, education, transit, and health care, all with the aim of creating spaces where people of all means can thrive. "I want the best of cities to continue to shine through, but for them to be places for everyone," Castro said.

# Recent Alumni Books



**“Barred: Why the Innocent Can’t Get Out of Prison,”** by Daniel S. Medwed ’95 (*Basic Books*)

When he was a student at HLS, Daniel Medwed recalls, a professor said, “Give me procedure over substance any day.” He doubted that contention then, but he doesn’t now. A law professor at Northeastern University and a founding member of the board of directors of the Innocence Network, he examines the procedural barriers facing the wrongly incarcerated despite evidence of their innocence. Procedural rules such as a ban on introducing new evidence undermine the promise of appellate review, he argues. In addition, parole proceedings disadvantage people who advocate for their innocence rather than show remorse for their crimes. To facilitate justice, Medwed recommends internal review units within prosecutors’ offices to scrutinize questionable convictions as well as independent agencies established by state legislatures to investigate claims of innocence.

**“Constructing Basic Liberties: A Defense of Substantive Due Process,”** by James E. Fleming ’85 (*University of Chicago Press*)

Conservative jurists have criticized substantive due process — which the author defines as protection of civil liberties under the Due Process Clauses — for having no basis in the Constitution and effectively undermining legislative authority to enact laws grounded in morality. Yet James Fleming, a professor at Boston University School of Law, contends that substantive due process is “justifiable on the basis of constitutional imperatives: protecting the basic liberties significant for personal self-government and securing the status and benefits of equal citizenship

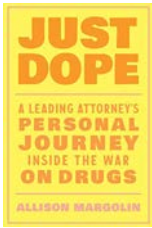
for all.” He examines *Obergefell v. Hodges* and other cases that address personal liberty as well as the future of substantive due process in light of a Supreme Court majority that appears hostile to it.

**“The Equality Machine: Harnessing Digital Technology for a Brighter, More Inclusive Future,”** by Orly Lobel S.J.D. ’06 (*PublicAffairs*)

Technology can exacerbate injustices, but it can also bring equality and social benefit with the right choices, oversight, and direction, contends Orly Lobel. A professor of law at the University of San Diego, Lobel outlines her vision for making technology a force for good in areas including hiring and compensation; racial and sexual justice; personal relationships; and health care. She calls for addressing issues such as racially biased facial recognition, for sharing technology resources to address problems, and for advancing policies that regulate technology. “Through the wise and forward-looking implementation of tomorrow’s technologies, we can envision a society in which our lives are not limited by gender, race, sexuality, age, geography, or ability,” she writes.

**“Home Bound: An Uprooted Daughter’s Reflections on Belonging,”** by Vanessa A. Bee ’12 (*Astra House*)

Growing up, Vanessa Bee envied classmates who could explain in a short statement where they were from. Her explanation comes in the form of this book. Born in Cameroon and adopted by her aunt and her aunt’s white French husband, the author recounts an unsettled childhood in which she faced housing insecurity in France and England

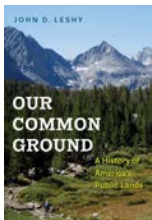


and later shared a house with six relatives in Nevada. Her time at Harvard Law was transformative: Arriving as a married 20-year-old evangelical Christian, she divorced her husband and left the church by the time she graduated. For Bee, now a consumer protection lawyer as well as an author, home “feels as cumulative as a nesting doll,” she writes — a city, a neighborhood, a domicile, the places that shaped her beliefs, the soil her grandparents tilled, the body in which she navigates the world.



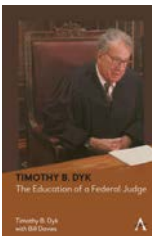
**“Indivisible: Daniel Webster and the Birth of American Nationalism,”** by Joel Richard Paul '81 (*Riverhead Books*)

During the early years of the nation, the concept of a “United States” was a fiction, as colonists identified with their village, state, or region, according to Joel Richard Paul, a professor of constitutional and international law at UC College of the Law, San Francisco. He chronicles how Daniel Webster, an attorney who served in Congress and as secretary of state, popularized the idea of “constitutional nationalism,” advocating that the Constitution made America one nation. The book covers the period from 1812 to 1852, including Webster’s opposition to the “toxic populism” of Andrew Jackson and his compromise to accept the Fugitive Slave Act of 1850. Even as the Union disbanded with the Civil War, Paul writes, “our American identity was taking shape.”



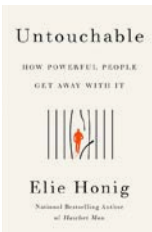
**“Just Dope: The Case for Legalizing All Drugs for a More Just World,”** by Allison Margolin '02 (*North Atlantic Books*)

In a mixture of memoir and manifesto against the drug war, Allison Margolin details her experiences growing up in the marijuana legalization movement (her father, Bruce Margolin, is a defense attorney and longtime director of the Los Angeles chapter of the National Organization for the Reform of Marijuana Laws). She also draws on her experience as an attorney defending those charged with drug crimes. The book chronicles the history of drug prohibition and efforts such as the “Just Say No” campaign and the D.A.R.E. school program, which sought to discourage drug use. Margolin argues that most drug users don’t become addicted and will use regardless of the law while people who are addicted need support, not criminalization of their behavior.



**“The Last White Man,”** by Mohsin Hamid '97 (*Riverhead Books*)

With his fifth novel, Mohsin Hamid presents a provocative premise: White people awaken to find that their skin color has turned dark. Through the experiences of his main characters, Anders and Oona, he explores the unease and fear that people feel after this transformation, the upheaval that ensues as more people’s skin darkens, and what might happen if everyone’s skin were brown. Hamid, a native of Pakistan, developed the idea for the book when he faced



distrust and hostility after Sept. 11, 2001. While always a person of color with a Muslim name, he came to understand that something profound had changed for him as someone who had previously enjoyed the benefits of his education and status: In the eyes of many, he had lost his whiteness.

**“Our Common Ground: A History of America’s Public Lands,”** by John D. Leshy '69 (*Yale University Press*)

About 30% of the land surface of the United States is public. John Leshy, *emeritus* professor at UC College of the Law, San Francisco and former solicitor for the U.S. Department of the Interior, explains how a significant portion of a nation that values private property became public and how that land has largely been preserved. He traces the history starting with the nation’s founding to the post-Civil War era, when conservation and recreational uses of public land began to be prioritized, through recent efforts to redress injustice against Native Americans who lost title to nearly all of their land. In a time when people are skeptical about the political process, he writes, public lands play a consensus-building, unifying role in American life.

**“Timothy B. Dyk: The Education of a Federal Judge,”** by Timothy B. Dyk '61 with Bill Davies (*Anthem Press*)

In a memoir recounting his early life and approximately 60 years in the law, Timothy Dyk highlights his experiences as a noted First Amendment attorney and his tenure as a judge on the U.S. Court of Appeals for the Federal Circuit. Starting his career as a clerk on the Warren Supreme Court, he went on to private practice litigating cases including many on behalf of CBS. He shares his diary entries made during the more than two-year delay between his judicial nomination and confirmation, and provides insight into the judicial process and challenges of being an appellate judge. In addition to his own story, he reflects on changes in the legal profession such as an increased focus on financial gain and a more pronounced conservative-liberal divide.

**“Untouchable: How Powerful People Get Away with It,”** by Elie Honig '00 (*Harper*)

Now a CNN senior legal analyst, Elie Honig taps his experience as a federal and state prosecutor to uncover how powerful and wealthy people exploit flaws in the legal system to avoid accountability. He focuses on cases involving Donald Trump, including the investigation by Honig’s former office, the U.S. Attorney’s Office for the Southern District of New York, into hush money payments made to cover up alleged sexual affairs by Trump, which culminated in charges against only his former lawyer, Michael Cohen. The author also details issues that impede prosecutions of powerful people, who use techniques such as creating arrangements to insulate themselves from direct culpability and enforcing silence among associates. He urges prosecutors to take on imperfect cases even in the face of these obstacles in order to promote and protect the greater good.

# Class Notes

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Got news (and maybe a reflection) for classmates? Submit your class note online at [hls.harvard.edu/classnotes](https://hls.harvard.edu/classnotes).





1958

**MICHAEL L. WEISSMAN** continues as counsel to the Chicago law firm of Levin Ginsburg, working primarily on Uniform Commercial Code and commercial lending issues. Having taught classes on commercial lending for the Risk Management Association in more than 40 states, he now writes a monthly column for the RMA Journal and serves on its editorial board. His latest speaking engagement was at the Illinois Bankers Association's annual lawyers' conference. Weissman's book, "Commercial and Industrial Loan Documentation," is in its third printing, and he also writes a monthly column on the financial services industry for the Illinois Institute for Continuing Legal Education, having served as that group's chairman and as a member of its board of directors for 13 years. IICLE has honored him with its Addis Hull Award for "career-long dedication to excellence in continuing legal education."

1960

**MICHAEL BAMBERGER** received a Lifetime Achievement Award at the Hugh M. Hefner Foundation's First Amendment Awards ceremony in Washington in September. Bamberger, senior counsel at Dentons, has represented clients for more than four decades and has argued more than 100 First Amendment cases before trial and appellate courts, including the U.S. Supreme Court. He has also received the New York Law Journal's Lifetime Achievement Award.

1964

After practicing labor law and international law for more than 40 years, **MARTIN R. GANZGLASS** has signed an option agreement with Distant Planet Entertainment for "Cannons for

the Cause," the first in his series of six published historical novels about the American Revolution. He writes: "It's about Will Stoner, a young farm boy from upstate New York, who joins Col. Henry Knox's mission to haul heavy cannons from Lake George through the Adirondack Mountains to Gen. Washington's army at Cambridge in the brutal winter of 1775-1776. On the trek of the 'noble train of artillery,' Will is befriended by Ensign Nat Holmes of Col. John Glover's Marblehead Mariners. Once in Cambridge, Will serves as a nurse in a soldiers' smallpox ward; is barracked with the Mariners, one of the few integrated units in the Continental Army, and fights alongside them when a race riot breaks out at Washington's headquarters; mans the front lines on Dorchester Heights; and enters Boston with Knox's artillery when the British abandon Boston." The other novels in Ganzglass' American Revolutionary War series follow Will and the Marblehead Mariners from the disastrous defeat at the Battle of Brooklyn to the triumphant victory at Yorktown. Since retiring in 2010, he has published seven novels and two compilations of short stories, all available from Amazon.

1966

**ROBERT KAFIN** has been elected to the board of trustees of Paul Smith's College in the Adirondack Mountains of New York state.

1967

**COLIN MCNAIRN LL.M.** has published a second collection of nursery rhyme parodies written in a light verse style. The latest book is titled "What If Jack Wasn't So Nimble? Mother Goose Characters Reimagined." More information about the book and its predecessor, "Signs of the Times: Through Reimagined Nursery Rhymes," can be found on the author's website, [www.colinmcnairn.com](http://www.colinmcnairn.com).

1968

In summer 2022, **STEPHEN SCHLESINGER** wrote: "This year I am marking the 40th anniversary of the book I co-wrote with former New York Times correspondent Stephen Kinzer titled 'Bitter Fruit,' about the 1954 CIA coup in Guatemala. The book influenced the Clinton administration to apologize to the people of Guatemala for past U.S. support of military forces in that country which 'engaged in violence and widespread repression.' It is still in print."

**WILLIAM WATSON**'s memoir, "Bravo Troop: A Forward Observer's Vietnam Memoir," was published by McFarland & Company last year. Watson, a retired attorney, was the artillery forward observer for an armored cavalry troop operating northwest of Saigon for the first half of 1969. This account of his time with Bravo Troop recounts those six months of intense armored cavalry combat through his eyes. He writes: "I was commissioned in the Army on graduation from college and given a delay in call to active duty for law school. After graduation from HLS in 1968 and taking the New York bar exam, I went on active duty. When I first met the commanding officer of Bravo Troop, he was quite surprised to have a forward observer from HLS." Watson lives in Denver.

1969

**MICHAEL LEVIN** writes that the story of his wife's mother and another female Jewish pianist who played for Jewish-only audiences in Nazi Germany has been recreated in the multimedia concert "Two Pianos: Playing for Life — Musical Message of Hope." Anna (Burstein) Bieler-Suwalski (his wife's mother) and Halina (Neuman) Schulsinger played under the umbrella of the little-known Jewish Culture League (Judischer Kulturbund), which provided thousands of dismissed performers with employ-

*Continued on page 41*

Sondra Miller recounts her career as a member of the first HLS class to admit women and a judge for more than 20 years

## A Pioneering Woman



At 93, retired judge Sondra Miller is chief counsel at Goldschmidt & Genovese in White Plains, New York.

Seventy years ago this spring, the first class of women graduated from Harvard Law School.

For many of the women enrolled in that historic class in 1950, it would be the first time they set foot on campus. But **Sondra (Markowitz) Miller '53**, who was dating a rising 3L, had traversed the campus many times over, riding sidesaddle on the back of her boyfriend's bike.

"I had an advantage because I had someone to really show me around," said Miller.

On a campus with over 1,500 male students, Miller, who had attended the all-female Wellesley College and before that the Horace Mann School for Girls, anticipated a culture shock, but most male students were accepting and most professors were "exceptionally fine," she said. "Some of the faculty were very cordial and very helpful. And some were not."

While women were accepted, said Miller, the school "wasn't really prepared for us."

There was no place on campus for them to live. They paid medical fees but couldn't access the infirmary. Most pressing, they didn't have a restroom.

Miller was deputized to broach the issue with the dean. After he designated a restroom for women in the basement of Austin Hall, she went back and asked him to hang a mirror.

"That was our first achievement at the law school," she said.

Miller's father, a Romanian immigrant who idolized Supreme Court Justice Benjamin Cardozo, told her from a young age that she could be a judge.

"I don't know if I knew what it really meant," said Miller. "I knew judges could make decisions and I liked that idea."

Miller, who ultimately served as a judge for 22 years on three different courts in New York and is currently chief counsel to Goldschmidt & Genovese in White Plains, New York, said expectations for her cohort's success were underwhelming.

She recalls Dean Erwin Griswold '28 S.J.D. '29 inviting the women to a tea at his home and

telling them they should have been admitted years before — they could have accomplished so much by doing all the pro bono work for the men.

"I recognized his good faith," said Miller, "but I thought, My goodness."

In her 60th Reunion report, Miller wrote that while she enjoyed her law school experience enormously, at the time, events in her personal life "were of major consequence."

Her relationship ended in a broken engagement. She married a New York City physician her second year, regularly missing Property class to commute to New York for Friday religious services. She was pregnant with her first son by year three, giving birth two months after graduation.

Miller framed the letter she received from Vice Dean Livingston Hall '27 congratulating her on her son and on graduating in "such fine fashion."

After a brief legal career and the birth of her third child, she divorced, remarried, and managed a family business before returning to the practice of law in the area of wills, trusts, and estates. In 1974, she helped found the Westchester Women's Bar Association, one of two local bar associations that constitute the Women's Bar Association of the State of New York, which now contains 20 chapters and more than 4,000 members.



Sondra Miller (back row, third from left) with other women of the Class of 1953

*Continued from page 39*

In 1980, she was encouraged to run as a judicial candidate in a contest with two judges seeking reelection. “The race was not one to be won,” she said, but the experience — of winning two of five counties and securing the local newspaper’s endorsement — put “fire in the gut.”

By 1983, she had secured a judgeship on the Westchester County Family Court, where she served for three years before campaigning for a seat on the New York Supreme Court, 9th Judicial District. At the time, the district consisted of 16 men, all Republicans — but she scored a historic win, becoming the first Democrat to win a contested election in the district in nearly 100 years, other than the 1964 Johnson landslide.

In 1990, Gov. Mario Cuomo appointed her to the Appellate Division, the first woman in the 9th Judicial District to be so recognized.

A longtime advocate of making divorce proceedings more protective of children, Miller wrote legal decisions that are frequently cited, particularly for their impact on family law and children’s rights.

In 2004, she was appointed chair of the Matrimonial Commission to recommend reforms to the divorce and custody dispute processes in New York. The commission produced a 70-page report recommending no-fault divorce and sweeping changes, including in the selection and education of judges.

Miller went on to serve as director of the Office of Family Services, established to implement the commission’s recommendations. She has also served for many years on a family violence task force for New York state, which aims to give parents guidance on minimizing the traumatic effects of divorce on children.

By the time she retired from the bench in 2006, she said, the representation of women on and before the bench had changed significantly.

“The face of the legal world has changed, and so, I believe, has its character.”

At 93, Miller says she has lived through and benefited from the changes affecting women in the profession since her graduation in 1953 and that she’s been “blessed.”

“I did the best I could. I didn’t neglect [my children], but neither did I neglect what I really wanted to do.” —CHRISTINE PERKINS

ment during that dark era. Levin and his wife, Nora Jean, joined other descendants of the pianists and the acclaimed Varshavski-Shapiro piano duo at the May 2022 performance at the Untermyer Gardens Amphitheater in Yonkers, New York.

#### 1971

**RON W. BROWN** writes that in his new autobiography, “Seasons of Life,” he “expresses and expands upon the view that our preachers, painters, poets, and other creative artists sometimes have,” and hopes to call readers to a prophetic vision of a better tomorrow and to encourage them to give of their best to make a difference in the world. He covers topics including faith, memory, genetic testing, and dementia as well as “the bucket list, the entertainment business, [and] chicken bone beaches.”

#### 1973

**SCOTT W. STUCKY** became a senior judge of the United States Court of Appeals for the Armed Forces upon the expiration of his term of office on Aug. 1, 2021. His portrait was hung in the court’s historic courthouse on Judiciary Square in Washington, D.C., in a ceremony in November 2021. That December, the Judge Advocates Association gave him its highest award, the Robinson O. Everett Distinguished Life Service Award, named for the chief judge (HLS ’50) who taught at Duke for many years and was one of the leading figures in American military law. In April 2022, the Wichita State University Alumni Association honored Judge Stucky with the Alumni Achievement Award, its highest honor for an alumnus of the university.

#### 1974

**HOWARD BROD BROWNSTEIN** has been recognized as an “Industry Icon” by ABF Journal, a publication serving the secured finance industry. Its 3rd Quarter 2022 issue featured the story “Present at the Inception: Brownstein Leads the Evolution of the

Turnaround Industry.” The article described Brownstein’s 30+ years in the turnaround profession. He continues as president of The Brownstein Corporation.

#### 1975

After 42 years of teaching law, **JIM FRIEDBERG** retired in May 2022, taking on *emeritus* status. Most of that time was spent as Posten Professor of Law at West Virginia University, with stints as a visiting professor or visiting scholar at Oxford, Cambridge, Hebrew University, Guanajuato, Cal Berkeley, Pittsburgh, Seville, Hawaii, and Cyril and Methodius University (Macedonia). At the latter, as a Fulbright Scholar (2002), Friedberg conducted seminars on human rights for graduate students, while researching democratic transition in the Balkans. At WVU, he principally taught courses in the international and comparative areas, as well as founding and directing an immigration clinic. His main scholarship in recent years has related to the Palestinian/Israeli conflict. Such research builds on his past writings regarding democratic transition and human rights in various parts of the globe. He is now working on developing his law review article (“Yitz and Ishmael ...,” *Minnesota Journal of International Law*, 2019) from its form as an annotated dialogue to a stage-ready drama. Friedberg still happily shares his life with Helene, his wife of half a century, with whom he also shared an apartment at Peabody Terrace on the Charles, while in law school at Harvard.

**RICHARD MESERVE** writes: “I am pleased to report that I have been selected as the recipient of the Joseph A. Burton Forum Award by the American Physical Society. The award is to recognize ‘outstanding contributions to the public understanding or resolution of issues involving the interface of physics and society.’ The citation for the award is: ‘For outstanding service to science and to the nation in the safe, secure, and peaceful use of nuclear power and in the proper and powerful application of science in important legal matters, and for wise counsel on policy issues involving science.’”

1976

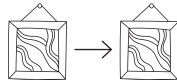
**SCOTT BLAKE HARRIS** recently resigned from Harris, Wiltshire & Grannis, the law firm he founded, to take a new position as senior spectrum adviser at the National Telecommunications and Information Administration in the Department of Commerce. NTIA is the executive branch agency principally responsible for advising the president on telecommunications and information policy issues. Harris previously served in government at the Department of Energy, the Federal Communications Commission, and the Bureau of Export Administration at Commerce. With his departure, the law firm has been renamed HWG.

1977

**JOE BASILE** writes: “Building on more than 40 years of experience as an M&A lawyer, I have launched *Pari Passu M&A Mediation*, a practice that focuses exclusively on mediating disputes arising from M&A transactions. My value proposition is that I am not a disputes resolution generalist but rather draw on the subject matter expertise, market knowledge, and judgment acquired from over four decades of successful M&A deal-making to help parties find solutions to M&A-related controversies. In addition to mediating disputes arising out of mergers, acquisitions, divestitures, joint ventures, and control and minority investment transactions, I also offer neutral evaluation of M&A disputes, facilitating difficult M&A deal negotiations and coaching representational lawyers dealing with M&A dispute mediation. For more details, see [paripassummediation.com](http://paripassummediation.com).”

1978

**PATRICIA HAMBRECHT** has joined Pryor Cashman as of counsel in the art law group in New York and represents clients in high-profile art transactions and related disputes. She previously served as president and general counsel of Christie’s North and South America; deputy chairperson, chief



... represents clients in high-profile art transactions and related disputes.

business development officer, and general counsel of Phillips Auctioneers; and worldwide president of Harry Winston, Inc. In addition, Hambrecht is the founder of Jaspar LLC, an exclusive jewelry advisory service.

1979

**ARTHUR BRYANT** received the first-ever Legacy Award from Public Justice at its 40th Anniversary Gala in July 2022. He was honored for his work and success over 35 years building the organization from two staff (him and the receptionist) into one of America’s leading national public interest law firms. In November 2021, after joining Bailey Glasser, Bryant was named a Sports Law Trailblazer by The National Law Journal for his landmark work using Title IX to fight sex discrimination in sports.

Minnesota State University Moorhead named its American Indian Center after **GEORGE SOULE** (who received his undergraduate degree from MSUM in 1976). Soule and his wife, Lisa McDonald, have sponsored scholarships for American Indian students at the school and programming through the American Indian Center on campus. The George Soule American Indian Center is designed to promote a sense of community among American Indian students. It also serves as a center of knowledge and understanding of traditional and contemporary American Indian culture.

Duke Law Professor **LAWRENCE ZELENAK** is co-editor of “A Half-Century with the Internal Revenue Code: The Memoirs of Stanley S. Surrey,” the prominent tax law academic who was Jeremiah Smith Professor of Law at Harvard Law School and served two stints in the U.S. Treasury Department. At his death in 1984, Surrey had written drafts of the majority of his planned professional memoirs, and for a long time they remained unpublished in the archives of the HLS Library. Zelenak and Ajay K. Mehrotra edited the memoirs for this collection, and it includes a comprehensive introductory essay on Surrey’s professional life and his contributions to tax policy, as well as important background information on the people and events he discusses in the memoirs.

1980

Trial lawyer and appellate advocate **JOEL DEWEY** has joined Baker Donelson as a shareholder in the firm’s complex torts group. He focuses his practice on the preparation, trial, and appeal of complex product liability and class-action cases.

**ROBERT SCHECHTER** writes: “My first collection of children’s poems, ‘The Red Ear Blows Its Nose,’ will be published in April 2023. Kenn Nesbitt, former U.S. children’s poet laureate, calls it a ‘dazzling tour de force,’ and the critics seem to be agreeing. Many of the poems in the collection first appeared in *Highlights for Children*, *Cricket*, *Spider*, *Ladybug*, and numerous major anthologies. The book also has over 60 wonderful illustrations by S. Federico.”

1982

**RAYMOND ANGELO BELLIOTTI**, SUNY professor of philosophy *emeritus*, has published his 25th book: “Heroism and Wisdom, Italian Style: From Roman Imperialists to Sicilian Magistrates” (Fairleigh Dickinson University Press, 2022).

**STUART W. DAVIDSON**, founding partner of Willig, Williams & Davidson in Philadelphia, now serves on the advisory board of Capital & Main, an award-winning nonprofit publication that reports from California on economic, environmental, and social issues. Davidson counsels public and private benefit funds, fighting to preserve the ability of workers to retire with dignity and have access to affordable health care. His work for unions includes leading contract negotiations, presenting interest and grievance arbitrations, and advising on external and internal union matters. He serves as chief counsel to large regional and local unions along the East Coast, along the Gulf Coast, and in the Chicago area.

**JEFF ROSEN** was appointed by Virginia Gov. Glenn Youngkin in May 2022 to chair the Virginia Commission to Combat Antisemitism. He writes, “The 15-member commission is charged with making recommen-

As U.S. ambassador to India, Kenneth Juster drew on a career that has encompassed law, business, and government

## A Broad Perspective

When **Kenneth Juster '79** was in high school, he traveled to Thailand on a school exchange program. He saw a map of the world there and noticed that Thailand was at the center of it. It was the first time he had ever seen a world map without the United States as its focal point.

"You realize that people look at the world through their own lens, and it's a different lens than I have," he said.

His exposure to a different perspective and culture stirred his interest in pursuing a career centered on international affairs, culminating in what he called "the greatest privilege of my life" when he served as U.S. ambassador to India from 2017 to 2021.

Prior to that, Juster was immersed in issues involving India during a career that has spanned law, business, and government, including being a major architect of the Next Steps in Strategic Partnership initiative with India when he was undersecretary of commerce in the George W. Bush administration and helping to open Salesforce's India office when he was an executive VP for the company. While his experience served him well, he acknowledged that he still faced a learning curve as ambassador. In addition to representing U.S. interests on issues including trade, security, and human rights, he managed the third-largest U.S. mission in the world, with 2,500 employees and their families. The job became even more challenging when COVID-19 hit, locking down the embassy in New Delhi. He also helped coordinate President Donald Trump's visit to India and was one of the few ambassadors granted a private meeting with the country's prime minister, Narendra Modi, in which Juster advocated for better investment opportunities and lower barriers to trade. Another highlight: his multiple visits with the Dalai Lama.

"I feel fortunate that I came to this position at a point in my life where I had been involved in a variety of private-sector activities in law, finance, and technology, as well as had previous government experience," said Juster. "So

I was able to bring all of that together."

Perhaps his most formative government experience occurred when he served as deputy and senior adviser to Deputy Secretary of State Lawrence S. Eagleburger during the George H.W. Bush administration, which he called "the gold standard" in foreign policy. During that time, he helped negotiate for the release of a key Chinese dissident in the aftermath of the Tiananmen Square protests, worked on U.S. assistance programs after the collapse of the Berlin Wall, and helped persuade the Israeli government not to take preemptive action against Iraq before the Persian Gulf War. "I didn't realize at the time how special was the group of people with whom I worked, and the period of history and the issues on which we worked," he said.

Now a senior counselor at Freshfields in New York City, Juster credits his legal training for providing a strong foundation for everything he's done in his career. Of course, that started at Harvard Law School, where he particularly benefited from international law courses taught by Hal Scott, Louis Sohn LL.M. '40 S.J.D. '58, and Henry Steiner '55, he said. Before and after his service in the George H.W. Bush administration, he practiced law with Arnold & Porter, including in international arbitration and litigation. In 2005, he moved to Salesforce in San Francisco shortly after it went public. Joining the burgeoning high-tech company was a change in both geography — he had never lived on the West Coast before — and culture. He later returned to New York as a partner at the global investment firm Warburg Pincus.

"I'm someone who believes that you always



**Kenneth Juster** (center) served as ambassador to India from 2017 to 2021.

try things a little outside your comfort zone so that you can expand your comfort zone, as opposed to try only things that you know you can do," Juster said.

When younger people ask him for career advice, he tells them to embrace any opportunities that may arise. Juster did that himself from an early age growing up in Scarsdale, New York. He worked on his junior high school newspaper with a friend whose grandfather was Ed Sullivan. And they took the opportunity to interview for the paper performers who appeared on "The Ed Sullivan Show," including Mick Jagger and Keith Richards of the Rolling Stones, Tom Jones, Ethel Merman, and Wayne Newton. It helped teach him not to be intimidated by any person or challenge he might face. That's a lesson he hasn't forgotten.

—LEWIS I. RICE



"I founded Democracy Counts, a nonprofit tech company, to develop and distribute technology empowering Americans to conduct legitimate, near real-time independent audit checks on their local election machinery."

dations to the governor and General Assembly to help address increasing anti-Semitic incidents."

1986

**DANIEL WOLF** writes: "My work in election integrity, which I started at HLS, has finally become relevant to real America. While at HLS I wrote the world's first country-specific guide for election observers, for the 1984 Nicaraguan elections; it became my third-year paper. In 2012 I was senior consultant to the U.S. Senate's election observation commission to Taiwan. And in 2015 I realized that the smartphone revolution could impose transparency on American elections. So I founded Democracy Counts, a nonprofit tech company, to develop and distribute technology empowering Americans to conduct legitimate, near real-time independent audit checks on their local election machinery. We labored in the shadows until 2020, when a certain presidential candidate raised the issue to fever-pitch level. Now our apps [help] rebuild trust in American elections, whether that means reassuring people when they are faultless or providing solid evidence to challenge and correct them when they're faulty. It's been a long haul, but HLS provided a solid foundation for the legal-strategic side of what we're doing. (Go to [www.AmericaCounts.us](http://www.AmericaCounts.us) if you are interested in knowing more.)"

1987

**DAVID S. SCHAFFER** is a partner of L&G Law Group, a full-service, midsize firm in Chicago, where he handles a wide range of business transactions. He and his wife, Margaret, have three teenagers to keep them busy! Schaffer just completed a term on his local school council and remains active in Chicago politics. He says anyone passing through is welcome to give him a call.

1988

**EDWARD "TED" JOHNSON** of Tokyo was an executive producer of the French movie "Coupez!" (in English, "Final Cut!"), selected as the opening film for the 2022 Cannes Film Festival, which he attended.

1989

**ANDREA I. ROCANELLI** writes: "I retired from the Delaware judiciary last year and started my own alternative dispute resolution firm: Delaware ADR, LLC. We specialize in resolving all manner of complex commercial disputes, including corporate, intellectual property, and bankruptcy. ... It has been a pleasure to work with several HLS alumni in my first year of practice, but I have not worked with anyone from 1989 (yet). It would be great to work with classmates! Please visit my website at [www.delawareADR.com](http://www.delawareADR.com)."

"I Don't Do That," written by **MONA R. WASHINGTON**, was one of three plays selected to be performed at Penn Live Arts (University of Pennsylvania) in the fall in the Our Voices, Our Time: One-Act Play Festival. The festival was a collaboration between the venue and the Negro Ensemble Company. "I Don't Do That" focuses on newly engaged Norah (African American) and Simon (Nigerian), whose romance is thwarted by an argument based on stereotypes and power dynamics. The play had its world premiere in Philadelphia and went on to New York to be performed at the Cherry Lane Theater NYC and then off Broadway.

1991

In May, **I. ROGER BOORD** wrote, "Nina Marie Virginia Boord, the daughter of L. Roger Boord and Fran Gaddini Boord, began her freshman year in engineering at Stanford University last fall."

**MARTIN J. SIEGEL**'s book, "Judgment and Mercy: The Turbulent Life and Times of the Judge Who Condemned the Rosenbergs," is forthcoming from Cornell University Press in the spring. The book is a biography of 2nd Circuit Judge Irving R. Kaufman, who presid-

ed at the espionage trial of Julius and Ethel Rosenberg and sentenced them to death while a district judge in 1951. It explores Judge Kaufman's evolution from overzealous anti-communist to groundbreaking liberal in cases including the first school desegregation suit in the North, the Pentagon Papers litigation and other major First Amendment cases, the Nixon administration's attempted deportation of John Lennon, and many other matters. It also traces Judge Kaufman's often tragic family life — and how the Rosenberg controversy haunted him to the end. Siegel and **DAPHNA BOROS STEPEN** were Judge Kaufman's last law clerks. More information can be found at [martinjsiegel.com](http://martinjsiegel.com). Siegel, who is married to **BETTINA ELIAS SIEGEL**, is an appellate lawyer in Houston and teaches American Legal History and directs the Appellate Civil Rights Clinic at the University of Houston Law Center.

1993

→ 30TH REUNION APRIL 21-22, 2023

**CANDACE N. SMITH** has joined the firm of Herman Jones as of counsel and is resident in the Atlanta office. She focuses her practice on the firm's litigation matters, including those involving class actions, securities, antitrust, and intellectual property matters.

1994

**SUSAN E. BROOKS** of Raleigh, North Carolina, has joined the N.C. Innocence Inquiry Commission as associate director for legislative, legal, and policy matters. She previously served in various capacities for over 18 years at the N.C. Office of Indigent Defense Services.

**GIL GREENMAN** writes: "I published a book on Amazon called 'A Fortunate Man with MS.' This book is my story of life with multiple sclerosis, always present, and the way this journey has unfolded with hope and perseverance."

**STEVEN K. HOMER** was appointed associate dean for academic affairs at the University of New Mexico School

Kimberly J. Robinson  
argues for a federal  
right to education

## ‘A Civil Rights Issue of Our Time’

In 1973, in the landmark case *San Antonio Independent School District v. Rodriguez*, the U.S. Supreme Court held there is no constitutional right to education; that responsibility falls to the states. Yet in the 50 years since, states have often failed in providing a quality public education, especially to disadvantaged children, many argue.

Today the COVID-19 pandemic has sparked a growing interest in establishing a federal right to education, says **Kimberly Jenkins Robinson '96**, a national expert in education equity, school funding, and education and democracy.

“When they closed the schools, people realized how reliant they are on the schools not just for child care but for moving their children forward to be college- and career-ready,” says Robinson, a professor of law and of education at the University of Virginia, and a professor of law, education, and public policy at UVA’s Frank Batten School of Leadership and Public Policy.

“I am getting more calls from parent groups asking, ‘What can we do to challenge the level of education my child is getting?’ It’s a silver lining that the pandemic has generated new energy for reform.”

According to a report from the National Assessment of Educational Progress released in October 2022, schoolchildren’s reading and math scores fell during the pandemic, and struggling children fell further behind than ever, says Robinson. The achievement gap between low- and high-poverty schools, which existed before the pandemic, is a result, according to Robinson, of the “opportunity gap.” Children of color, rural children, and those from low-income households aren’t offered the same quality of education as others “be-

cause we do not insist that the states provide it,” she argues.

This moment is an opportunity to spark a national dialogue that Robinson hopes will lead to federal legislation guaranteeing a right to high-quality education for all children. “We need federal leadership to move the ball forward,” she says.

In our democratic system of self-government, the stakes couldn’t be higher, proponents insist. In addition to the economic case for educating people so they can obtain good jobs, “consider also the civic needs: Only 36% of Americans can name the three branches of government,” writes HLS Professor Martha Minow in her foreword to “A Federal Right to Education: Fundamental Questions for Our

Democracy” (NYU Press, 2019), a volume of essays by leading scholars edited by Robinson. “Nationally authorized education rights could produce more equal opportunities across the country and more protections for vulnerable individuals and groups from neglect or mistreatment in local or state settings,” Minow adds.

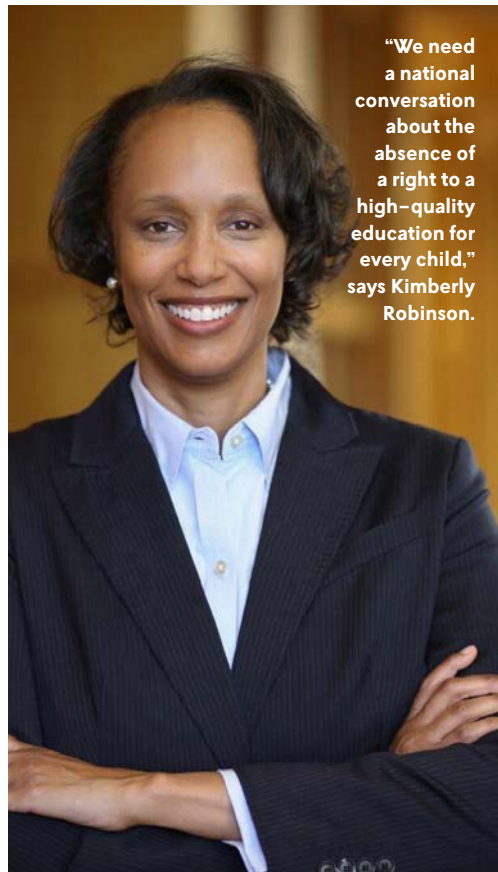
Minow also praises Robinson’s leadership in education. “Her knowledge and clarity about education law and reforms are rivaled only by her ability to bridge theory and practice in the field, making both better,” Minow says. “When she brings together scholars and policymakers, real and valuable insights and progress – and publications and initiatives – emerge.”

Since the Constitution provides no explicit right to education, and the current Supreme Court, Robinson says, would be “extremely unlikely to find an implied constitutional right to education,” Congress is the most viable route. She and other proponents are working to consider the best avenues for legislation to guarantee a federal right to a first-rate education for every child in the country.

“We need a national conversation about the absence of a right to a high-quality education for every child, and we need to build a coalition that would enable such legislation to be proposed and passed,” she says.

There is bipartisan support for education as a civil rights issue of our time, Robinson believes, citing the words of recent presidents of both parties. “Whether you can get bipartisan support around legislation remains to be seen,” she says, but having both sides frame it as a critical civil rights issue is encouraging, adds Robinson, who in 2015 published “The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity” (Harvard Education Press), which she edited with her Harvard Law School mentor, Professor Charles J. Ogletree Jr. ’78.

“I think we are in a moment when we could greatly strengthen our nation’s education system,” Robinson says, “and I could not be more excited about it.” —ELAINE McARDLE



of Law. Recently promoted to full professor, he is also the director of the school's Legal Analysis & Communication Program. In 2013, Homer was one of 26 law teachers from around the country included in a study of excellence in law teaching, "What the Best Law Teachers Do," published by Harvard University Press.

1995

**MARGARET "PEG" BOLCE BRIVANLOU** has been named one of the Top 250 Women in IP and an IP star by B2B site Managing IP. She is a partner at Ballard Spahr in New York, where she represents biotechnology and pharmaceutical companies and institutions in the spectrum of patent matters, including patent portfolio development and counseling. She also advises investment funds and other clients on the intellectual property aspects of transactions.

**JONATHAN GOLDSTEIN** wrote in September that his latest film, "Dungeons & Dragons: Honor Among Thieves," will be released in theaters on March 31, 2023. He wrote and directed the film along with longtime collaborator, John Francis Daley. Based on the classic role-playing game, it stars Chris Pine, Hugh Grant, Michelle Rodriguez, and Regé-Jean Page.

1997

Regulatory attorney **KATHERINE ROMANO SCHNACK** has joined McGlinchey's financial institutions compliance practice group as of counsel, associated with the Cleveland office. Prior to joining McGlinchey, Schnack served as the VP of legal for a credit union service organization. She also worked for the Federal Trade Commission, where she litigated federal district court actions and investigated potential unlawful trade practices.

1998

→ 25TH REUNION APRIL 21-22, 2023

2001

**TOBY STOCK** and his wife, Margy Slattery, of Washington, D.C., welcomed their first, Helen Marion Slattery Stock, to the world on June 25, 2022.

2003

→ 20TH REUNION APRIL 21-22, 2023

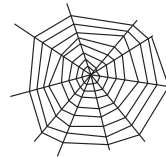
**DAVID L. AXELROD**, a first-chair trial lawyer who led Ballard Spahr's successful defense of The New York Times in a high-profile defamation trial last year, was named MVP of the Year for Media and Entertainment Law by leading legal news service Law360. The Law360 MVP of the Year award recognizes attorneys who had the biggest wins and made the most significant contributions to their practice groups over the previous year in various areas of law. Axelrod served as lead trial lawyer for the Times in defending a libel claim by former Alaska Gov. Sarah Palin, who sued over an editorial. He led the team that secured a favorable verdict for the Times after a 10-day trial.

**KATHY-ANN HART** is a cast member of the forthcoming Sony film "Madame Web," which is based on the Marvel comics. An actor who has worked in film, television, and commercials, previously Hart practiced law for seven years, including at the AIDS Action Committee in Boston.

2004

**CHRISTOPHER CHIOU** has joined Wilson Sonsini in Los Angeles as a partner in the litigation department. Previously acting U.S. attorney for the District of Nevada, he oversaw criminal and civil cases brought on behalf of the United States, including financial litigation, white-collar crime, cyber-crime, and public corruption. Before serving in the U.S. Attorney's Office, Chiou helped launch Jenner & Block's Los Angeles office.

**ROBIN FINEMAN** is now general counsel of JobTarget, a recruitment technology company located in Stamford, Connecticut. Fineman was previously a partner in the corporate and litigation departments of Hartmann Doherty Rosa Berman & Bulbulia.



... is a cast member of the forthcoming Sony film "Madame Web," which is based on the Marvel comics.

**KYLE A. OWENS** has joined the Dallas office of Bradley Arant Boult Cummings as a member of the banking and financial services practice group. In his work supporting financial services firms, as well as providers of goods and services that offer financing to their customers, he helps clients navigate risk, solve problems, and develop new lending products.

2007

**CURTIS B. LEITNER** has joined McCarter & English as a partner in the firm's business litigation group in New York. His practice focuses on complex civil litigation and white-collar criminal and regulatory enforcement matters. Leitner also provides strategic advice and counsel to clients operating in a range of industries.

2008

→ 15TH REUNION APRIL 21-22, 2023

2010

**ALEXANDER CHESTER** has joined Duane Morris as a partner in the firm's corporate practice group in its New York office. His practice focuses on corporate transactions in the sports industry.

2011

In June, **KATIE (MARSHALL) ALI** launched a boutique civil rights litigation firm, Ali & Lockwood, in Washington, D.C. She was formerly a partner at Hogan Lovells in D.C., where she spearheaded several landmark civil rights litigations while also litigating high-stakes commercial cases. "My new firm will focus primarily on criminal justice reform issues at the trial and appellate levels, while also maintaining a small commercial litigation and strategic advising practice," she wrote in July.

**CARLOS ARDILA** has been elected a partner at Latham & Watkins in Washington, D.C. A member of the project development and finance practice and the finance department, he advises clients on cross-border

*Continued on page 49*



At PEN America, Suzanne Nossel leads the charge to ensure freedom of expression for all

## Speak Freely

When PEN America marked its 100th anniversary last fall, the celebration included an exhibit at the New-York Historical Society that tracked the organization's evolution. In its earliest days, the nonprofit — which is dedicated to supporting freedom of expression and access to the ideas and work of writers — was a clubby society of poets, essayists, and novelists, offering writers a mutual support network with a strong social component: Guests at the group's first meeting in 1922, held at New York's Coffee Club House, dined on lamb chops and broiled shad.

The PEN America of today — with offices in New York, Los Angeles, and Washington, D.C. — remains staunchly in the corner of writers around the world; but the nonprofit's reach has expanded exponentially over the years, accelerating with particular speed in the decade since **Suzanne Nossel '96** was named CEO in 2013. In a time of rampant disinformation, book bans, and nonstop social media, for example, a librarian can go to PEN's website for clear guidance on how to handle harassment from angry, and on some occasions even potentially violent, patrons challenging the availability of certain titles. A teenager bullied on social media can also turn to PEN for concrete, actionable advice on how to protect herself. And the organization's News Consumers' Bill of Rights and Responsibilities offers a blueprint for steering a clear path through thickets of media disinformation, in addition to reminding readers of their own role in fostering a healthy exchange of ideas.

PEN America does more than just offer online resources, however; under Nossel, it's also a frequent convener and instigator of public discourse, supporting the right to freedom of expression on both sides of the aisle. "We really try to bring together groups of people from across the political spectrum to show that disagreement can happen in a reasoned way, where there's a genuine give-and-take and people actually listen to each other," Nossel says. "It's so important to create opportunities for that in our pitched and polarized



Suzanne Nossel,  
CEO of PEN America  
and author of  
"Dare to Speak"

discourse — that's a role PEN America can and must play."

The case for free speech, and the very conscious, thoughtful effort required to sustain it, are also driving forces behind Nossel's 2020 book, "Dare to Speak: Defending Free Speech for All," which Margaret Atwood called "a must-read for writers, speakers, teachers, journalists, and, well, anyone who talks."

That book, and Nossel's commitment to PEN America (where the organization's membership, budget, and staff have doubled during her tenure), are the continuation of an established career dedicated to human rights and freedom of expression in the public, private, and nonprofit sectors. In addition to having served as executive director of Amnesty International USA and COO of Human Rights Watch, Nossel was deputy assistant secretary of state for international organizations during the first term of President Barack Obama '91, leading U.S. engagement at the U.N. on humanitarian issues. The granddaughter of German Jewish refugees who settled in Cape Town, South Africa, she saw the disconnect between apartheid's stark reality and her suburban New York existence when visiting relatives as a girl — an experience that inspired one of Nossel's earliest engagements

as a human rights advocate, working to help implement South Africa's National Peace Accord in the early 1990s.

"I had a ringside seat for this inspirational, breakthrough moment, when people were gaining the right to vote and have a say in their government for the first time," she recalls. "It kindled for me a deep passion for standing with those who are repressed and daring to express themselves."

With the midterm elections in the rearview mirror and the 2024 presidential election approaching, Nossel says in the months ahead she and others at PEN will be keeping a close watch on "the place of truth in American society, and whether disinformation dating back to the 2020 election remains a political force in our public life, or subsides — that will be an important litmus test of being able to return to a less polarized political environment." A member of the independent Facebook Oversight Board since April 2021, Nossel also expects to see an uptick in debate over regulation of free speech in the digital sphere. "New laws are being introduced in the States and the EU," she says. "I think we're going to learn more about how that regulation works, and how it may need to be refined."

—JULIA HANNA

A new book co-written by Andrew Stobo Sniderman spotlights inequities in Canada's Indigenous communities — and a path toward justice

## Separate but Unequal

**Andrew Stobo Sniderman LL.M.** '22, a lawyer and writer from Montreal, has spent the past few months traveling around Canada talking about his bestselling book, "Valley of the Birdtail: An Indian Reserve, a White Town, and the Road to Reconciliation," co-written with Douglas Sanderson (Amo Binashii). It's a work about Canada's past that Sniderman hopes could lead to a better future.

The book follows the stories of multiple generations of two families in western Manitoba — an Indigenous family on the Waywayseecappo First Nation reserve and a Ukrainian Canadian family across the valley in Rosssburn — over 150 years. It weaves in Canadian history, politics, and law to illustrate how their lives and communities became separate and unequal. Unlike many similarly affected communities across Canada, however, in 2010 Waywayseecappo and Rosssburn charted their own course, finding a way to equalize the government funding available to their schools and pooling resources. Since then, more students from Waywayseecappo have gone on to graduate from high school, and bridges have been built between the two communities.

Sniderman first wrote about Waywayseecappo and Rosssburn in 2012, seeing them as illustrative of the gap in Canada between non-Indigenous and Indigenous schools, the latter of which had for decades received thousands of dollars less per student.

Earlier, in reporting he had done on Canada's Truth and Reconciliation Commission, survivors of the century-old Indian residential schools — which were responsible for the abuse, neglect, and entrapment of countless First Nation people — told their stories. "It was a devastating experience for me, and inspiring



Andrew Stobo Sniderman,  
co-author of "Valley of the Birdtail"

at the same time," Sniderman recalled. "The residential schools are closed, but the after-shocks continue for many generations."

As he began researching the book, he saw that as a non-Indigenous Canadian, he couldn't do it justice alone, and asked Sanderson, who had been his property law professor at the University of Toronto and is a member of the Opaskwayak Cree Nation, to join him. "He was thinking about the big picture in a way that I just hadn't been," said Sniderman.

To avoid reinforcing what Sniderman described as "a narrative of hopelessness," they decided to focus on the Birdtail Valley communities. "We wanted to find a place that illustrated what had gone wrong in the past but could also show what a better future could look like," he said.

Ten years in the making and the product of archival research and extensive interviews

with residents of the two communities, "Valley of the Birdtail" has met with praise for its fidelity to the historical record and to its characters. Bob Rae, Canada's ambassador to the U.N., called it "a remarkable book, combining wonderful stories with historical, legal, and political analysis on a subject that is critical to our future in Canada and around the world."

Law is also a character in the book, according to Sniderman. Canada's Indian Act and other government mandates subjected Indigenous communities to decades of discrimination and oppression, from threatening parents with arrest if their children did not attend the residential schools, to imposing restrictions on dancing, to making it almost impossible for an Indigenous community to hire a lawyer.

"The government also ignored legal constraints," Sniderman said, imposing a "glaringly illegal" pass system which controlled a resident's ability to leave the reserve. "I found examples of government officials acknowledging the illegality of the pass system, but they still enforced it for decades."

In 1982, Canada integrated its first Charter of Rights and Freedoms into its Constitution, but the oppression and unequally funded schools persisted. "The inequality between the two sides of the Birdtail was not an aberration. It was not some unfortunate, isolated case. It was, rather, perfectly in keeping with the norm for the five hundred schools on reserves across Canada," Sniderman noted. "The fact that these communities had separate but unequal schools for many decades — even after Canada had this beautiful Charter of Rights and Freedoms — has never been addressed."

It was this constitutional question that animated Sniderman's thinking while writing the

*Continued from page 46*

book and during his studies at Harvard Law. In his LL.M. paper, under the supervision of Professors Michael Klarman and Martha Minow, he outlined a case for holding unconstitutional the unequal treatment of schools on reserves. He also examined the parallels between the integration of Indigenous children into Canada's provincial public schools and the integration of Black children in the U.S.

At Klarman's suggestion, Sniderman expanded his research to newspaper archives. That's when he came across two photos in Toronto's *The Globe and Mail* — from September 1954, just a few months after the U.S. Supreme Court's ruling in *Brown v. Board of Education* — and an announcement that the first group of Indian students had enrolled in a public school, calling this “an experiment to see how well a scheme of non-segregation works out.”

“These experiences of integration are absolutely lined up in time,” Sniderman said. “*Brown* was not the direct cause of what was happening in Canada, but it did bring about a lot of reflection and draw more attention to the problem of separate schools in Canada.” One of the interesting differences, he said, was that in Canada, starting in the early 1970s, many hundreds of Indigenous communities pulled their children out of the newly integrated public schools and set up their own schools on reserves. One Indigenous leader, cited in the book, described the new government policy of integration as a “thinly disguised programme of extermination through assimilation.” Sniderman notes that communities in Canada still wrestle with the upsides and risks of separate education.

Sniderman, who lives in New York with his wife, Mariella, also a lawyer, and their infant son, Amaru (named after the last Inca who fought against the Spanish), returns to HLS in September to pursue doctoral studies. “Writing this book has been the most challenging and best work I've ever done,” he said. “Now I'm looking for a worthy sequel!”

—AUDREY KUNYCKY

corporate and financing transactions and related energy and infrastructure matters, with a focus on transactions in Latin America.

**NANCY ALLRED COLLINS** has joined Crowe & Dunlevy and is a director in the firm's Dallas office and member of its taxation practice group. She focuses her practice on international, federal, state, and local income taxation as well as gift and estate tax planning. She is also a member of the firm's private wealth and closely held business practice group and counsels family offices, as well as domestic and foreign ultra-high-net-worth individuals, on asset protection and estate planning strategies.

**MIGUEL A. LOPEZ**, an attorney in the New York office of Littler, has been named secretary of the New York City Bar's Trade Secrets Committee. The City Bar's mission is to equip and mobilize a diverse legal profession, and the Trade Secrets Committee helps section members, other attorneys, and their clients understand trade secrets by providing educational programs and forums. At Littler, Lopez advises and represents clients on matters involving trade secret disputes, worker classification for independent contractors, unfair competition, and exemptions to federal and state overtime laws. He has a special interest in startup and gig-economy businesses, as well as minority- and LGBTQ+-owned enterprises.

**KIMBERLY LUCAS** has been promoted to counsel at Latham & Watkins in Washington, D.C. She is a member of the real estate practice and corporate department and represents clients in commercial real estate matters, including commercial mortgage loan transactions, joint ventures, commercial dispositions and acquisitions, and leasing matters.

#### 2012

**DEVIN O'CONNOR** advises clients on federal environmental law matters, with a particular focus on complex environmental regulatory issues and litigation, as a new partner at Latham & Watkins. She is a member of the environment, land, and resources practice and the litigation and trial department in Washington, D.C.

**GEMMA MOOTOO RAJAH LL.M.** is now counsel at Latham & Watkins in New York. A member of the capital markets practice and corporate department, she represents financial institutions, corporate clients, and private equity firms in capital markets transactions and general securities matters.

#### 2013

→ 10TH REUNION APRIL 21-22, 2023

**YONI LEVY** has become a partner at Ropes & Gray in Boston. He guides sponsors and investors through fundraising, ranging from first-time offerings to billion-dollar funds, and works across fund types, including LBO, credit, energy, and evergreen funds.

**KATHRYN SEEVERS**, new counsel at Ropes & Gray in Washington, D.C., advises investors and private fund managers on the formation and operation of private equity funds, credit funds, and real estate funds. She also counsels asset managers on an array of transactional tax matters, with a focus on complex real estate transactions, including those involving public and private, equity, and debt REITs.

New Ropes & Gray partner **PJ SULLIVAN** is a private equity lawyer who focuses on M&A in the firm's Boston office. He works with investors in the middle-market and large-cap spaces and in a range of industries, including retail, consumer products, health care, and asset management.

**LEONIDAS THEODOSIOU LL.M.** has been elected partner in the antitrust practice of Morgan, Lewis & Bockius, resident in London. He represents multinational firms in merger control proceedings, litigation in the English and EU Courts, and enforcement matters, including cartel, abuse of dominance, and state aid investigations. Theodosiou has also recently been appointed vice chair of the ABA's Privacy and Information Security Committee.

**DAN ZUCKERMAN**, a new partner at Ropes & Gray in Boston, provides tax advice to private equity and hedge fund sponsors and investors through the full life cycle of funds across a range of asset classes.



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**2014**

New Latham & Watkins partner **ERIC RICE** is a member of the firm's capital markets practice and corporate department in New York. He advises clients on equity derivatives and equity-linked products, including convertible notes, structured share repurchases, and margin loans.

**NICHOLAS SCHLOSSMAN** has been promoted to counsel at Latham & Watkins in Washington, D.C. A member of the complex commercial litigation practice and the litigation and trial department, he represents clients in complex business litigation, class actions, and disputes with the government.

**CAITLIN WOOD** has been elected partner of Davis Polk and is a member of the capital markets as well as the derivatives and structured products practices in New York. She advises investment banks, corporations, and institutional holders on the structuring, negotiation, and execution of a broad range of equity-related transactions.

**2017**

**KESHAV DIMRI** has joined litigation firm Reynolds Frizzell in Houston as a trial attorney. He advises clients across a wide array of industries and loves to help them resolve difficult challenges.

**2018**

→ 5TH REUNION APRIL 21-22, 2023

**JOE RESNEK** sent news of the release of his first album called "1." Resnek, who worked as a public defender in Greenfield, Massachusetts, after law school, has put his legal career on hold and returned to Chelsea, Massachusetts, where he grew up, to focus on his music, according to a story in the Chelsea Record. His songs are about starting out in Chelsea and "coming home and being home again," he said. "They're like love songs to my hometown." They can be heard on several streaming platforms including Spotify, Apple Music, Amazon, and YouTube.

How Harvard Law alums fared in the 2022 U.S. midterm elections

**HLS in Congress**

A total of 13 Harvard Law School alumni won their congressional bids during the U.S. midterm elections.

Two longtime members of the Senate, Majority Leader Chuck Schumer '74 (D-N.Y.) and Mike Crapo '77 (R-Idaho), were both re-elected. They rejoined Harvard Law Professor Emerita Elizabeth Warren (D-Mass.) as well as several fellow graduates in the U.S. Senate who were not up for reelection: Tom Cotton '02 (R-Ark.), Ted Cruz '95 (R-Texas), Tim Kaine '83 (D-Va.), Jack Reed '82 (D-R.I.), Mitt Romney J.D./M.B.A. '75 (R-Utah), and Mark Warner '80 (D-Va.).

After advancing to multiple rounds in Alaska's ranked-choice voting system, Republican challenger Kelly Tshibaka '02 lost her bid to unseat Republican Senator of Alaska Lisa Murkowski.

Voters also returned 10 Harvard Law alumni to the U.S. House of Representatives: Joaquin Castro '00 (D-Texas), Josh Gottheimer '04



(D-N.J.), Raja Krishnamoorthi '00 (D-Ill.), Katie Porter '01 (D-Calif.), Jamie Raskin '87 (D-Md.), John Sarbanes '88 (D-Md.), Adam Schiff '85 (D-Calif.), Terri Sewell '92 (D-Ala.), Brad Sherman '79 (D-Calif.), and Juan Vargas '91 (D-Calif.).

Glenn Ivey '86 (D-Md.) joined Congress as a first-time representative after winning his race to replace Anthony Brown '92 (D-Md.).

Brown chose instead to run for Maryland attorney general and became the first African American elected to that position.

Congressman Jim Cooper '80 (D-Tenn.) did not seek reelection after his district was changed in the latest redistricting, while Antonio Delgado '05 (D-N.Y.) stepped down from his congressional seat earlier in 2022 in order to serve as New York's lieutenant governor. Democratic candidate Josh Riley '07 lost his race against a Republican challenger to represent Delgado's former congressional district, which was also changed in the latest redistricting.

Recent graduate Cara Mund '22 lost her bid as an independent to unseat a Republican incumbent in North Dakota's at-large district. House members Mondaire Jones '13 (D-N.Y.) and Andy Levin '94 (D-Mich.), who were also impacted by recent redistricting, left Congress after losing in primary races.

— AYSHA BAGCHI '17

**1940-1949**

MELVIN L. HIRSCH '48  
*May 26, 2022*  
 WALTER F. ROGERS JR. '48  
*Jan. 13, 2022*  
 GEORGE H. DUMMER '49  
*June 3, 2022*  
 HUGH KNOWLTON JR. '49  
*April 4, 2022*  
 DONALD C. LUBICK '49  
*Feb. 8, 2022*

**1950-1959**

I. FREDERICK SHOTKIN '50  
*April 15, 2022*  
 TOBIAS J. BERMANT '51  
*March 17, 2022*  
 DANIEL C. COHEN '51  
*April 28, 2022*  
 ALLEN GROSSMAN '51  
*Oct. 9, 2020*  
 HARRY G. LEFFLER '51  
*March 11, 2022*  
 S. THOMAS MARTINELLI '51  
*June 15, 2022*  
 JEROME MEDALIE '51  
*June 16, 2022*  
 MELVILLE NEUMAN LL.M. '51  
*April 26, 2022*  
 CLIFFORD DAVIS '52  
*June 11, 2022*  
 BERTRAM H. FIELDS '52  
*Aug. 7, 2022*  
 JOSEPH J. NAHRA '52  
*Feb. 27, 2022*  
 SYDNEY MICHAEL ROGERS  
 JR. '52  
*June 25, 2022*  
 WELLINGTON F. "SCOTTIE"  
 SCOTT III '52  
*June 17, 2022*  
 HARRY L. WALLACE '52  
*May 15, 2022*  
 MILTON J. CRYSTAL '53  
*June 19, 2022*  
 SAMUEL L. HACK '53  
*May 18, 2022*  
 ARTHUR C. JOHNSON '53  
*March 10, 2022*  
 DAVID LANDAU '53  
*March 21, 2022*  
 ELISABETH M. LEUZINGER-  
 IRMINGER LL.M. '53  
*Sept. 29, 2021*  
 RICHARD A. MILLER '53  
*Nov. 17, 2022*  
 MARTIN F. RICHMAN '53  
*May 22, 2022*  
 ROBERT E. SENGHAS '53  
*June 26, 2022*  
 S. GILMER TOWELL '53  
*March 30, 2022*  
 WILLIS V. CARPENTER '54  
*April 8, 2022*  
 JAMES D. GABLER '54  
*March 10, 2022*  
 JOHN F. GEANEY JR. '54  
*Dec. 25, 2017*  
 JAMES C. INGWERSEN '54  
*June 19, 2022*  
 E. LEONARD KANE '54  
*Jan. 13, 2022*

PAUL R. LARKIN JR. '54  
*March 18, 2022*  
 JOHN T. RONAN '54  
*March 24, 2022*  
 FREDERICK S. STERNS '54  
*Feb. 9, 2022*  
 ROGER M. WHITEMAN '54  
*June 7, 2022*  
 JAMES C. BUSHBY '55  
*June 3, 2022*  
 FRANK B. GILBERT '55  
*May 14, 2022*

WILLIAM M. GROSS '55  
*May 11, 2022*  
 CHARLES D. MAHAFFIE JR. '55  
*June 18, 2020*  
 JOHN F. MCCLATCHEY '55  
*Feb. 27, 2022*  
 CHARLES H. MELOCHE JR. '55  
*Jan. 19, 2022*  
 JOHN P. REID '55  
*April 26, 2022*  
 DAVID WHEELER '55  
*April 25, 2022*  
 PAUL F. MARX '56  
*May 24, 2022*  
 JOHN R. OLESON '56  
*July 6, 2022*  
 ROBERT M. OSTER '56  
*Jan. 17, 2022*

ALLEN N. RIESELBACH '56  
*Aug. 2, 2022*  
 JAMES M. STOREY '56  
*April 16, 2022*  
 RODNEY H. WASHBURN '56  
*Feb. 13, 2022*  
 KARL GREENMAN '57  
*June 12, 2022*  
 HAROLD L. HALPERN '57  
*Jan. 2, 2022*  
 JOEL F. HANDLER '57  
*Sept. 22, 2022*  
 DONALD B. KING '57  
*Oct. 20, 2022*  
 DONALD G. LUBIN '57  
*June 5, 2022*

RONALD A. MORRIS '57  
*Nov. 19, 2021*  
 RICHARD PARTRIDGE '57  
*Feb. 27, 2022*  
 NORMAN E. SCULL '57  
*Jan. 4, 2022*  
 JOSEPH E. SILVERMAN '57  
*Aug. 4, 2022*  
 CURTIS V. TITUS '57  
*July 26, 2022*  
 JOBST-HINRICH VON BULOW  
 LL.M. '57  
*Nov. 30, 2018*  
 TRUMAN S. CASNER '58  
*March 15, 2022*  
 DAVID A. DOHENY '58  
*March 1, 2022*  
 WILLIAM J. FOOTE '58  
*April 17, 2022*  
 ALBERT M. FORTIER JR. '58  
*March 5, 2022*  
 COLIN T. NAYLOR III '58  
*March 1, 2022*  
 ARTHUR J. ROTHKOPF '58  
*Feb. 9, 2022*  
 STANLEY WEISS '58  
*July 31, 2020*

JOHN B. WILL '58  
*Oct. 4, 2022*  
 ALFRED J. DIETSCH '59  
*Feb. 28, 2022*  
 ROBERT C. ELY '59  
*March 3, 2022*  
 FRANK H. FINCH JR. '59  
*July 23, 2022*  
 REEDER R. FOX '59  
*Feb. 13, 2022*  
 W. FLETCHER HOCK JR. '59  
*April 13, 2022*  
 FRANKLIN G. HUNT '59  
*Jan. 13, 2022*  
 JOHN C. KEENE '59  
*March 4, 2022*  
 MICHAEL MULRONEY '59  
*Feb. 28, 2022*  
 WILLIAM C. PARLER LL.M. '59  
*May 6, 2022*  
 JOHN W. POOLE JR. '59  
*April 17, 2022*  
 RICHARD J. SCHWARZSTEIN  
 '59  
*May 29, 2022*  
 MARK THOMAN '59  
*May 24, 2022*  
 RICHARDSON "PETER" WHITE  
 JR. '59  
*Aug. 29, 2022*

**1960-1969**

RONALD L. BOORSTEIN '60  
*Jan. 25, 2022*  
 WARREN H. GREENE JR. '60  
*April 15, 2022*  
 PEGRAM HARRISON '60  
*July 5, 2022*  
 ELLIS A. HORWITZ '60  
*March 24, 2022*  
 RACHEL M. H. "POLLY"  
 JOHNSON '60  
*March 15, 2022*  
 GERALD A. LEWIS '60  
*Jan. 24, 2022*  
 FRANK M. RASMUSSEN '60  
*March 23, 2022*  
 NICK BEILENSEN '61  
*Feb. 22, 2022*  
 RICHARD I. BURNHAM '61  
*April 26, 2022*  
 JOHN H. CALDWELL '61  
*Feb. 19, 2022*  
 NOEL M. FIELD JR. '61  
*June 12, 2022*  
 NEIL I. KILSTEIN '61  
*May 22, 2022*  
 J. JOSEPH MCGOWAN '61  
*April 24, 2022*  
 BERNARD W. NUSSBAUM '61  
*March 13, 2022*  
 NORMAN P. ROUSSEAU '61  
*May 26, 2022*  
 LAURENCE H. SILBERMAN '61  
*Oct. 2, 2022*  
 MILES A. COON '62  
*May 21, 2022*  
 WILLIAM I. COWIN '62  
*Aug. 9, 2022*  
 ASHTON HAWKINS '62  
*March 27, 2022*  
 LESLIE T. "TERRY" JONES '62  
*April 14, 2022*

ROLAND M. PERACCA JR. '62  
*April 1, 2022*  
 EDWARD F. SHERMAN '62  
*June 7, 2022*  
 ARTHUR W. TODD JR. '62  
*May 28, 2022*  
 JOHN L. WASHBURN '62  
*July 13, 2022*  
 ANDREW M. BROWN JR. '63  
*June 16, 2022*  
 WHITNEY I. GERARD '63  
*June 25, 2022*  
 MICHAEL N. SOHN '63  
*March 22, 2022*  
 FRANK S. BAYLEY III '64  
*Nov. 12, 2022*  
 ALBERT T. CHANDLER '64  
*Oct. 25, 2022*  
 CHARLES P. CONDON '64  
*Dec. 13, 2021*  
 MARIO A. IORILLO '64  
*April 13, 2022*  
 DAVID H. KOPELMAN '64  
*Feb. 8, 2022*  
 VICTOR LEVINSON '64  
*May 28, 2022*  
 JAMES E. DANIELS '65  
*Oct. 18, 2022*  
 DAVID F. HAYES '65  
*June 28, 2022*  
 ANTHONY J. MEDAGLIA JR.  
 '65  
*April 14, 2022*  
 PETER W. STEKETEE '65  
*March 31, 2022*  
 KENNETH R.M. THOMPSON  
 '65  
*May 18, 2022*  
 THEODORE W. VOLCKHAUSEN  
 '65  
*Aug. 1, 2021*  
 ALAN L. ADLESTEIN '66  
*March 7, 2022*  
 RUSSELL M. COOMBS '66  
*June 5, 2022*  
 JOHN ECKEL '66  
*March 15, 2022*  
 JOHN A. GRAUSTEIN '66  
*Oct. 23, 2022*  
 MARY K. "KAY" RYAN '66  
*March 26, 2022*  
 ROBERT M. WEINBERG '66  
*June 17, 2022*  
 MICHAEL S. WILDER '66  
*May 18, 2022*  
 MONROE E. "MIKE" FREEMAN  
 JR. '67  
*April 20, 2022*  
 JOHN G. GAINES '67  
*June 25, 2022*  
 RICHARD S. GALLAGHER '67  
*May 16, 2022*  
 RICHARD STONE '67  
*May 29, 2022*  
 RAYMOND D. COTTON '68  
*March 22, 2022*  
 PHILIP C. JOHNSTON '68  
*Feb. 4, 2022*  
 JOEL L. SELIG '68  
*May 30, 2022*  
 RICHARD M. WHISTON '68  
*Jan. 2, 2022*

J. MONTIETH "MONTY"  
 ESTES '69  
*Feb. 11, 2018*  
 KENNETH M. ROBINS '69  
*April 6, 2022*  
 JOHN M. "JAY" WESTCOTT  
 JR. '69  
*May 24, 2022*

**1970-1979**

JAMES M. KRAMON LL.M. '70  
*Feb. 25, 2022*  
 JOHN JAY OSBORN JR. '70  
*Oct. 19, 2022*  
 WILLIAM A. SIMS '70  
*Feb. 22, 2022*  
 JAMES PHILLIP CHANDLER  
 LL.M. '71  
*July 16, 2022*  
 JOHN V. ERICKSON '71  
*April 16, 2022*  
 JOHN E. KENNEDY '71  
*June 25, 2022*  
 SAMUEL COOPER III '72  
*Dec. 21, 2019*  
 ROBERT N. ECCLES '72  
*March 6, 2022*  
 WILLIAM A. JOHNSON '72  
*June 22, 2022*  
 DAVID MCKEE '73  
*Jan. 13, 2022*  
 DAVID W. O'CONNOR '74  
*June 13, 2022*  
 JOSEPH B. TOMPKINS JR. '74  
*April 15, 2022*  
 MANUEL G. AGUILAR '76  
*March 3, 2022*  
 JOHN W. FOSTER '76  
*July 8, 2022*  
 THOMAS M. MUSTIN '76  
*July 5, 2022*  
 STEPHEN J. SIRIANNI '76  
*May 14, 2022*  
 JEFFREY RANDALL KARP '77  
*Jan. 4, 2022*

**1980-1989**

RICHARD L. CLAMAN '80  
*Jan. 5, 2022*  
 JOHN CABELL KINGERY '80  
*July 22, 2022*  
 JAVIER "JAY" AGUILAR '81  
*Feb. 8, 2022*  
 ARON A. GOLBERG '81  
*June 12, 2022*  
 TETSURO NAKAMURA LL.M.  
 '87  
*2020*  
 MICHAEL LACOVARA '88  
*Feb. 25, 2022*

**1990-1999**

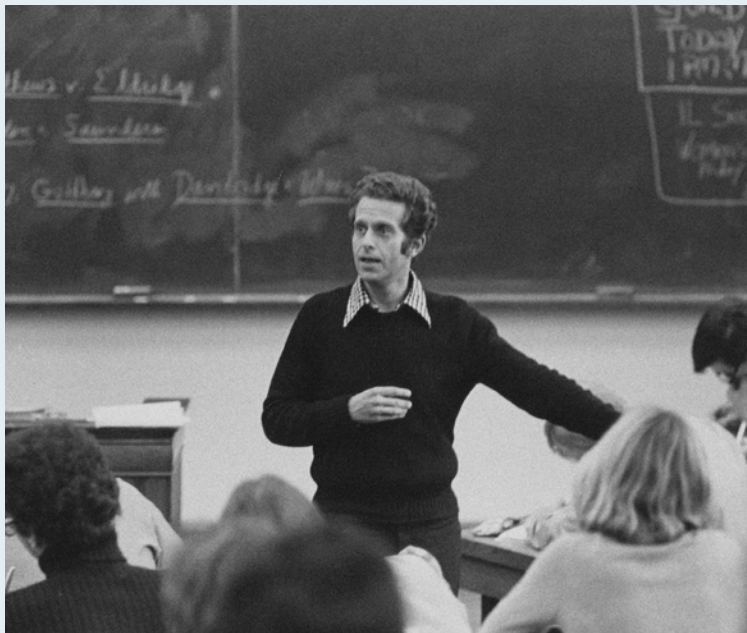
KAREN BELL EISENBERG '90  
 LL.M. '95  
*Jan. 19, 2022*  
 TIMOTHY D. CHURCH '92  
*Feb. 8, 2022*  
 YOSHIMASA FURUTA LL.M.  
 '95  
*Dec. 3, 2021*

**2000-2009**

ALLISON R. BROWN '02  
*Aug. 15, 2020*

## Church, State ... and Beer?

On the 40th anniversary of *Larkin v. Grendel's Den, Inc.*, Laurence Tribe reflects on the First Amendment case that got its start in a Harvard classroom and went on to the Supreme Court



Herbert Kuelzer, a Bavarian immigrant, opened Grendel's Den restaurant in 1971

In the early 1980s, Harvard Law School Professor Laurence Tribe '66 was writing the first edition of his treatise on the American Constitution and teaching a course on the topic. During a session focused on religious freedom, Tribe had just made the point that in our system of government, churches cannot wield power over secular life, when a student raised his hand and asked: "Professor Tribe, if that's true, why can't I get a beer with my lunch at Grendel's Den?"

The answer — which centered on a Massachusetts state law that allowed church officials to veto the sale of alcohol within 500 feet of their property — led Tribe, with Harvard Law colleagues Stephen Breyer '64, now Byrne Professor of Administrative Law and Process, and David Rosenberg, now Lee S. Kreindler Professor of Law, *Emeritus*, to file a legal challenge against the state, which ultimately resulted in a landmark Supreme Court decision, *Larkin v. Grendel's Den, Inc.* The challenge successfully changed laws in nine states and paved the way for the restaurant Grendel's Den — a Harvard Square institution — to finally, in 1983, obtain a license to sell alcoholic beverages, which it still does to this day.

Forty years later, reflecting on the continued importance of the case, Tribe, now the Carl M. Loeb University Professor, *Emeritus*, says: "The principle that churches should not be able to wield governmental power is an important part of the whole idea of self-government. ... At a time when democracy is under such threat, no principle could be more basic than that."



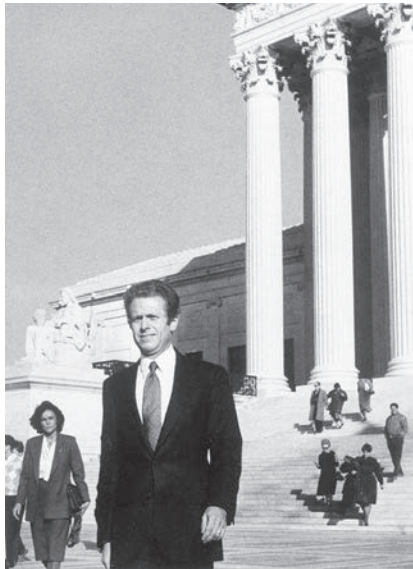
Tribe's complaint, filed on behalf of Grendel's Den against the Massachusetts Liquor Licensing Authority, was successful in federal district court on First Amendment grounds, then was overturned by the 1st Circuit Court of Appeals, before being reversed en banc. The state of Massachusetts then decided to take the case before the U.S. Supreme Court.



but soon realized his business couldn't get a liquor license



without permission from the church next door (the Holy Cross Armenian Catholic Church).



Because "the Court was quite enamored of originalism," Tribe said, he focused on the founding of the Republic in his oral argument, pointing to that period as a time when churches were expressly prohibited from exercising governmental power.



On Dec. 13, 1982, the case was decided 8-1 (with Justice William Rehnquist dissenting), ruling that it was unconstitutional to deny Grendel's Den a liquor license by exercising a religious veto.

**“The face** of the legal world has changed, and so, I believe, has its character.”  
—*Sondra Miller '53, a member of the first HLS class to admit women*

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Sondra Miller (third from left) and eight other women of the Class of '53 meeting with Vice Dean Livingston Hall '27