

# Harvard Law

*bulletin*

Summer 2005

**SPECIAL ISSUE**

Crime  
and  
Punishment

# UNBOUND



Breaking  
free  
from  
old  
thinking  
about  
criminal  
law

**ALSO INSIDE:**  
The Prolific  
Mr. Dershowitz

**Camera**

PHOTOGRAPH BY KATHLEEN DOOHER



Commencement 2005

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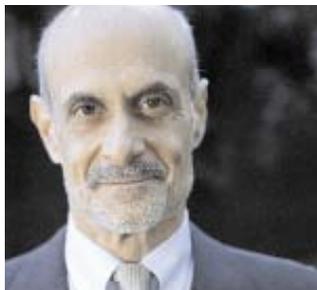
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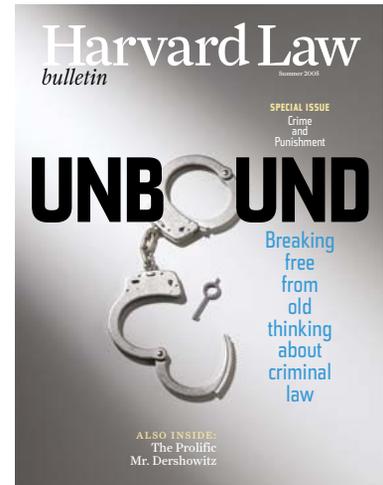
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COVER  
Photograph by Christopher Harting

# Criminal Law in Flux

CRIMINAL LAW IS standard fare for every Harvard 1L. There's a reason for this, of course: The laws that determine when and how individuals should be punished are at the heart of any legal system, including our own. And in a sort of "perfect storm" scenario, recent events have conspired to raise criminal law to an ever-greater prominence. The specter of terrorism, DNA-based exonerations of death-row inmates, human rights abuses—these are the kinds of issues that prompt us to think deeply about the way a criminal justice system should function.

In the field of criminal law, as in so many others, I'm proud to say that Harvard Law School alumni, professors and students are taking the lead in addressing many of the most pressing issues of our time. The remarkable scope of their activities is reflected in this issue of the Bulletin. For example, "The Guardian" profiles Homeland Security Secretary Michael Chertoff '78, now charged with the massive task of overseeing the nation's antiterrorism efforts. For another, very personal perspective on criminal law, turn to "Putting Together the Pieces," the inspiring story of Geraldine Umugwaneza LL.M. '05, who lost her family in the



1994 Rwandan genocide and went on to become a judge in the court charged with implementing the country's new "gacaca" system, a traditional form of dispute resolution aimed at promoting reconciliation.

As many of you know, one of my highest priorities as dean is to instill in all students—regardless of career track—a genuine commitment to public service, and it's exciting for me to see the eagerness with which so many have embraced this challenge. One of the newest examples of this enthusiasm is the Harvard Project on Wrongful Convictions, an affiliate of the national Innocence Project. As described in "Guilty Until Proven Innocent," students involved in the Harvard Project review cases with an eye to ascertaining whether

post-conviction DNA evidence might yield conclusive proof of innocence.

While most would agree that our criminal justice system stands in need of some reform, there is endless debate over what changes should be made. Our criminal law faculty members, along with many alumni, have dedicated countless hours to studying these complex and profoundly important questions. "Aftermath" charts the immediate fallout from the Supreme Court ruling freeing federal judges from mandatory sentencing guidelines. As the air begins to clear, Professors William Stuntz, Philip Heymann '60 and Carol Steiker '86 share their thoughts on the new landscape, which could turn out to be not so different from the old one. And in "Is the War on Drugs Succeeding?" HLS alumni who have played key roles in the national debate on drug policy—among them Joseph A. Califano Jr. '55, William Bennett '71 and Ethan Nadelmann '84—stake out their various positions.

As you read this issue of the Bulletin, I hope that you'll be struck—as I was—by the extraordinary work of Harvard Law School students, alumni and faculty in the criminal law arena. As always, there is a diversity of viewpoints. But so long as debate over crime and punishment continues, I'm confident that it will be far richer and more productive for the law school's contributions.

A handwritten signature in dark ink, appearing to read "Elena Kagan". The signature is fluid and cursive, with a long horizontal stroke at the end.

*Dean Elena Kagan '86*

## Letters

**“Pro bono is supposed to be something that a lawyer wants to do, not something that is imposed on us as a prerequisite to graduation.”**

—Aaron S. Kaufman '06

### IN SUPPORT OF MILITARY SERVICE

I JUST RECEIVED my copy of the Harvard Law Bulletin. Having been a student at HLS after serving in the military during a politically divisive war, I wish to thank you heartily for publishing Capt. Nick Brown's Letter from Baghdad as part of your public service edition. Whatever one may think about war in general or the advisability or implementation of a particular war, it seems that the institution of war is likely to continue as an instrument of general political policy far into the future. Soldiers, sailors and marines such as Capt. Brown are sometimes in the position of having to implement national policy through their service in hostile foreign lands. Unfortunately, that service is dangerous and often tedious and isolating, punctuated only by intermittent military attacks. In this particular case, their service has been subjected to an unprecedented level of often hostile public scrutiny from our national press.

Undoubtedly, service life under such conditions must often be difficult for Capt. Brown and his compatriots. Certainly, their service is far different from arguing a legal point before the United States District Court or the Circuit Court of Appeals in the relative safety of a courtroom of a relatively well-ordered constitutional republic. Even so, Capt. Brown sounds as though he's handling his situation well and is quite proud of his service. I commend him for it. I commend the Bulletin for sharing his experience with us.

JAMES M. BEHNKE '81  
*Boston*

### A WELCOME CHANGE

I WAS THRILLED to see the cover of the most recent edition of the Bulletin, proclaiming HLS's commitment to public service and pro bono. When I was at HLS ('79-'82), it was almost impossible to chart a career course with public interest goals in mind. Those of us who chose to flout the big corporate law firm interview mill were looked upon with skepticism and disdain. Although there was the Legal Services Institute and the Low-Interest Loan Repayment Plan, both laudable efforts, the career services office had nothing to provide by way of supporting those of us who wanted both summer jobs and postgraduate positions in anything other than big corporate law firms.

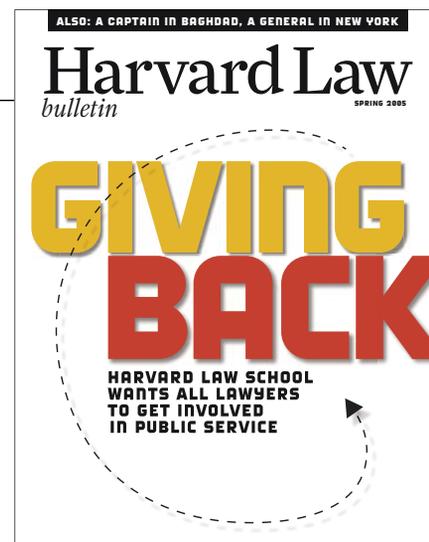
EMILY J. JOSELSON '82  
*Middlebury, Vt.*

### RETIREES AND PUBLIC SERVICE

THE HARVARD LAW BULLETIN of spring of 2005 notes the importance of supplying pro bono work and of all lawyers getting involved in public service. Then it fails to explain what role the retired Harvard lawyer can play nationwide.

In reviewing the Class Notes of the Harvard Law Bulletin, I see our graduates of the postretirement era do not mention involvement in public service work at a time in their lives when such work would still be intellectually rewarding. They could be helpful as role models for a generation of lawyers interested in public service.

LEONARD R. FRIEDMAN '69  
*Winthrop, Mass.*



### GOVERNMENT SERVICE? SERIOUSLY!

WHEN I FIRST read the dean's "Call to Public Service" (Spring 2005 Bulletin), I thought seriously she was advocating government as a career. But that can't be right because most Law School alumni I've met equate success almost exclusively with the accumulation of wealth in private practice. And the dean certainly wouldn't suggest graduates be less than fully successful.

No doubt it's OK for recent graduates to spend a year or two in a government job, but only as a stepping stone to something more lucrative in the private sector. And, of course, it's helpful and improves one's image (and ego) to do pro bono work on occasion or at the end of a financially successful private practice. All this [is fine], as long as it doesn't interfere with objective number one ... raking in the big bucks.

So, recent graduates, don't get any funny ideas about public service if you care about your reputation among most [HLS] alumni. Do just enough so you can mention it in your CV. But never, ever think of being a career bureaucrat unless you honestly don't care what most Harvard lawyers think! (Exclude those who go into teaching or the judiciary. They do public service without too much damage to their reputations. It's a minor exception to the established sentiment.)

FRED STERNS '54  
*Rockville, Md.*

### THE OTHER SIDE UNCOVERED

I AM SOMEWHAT upset about the back cover of the Spring 2005 issue of the

Harvard Law Bulletin, with the full-page photo of Suma Nair and the quote, "I'm glad there is a pro bono requirement. It brought me back to why I came here in the first place."

It misrepresents the views of most law students who very much resent the law school telling us that we must work a certain number of hours pro bono. Pro bono is supposed to be something that a lawyer wants to do, not something that is imposed on us as a prerequisite to graduation. While I doubt, for political reasons, that you're going to put a full-page picture of me on the back of the Bulletin saying, "I truly resent the pro bono requirement," I would appreciate if you make some sort of apology or emphasize that Ms. Nair's views are atypical. Or at the very least, please present views on the other side of the issue.

AARON S. KAUFMAN '06  
*Cambridge, Mass.*

#### A SOLDIER AND A TERRORIST

I WAS DELIGHTED to see Harvard taking on the issue of terrorism (Fall 2004), this extremely important, complex and difficult subject. After 65 years I still feel humility entering a discussion with so many great professors. But I believe I can add a dimension to the subject from a different point of view. I was a terrorist and an active participant in some of the deadliest terrorist acts in the history of warfare.

Sixty years ago I was a U.S. Army Air Forces navigator, one of 10 members of a B-29 crew, bombing Japan from Saipan in the Mariana Islands. I flew 24 bombing missions over 19 Japanese cities. Seventeen were fire raids. On March 9, 1945, a few days before I arrived on Saipan, the 20th

#### WE WANT TO HEAR FROM YOU

The Harvard Law Bulletin welcomes letters on its contents. Please write to the Harvard Law Bulletin, 125 Mount Auburn St., Cambridge, MA 02138. Fax comments to 617-495-3501 or e-mail the Bulletin at [bulletin@law.harvard.edu](mailto:bulletin@law.harvard.edu). Letters may be edited for length and clarity.

Air Force conducted the first great fire raid on the city of Tokyo. In two and a half hours 700,000 bombs fell in the target area, and approximately 200,000 women, children and old men were dead or dying. More than 1 million people became homeless. I was not on that raid but on three later and larger and similar ones over Tokyo.

Of my 24 bombing missions, I can only remember four in which the briefing officer described the target as a factory or military installation, and none of the targets if destroyed would have had any material effect on the outcome of the war.

Were we any different in motive or conduct than the modern terrorists in Iraq or Afghanistan or Israel? We were better equipped and killed more people. But we never talked of persons we were killing or the horrible manner of their deaths. Like today's terrorists, we were indifferent to the dead. We only wanted to create terror.

ARTHUR L. ABRAMS '40  
*Palm Beach, Fla.*

#### CLEARER THAN A BELL

KUDOS TO MALCOLM BELL (Letters, Spring 2005) for his succinct summary of all that is wrong with the so-called "war on terror." Poet Adrienne Rich was quoted recently with an even more pithy summation: "It has been used to crack down on dissent, on immigrants and foreigners and activists, on libraries and school textbooks—to diffuse a climate ... of ignorance and fear. To make war, not social good, the national goal."

JOHN T. HANSEN '63  
*Castro Valley, Calif.*

#### EVIDENCE OF GENDER DISPARITIES

IN HIS LETTER in your spring issue, Mr. [Arthur] Schneider '64 relies on his personal experience to question whether his female and male classmates were treated any differently. He acknowledges that his conclusions are limited by his own perceptions. Mr. Schneider is correct that we have to rely on personal experience in investigating sex discrimination for the Class of 1964. However, substantial data is now available on gender issues for recent years of law students.

A group of law students conducted a two-year study examining the experiences of female and male [HLS] students. The group conducted student surveys, monitored comments in 190 class meetings, analyzed 1L course grade data from the registrar's office and collected data on extracurricular involvement, among other efforts. The final report of the study (available at [www.law.harvard.edu/students/experiences](http://www.law.harvard.edu/students/experiences)) showed that there are systematic differences between the experiences of women and men at HLS. For instance, a male student was 50 percent more likely to speak voluntarily at least once during a class meeting than was a female student. Ten percent of students accounted for almost 45 percent of all volunteered comments spoken in 1L classes during a two-week period, and women constituted only 20 percent of this top group of volunteers. Women also pursued public interest activities and employment at higher rates than men. Additionally, over the past five years, male graduates were 70 percent more likely than female graduates to receive magna cum laude honors.

We now have an opportunity to base our discussion of gender issues at HLS on more than individual anecdotes. The HLS community's attention to these issues is critical not only for female students. In the end, addressing gender disparities may help make the HLS experience less "disagreeable to all," in Mr. Schneider's words.

ADAM NEUFELD '04  
*Washington, D.C.*

#### MORE SILVER FOR BULLETIN

After winning a silver medal in the regional Council for Advancement and Support of Education publications contest last year, the magazine received two more this spring from the national chapter of the organization.

# Can Dissent Take the Form of Official Action?

*Professor Heather Gerken says it can*



From gay marriage to jury nullification—sometimes, says Heather Gerken, the minority rules.

**You've recently been focusing on what you refer to as "dissenting by deciding." What do you mean?**

We always think of dissenters as speaking truth *to* power. Dissenting by deciding lets dissenters speak truth *with* power. It takes place when would-be dissenters—those in the minority—enjoy a local majority on some decision-making body like a city council, a jury or a school committee. In such instances, dissenters have a chance to go beyond a statement of what they, in theory, would do on an issue. Instead, they get to put their views in practice

and offer us a real-life example of their views.

San Francisco's decision to marry gays and lesbians is a good example. San Francisco officials knew they were outliers in the national debate. But instead of offering just an abstract articulation of their views on gay marriage, they showed us what gay marriage would really look like in practice. I think that decision altered the political landscape in a way that conventional dissent had never done. We now have a concrete practice, not just an abstract issue, to debate.

**What's the difference between dissenting by deciding and taking the law into your own hands?**

Just because a group of people does something the majority would reject doesn't make it lawless. Think about juries. Juries engage in nullification, often in instances where the majority of the community would take a different view. But the jury plainly is acting lawfully—that is, it is legal to nullify. And there are lots of instances where the majority grants a state or a city or a school committee leeway to decide, and the decision ends up looking different from the one the majority contemplated. Using the power you've been given to do something different from the majority is not lawless. That's what makes dissenting by deciding different from civil disobedience, where breaking the law is the form dissent takes. Here, dissent takes the form of a lawful decision.

And in most of these instances, the majority can decide *not* to give that power away. Or it can overrule the decision.

**Does this kind of dissent risk creating a backlash?**

Dissenting by deciding always poses the risk of going too far in the majority's eyes, and it thus always creates the risk of backlash—some people think that's what happened with San Francisco's gay marriage decision. But dissenting by deciding is also a particularly useful tool for average citizens to use to put their issues on the political agenda, to level the playing field a bit: They can draw attention to their concerns even though they may not have money or the majority behind them. \*

# Write of Passage

*A sampling from this year's crop of 3L papers*



## MILITARY BUT PRIVATE

WHEN THE ABU GHRAIB prison scandal broke last spring, and private contractors as well as U.S. soldiers were implicated, **Rebecca Weiner '05** had already begun to think about the complicated role of private military companies in Iraq. She found they often exist in a legal limbo—difficult to regulate and prosecute—and yet often provide necessary support. Her paper was supervised by Professor David Kennedy '80.

## CHARTER FOR AN EPIDEMIC

WINTER TERM this year found **David Flechner '05** in Angola, fluent in Portuguese and intent on completing a third-year paper that would yield something useful outside academe. Working with a local NGO, Flechner researched and wrote a human rights charter for people living with HIV/AIDS. By April, the NGO was using the charter (written in Portuguese). The related paper (written in English) was supervised by Human Rights Program Associate Director James Cavallaro.

## LOOKING INWARD

SINCE THE BOARD of directors of Enron Corp. hired a law firm to look into rumors of accounting irregularities, internal investigations have become nearly as common as heat waves in Texas. **Megan Bern '05** studied the trend and its implications for corporate legal

compliance and corporate governance in a paper supervised by Professor Guhan Subramanian '98.

## BACK TO BROWN

**Bryan Carter '05** wanted to understand why public education in some Southern states like North Carolina has historically been stronger than in others like Alabama, where he grew up. His comparative study of public education in the two states, supervised by Professor Martha Minow, took him back to *Brown v. Board of Education* and the very different responses of elected officials to the 1954 ruling outlawing school segregation.



## MOVING RIGHT

**George Hicks '05** has been asking a lot of questions about politics. He interviewed dozens of HLS students, faculty and alumni and concluded that conservatism is on the rise in the student body, and has been for 25 years. During the same period, the HLS Federalist Society, the local branch of the national organization of conservative and libertarian law students, has come into its own. His paper, supervised by Visiting Professor Daniel Coquillette '71, chronicles the two phenomena.

## LAND-USE ECONOMICS

WHEN THE GOVERNMENT takes property from a person or private entity

and transfers it to another, for a “public use,” property owners and libertarians may object. And under certain circumstances, **Daniel Kelly '05** does, too. At the heart of his law and economics analysis, supervised by Professor Steven Shavell, is the idea that many such transfers are inefficient.

## FAITH AND CREDIT

**Ezekial Johnson '05** and **James Wright '05**, both members of the Church of Jesus Christ of Latter-day Saints, were intrigued by an apparent contradiction: Utah's bankruptcy filing rate is sky-high, despite the Mormon church's admonition to avoid excess debt and consumption. As part of their paper, supervised by Professor Elizabeth Warren, they distributed questionnaires to Mormon and non-Mormon bankruptcy filers in cities in Utah, and what they learned surprised them.

## CONSTRAINT AND PROTEST

**Saratu Nafziger '05** grew up in northern Nigeria, before defendants were sentenced to death by stoning. Last December, she returned to find out from lawmakers, academics and activists how women have been faring since religious law was reintroduced. She found much legislation that is detrimental but also women who are protesting it. Her paper was supervised by Adjunct Professor Frank Vogel.



“Excessive pay isn’t the only cost of flawed compensation arrangements. Executives’ influence over their boards has produced pay arrangements that dilute and sometimes pervert incentives. Though the need to provide executives with adequate incentives is often given as the reason for the escalation of pay levels during the past decade, pay is much less linked to performance than is commonly recognized, and bonuses are often only weakly linked to performance. Also, much compensation is provided through stealth compensation such as retirement benefits that are largely decoupled from performance.” **Professor Lucian Bebchuk LL.M. ’80 S.J.D. ’84**, on common flaws in executive compensation arrangements, in the April *Optimize* magazine.

“[T]he law passed by Congress on Monday was an obvious attempt—under the pretense of allowing the determination of federal constitutional rights—to delay the outcome decreed by Florida state law with the hope of making that outcome impossible. That is precisely the worrisome tactic employed with increasingly imaginative stays and orders of relitigation in a number of federal courts. ... And it is also precisely the sort of tactic that Congress sought to discipline in the Effective Death Penalty Act.

“It is no good for politicians to try to justify this absurd departure from principles of federalism and respect for sound and orderly judicial administration by saying that, in this case, the life at stake is unquestionably innocent. For in many of the death penalty cases, the claim has also been that the prisoner had at least unfairly, and perhaps even incorrectly, been condemned to death.

“What we have is many of the same political leaders who denounced the Supreme Court’s decision forbidding states from executing those who committed their crimes as juveniles now feel free to parachute in on a case that had been within a state court’s purview for 15 years.” **Professor Charles Fried**, on the danger to federalism posed by Congress’ intervention in the Terri Schiavo case, in the March 23 *New York Times*.



BEBCHUK



FRIED



KAUFMAN



WARREN

“Academics could argue for a long time whether advice on recusal fits within the literal language of a communication about ‘procedures affecting the merits,’ but there seems little doubt that the parties are vitally interested in the private advice that a judge receives about whether to recuse. ... With academics doing so much outside consulting these days, an academic consulted ex parte may not be so ‘disinterested’ as the judge thinks. In addition, advice given informally and privately may be more off-the-cuff and less ‘expert’ than the inquiring judge realizes, and the pleasure and pride in being asked may lead to nondisclosure both of some ‘interests’ or of lack of expertise. There is also the danger that judges may select experts more likely to give the advice they desire and that experts may consciously or unconsciously lean toward giving the advice they believe that judges want to receive.”

**Professor Andrew Kaufman ’54**, on whether it is proper for judges to seek private expert advice about recusal, in the Feb. 21 *National Law Journal*.

“Why has it gotten so easy to fall off America’s economic ladder? The people in Washington who are rushing through the laws to make it harder ... to file for bankruptcy say it is about over-consumption and lack of personal responsibility. But that ignores very real changes in the economic conditions facing today’s families. In inflation-adjusted dollars, today’s median-income families are spending less on clothing, food, appliances, and furniture than their parents spent a generation ago. They are spending more on electronics, but that additional \$170 a year doesn’t explain 1.5 million families in bankruptcy. So where is the money going? Increases of 69 percent on housing costs and 90 percent on health insurance costs have ripped through the family budget. Other necessities, like gas and child care, are rising in price while wages are stagnating. In other words, the cost of being middle-class has shot beyond the reach of many families.”

**Professor Elizabeth Warren**, and her daughter, Amelia Warren Tyagi, on why bankruptcy filings have become more common in recent years, in the April 24 *Boston Globe*.

# A Wide-Ranging Curiosity

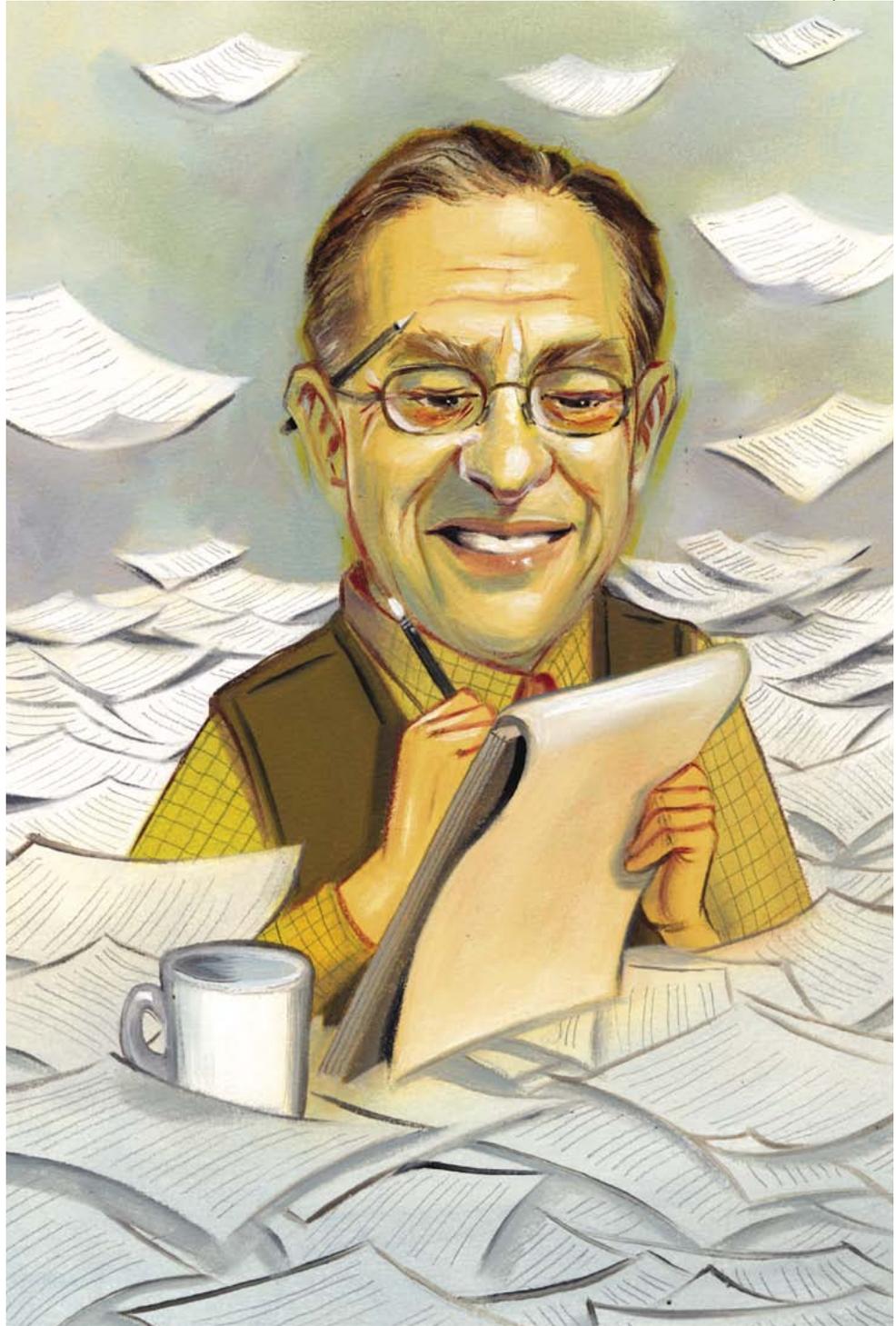
*Alan Dershowitz writes the way he thinks*

ASK PROFESSOR Alan M. Dershowitz to rank his favorite professional activities, and his response is unequivocal. “I love the actual act of teaching, being in the classroom, the most,” he said. “But a close second is sitting home alone with my white legal pad and pen, all by myself, and just writing, writing, writing.”

The evidence suggests that Dershowitz is not overstating the case. “Rights from Wrongs: A Secular Theory of the Origins of Rights” (Basic Books), published in November 2004, was his ninth book since the beginning of 2000—and his 19th since 1982, when Random House published his first popular book about law, “The Best Defense.”

Furthermore, there’s no reason to believe that the prolific Professor Dershowitz will be slowing down any time soon. He has two more books in the hopper. One, an examination of preemptive government action as a tool for self-protection, is already in book-length manuscript form and undergoing edits. The second, which he’s calling “The Case for Peace,” is a follow-up to his 2003 book “The Case for Israel” and will lay out his ideas on how to achieve lasting peace in Israel.

At the moment, both of these pending projects tangibly exist as stacks of paper within boxes that are piled on one side of his Hauser Hall office, where his earlier books, some of them foreign-language editions, line the walls. On a recent Friday afternoon, Dershowitz stood next to this massive output and talked about how he does it. He reached into a “Case for Peace” box and extracted a white legal pad, words written on every other line to provide space for additions. “I write everything by hand, and then I give it to Jane to



**“I walk around the house, smacking my head and saying, ‘I don’t have it. ... ’ And then suddenly it gels.”**

—Professor Alan Dershowitz

type,” he said, referring to Jane Wagner, his assistant.

While the legal pad is the first palpable evidence of a Dershowitz book, the process actually begins months or years ahead of the writing, he points out. “For me, the trick to writing a book is to think it through completely,” he said. “I separate out the craft of writing from the thinking it through. My wife will tell you I walk around the house, smacking my head and saying, ‘I don’t have it. I don’t know where it’s going.’ And then suddenly it gels, I sit down to do it, and the writing comes very fast. Very fast.”

He doesn’t follow a daily schedule, as many writers do. But he does follow a weekly one, which begins Friday night after his classes are over and continues through Tuesday.

Dershowitz also relies on various

types of cross-fertilization. First, he’s also a prolific author of opinion articles for newspapers and magazines, and some of that work finds its way into his books. Second, his classroom and seminar activity also often informs his books. He points out, for instance, that his pre-emption manuscript has been influenced by a seminar he taught on the subject during the fall semester.

“I handed out to students in the seminar a very, very rough draft of a few chapters. We went over some of them in class, students did papers, and in a couple of instances I was able to incorporate some of their ideas—and give them credit, obviously—into some of what I was writing.”

Finally, another obvious contributing factor to Dershowitz’s writing is his wide-ranging curiosity. His post-1999 books alone have addressed international terrorism (“Why Terrorism Works”), legal history (“America De-

clares Independence” and “America on Trial”), leading a fulfilling professional life (“Letters to a Young Lawyer”), civil liberties (“Shouting Fire”), the origins of rights (“Rights from Wrongs”) and religion (“The Genesis of Justice”).

Ask Dershowitz about the potential for burnout, and he just smiles and shakes his head. “I just never feel that,” he said. “I’m always energized.”

And it’s an energy that he wants others to share. Recently, elementary students at P.S. 312 back in Dershowitz’s hometown of Brooklyn, N.Y., asked if he might share some thoughts on writing. On April 14, he sent them a letter with the following words of advice: “Write like you speak and like you think. Don’t try to be fancy. Use simple words. Brooklynese is one of the most expressive languages in the world. You speak it. Now write it. ... I know it will move me. So keep writing. Write every day.” \* —Dick Dahl

**A Dershowitz sampler**

“The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Law” (Warner Books, 2000). *Key concepts in our legal tradition traced back to stories from the Bible.*



“Supreme Injustice: How the High Court Hijacked Election 2000” (Oxford University Press, 2001). *An examination of the high court’s role in the 2000 presidential election.*



“Letters to a Young Lawyer” (Basic Books, 2001). *Essays about life, law and what it means to be a good person.*



“Shouting Fire: Civil Liberties in a Turbulent Age” (Little, Brown and Co., 2002). *A collection of essays, making the case for certain rights and arguing against others.*



“Why Terrorism Works: Understanding the Threat, Responding to the Challenge” (Yale University Press, 2002). *How the international community can better deter attacks, while preserving fundamental liberties.*



“America Declares Independence” (John Wiley & Sons, 2003). *A re-evaluation of the history, political theory and theology underlying the Declaration of Independence.*



“The Case for Israel” (John Wiley & Sons, 2003). *In defense of Israel—its culture and its right to exist.*



“America on Trial: Inside the Legal Battles that Transformed Our Nation” (Warner Books, 2004). *Important legal cases, from the Salem Witch Trials to the Guantanamo Bay detention challenges.*



“Rights from Wrongs: A Secular Theory of the Origins of Rights” (Basic Books, 2004). *Rights arise from particular experiences with injustice, the author argues, rather than from religion, logic or law.*



UN

**SPECIAL SECTION**

B

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UN

Sometimes,  
the challenge  
is to take the  
cuffs off our  
own thinking.

D



## In criminal law, new ideas are taking flight

**S**UDDENLY, JUDGES ARE free from mandatory sentencing rules that tied their hands for nearly 20 years.

Innocent people are being freed by DNA evidence, and lawyers are working to remove the legal restraints that still hamper the process of exoneration.

Experts are debating whether it's time for drug policy to break free from an approach that has emphasized punishment largely to the exclusion of other strategies.

Under the threat of terror, a new secretary of Homeland Security is trying to end old rivalries and turf wars that have prevented law enforcement agencies from cooperating effectively.

And, after a genocide, a shattered nation is breaking away from the need for revenge, and moving forward through a process of truth and reconciliation.

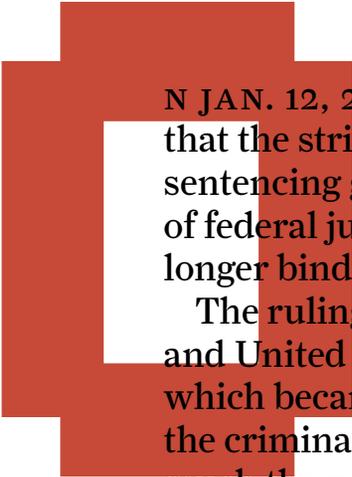
Unbound by old conventions, the teachers, students and lawyers of Harvard Law School are deciding what comes next.

**RESPONDING TO THE  
NEED FOR CHANGE, AT  
HOME AND ABROAD**

by Robb London '86  
illustrations by Luba Lukova

# aftermath

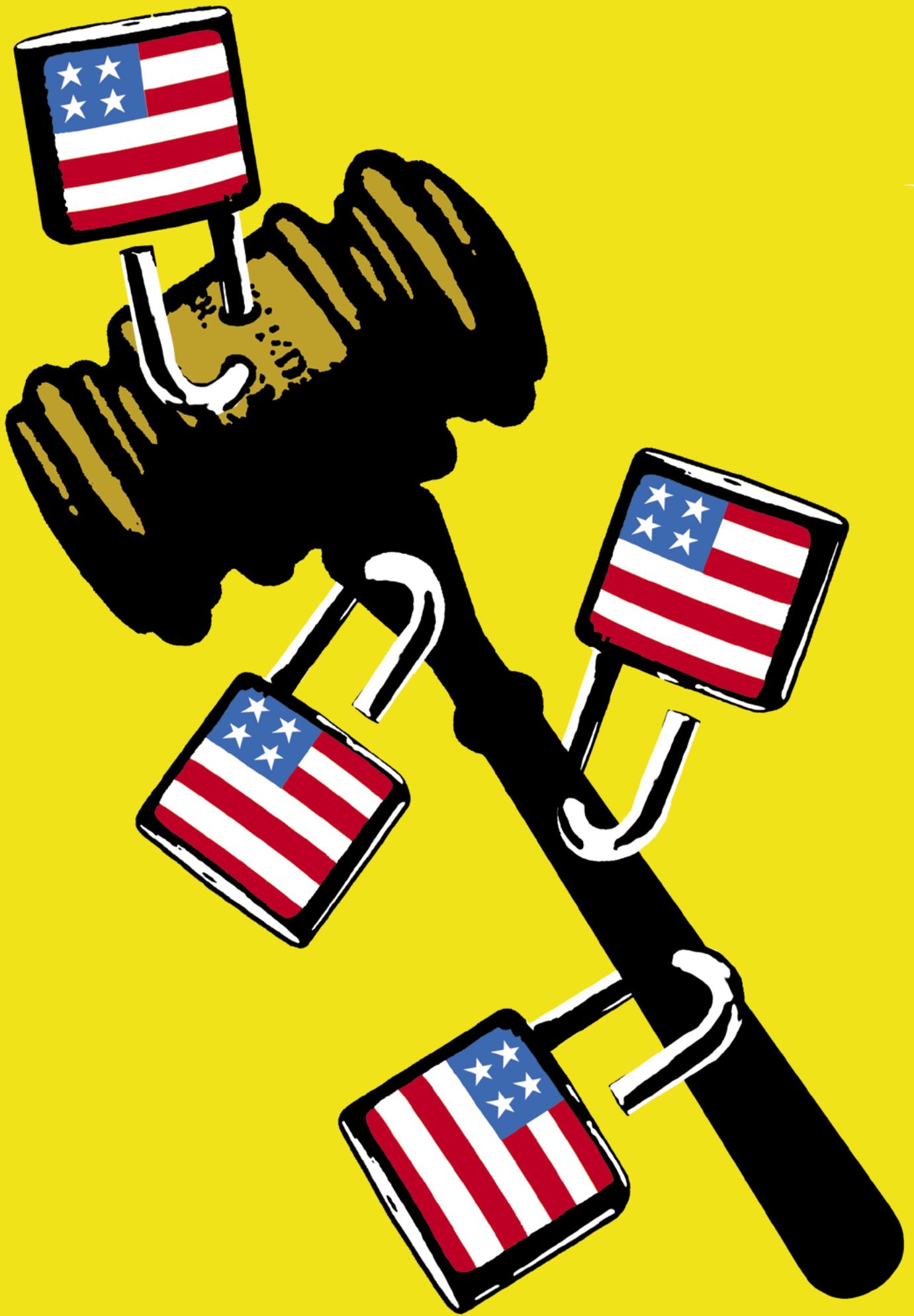
**THE FEDERAL SENTENCING GUIDELINES ARE  
DEAD. LONG LIVE THE GUIDELINES.**



ON JAN. 12, 2005, the U.S. Supreme Court ruled that the strict and sometimes unforgiving sentencing guidelines that have tied the hands of federal judges for nearly 20 years would no longer bind them.

The ruling came in *United States v. Booker* and *United States v. Fanfan*, consolidated cases which became known almost immediately in the criminal justice world as simply “Booker,” much the way lawyers use one-word references for other cases of landmark importance, like *Miranda* or *Gideon*.

But, while the Court ruled 5-4 that judges are no longer obligated to follow the guidelines’ punishment ranges when imposing sentences, it did not throw out the guidelines completely and, in a second part of its decision—and by a different 5-4 split—appears to have preserved their use, saying judges must continue to consult them.



The twin rulings have answered some questions with certainty but have raised a host of new ones, leaving practitioners and prisoners wondering where they stand as the aftershocks subside and the lower courts begin to feel their way through the new landscape.

“The clearest winners in this, at the moment, are the federal judges,” said Professor William Stuntz. “They’ve been complaining about the inflexibility of the guidelines for the better part of 20 years, and suddenly they’ve been given back much of the discretion that the guidelines took away from them.”

Defendants, too, are likely to benefit from Booker, at least in the short run, because judges are no longer bound by some of the tougher penalties that the guide-

of the decisions is limited to cases awaiting sentencing and some cases where appeals were pending. A few lower courts have already decided that Booker does not have retroactive effect. Nevertheless, says Stuntz, until the Court unequivocally slams the door on Booker-based attempts to reopen old punishment decisions, there will probably be hundreds of motions or petitions to reopen sentencings.

But perhaps the most important question raised by Booker is: What is the role of sentencing guidelines, now that they are no longer mandatory but must still be consulted? “What will an advisory guideline system look like?” Stuntz asked. “How much should judges adhere to them?”

## What is the role of the sentencing guidelines, now that they are no longer mandatory but must still be consulted? How much should judges adhere to them?

lines required. “When judges complained about the mandatory rules, it was usually because they thought the penalties were too harsh, especially in drug cases,” said Stuntz. “But this could turn out to be a case of ‘Be careful what you wish for,’” he added, “because if sentences now start looking lenient, Congress could decide to jump in with even tougher mandatory minimum penalties.”

Indeed, one of the new questions after Booker is whether Congress, fearful that courts will now be too lenient, will try to impose a “Booker fix” in the form of even tougher penalties or other legislation. “That’s a huge question at the moment,” said Professor Philip Heymann ’60. Heymann recently joined ranks with former Attorney General Edwin Meese and Frank O. Bowman ’79, a professor at Indiana University School of Law, asking the House of Representatives not to pursue a quick fix in response to Booker.

Another looming question is whether or to what extent Booker will be given retroactive effect—whether droves of defendants who were sentenced under the guidelines will now ask to be resentenced without the guidelines playing a mandatory role in their punishments.

The Court did not specifically address the question of retroactivity in Booker, but suggested that the reach

of the guidelines must be consulted and taken into account, it did not expressly address the question of how much weight they should be accorded by sentencing courts. There are already several district court decisions with varying opinions regarding the precise weight that should be given to the guidelines. Some have held that the guidelines should be given “heavy weight” and should be deviated from only in unusual cases for clearly identified and persuasive reasons, while others have said the guidelines are just one of a number of sentencing factors to be considered.

### THE ROAD TO BOOKER

While no one had predicted the two-part decision, most Court-watchers were at least braced for the first part, expecting the justices to rule that the guidelines were constitutionally flawed. Booker and Fanfan were the latest in a series of cases in which the Court had been moving inexorably in that direction. They brought to a head tensions that have existed in the criminal justice system since the founding of the republic. “Let mercy be the character of the lawgiver,” Thomas Jefferson wrote in 1776, “but let the judge be a mere machine.”

Jefferson’s hopes notwithstanding, until the late 1980s, judges had broad discretion to choose sentences



within wide ranges established by Congress or state legislatures. They were also free to base their decisions on a variety of facts about the defendant's criminal history and other matters that were never presented to the jury in cases that went to trial. And they were not required to find facts "beyond a reasonable doubt."

That discretion produced glaring disparities in sentences. Similar defendants convicted of similar crimes were often given widely varying punishments by different judges. Sentencing reform caught on, and by the end of the 1980s, Congress and many states had enacted guidelines. A leading proponent of the federal guidelines was Stephen Breyer '64, who helped draft them before he became an associate justice of the Supreme Court.

The federal guidelines established ranges of mandatory penalties for the gamut of crimes, and included adjustments upward or downward based on many factors, including the defendant's criminal history and characteristics of the offense. Many of the facts relevant to punishment were determined by judges, not juries, often by a measure of proof more relaxed than the "beyond a reasonable doubt" standard that governs the establishment of guilt.

There were very few grounds for judges to depart from those ranges. And, as Congress enacted progres-

sively tougher penalties for drug crimes and other offenses, judges increasingly complained that they were being forced to impose punishments too harsh for the circumstances of particular cases.

Defense attorneys brought numerous legal challenges to the guidelines in the 1990s but were unsuccessful in having them thrown out.

But in 2000, in the case of *Apprendi v. New Jersey*, defense lawyers hit pay dirt when they made a Sixth Amendment argument based on the right to have facts found by juries, not judges. The Sixth Amendment was the sleeping giant of sentencing law, and they shook it awake. When they did, they found five receptive members of the Court, including Justices Antonin Scalia '60 and Clarence Thomas.

In *Apprendi*, the Court ruled 5-4 that any fact, except for a defendant's prior convictions, that a judge relies upon as the basis for increasing the defendant's sentence above the statutory maximum (where such an increase is allowed based on the finding of an aggravating factor) must be submitted to a jury. "At that point, the handwriting was on the wall," said Stuntz, and the broader implications for judicial fact-finding under mandatory guidelines were hard to ignore.

#### THE BLAKELY THUNDERBOLT

Still, when the Court agreed in 2003 to hear a state guidelines case out of Washington, many thought it would use that case, *Blakely v. Washington*, to rule, as had nearly all lower courts, that *Apprendi* had no applicability to judicial fact-finding affecting sentences within otherwise applicable statutory ranges. "A lot of people hoped the *Apprendi* principle was limited to situations where a judge tries to impose an exceptional sentence, above the normal statutory maximum, based on some additional aggravating fact," said Douglas Berman '93, a professor at Ohio State University's Moritz College of Law and one of the nation's foremost experts on sentencing law. "They thought the Court would use *Blakely* to make it clear that judges could still engage in fact-finding that would only affect sentences below the normal statutory maximum."

But in June of last year, the Court ruled 5-4 in *Blakely* that the Sixth Amendment required that any fact relied upon as the basis for a sentence harsher than the one triggered by the facts found by the jury or admitted by the defendant—even a sentence below the statutory maximum—must be found by a jury, not a judge, unless the defendant waived the right to a jury. The Court

held certain components of Washington's sentencing provisions unconstitutional because they allowed a judge, acting without a jury and using a lower standard of proof than "beyond a reasonable doubt," to sentence above a legislated standard range based upon the judge's own finding of aggravating facts.

"[T]he 'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant ... not the maximum sentence a judge may impose after finding additional facts," wrote Scalia in his opinion for the majority. "When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment.'"

The Blakely decision suggested that judicial fact-finding cannot form any part of the basis for the imposition of a criminal sentence within a mandatory sentencing guidelines system, absent the defendant's waiver of a jury.

"Blakely made clear that if you want a system of mandatory guidelines where sentences are bumped upwards based on fact-finding—even when they are still below the statutory maximum—then you're going to have to let the jury decide the facts relevant to sentencing, and by a 'beyond a reasonable doubt' standard," Berman said. "It was a thunderbolt."

Even though the Blakely holding was limited to Washington state's guidelines, Scalia's opinion left little doubt that the federal guidelines would not survive Blakely-based scrutiny. With approximately 87,000 federal criminal prosecutions each year, the potential impact was staggering.

The federal guidelines required judges to elevate sentences from a base, or "presumptive," level whenever any of a wide range of enumerated aggravating factors was proven by a "preponderance of the evidence." Most of those factors were specified only in the guidelines, and not in statutes. If Blakely implied that federal defendants would now have the right to jury trial of those factors, the federal court calendars could become unmanageable.

"Blakely cast so much doubt on the continuing constitutionality of judicial fact-finding under the federal guidelines that just about everybody begged the Court to either make it official or find a way to take a step back," said Stuntz. "Not just the Justice Department and the federal defense bar, but federal judges all over the country implored the Court to decide whether the



federal guidelines had any continuing viability in view of Blakely."

The Court promptly agreed to hear appeals in two federal sentencing cases, Booker and Fanfan, and scheduled argument for the first day of the new term, Oct. 4, 2004. Three months later, it issued its decisions and opinions in both cases.

#### **SNATCHING VICTORY FROM THE JAWS OF DEFEAT**

In a majority opinion written by Justice John Paul Stevens and joined by Scalia, the Court held, as widely predicted, that the federal sentencing guidelines were unconstitutional under the doctrines announced in Blakely and Apprendi. But a second majority opinion written by Breyer and enabled by the switched allegiance of Justice Ruth Bader Ginsburg '56-'58—which no one predicted—created the Booker remedy of converting the guidelines from binding rules to advisory ones. The second majority simply excised the provisions of the guidelines law that made them mandatory.

Instead of overturning the guidelines entirely or requiring jury fact-finding for all salient sentencing factors, the second part of Booker allows judges to continue making informal inquiries and findings of fact, without a jury.

"The guidelines were unconstitutional when they

were mandatory and required judges to tie sentences to particular findings of fact that the Court was now saying were rightly the province of the jury,” said Berman. “By contrast, in a system where guidelines are merely advisory and not mandatory, the Sixth Amendment problem of fact-finding by judges goes away, at least theoretically, because there’s no requirement that the judge’s discretionary sentencing decision be tied to his having made some particular finding of fact that should rightly be for a jury to make.

“The more I think about the Booker outcome, the more amazed I am that Justice Breyer found a way to win the federal sentencing war despite having lost the

vote-swapping and other considerations inappropriate for high court decision-making.”

#### **RULES MODERATED BY MERCY**

But other experts welcomed the result. “Booker and Fanfan, despite their own ambiguities, represent an improvement in terms of predictability over the incredible confusion that reigned in federal criminal practice in the immediate aftermath of Blakely,” said Professor Carol Steiker ’86. “They restore some judicial discretion that almost certainly will be used to make federal criminal sentences less harsh rather than more so—though they permit this as well—without the fear

“[Booker] may lead us as close to an ideal system as we may ever get—rules moderated by mercy.”  
—Professor William Stuntz

Apprendi/Blakely battle,” said Berman. “Only time, and lots of litigation, will reveal the real impact of Justice Breyer’s remedial handiwork, which ultimately sets up a remarkable experiment in advisory guideline sentencing.”

Stuntz agrees. “Many academics think Breyer pulled off a fast one, but I think Breyer’s opinion was very judicious, a great piece of judging—though maybe not a wonderful piece of lawyering.”

But not all experts were impressed by the two-part ruling or the votes by Ginsburg that led to two different 5-4 majorities. Booker, wrote Professor Alan Dershowitz in a Jan. 17 op-ed in the *Los Angeles Times*, “reveals a Supreme Court in disarray.” The second majority, he pointed out, “ruled that it would be perfectly all right for a sentencing judge to resolve disputed facts against a defendant and to add years to his sentence based on them, so long as the judge said he was doing so at his discretion, not because he was forced to do it by the guidelines. The constitutional right of a defendant to have facts that could add years to a sentence decided by the jury was thus substantially, if not completely, undercut.”

“We have two equally authoritative opinions that seem irreconcilable,” wrote Dershowitz. “This decision, and many others over the past decade, can be explained only by means of patchwork pragmatism,

that there will be immediate reversion to the sentencing disparities that predated the guidelines, given that the federal judiciary has been steeped in guidelines practice for almost two decades.”

Stuntz sees Justice Breyer’s solution in the second part of Booker as a creative salvaging of guidelines without the morass that could have resulted had the Court required jury trials for all salient sentencing facts: “I think, in its own strange, two-part way, Booker gets us to a good result. It may lead us as close to an ideal system as we may ever get—rules moderated by mercy.”

Early reports since Booker suggest that most federal courts are using their newly restored discretion cautiously, consulting the guidelines and only occasionally deviating from them. But it’s still too early to tell whether disparities will make a comeback, and many of the new questions raised by Booker will have to be worked out piecemeal, through litigation, including the new standard by which appellate courts will review discretionary sentencing decisions for error.

So far, says Berman, judges are being careful to consult the guidelines and refer to them. “Maybe this will only be temporary, but for now it’s a lot like that song by The Who.”

“Meet the new boss,” he said. “Same as the old boss.” \*

A close-up, low-angle shot of a person's legs from the knees down. They are wearing bright orange, wrinkled jumpsuits. Their feet are in black and white sneakers, which are secured to a metal chain. The chain is attached to a metal floor. The background is a blurred, industrial-looking setting with metal bars and a door.

guilty

until proven

by Margie Kelley

# innocent

**R**RANDON MOON was a 25-year-old college student at the University of Texas at El Paso in 1988 when he was convicted of rape and sentenced to 75 years in prison. Last December, after 16 years behind bars, he was released following conclusive DNA testing that proved his innocence. A few days later, Jennifer Millstone '05 received a gift from Moon—an angel pin that he'd made in prison—to thank her for helping to set him free.

**A NEW STUDENT PROJECT COULD  
SAVE THE LIVES OF THE  
WRONGLY CONVICTED.**

# “When I heard he was exonerated, it was one of

“When I heard he was exonerated, it was one of the happiest days of my life,” said Millstone, who worked on Moon’s case as an intern at the Innocence Project in New York City last summer. Now a new group on campus will make it easier for other students to help inmates like Moon. This spring 2Ls Benjamin Maxymuk, Dana Mulhauser and Alexander Abdo launched the Harvard Project on Wrongful Convictions.

Moon is one of 158 individuals nationwide whose convictions have been overturned through DNA evidence since 1989, says Maxymuk, who was inspired to launch the project after a campus visit last year by Barry Scheck, the criminal defense attorney best known for his DNA work for the O.J. Simpson legal defense team. Scheck, along with attorney Peter Neufeld, has been pioneering the use of DNA evidence since 1988. Together, they established the Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University in New York City in 1992, as a nonprofit legal clinic focused on cases where post-conviction DNA testing might yield conclusive proof of innocence. The clinic has since helped to exonerate dozens of wrongfully convicted individuals and sparked the creation of more

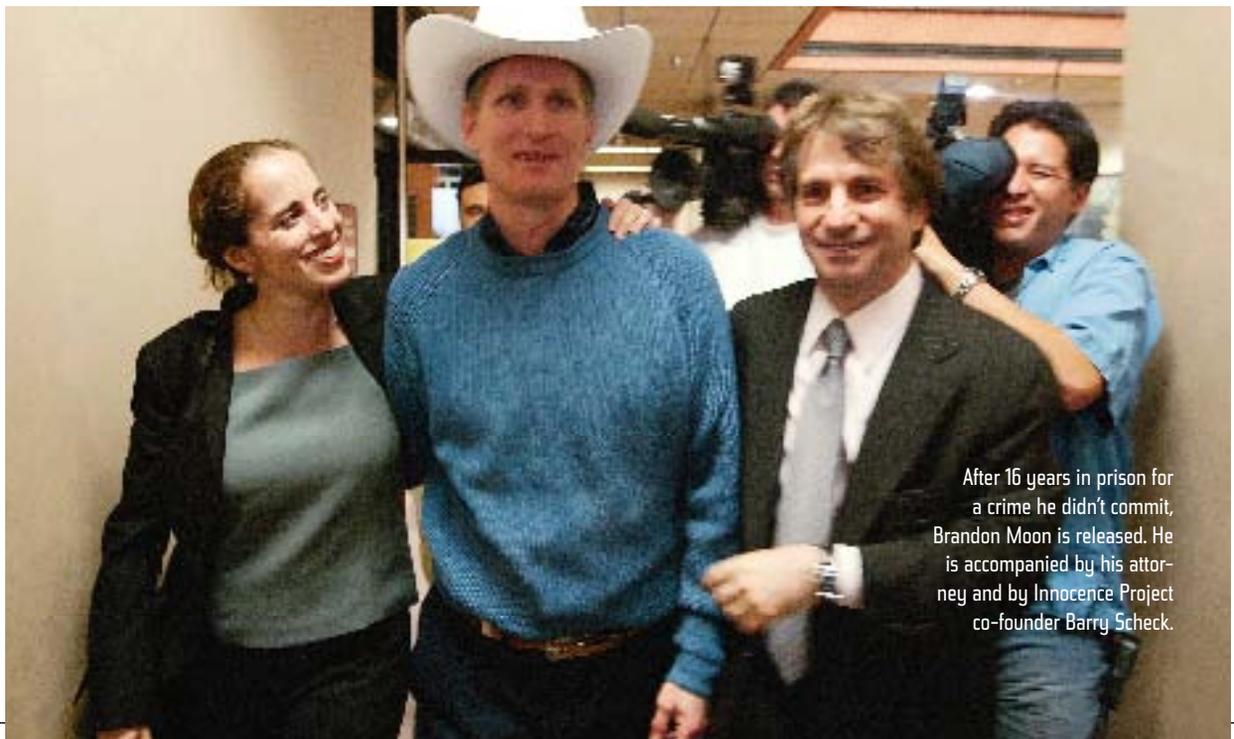
than 30 Innocence Projects based in law firms and law schools across the country.

“[Wrongful conviction] is not a new issue,” said Maxymuk. “The difference now is DNA. Before, people didn’t want to believe that eyewitness testimony isn’t always reliable. But it turns out, it’s one of the least reliable types of evidence. People have started to listen and look at reforms because DNA is nearly irrefutable. People can’t turn away from it.”

Moon’s exoneration was the second one Millstone had helped to bring about through her summer internship, and the experience left her wanting to do more.

Last fall she arranged to work 10 hours a week for the New England Innocence Project in Boston, whose network of attorneys in several local law firms has been directly involved in the exonerations of five New England men since its founding in 2000.

Millstone is one of several law students from local schools who have worked with NEIP on the dozens of requests for post-conviction case reviews that come in every year. She was able to get two of her professors in criminal law courses to grant clinical credits for her time at NEIP. More than 40 students have joined the



After 16 years in prison for a crime he didn’t commit, Brandon Moon is released. He is accompanied by his attorney and by Innocence Project co-founder Barry Scheck.

the happiest days of my life.”

JENNIFER MILLSTONE '05

Jennifer Millstone, wearing the angel pin Brandon Moon made to thank her for helping to set him free



HLS project, and 11 have had training for case review work, according to Jennifer Chunias, who taught the First Year Lawyering course at HLS and has served as project director at the NEIP since 2003.

“Each student is responsible for conducting both the investigative review and the analysis of the legal issues that were presented at trial and on appeal,” said Chunias, who was Millstone’s supervisor and will serve as the new group’s trainer and adviser as students comb through trial transcripts and court files. “It’s a very interesting intellectual exercise because all the work we do is post-conviction. The students are charged with unpacking each case. In a way, we’re asking them to take away the conviction and say, ‘If there was biological evidence here and if it was tested, would it be probative of innocence?’ If so, then we should pursue it.”

Five HLS students have begun receiving cases for review, which they will work on in addition to their full-time summer jobs. Chunias and Maxymuk expect as many as another 10 students per semester to review NEIP cases.

While Maxymuk has already had a taste of case review through his job last summer at the Office of Capital Defense Counsel in Jackson, Miss., he said for many Harvard Law students, this will be the first opportunity to “see what a trial transcript looks like, and they’re definitely going to see the effect of these cases on real people.”

Using Millstone’s experience as a model, the group is arranging for students to earn clinical credits for NEIP casework. In fact, Millstone has been instrumental in helping structure the new group, which plans to offer a seminar as well as panel discussions, guest lectures, policy papers and even films to boost awareness on campus.

“I was alone [at Harvard] on this project. I was just feeling my way,” said Millstone. “I would have loved to talk about my cases with other students.”

Chunias will hold a workshop for students doing case review. Professor Charles Ogletree ’78, the project’s faculty adviser, has a related course in the works.

“The [Harvard Project on Wrongful Convictions] is one of the most exciting things I’ve ever seen happen at Harvard Law School in my 30 years of association with

the school, as a student and as a faculty member,” said Ogletree.

The exonerations, in recent years, of 13 death-row inmates in Illinois, he said, have been deeply motivating to HLS students: “The magnitude of death being a crapshoot or a flip of the coin—to have such errors in the criminal justice system—is frightening. The fact that Harvard Law students see this as a mission that they will pursue is great for the system, great for the law school and, most important, may mean the difference between life and death for people who are facing sanctions when they are completely innocent.”

Neufeld, co-director of the Innocence Project in New York City, said the Harvard project will give HLS students the “unprecedented opportunity to walk a wrongfully convicted man or woman out of prison and into freedom. It doesn’t matter whether, ultimately, you become a corporate lawyer, judge or advocate for criminal justice. That experience will be life-changing.”

While exonerations are their main focus, the HLS students will also advocate for reforms in the criminal justice system. Chunias said that includes pushing for improved standards for state crime labs, and for legislation that would guarantee the preservation of DNA evidence and make it easier for defendants to have access to it for post-conviction testing. (Massachusetts has yet to pass such a law.) Students will also lobby for better training protocols for police and prosecutors to lessen the chances that convictions can be based on mistaken eyewitness identifications (an issue in Brandon Moon’s case).

“If there is DNA evidence clearing someone, that means the ID was bad and it takes the reasonable doubt out of reasonable doubt,” said Mulhauser, who worked last summer for the Public Defender Service for the District of Columbia.

“There’s a strong current in society that wants to believe the justice system doesn’t make mistakes,” added Maxymuk. “We want to make sure there’s some effort to fix the broken processes that are churning out all these mistakes, not to mention stealing decades from people’s lives.” \*

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*Margie Kelley is a freelance writer living in Attleboro, Mass.*

## Students who have helped free the wrongfully

## NEW PROGRAM TO FOCUS ON RACE AND JUSTICE

Racial disparities have long plagued the field of criminal justice. Two percent of white men in their late 20s are incarcerated, compared with 13 percent of black males. Two-thirds of crack cocaine users are white or Hispanic, according to the Department of Health and Human Services, yet 81 percent of crack cocaine defendants are African-American. A recent study from the University of Michigan shows similar racial gaps in wrongful convictions. While 58 percent of prisoners convicted of rape were white versus 29 percent black in 2002, black defendants accounted for nearly two-thirds of rape exonerations.

The Harvard Project on Wrongful Convictions allows students to work directly on exoneration cases. A new program being launched at Harvard this fall—the Charles Hamilton Houston Institute for Race and Justice—will examine many of the underlying issues involved in these cases within the broader context of race and the law. It will sponsor research and co-host conferences with a range of organizations pursuing questions of racial justice. Profes-

sor Charles Ogletree '78, who serves as faculty adviser to the Project on Wrongful Convictions, will direct the new institute.

“On the heels of the hundreds of cases of wrongful convictions around the coun-

try recently, and the dozens of cases in Massachusetts, the Charles Hamilton Houston Institute for Race and Justice opens at a critical time and will allow my students real-world experiences in addressing problems in the criminal

justice system,” Ogletree said.

Charles Hamilton Houston '22 S.J.D. '23 was the architect of the plaintiffs' litigation strategy in *Brown v. Board of Education*, the landmark case that ended segregation in public schools. —Mary Bridges

Two-thirds of crack cocaine users are white or Hispanic, yet 81 percent of crack cocaine defendants are African-American.

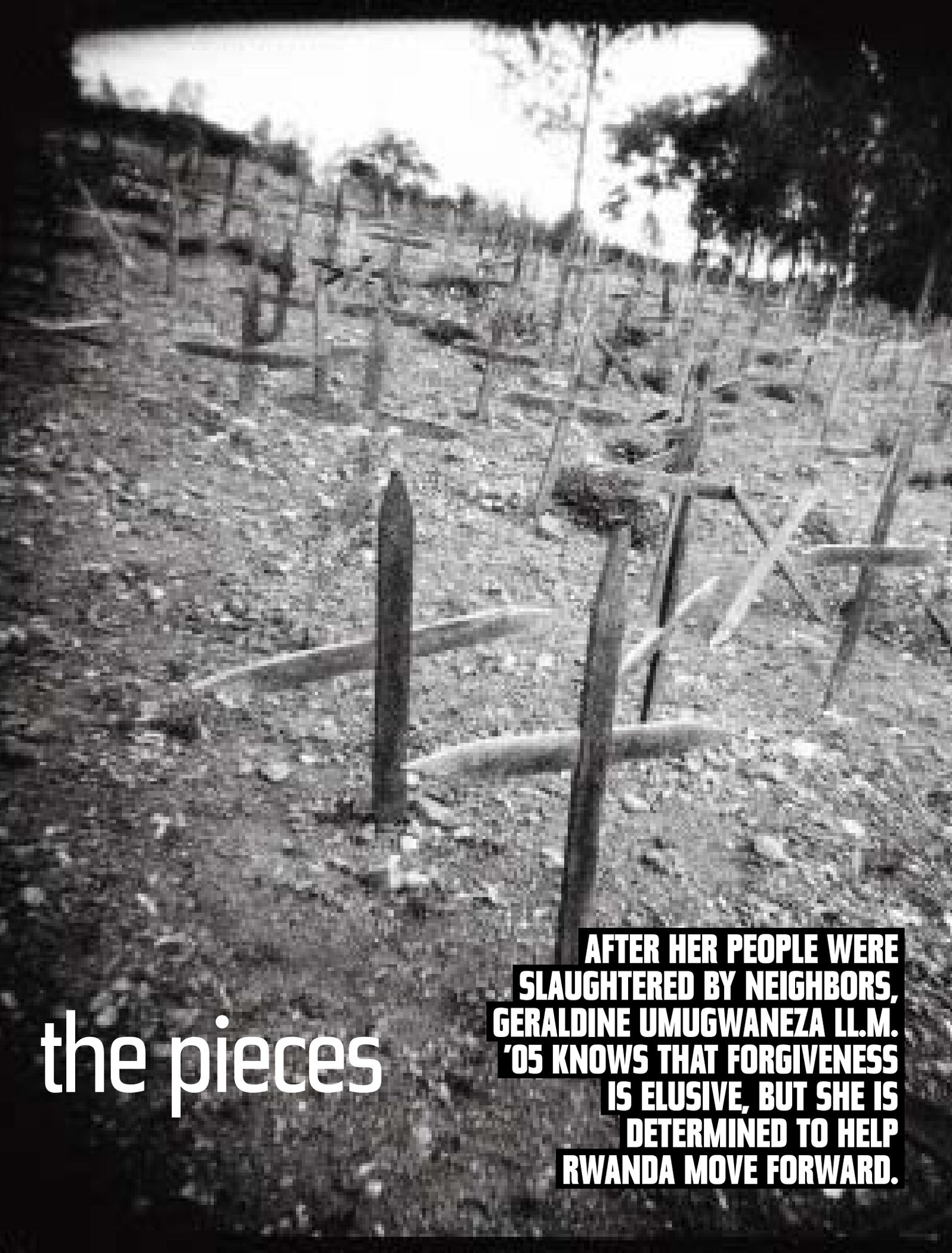
convicted call the experience life-changing.



After a genocide, only so much truth can be known, says Geraldine Umugwaneza, but she hopes the Rwandan community courts she helped to establish will get at much of it.

# putting together

*by* Emily Newburger  
*portraits by* Millicent Harvey  
*Rwanda photographs by* Jerry Berndt



the pieces

**AFTER HER PEOPLE WERE  
SLAUGHTERED BY NEIGHBORS,  
GERALDINE UMUGWANEZA LL.M.  
'05 KNOWS THAT FORGIVENESS  
IS ELUSIVE, BUT SHE IS  
DETERMINED TO HELP  
RWANDA MOVE FORWARD.**

ERALDINE UMUGWANEZA LL.M. '05 doesn't think she could live in the Rwandan village where her family was murdered. After the 1994 genocide, the looting and violence left her mother's house a frightening shell. But what scares her more is the idea that even today the neighbors might kill her, too.

That a former Supreme Court judge should have such fears says a lot about the challenges that face Rwanda.

The government estimates that as many as 1 million people—one-eighth of the population—participated in the 100 days of killing directed by Hutu extremists against at least 800,000 Tutsis and moderate Hutus. In a country where so many who were victimized live in proximity to so many who are complicit, how do you seek justice?

Umugwaneza believes it's her obligation to try. Born a refugee in Uganda, she dreamed of the day she would go home to claim her identity. Violence against Tutsis had driven her parents from Rwanda in 1973, and it wasn't until 1984 that her family took a chance on moving back. Umugwaneza stayed on in Uganda with one of her sisters to finish her education. By the time she crossed the Rwandan border, at age 20, the genocide had taken the lives of her mother, grandmother and four of her siblings. It left her driven to help put her country back together.

After studying law at the National University of Rwanda, she started by advocating for thousands of widows of the genocide. Most of the women had been raped and many had HIV or AIDS. By 1996, about 70 percent of the remaining population was female, yet women had no right to inherit property or hold bank accounts. Umugwaneza is happy she played a role in changing the law. "They looked at me as a daughter," she said. "I felt it was something I had to do."

At the same time, the Rwandan government was struggling with what it had to do to respond to the genocide. Faced with an enormous backlog of prisoners awaiting trial, and few lawyers and judges (many had been killed), it drew on a traditional form of dispute resolution that promotes reconciliation between the perpetrator and the community, and offers a reduction of sentence for those who come forward and admit their crimes and ask for forgiveness.

Umugwaneza first served as a technical adviser to the Supreme Court, which was supervising the new "gacaca" (pronounced ga-CHA-cha) system, named for the grass where the traditional hearings took place. In 2002, when she was 28, she was appointed a judge in the chamber of the Supreme Court charged with imple-



According to the Rwandan public information campaign for the gacaca courts, advertised below, truth heals. Umugwaneza, above, in front of Austin Hall, wants to believe it will.





## She's reburied her family's remains, but the memories stay with her, along with the desire for justice.

menting the program. She traveled to villages across the country where people were selected to serve on the local courts and hear testimony in front of the community in open-air hearings. There are now close to 12,000 such courts in a country about the size of Maryland. This spring, as Umugwaneza was finishing a paper on the courts as part of the LL.M. program at HLS, the first gacaca trials were held.

Umugwaneza explains that the system works in tandem with the conventional courts. As evidence is gathered, the crimes are classified. The majority of defendants, mostly those accused of having done the killing, are tried in the gacaca courts, where the maximum sentence is 30 years. The cases of those accused of having planned or instigated the genocide, on the other hand, are passed on to the conventional courts, which can impose the death penalty. The International Criminal Tribunal for Rwanda, in Arusha, Tanzania, also relies on the gacaca courts for building its cases.

Human rights observers have raised possible problems with the system, including intimidation of witnesses, lack of due process for defendants who are not represented by counsel and the fact that accusations against soldiers of the Tutsi-led Rwandan Patriotic Front that now controls the government are being overlooked.

"Observers have understandably raised critical questions about the gacaca courts," said Professor Henry Steiner '55, director of the HLS Human Rights Program, "but the courts also open up possibilities for seeking justice after genocide or other mass atrocities."

Umugwaneza knows the system has its flaws. But right now she believes it's her country's best hope. After a genocide, only so much truth can be known, she says. But the gacaca process, she believes, is getting at a lot of it.

She is all too familiar with the brutality of that truth. The gacaca courts are meant to facilitate reconciliation. But forgiveness, she said, is something that has to be talked about on an individual basis: "Most of us are finding it very, very difficult—almost impossible—to forgive and reconcile."

Last year gacaca had not yet begun in the area where Umugwaneza's mother and siblings had lived with her grandmother (her father had died of illness

in 1990). But when Umugwaneza returned there last April, members of the community helped her identify villagers they believed had killed her family. Some of the suspects were already in prison. Some denied the allegations. But she heard how her mother

and grandmother had been buried alive. How a killer chopped off her sister's arms and left her to suffer before she was hacked to death. How her brother was burned. How her youngest sister sought refuge with a cousin whose husband gave the 8-year-old up to be killed.

"They were not strangers," she said. "They were not strangers."

By then she'd known for years that her family had been murdered, but that couldn't prepare her for what she found when neighbors pointed to where the bodies were buried: "I wasn't ready to see my mother again."

Yet she did what was needed and dug where she was told.

ALTHOUGH SHE'S REBURIED HER family's remains in the village cemetery, the memories stay with her. Without her faith in God, Umugwaneza says, she could never move toward healing. As for forgiving the people who slaughtered her family: "I have kind of forgiven. But having forgiven—kind of—that doesn't mean that I don't want these people to be prosecuted."

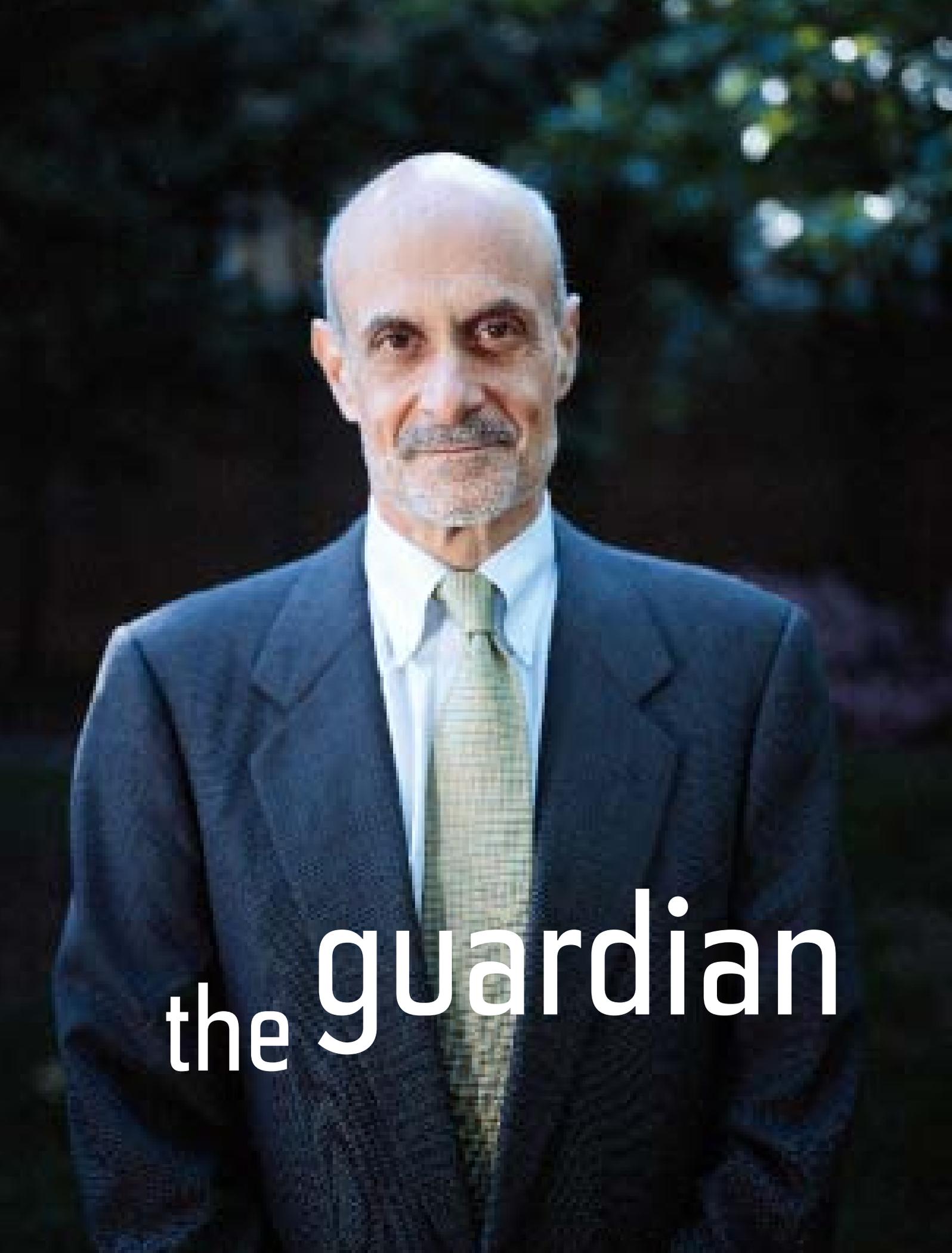
Rwandan authorities say that over the past three and a half years, 75 percent of prisoners have admitted to crimes with the hope of receiving reduced sentences. Many survivors find this hard to accept. But at least, says Umugwaneza, now there is accountability.

"People may forgive, and eventually may be reconciled, but people are going to be punished. And that is also an achievement, to hold people accountable."

When Umugwaneza returns home, she'll work again in public service. Steiner, who supervised her paper on the gacaca courts, called her "an extraordinary woman, with extremely valuable perceptions about ideas like reconciliation and forgiveness." Umugwaneza says her year in Cambridge was a gift—not just to her but to her society.

The girl who was a refugee in Uganda has grown up to claim her national identity and the complicated legacy that it brings.

"We destroyed our country. It was in pieces," she said. "What we are trying to do through gacaca, through the reconciliation programs, is to pick up the pieces of our country and put them together and once again build a nation." \*



the guardian



ON SEPT. 11, 2001, even before the attacks from the skies over the Eastern seaboard had ended, Michael Chertoff '78 was making some of the government's first critical decisions in reaction to what was turning out to be the worst criminal act in U.S. history. As head of the criminal division of the U.S. Department of Justice, it fell to Chertoff to lead the government's law enforcement efforts until the attorney general, John Ashcroft, could return from an out-of-town trip.

In those first few hours after the attacks, Chertoff, a career trial lawyer and prosecutor, got a brief look at what it's like to manage the response of a massive government bureaucracy made up of multiple law enforcement agencies during a national terrorist emergency. What he didn't realize was that he was also getting a first glimpse at his own future.

*by* Seth Stern '01  
*photographs by* David Deal

Michael Chertoff '78 has taken the helm of a department plagued by organizational problems and bureaucratic challenges.

**CAN A VETERAN PROSECUTOR  
WHIP THE DEPARTMENT OF HOMELAND  
SECURITY INTO SHAPE? MICHAEL  
CHERTOFF '78 HAS ALREADY STARTED.**

That future became clear earlier this year, when President Bush handed him the job of running the Department of Homeland Security, a sprawling conglomerate of 22 agencies and 180,000 employees tasked with guarding the nation against further attacks.

Chertoff has taken the helm of a department plagued by organizational problems and the bureaucratic challenges caused by consolidating so many disparate agencies under one roof. He arrived there on the heels of a report by DHS's former inspector general, Clark Kent Ervin '85, blasting the department for poor financial decisions, wrongheaded allocation of resources, inadequate precautions at the nation's ports and airports,

lessen the chances of a replay of some recent tensions between DHS and Justice. His predecessor, Tom Ridge, and former Attorney General Ashcroft were known to clash, most recently over information sharing and which agency should issue and announce terror alerts.

Chertoff already displayed many of the traits touted by supporters when he was a Harvard Law student 30 years ago. He had barely arrived at HLS when his fierce advocacy and intensity first drew notice. He engaged Professor Duncan Kennedy in a running argument for two days during class, sparring with him over judicial enforcement of the District of Columbia's rent-control law. "I was arguing for what we call judicial restraint,"

## Chertoff already displayed many of the traits touted by supporters when he was a Harvard Law student 30 years ago.

and unsatisfactory integration of terrorist watch lists and databases from its component agencies.

In short, the challenges he faces are immense, as Sen. Judd Gregg, R-N.H., bluntly reminded him at an April hearing.

"Were this agency admitted to an emergency room, it would be considered to be in extreme distress," Gregg said.

Chertoff's supporters say the patient is in good hands, and that the department will be well-served by his considerable experience as a trial lawyer known for intense, hard-nosed advocacy, occasional elbow-throwing and an inclination to question assumptions through searing cross-examination. He also brings vast knowledge of criminal law and procedure, including a strong awareness of the constitutional rights implicated by government surveillance, searches and seizures—things his department does every day.

But, as much as all of that will help him, the experience that he will draw on most, say observers who know him, is his service as the U.S. attorney for New Jersey and later as the top criminal lawyer at the Justice Department, where he learned to hammer out problems between federal, state and local law enforcement agencies sometimes known to compete as much as cooperate.

And, Chertoff's roots in the Justice Department may

Chertoff said in a recent interview with the Bulletin. "He was arguing for activism."

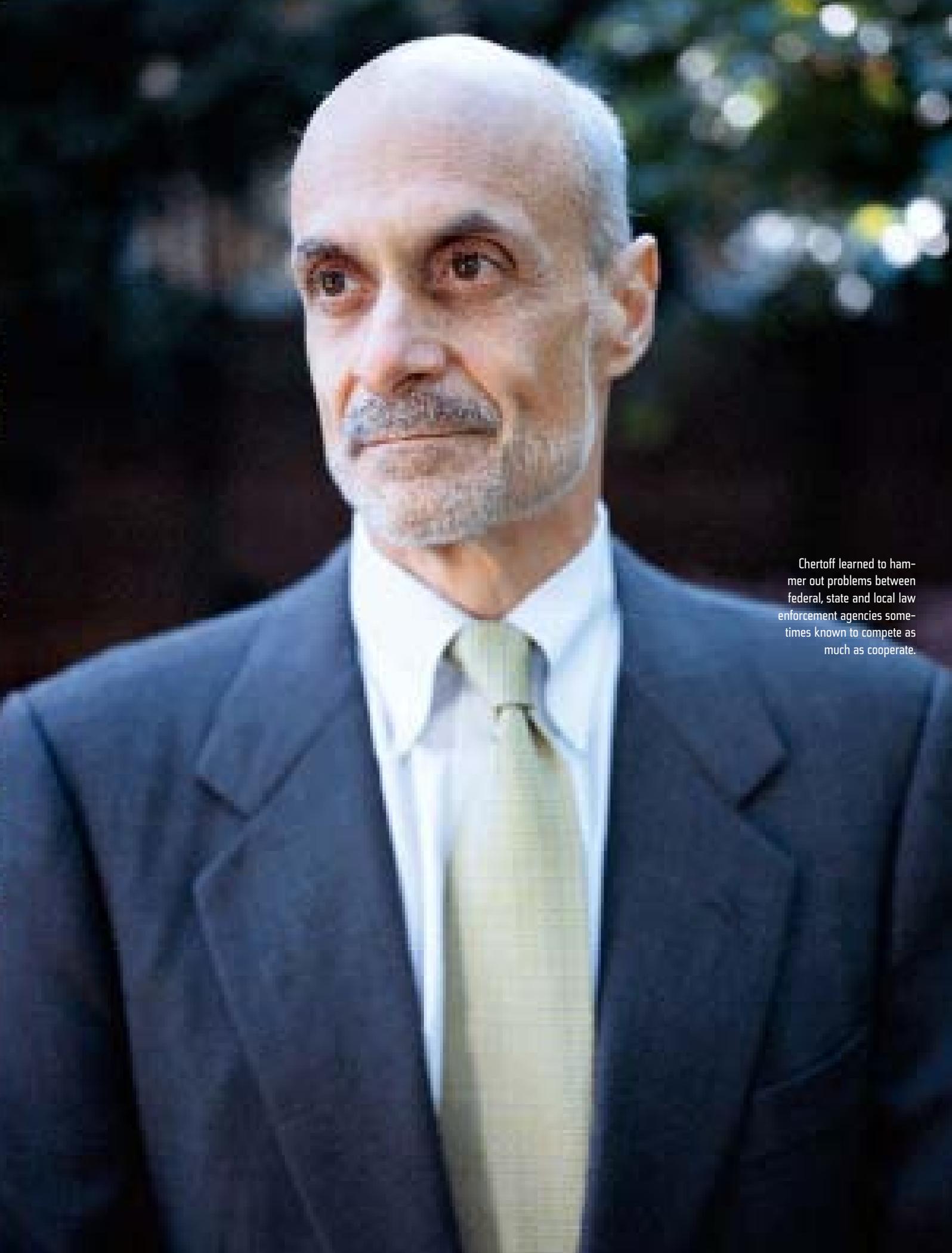
Kennedy has no recollection of the exchange, but it stuck in the mind of classmate Scott Turow, who later described Chertoff as the brightest student in the section. (Turow is said to have used Chertoff as the basis for at least one of his composite characters in his book "One L," although he declines to say which characters are based on which students.) "Chertoff was not reluctant to debate with anybody," remembered Turow. "He was self-confident, assertive, but never obnoxious."

# A

AFTER GRADUATION, Chertoff clerked for Murray Gurfein '30, a judge on the U.S. Court of Appeals for the Second Circuit, who regaled him with tales from his own days of prosecuting mobsters under then New York District Attorney Thomas Dewey in the 1930s.

"I realized that the prospect of doing a case in court was the most exciting thing you could do as a lawyer, plus I was interested in public service," said Chertoff. "The best place to do that was in a prosecutor's office."

After a U.S. Supreme Court clerkship with Justice William J. Brennan Jr. '31 and a few years as an associate at Latham & Watkins, Chertoff landed in the office of another prosecutor with his eye on organized crime, Rudolph Giuliani, then the U.S. attorney for the Southern District of New York. Giuliani assigned the 32-year-



Chertoff learned to hammer out problems between federal, state and local law enforcement agencies sometimes known to compete as much as cooperate.

old Chertoff the role of prosecuting the heads of New York's top mob families. They employed what was then a novel legal theory, charging and trying a major case under the federal racketeering statute and proving that the heads of the families had conspired as part of an illegal racketeering enterprise called the "Commission."

The threat of violence hung over the three-month trial from the start, says fellow prosecutor John F. Savarese '81. Shortly before the trial began, one of the defendants, Paul Castellano, was gunned down outside a Manhattan steakhouse.

Savarese recalled Chertoff's "quiet authority and mastery of the facts and sincerity that [came] through

Chertoff's success was noticed back at department headquarters, where Barr included him in his inner circle. "He was second to none," said Barr, who turned to him for advice and help with the most controversial and complicated cases.

But it was the case of a kidnapped Exxon executive, Sidney Reso, that Chertoff says affected him most deeply. It was one of the rare instances when he had to handle a violent crime as it was unfolding. Chertoff comforted Reso's family members after his body was discovered in a New Jersey forest.

Even after stepping down from the U.S. Attorney's Office, Chertoff continued to serve as counsel in probes

## After Anthony "Fat Tony" Salerno was convicted, he quipped that Chertoff owed him thanks for landing him his next job.

and really connected with the jury." All eight defendants in the case were convicted. (One of them, Anthony "Fat Tony" Salerno, later quipped that Chertoff owed him thanks for landing him his next job, as first assistant U.S. attorney in New Jersey.)

Chertoff's reputation as a relentless prosecutor grew with each case. The *American Lawyer* magazine noted his "Gatling gunslinger" style of questioning. The *Weekly Standard* said of his interrogations, "[He] can make smart people look stupid."

In 1990, President George H.W. Bush picked Chertoff to be U.S. attorney for New Jersey, and, in the state where he was born and raised, Chertoff often outshined his former colleagues across the river in New York. He prosecuted several mayors on corruption charges and handled the made-for-tabloid case against Chief Justice of New York Sol Wachtler for threatening to kidnap his former lover's daughter.

As a federal prosecutor with management responsibilities, Chertoff learned to address bureaucratic problems, especially how to bring multiple law enforcement investigative agencies into line and to be certain that everyone was pulling in the same direction.

William Barr, attorney general in the administration of the first President Bush, says Chertoff's experience building bridges to and between state and federal law enforcement agencies will serve him well at Homeland Security. "It's important for a leader to understand this is a field organization," Barr said.

of public corruption and racial profiling in New Jersey. "He was just offended by [these things]," said former Assistant U.S. Attorney Walter Timpone, who attributes Chertoff's zeal for public service to his upbringing as the son of a New Jersey rabbi. "He's got a real sense [that] this is his way to give back to the community," Timpone said.

In 1994, Chertoff took on his most controversial (and, as it turned out, least successful) assignment—as chief counsel to the Senate Whitewater probe of President and Mrs. Clinton. Critics accused him of leading an overzealous witch hunt that had little to show after dozens of witnesses and tens of thousands of pages of testimony.

Nevertheless, Chertoff calls the Whitewater assignment a fascinating experience in which he gained his first close-up exposure to the legislative branch. He acknowledged only that such investigations "can be very painful and difficult" for those on the receiving end.

Despite the controversy, his role in the Whitewater probe did not harm Chertoff in the long run. In 2001, President Bush nominated him to be assistant attorney general in charge of the criminal division of the Justice Department, and the Senate confirmed him nearly unanimously.

In that role, he led the Justice Department's investigation of Enron and its accounting firm, Arthur Andersen. But most of his time was dedicated to helping formulate the Bush administration's legal strategy for

combating terrorism, including the decision to sweep up hundreds of foreigners on immigration charges. He also helped craft the USA Patriot Act and staunchly defended the government's antiterror efforts.

"Are we being aggressive and hard-nosed? You bet ... but let me emphasize that every step that we have taken satisfies the Constitution and federal law as it existed both before and after September 11," Chertoff told a Senate hearing in November 2001.

At the top of the criminal division, Chertoff had to oversee all of the federal government's prosecutions and coordinate many of its most sensitive and complex law enforcement investigations, including those conducted by joint task forces of federal, state and local authorities. In that capacity, he learned to deal with multiple agencies and jurisdictions, and to cut through bureaucratic entanglements as efficiently as possible. Barr and other supporters note that he is particularly well-prepared for similar challenges at the Department of Homeland Security.

After leaving the Bush administration in 2003, Chertoff softened his zealous defense of the administration's antiterrorism policy, expressing some doubts about the indefinite detention of American citizens such as José Padilla as "enemy combatants" without filing charges against them or providing them with legal counsel. In an article for *The Weekly Standard* in December 2003, he wrote: "We need to debate a long-term and sustainable architecture for the process of determining when, why and for how long someone may be detained as an enemy combatant, and what judicial review should be available."

"In retrospect," Chertoff told the *Bulletin*, "there were some imperfections. People in the field were making split-second decisions under pressure. The policies were appropriate and completely understandable given the risk. But we learned we should do better."

Chertoff's publicly aired second-guessing of Bush administration policies did not stop the president from putting him on the U.S. Court of Appeals for the Third Circuit in 2003.

He was on that court for little more than a year when Bush turned to him again for Homeland Security, after the nomination of former New York City Police Commissioner Bernard Kerik imploded over allegations of personal and financial improprieties. Chertoff had the advantage of having already been vetted and confirmed by the Senate three times. He didn't hesitate

to accept when Bush offered him the job.

"Winning this war against terror is the great calling of our generation," Chertoff told an audience at George Washington University in March.

**T**HUS FAR, Chertoff has consciously taken a lower profile than his predecessor, Ridge, the former Pennsylvania governor who relished his role as the public face of Homeland Security. Chertoff seems slightly ill at ease with the public part of his job and the retail politics that go with it, but what he lacks in natural skills as a glad-hander he more than makes up for as a political operator, former colleagues say. "His personality is exactly what the department needs, given his reputation for sharp elbows," said homeland security expert James Carafano of the Heritage Foundation. "The department needs a strong advocate."

Chertoff won some early plaudits for his first weeks on the job. Like a senior prosecutor taking over a foun-dering case, he ordered a top-to-bottom review of how the department is structured and how it does its job. He brought in Michael P. Jackson, the U.S. Department of Transportation's deputy secretary known for his managerial prowess. He also questioned the usefulness of the color-coded warning system adopted by Ridge.

Chertoff said he plans a "disciplined approach" to sharing information with the public, trying to balance the need to keep everyone informed with a desire to avoid undue anxiety or alarm.

"The public is mature. The public understands that even before 9/11, we faced violent disasters both man-made and natural," he said. "There's not perfect protection; there are no guarantees. We need to focus on events that might have catastrophic consequences."

Chertoff admits he has plenty to learn and is still mastering the breadth of the department's responsibilities, which span law enforcement, disaster preparedness, and science and technology. The job has required adjustments in his personal life, too. His wife, Meryl Justin Chertoff '83, a homeland security expert, decided to leave her job as a government lobbyist. And Chertoff admits his two children would like to see more of him.

He insists that he doesn't miss the courtroom. But his friends aren't so sure. Said Savarese, "If there's a way for the Homeland Security secretary to argue a case somewhere, I think he'll find it." \*

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*Seth Stern '01 is a legal affairs reporter at Congressional Quarterly in Washington, D.C.*

*by* Robb London '86

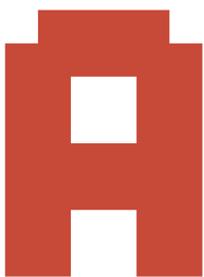
is the  
war on  
drugs  
succeeding?

**DRUG USE IS DOWN OVER THE  
LAST 25 YEARS, BUT A HALF  
MILLION AMERICANS ARE IN PRISON  
FOR DRUG OFFENSES. HOW SHOULD  
SUCCESS BE MEASURED?**



William Bennett 71,  
drug czar under  
President George  
H.W. Bush

In 1999, 14.8 million Americans used illegal drugs, compared with 25 million in 1979, according to the National Household Survey sponsored by the U.S. Department of Health and Human Services—a decrease of more than 40 percent in 20 years.



**AMERICA IS EITHER** winning the war on drugs or losing it badly, depending on whom you ask.

The fact that the answers vary so widely raises the question, How should success or failure be measured? As part of its focus on crime and punishment, the Bulletin put that query to several HLS alumni who figure prominently in the national debate over drug policy, across the political spectrum.

For Ethan Nadelmann '84, head of the Drug Policy Alliance, a New York City-based policy and lobbying group dedicated to a less punitive approach to drug policy, the answer lies in the social and economic costs of a strategy that he believes has put too many in jail or prison and done little to reduce the availability of drugs. Of the approximately 2 million people behind bars in the U.S., he notes, about 500,000 are there for drug-law violations—more than the total number of people jailed for all criminal offenses in Western Europe, although the U.S. has 100 million fewer people.

“If we’re lucky, our grandchildren will recall the

administration has taken federal action promoting such programs even though the public health world is nearly unanimous in its assessment that they significantly reduce the spread of HIV.

“At the state level, people have to deal with the fact that HIV and hepatitis are spreading; it’s going to add to hospital costs,” Nadelmann says. “They have to deal with the fact that building new prisons and new jails is a major cost. When you get to the national level in Washington, that’s where you see a lot more of the rhetoric, a lot more of the disregard for both the human cost and the fiscal cost of the policy.”

“Forget whether the war on drugs is actually effective or not. [Some people] would say that it’s morally wrong to legalize drugs that are currently illegal.” -Kurt Schmoke '76

global war on drugs of the late 20th and early 21st centuries as some bizarre mania,” says Nadelmann. “The true challenge is learning to live with drugs so that they cause the least harm. An effective strategy needs to establish realistic objectives and criteria for evaluating success or failure, and must focus on reducing the death, disease, crime and suffering associated with both drug use and drug policies.”

Nadelmann and the DPA favor legalizing marijuana and treating it like alcohol—a commodity, he says, that’s taxed and regulated with prescribed minimum legal ages for use. Working primarily at the state level, Nadelmann and his group have been successful in a variety of ballot initiatives dealing with medical use of marijuana and treatment instead of incarceration (for nonviolent offenders charged with possession). The DPA’s single biggest victory, he says, has been the passage of California’s Proposition 36, in 2000, which requires treatment in place of incarceration for many drug possession offenders and has already kept close to 100,000 people from going to jail or prison. “We doubled money for drug treatment while simultaneously saving taxpayers money by reducing prison populations,” he notes. “We’re now taking that model around the rest of the country.”

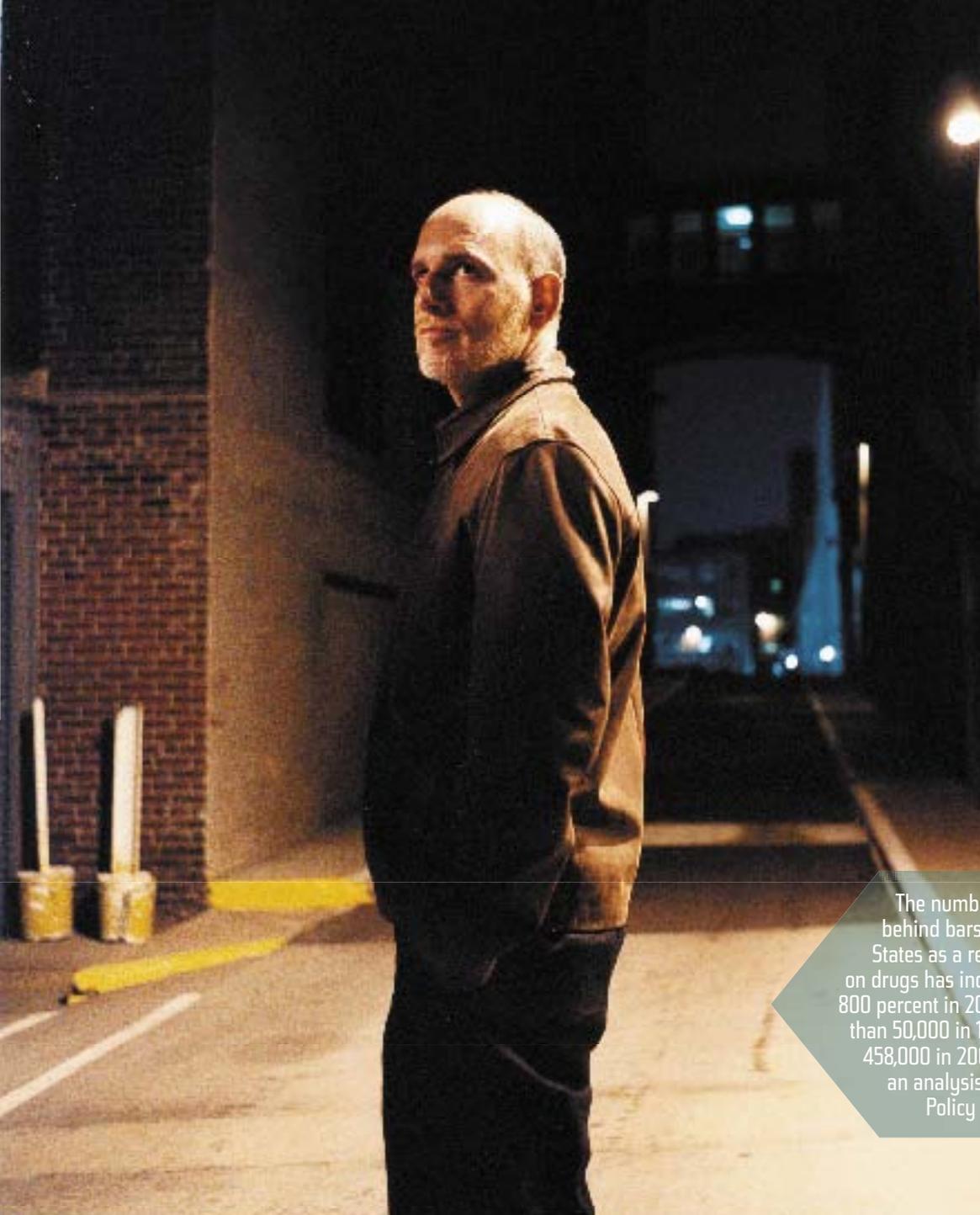
Nadelmann has also been successful in pushing for needle-exchange programs, which now exist in nearly half the states. Neither Congress nor any presidential

William Bennett '71, drug czar under President George H.W. Bush, and secretary of education under President Reagan, takes a very different approach to measuring the success of national drug policy. “You measure [success] by overall, current drug use,” he argues. “Other good measures include city-by-city emergency room admission rates and [looking] to the culture—how is drug use depicted in the movies and in television?” By all of these yardsticks, he believes, the war on drugs declared by President Nixon more than 30 years ago is succeeding.

He points to a study sponsored by the U.S. Department of Health and Human Services, which shows that in 1999, 14.8 million Americans were drug users, down from the 1979 peak of 25 million users.

As drug czar, Bennett was a vehement advocate of the punitive approach, and he continues to support it today. He is untroubled by the number of people in prison for drug offenses. “Most people are in prison for multiple offenses, including illegal drug use,” he contends. “Some people plead down to a drug use conviction when a lot of other charges brought them to the prosecution in the first place. Very few people are in prison for drug use alone.”

Nevertheless, even Bennett believes that, for some offenders, penalties besides prison should be explored: “[We should] consider revoking privileges and licenses—drivers’ licenses, realty licenses—bar memberships



Ethan  
Nadelmann '84  
of the Drug Policy  
Alliance

The number of people behind bars in the United States as a result of the war on drugs has increased more than 800 percent in 20 years, from fewer than 50,000 in 1980 to more than 458,000 in 2000, according to an analysis by the Drug Policy Alliance.

and so on.”

Asked about proposals for decriminalizing marijuana use, Bennett answers emphatically: “No. Marijuana is the most abused drug because it is the most used drug. More children are in treatment for marijuana than for all other drugs.”

Somewhere between Nadelmann and Bennett is Joseph A. Califano Jr. '55, President Carter's secretary of health, education and welfare and currently the chairman and president of the National Center on Addiction and Substance Abuse at Columbia University. Like Bennett, Califano believes that decriminalization of drugs is a dangerous idea and that the criminal justice system must continue to handle drug users with

a firm hand. But he has opposed some of the tough mandatory minimum sentences for drug offenses and says we can do much better in prevention through education.

Legalization or decriminalization, he believes, would make drugs more available to children, and overall use would increase.

“Marijuana is particularly harmful to children and young teens,” Califano said in a written statement to the Bulletin. “It can impair short-term memory and ability to maintain attention span; it inhibits intellectual, social and emotional development, just when young people are learning in school. [There is] a powerful statistical correlation between using marijuana and use

of other drugs such as heroin and cocaine.” Twelve- to 17-year-olds who smoke marijuana are 85 times more likely to use cocaine than those who do not, he says.

“Legalizing drugs not only is playing Russian roulette with children,” Califano said. “It is slipping a couple of extra bullets into the chamber.”

Drug policy, he believes, should focus on initiatives such as neighborhood- and school-based programs aimed at high-risk 8- to 13-year-olds. He also favors outreach programs specifically tailored to particular categories of people who may abuse substances for very different reasons and in very different patterns, such as mothers on welfare, families torn by domestic abuse, families living in public housing, college students and people with HIV.

He sees the medical marijuana initiatives, the push for reduced sentences and the needle-exchange pro-

grams as vehicles to pave the way for the reformers’ true goal: broad drug legalization.

But Nadelmann rejects the claim that decriminalization of marijuana is a Trojan horse for a broader legalization agenda. With regard to decriminalizing other drugs, such as heroin, cocaine and methamphetamines, he says, “A majority of my organization and my board and the drug-policy reform movement as a whole are basically very cautious. We basically don’t support that.” But, he adds, he and his group support an elimination of prison time or severe punishment for possession of small quantities for personal use.

He also believes that opinion polls are “trending our way.” Majorities of Americans now favor decriminalization of marijuana, treatment instead of incarceration for many drug offenses, elimination of police asset-forfeiture powers and needle-exchange programs, he says.

## Rx for a public health problem

A public-private partnership at HLS looks to limit illegal Internet drug sales

**R**ecent studies show an alarming spike in illegal Internet sales of Vicodin, OxyContin and other highly addictive or dangerous drugs to teenagers who don’t have prescriptions.

And, while the government struggles to devise an effective strategy for cutting off these sales, Professor Philip Heymann ’60 is coming up with a plan—with a little help from his friends.

Heymann has assembled a panel of leading public and private experts from law enforcement, diplomacy, business and academia—including HLS colleagues William Stuntz and Jonathan Zittrain ’95 and several faculty members from Harvard’s John F. Kennedy School of Government—to design a tourniquet to stem the flow of illegal prescription drugs into the U.S. from sellers in countries whose governments can’t or won’t shut them down. Morris Panner ’88, CEO of OpenAir Inc. in Boston and former deputy chief of the narcotics section of the U.S. Department of Justice, is directing the project.

“Any 15-year-old with a credit card can

do a Google search for Vicodin and find international sellers within seconds,” says Heymann. “The challenge of this problem is that it involves an extremely complicated set of arrangements cutting across international borders—using Web sites and search engines, transferring money in ingenious ways and taking advantage of foreign governments that are either not equipped to deal with them or not inclined to do so.”

Some prescription drugs are lawfully sold online, mainly by legitimate sellers in the U.S. and Canada who verify buyers’ prescriptions. But illegal Web sites are proliferating, run by anonymous traders in unknown locations beyond the reach of U.S. law enforcement. Although most payments are made through major credit cards, tracing them can be difficult.

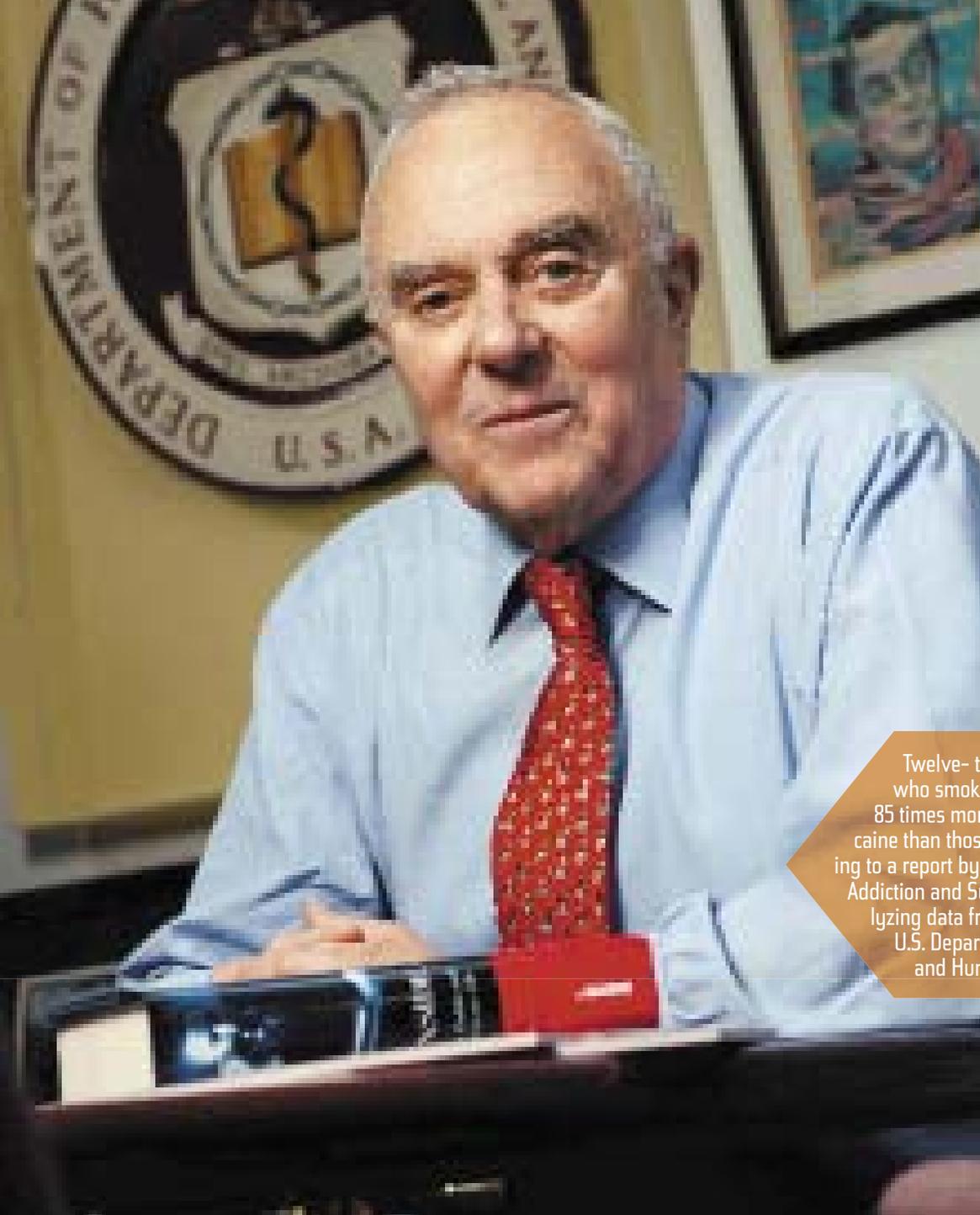
“Preventing advertising and sales over the Internet and getting the credit card companies and banks to shut down the payment systems—these are only parts of the problem,” Heymann says. “Diplomatic incentives are another part, to discourage

countries from letting this go on.”

About 6.5 million teenagers abused the prescription painkillers Vicodin or OxyContin last year, according to the Partnership for a Drug-Free America. Much of the access to these drugs is by Internet sales.

Heymann’s panel has already met several times at HLS and expects by year’s end to produce a set of recommendations that would foster cooperation among various government branches, private companies, banking and credit card companies, Internet service providers and search engine companies like Yahoo and Google. Diplomatic initiatives are also on the table. While the group is open to all possible fixes, including legislative action, an underlying premise of its mission is that the problem cannot be fixed through any single mechanism, and will depend largely on voluntary compliance and initiatives by private companies in the financial and information technology industries, working with law enforcement.

—R.L.



Joseph A. Califano Jr. '55, chairman of the National Center on Addiction and Substance Abuse at Columbia University

Twelve- to 17-year-olds who smoke marijuana are 85 times more likely to use cocaine than those who don't, according to a report by the National Center on Addiction and Substance Abuse, analyzing data from a study by the U.S. Department of Health and Human Services.

Maybe so, but few national politicians have jumped on the bandwagon. One who has is Kurt Schmoke '76, who, as mayor of Baltimore from 1987 to 1999, argued for decriminalization of marijuana and for a radical rethinking of national drug policy. The war on drugs, Schmoke has said, is America's "domestic Vietnam."

"The problem of substance abuse is more a public health problem than a criminal justice problem," he says. "The drug traffickers can be beaten and the public health of the United States can be improved if we are willing to substitute common sense for rhetoric, myth and blind persistence," he wrote. Schmoke worked with Nadelmann in developing a needle-exchange program in Baltimore when he was mayor. Are such pro-

grams making a difference?

"I think they are," Schmoke says. "But it's simply a long and difficult process because there are some people who believe that it's just morally wrong. Forget whether the war on drugs is actually effective or not; they would say that it's morally wrong to legalize drugs that are currently illegal."

Perhaps the best-known spokesman for that view is Bennett, who is buoyed by a recent study showing a slight dip in drug use among high school students. "People should associate drug use with a penalty," he maintains. "We need an unambiguous message." \*

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*Dick Dabl contributed to this story.*

# American Journey

After an odyssey that took him to the federal

**G**EORGE LEIGHTON '43 ('46) spent his childhood in Massachusetts summering in Plymouth and wintering in New Bedford. His summer home was a shanty with no running water or electricity near the cranberry bogs, and his winter home was an unheated apartment near the textile mills.

From his modest beginnings as the child of Cape Verdean immigrants and armed with only a sixth-grade education, Leighton made his way through Howard University to Harvard Law School to become a leading civil rights attorney and a federal district court judge.

Born George Neves Leitao on Oct. 22, 1912, he was renamed George Leighton by a fourth-grade teacher who couldn't pronounce his surname. He had to leave school at the beginning of seventh grade to work on an oil tanker.

Surrounded by "drunken, dangerous men," he hated life at sea. His seafaring days ended in violence in a New York City port when the steward abandoned ship, leaving Leighton, the cook, with no provisions. Under attack by a mutinous crew, Leighton escaped by hiding in a docked tugboat.

As a young boy, Leighton's favorite book was the Sears Roebuck catalog. But growing up, he read extensively and taught himself math and history. He returned to school at night in the 1930s, and in 1936, he won a \$200 scholarship in an essay-writing contest. Setting his sights on Howard University in

Washington, D.C., Leighton passed the school's entrance exam, but, without a high school diploma, he wasn't immediately enrolled in the degree program. His lack of a diploma also caused the scholarship committee to make his award contingent on completing his studies in good standing. By the end of first term, he was on the dean's honor roll, where he remained, graduating magna cum laude in 1940.

Knowing that some of the great African-American lawyers had graduated from Harvard, Leighton was determined to go there. He approached Howard University Dean William Hastie '30 S.J.D. '33 and later received a handwritten note from HLS Dean James Landis '24 inviting him to stop by the next time he was in Cambridge. The following Saturday, Leighton was in Landis' office. Leighton remembers the dean's "laser-beam blue eyes" fixed on him as he poured out his life's story. After finishing his monologue, Leighton didn't know what else to do but take his coat and hat and leave. He later learned he was accepted to HLS on a full scholarship.

"I remember sitting in Austin Hall, poor as I could be, rubbing shoulders with the wealthy sons and grandsons of some of the greatest lawyers in America," said Leighton. Although it was hard work, he says, his years at Harvard gave him a sense of satisfaction that has never left him.

After law school, he moved to Chicago. In the 1950s, he was president of the Chicago NAACP and

was chairman of the organization's legal redress committee during the Cicero riot case. He represented Harvey Clark, an African-American, who, according to Leighton, "had the temerity to rent an apartment." Leighton advised Clark that he had a right to move into Cicero, a white suburb of Chicago, but a mob burned the building down to prevent the move, and Leighton was indicted for conspiring to start a race riot.

"They did me a big favor," said Leighton. "They taught me how it felt to be wrongfully accused."

Several years later, with the help of Thurgood Marshall, then general counsel of the NAACP, the indictment against Leighton was dismissed.

In 1964, he was elected a judge of the Circuit Court of Cook County, and later, a justice of the Illinois Appellate Court, First District. After being nominated by President Gerald Ford, he was appointed a U.S. district judge for the Northern District of Illinois in 1976. He retired in 1987, and at 92, he's of counsel at Neal & Leroy in Chicago.

Leighton regularly returns to New Bedford to take his "sentimental journey," and several years ago, he bought a summer home in Plymouth with a small cranberry bog in back.

"The place where you have suffered a lot, cried a lot," said Leighton, "that place becomes precious." \*

By Christine Perkins | PHOTOGRAPHED BY CHRIS LAKE IN CHICAGO, MAY 2, 2005

bench, George Leighton '43 ('46) returns home



# Selling Health to the Third World

Richard Frank '62 is in

**A**IDS, MALARIA AND MALNUTRITION claim millions of lives in the developing world every year. One approach to such problems is to provide free health products—condoms, malaria kits and vitamin supplements—to health clinics.

Richard Frank '62 prefers a different tack: market and sell the items. He runs a nonprofit company in Washington, D.C., Population Services International, that does just that. PSI arranges for such products to be sold cheaply in poor countries because the company has found that selling them has two distinct advantages. First, when people have to pay for products, they are more likely to use them, Frank says. Second, selling items in retail stores allows the goods to reach more people.

"If you limit yourself to the public-sector clinics, you may only get a product out through 200 clinics," Frank said. "But if you go to the commercial infrastructure, ... 10,000 retailers will carry your product."

Frank's objective is not to make money. "Indeed, we lose money. Our objective is to give lower-income people the opportunity to have better health." International agencies, governments and private foundations provide funding for PSI's projects.

The company neither invents nor manufactures any of the goods that it distributes. Instead, PSI

forms partnerships with governments and local businesses—from Kenya to Cambodia—to improve the public's access to products such as insecticide-treated mosquito nets, and birth control. The company also designs marketing campaigns that are tailored to different cultures and coordinates with local distributors to make products widely available in stores.

PSI's businesslike strategy focuses on results, and according to Frank, this distinguishes it from hundreds of other nonprofits dedicated to good causes. When it comes to effectiveness, he says, having an appealing mission is not enough.

"It seems to me the question is: Does it [have a] health impact?"

This insistence on doing what works has sometimes generated criticism on Capitol Hill. The Wall Street Journal reported that an aide to Sen. Sam Brownback, R-Kan., characterized a PSI ad campaign for condoms as "obscene" and "oversexualized."

Frank countered that his approach to public health is in fact "conservative and old-fashioned" in its focus on effectiveness. It's an approach he attributes in part to his legal training.

"Harvard Law School says: Do it well. If it's practicing commercial law, do it well. I don't think that just practicing commercial law, which I once did, is the end-all,"

he said. "So we're doing something else. We're giving lower-income people in developing countries the opportunity to have good health. Do that well."

Frank has applied this philosophy not only in private practice but throughout his career. He held senior positions in government: undersecretary of commerce during the Carter administration, administrator of the National Oceanic and Atmospheric Administration and legal adviser for the U.S. State Department. He also served as director of the Center for Law and Social Policy, a nonprofit that focuses on helping low-income individuals.

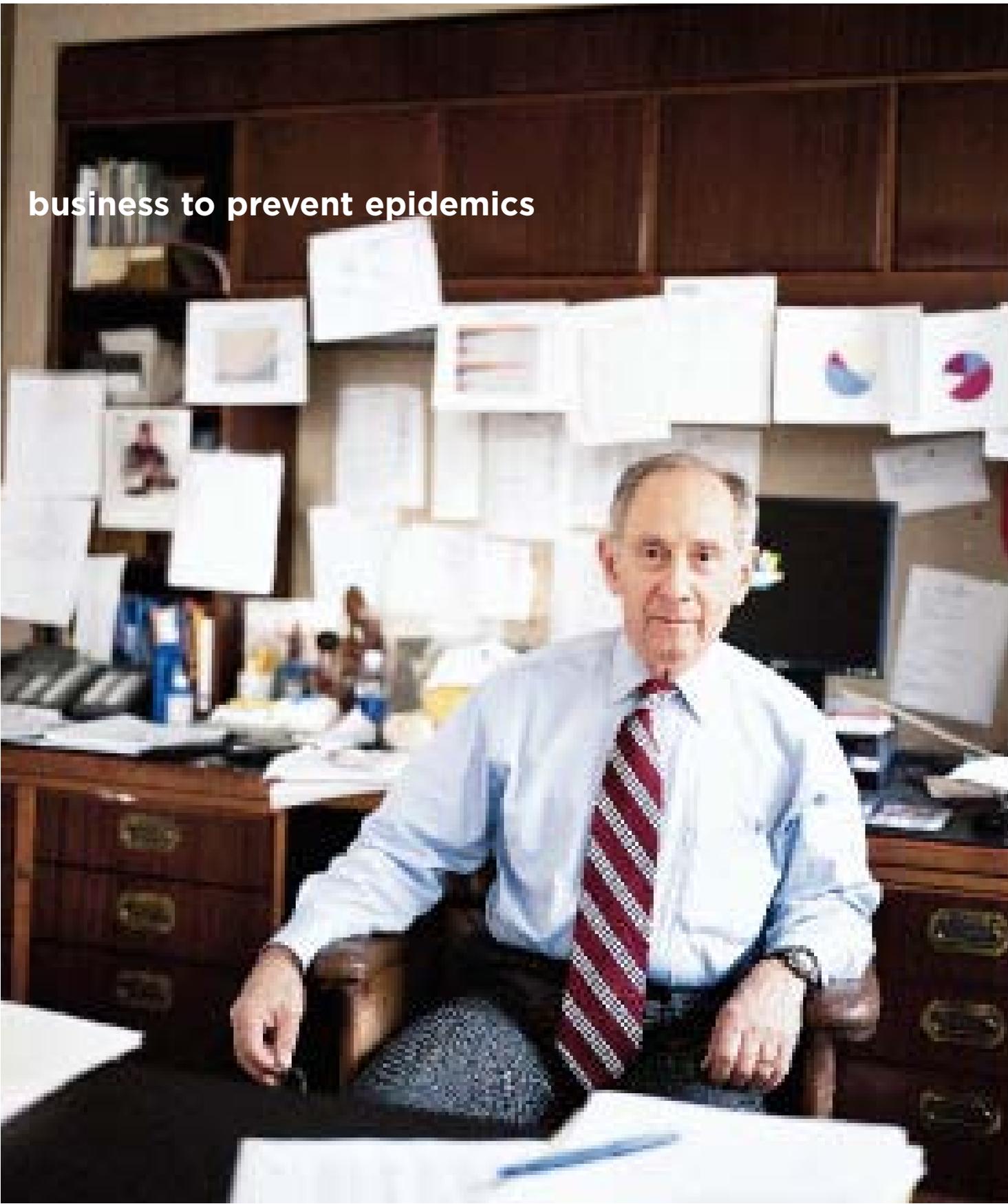
PSI unites both the government-service and private-sector sides of Frank's résumé. The organization coordinates with governments of developing nations and with international agencies like UNICEF, all the while using the marketing strategies of a private company like Procter & Gamble, Frank says.

If the numbers are any indication, PSI's model is producing results. According to its Web site, the organization estimates that in 2004 its programs prevented 803,000 HIV infections, 6.1 million unintended pregnancies and 83.6 million cases of malaria.

Though the missions and the institutions have changed since he graduated from Harvard Law School, Frank said that his goal remains the same: "Do it well." \*

By Mary Bridges | PHOTOGRAPHED BY DAVID DEAL IN WASHINGTON, D.C., APRIL 26, 2005

**business to prevent epidemics**



# 26 Years Later

## Peter Ferrara '79 finally has company

**T**WENTY-SIX YEARS AGO, Peter Ferrara '79 picked a then obscure topic for his third-year paper: Social Security solvency.

Ferrara didn't realize that his proposed solution—allowing Americans to divert part of their payroll taxes into private investment accounts—would become his professional obsession.

He dedicated the next quarter century to peddling private accounts tenaciously within conservative circles and then pushing the concept into the mainstream.

Today, Ferrara's idea is at the center of a national debate over fixing the Social Security system. And even those who fiercely oppose creating private accounts give him credit for advancing the idea so far.

Ferrara's conservative beliefs were well-settled long before he arrived at Harvard Law. He remembers being transfixed while watching television as Barry Goldwater stormed the 1964 Republican National Convention. He was 9 years old at the time.

So as he was wrapping up law school in 1979, Ferrara cast about for a third-year paper topic that would combine his interest in policy with his free-market values. The energy crisis was the big issue of the day, but he opted for Social Security, an issue few conservatives had written about.

The result was a 650-page paper that the fledgling Cato Institute published as its first hardcover book in 1980. It was hardly a best-seller, but Ferrara continued to

hammer at the idea. He pitched it to every conservative think tank in Washington and evangelized during debates at even the most unlikely venues, including an AARP convention.

"If you do this right, you can structure a system that serves all the policy goals of the current system better than the current system does," Ferrara said.

Except for a couple of breaks, including a stint as a Reagan White House policy aide, overhauling Social Security has been his life's work.

Ferrara knew that sooner or later the issue would get the attention of the political establishment—although later, he knew, could mean decades. "But I'd already sunk my teeth in so deeply I couldn't get out."

The idea, he says, slowly gained traction through the late 1980s and 1990s among conservative Republicans, culminating in an endorsement by George W. Bush during the 2000 presidential campaign. "He put it in the middle of politics," Ferrara said.

By inauguration day this year, it seemed as if Ferrara's work might finally pay off. The president barnstormed the nation promoting private accounts. And yet by spring, Democratic counterattacks were taking their toll, and Republican senators appeared to be losing enthusiasm for private accounts.

One April morning, Ferrara bounded up the stairs of the law firm housing the offices of the Free

Enterprise Fund, on Washington's K Street, one of five conservative groups he works for these days.

"Something big and bad is happening," he said breathlessly to Free Enterprise Fund staffers. A wire story that morning reported that Senate Republicans were considering shelving private accounts and instead focusing on reforms to protect the program's solvency.

The rest of the day, Ferrara raced to finish a response for the National Review's online edition in between shuttling his son to and from his high school baseball game.

"There's an old saying that applies to politics: 'Don't throw the baby out with the bath water,'" Ferrara wrote. "This latest GOP capitulation to the Democrats would throw the baby out and *keep* the bath water."

Ferrara concedes there is little chance of private accounts being enacted this year, the last shot, he says, before the next presidential election.

But he has hardly given up, already looking to potential Republican presidential candidates to carry the ball forward in 2008. He also hopes to broaden his focus to controlling costs of other entitlement programs such as Medicare and Medicaid, which, he says, threaten to boost federal spending as a percentage of the GDP to levels even higher than during World War II.

"I'm going to make a big crusade out of it," Ferrara said, adding with a grin, "I've still got another 30 years." \*

By Seth Stern '01 | PHOTOGRAPHED BY DAVID DEAL IN TYSONS CORNER, VA., APRIL 27, 2005

**on his crusade to privatize Social Security**



# Family Matters

Through literature and law, Larissa Behrendt

**A** GIRL IS KIDNAPPED and raped. Her child is stolen. No one is ever prosecuted.

For Larissa Behrendt, this story—her grandmother’s—is part of her personal history, but also part of her country’s. Australian government policy toward aborigines caused her grandmother to be taken from her family and aboriginal home in New South Wales and placed in domestic service with a white family in another city. She was raped and, after giving birth, was denied custody of her child.

The removal policy ended in 1969, the year Behrendt was born, but racism and ignorance about aboriginal history continue. As an indigenous rights lawyer, she has made it her life’s work to right historic wrongs and ensure that the stories of her people are told.

A member of the Eualeyai/Kamilaroi nations of northwest New South Wales, Behrendt grew up talking about land rights and the impact of colonization at home, but aboriginal history and the removal policy were never discussed in school. She was one of the first generation of aborigines to be able to go from high school to university, but even there, indigenous issues were not part of the curriculum. In 1993, she became the first aborigine to attend Harvard Law School.

At 36, Behrendt LL.M. ’94 S.J.D. ’98 is a professor of law and indigenous studies at the University of Technology in Sydney, where she directs the university’s Jumbunna Indigenous House of Learning. A

judicial appointee, she also sits on a tribunal that hears antidiscrimination cases and is part of a review board for the incarcerated.

At 25, she wrote her first book, on aboriginal dispute resolution. Her second came from her S.J.D. thesis on indigenous rights and Australia’s future. But Behrendt found it was Australia’s past that haunted her. And to write about it, she turned to fiction.

“It became really important to remind people of the human stories—to show what it actually means when you implement a policy or you change a law,” said Behrendt.

Her novel, “Home,” traces the devastation visited by the government’s removal policy on generation after generation of one aboriginal family.

Her father’s friendship with Roberta Sykes, the first aborigine to attend Harvard, set Behrendt on the path to HLS. Behrendt believes the opportunity to study at HLS gave her the freedom to get away from the prejudices and politics in Australia and to focus on the issue of sovereignty rights.

“In Australia, the law academics would say to me, ‘Why would you choose that as a topic? There will never be a recognition of aboriginal sovereignty,’” said Behrendt. “Whereas, when I was at Harvard, people would say, ‘That’s a really interesting question. How do you accommodate the rights of a culturally distinct, historically marginalized minority within a democratic

society?’”

She also finds her Harvard degrees have given her more credibility as an advocate.

“In the current political climate, people who advocate for indigenous rights, particularly in a way that’s against the government line, are really quick to be ridiculed and dismissed,” said Behrendt. “Having done a doctoral thesis at Harvard on indigenous rights meant that it had a kind of validity that, if I had done it in Australia, it wouldn’t have had.”

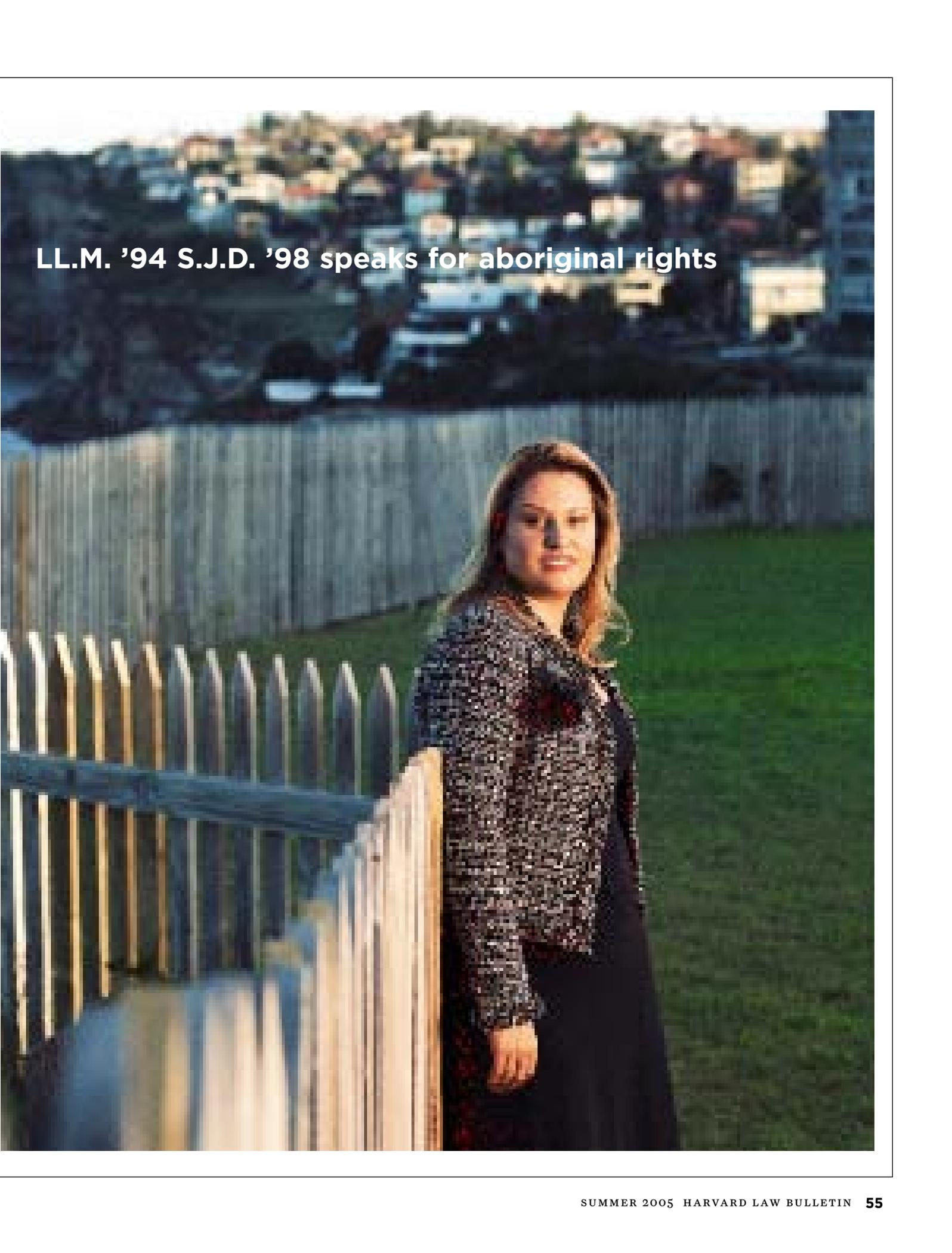
It was at HLS that she began recording her family’s stories. In 2002, her unpublished manuscript won the David Unaipon Award for indigenous writers. The University of Queensland Press published it in 2004, and this year the book won a Commonwealth Writers Prize.

At the end of the year, Behrendt will leave her directorship at Jumbunna to focus on research and advocacy and to continue her writing. Queensland Press has offered her a contract for another novel, a fictionalized account of the radical aboriginal activists of the 1960s.

Behrendt is becoming a symbol of hope for the next generation.

“One of the wonderful things that has happened is the number of aboriginal kids from around Sydney that say, ‘Oh, you’re the one who went to Harvard.’ Even if they can’t remember my name, they know there’s an aboriginal person who went there. And if someone’s done it in the community, then they think it’s an option for them.” \*

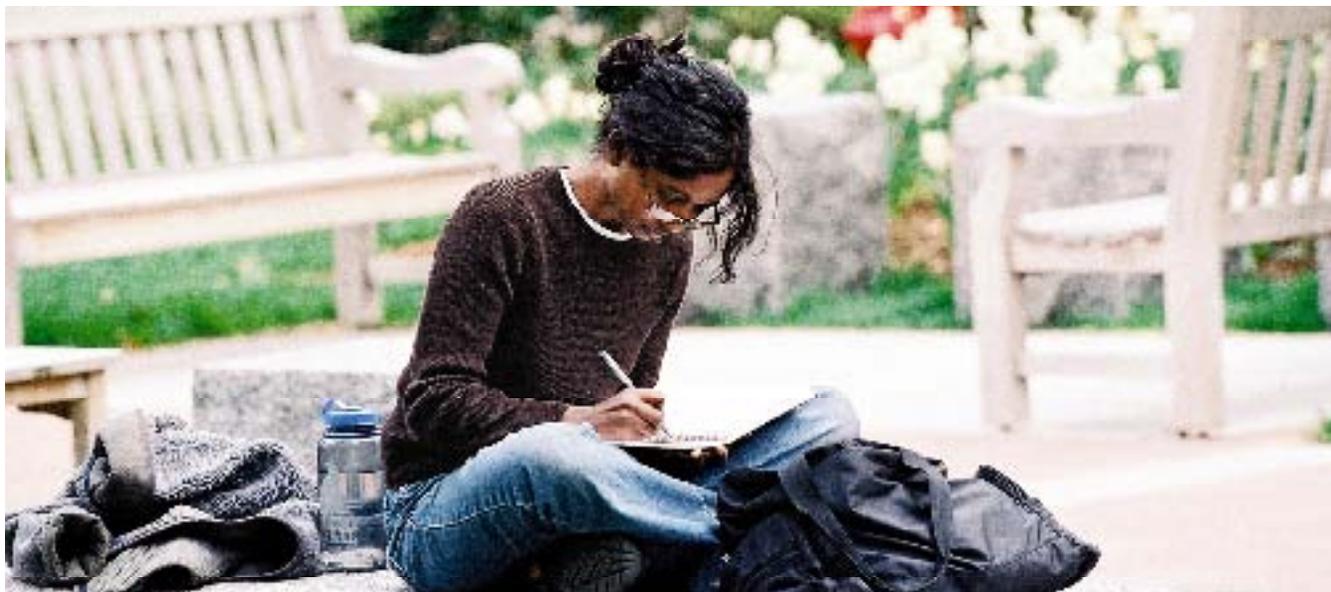
By Christine Perkins | PHOTOGRAPHED BY GEORGE FETTING IN SYDNEY, AUSTRALIA, MAY 4, 2005

A photograph of a woman with long brown hair, wearing a dark, patterned jacket and a dark skirt, standing in a green field. She is leaning against a white picket fence. In the background, there is a wooden fence and a hillside covered with many houses, suggesting a residential area. The lighting is soft, possibly from the late afternoon or early morning.

**LL.M. '94 S.J.D. '98 speaks for aboriginal rights**



# Calendar



GUSTAV FREEDMAN

JULY 14, 2005  
**HLSA of Northern California Summer Party**  
San Francisco  
617-495-4698

JULY 21, 2005  
**HLSA of New York City Summer Reception**  
617-495-4698

SEPT. 15, 2005  
**Charles Hamilton Houston Institute for  
Race and Justice Launch**  
Harvard Law School  
617-495-4698

SEPT. 16-17, 2005  
**HLS Leadership Conference**  
Harvard Law School  
617-495-4906

SEPT. 16-18, 2005  
**A Celebration of Black Alumni**  
Harvard Law School  
617-495-4698

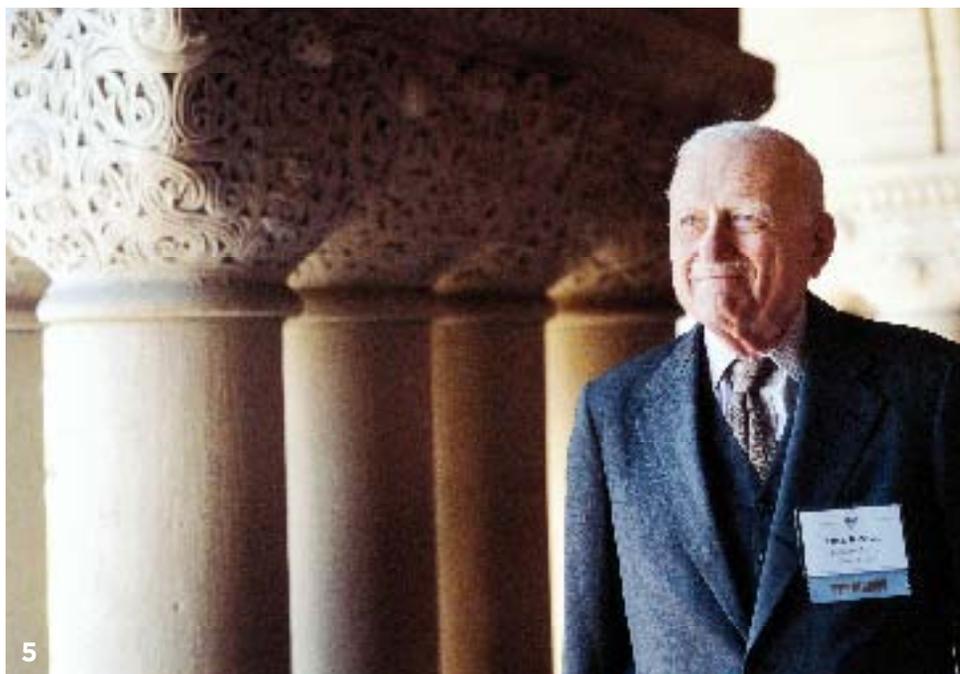
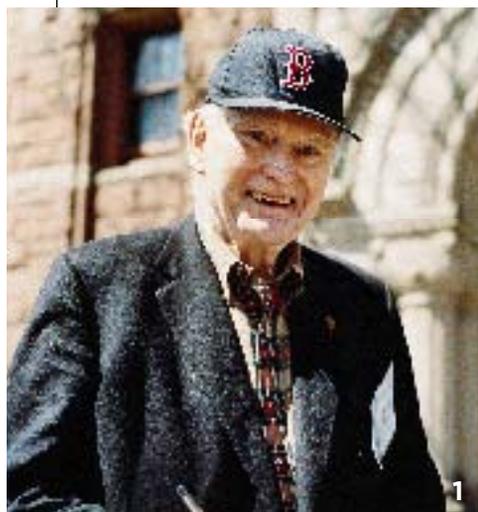
OCT. 20-23, 2005  
**Fall Reunions Weekend**  
**Classes of 1950, 1960, 1975,  
1985, 1990, 2000**  
Harvard Law School  
617-495-3173

APRIL 27-30, 2006  
**Spring Reunions Weekend**  
**Classes of 1956, 1966, 1971, 1981, 1996**  
Harvard Law School  
617-495-3173



KATHLEEN DOOHER

## Together, again Spring 2005 Reunions

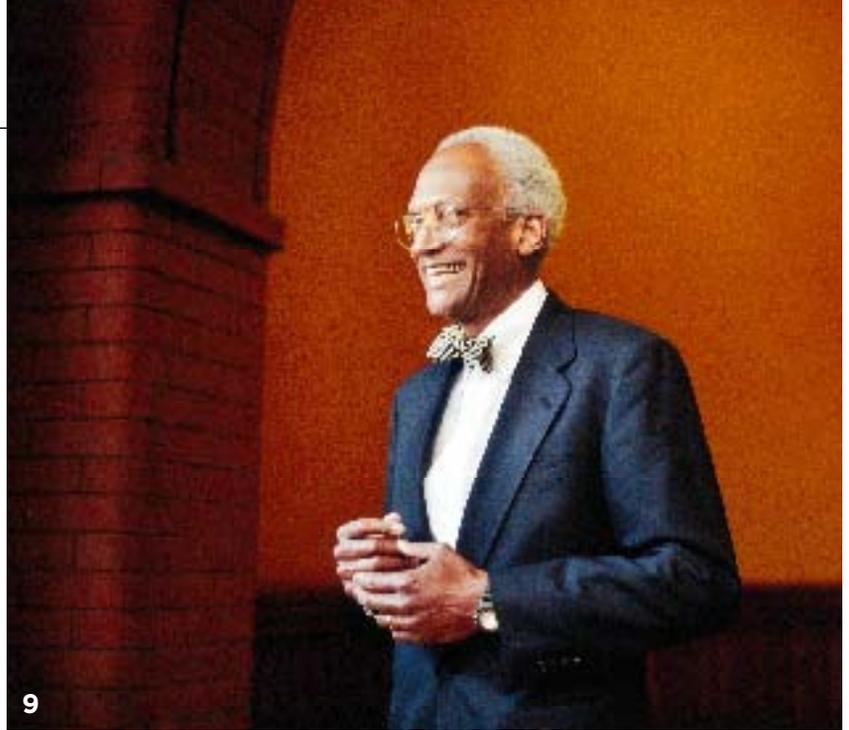


1. Robert Quinn '55 2. Rowena Young '80 3. 1995 LL.M. classmates Diego Fissore and Polykarpos Adamidis 4. 1965 classmates Thomas Welch and James Robertson 5. Fred Ringel '55 6. 1980 classmates Marla Williams and Michael Smith 7. 1965 classmates Michael Keating and Joseph Cheavens





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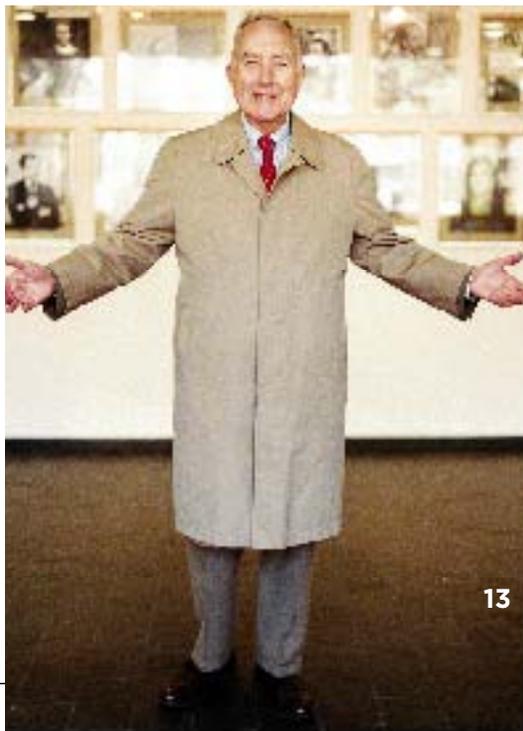
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8. 1980 class photo 9. James Bowers '70 10. Justine Kirby LL.M. '95 and Alexa Smith LL.M. '95 ('02) 11. Robert Leirer Justice '70 ('71) 12. 1980 classmates Scott Andrew Brister and Rex David Van Middlesworth 13. Andrew Gill Meyer '55 14. Polly Nyquist '95 15. 1955 classmates Howard Wiener and S. Paul Mazza



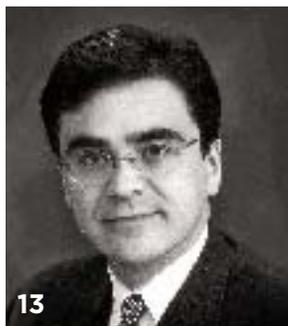
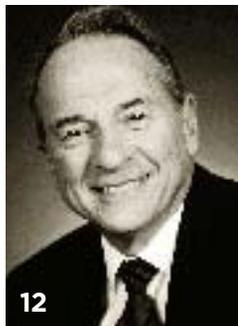
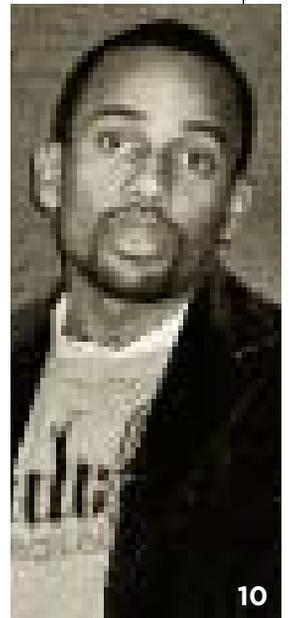
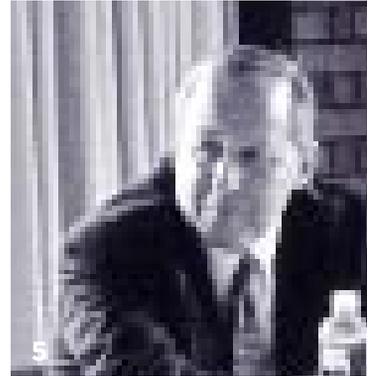
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15

## Traphagen Distinguished Alumni Speaker Series

This year, 15 alumni discussed their careers with students as guests of Dean Elena Kagan '86. The speaker series is supported by Ross E. Traphagen Jr. '49.



1. Lawrence R. Baca '76, deputy director, Office of Tribal Justice, U.S. Department of Justice 2. Robert D. Joffe '67, presiding partner, Cravath, Swaine & Moore 3. Mark A. Meyer LL.M. '72, member, Herzfeld & Ruben; Rubin Meyer Doru & Trandafir 4. Jeffrey A. Lewis '70, novelist, television and film writer 5. William H. Heyman '73, vice chairman and chief investment officer, St. Paul Travelers 6. Anthony R. Chase '80, CEO, ChaseCom 7. Preeta D. Bansal '89, counsel, Skadden, Arps, Slate, Meagher & Flom; chairwoman, U.S. Commission on International Religious Freedom 8. Peter R. Fisher '85, managing director, BlackRock 9. Amy R. Gutman '93, novelist 10. F. Hill Harper '92, actor, screenwriter 11. Todd D. Stern '77, partner, Wilmer Cutler Pickering Hale and Dorr 12. Jared Jussim '60, executive vice president, Intellectual Property Department, Sony Pictures Entertainment 13. Demetrios A. Boutris '86, president, Boutris Group 14. Lisa M. Poyer '80, general manager/company manager for Broadway productions 15. Thomas Graham Jr. '61, senior counsel, Morgan Lewis

# In Memoriam

## Obituary Information

Details may be sent to Harvard Law Bulletin, In Memoriam Editor, 125 Mount Auburn St., Cambridge, MA 02138

### 1920-1929

**Alexander Katzin '28-'29** of Bala Cynwyd, Pa., died March 14, 2005. He was in private practice in Philadelphia. Earlier in his career, he served as a special deputy attorney general for the U.S. Department of Justice in Pennsylvania.

### 1930-1939

**Milton B. Riskin '30** of Bethlehem, Pa., died Nov. 15, 2004. He was a partner in a general practice in Bethlehem, where he focused on wills, estates and probate law. He was also president of Wilbur Savings and Loan Association and counsel for Moravian College in Bethlehem.

**Max Freund '32** of New York City died Dec. 29, 2004. He was a partner and then of counsel at Katten Muchin Zavis Rosenman in New York City, where he specialized in litigation.

**James G. Henry Jr. '32-'33** of Ft. Lauderdale, Fla., died Aug. 10, 2004. For almost 29 years, he was a judge for the Social Security Administration. He retired from the bench in 2003. Earlier in his career, he assisted the attorney general in New Jersey and helped prosecute city officials in Newark. He was vice president, general counsel and director for Heller Brothers Steel Co. A descendant of Patrick Henry, he was a member of the Sons of the American Revolution. He was also a trustee of Ocean County College in Toms River, N.J.

**Craddock M. Gilmour '33** of Salt Lake City died July 21, 2004. He was a solo practitioner in Salt Lake City and later founded Gilmour Lime Co. Earlier in his career, he practiced law in New York and London, before serving as general counsel to the Utah Tax Commission. In the 1960s, he served on the governor's council on aging and was a chairman of the Utah State Bar Association's Committee on Dangerous Drugs and Narcotics. Active in Episcopal Church affairs, he served on a standing commission on racism in the 1960s, helped draft human relations legislation for the church and drafted its statement on Vietnam. During WWII, he served as a colonel in the U.S. Army and received the Legion of Merit for his work on war contracts at the Pentagon.

**Francis W. Jenness '33-'34** of Cape Eliza-

beth, Maine, died Feb. 24, 2005. An advertising and jingle copywriter for commercial products and retail stores, he worked for Tatham-Laird & Kudner, now Euro RSCG Worldwide, and helped create jingles for Ovaltine and the clothing store Robert Hall. During WWII, he served in the U.S. Navy.

**John N. Cole '34** of Newport, R.I., died July 29, 2004. He worked for the U.S. Department of Justice in the antitrust division. He also worked in the Office of Price Administration. In 1946, he joined Maguire, Cole & Bentley in Stamford, Conn., and litigated cases against utility companies. He was a director of the South Shore Bank and the Multibank Financial Corp. A member of the Society of Mayflower Descendants, he wrote articles for the organization's publication, the *Mayflower Quarterly*, and for *Rhode Island History*.

**Jesse A. Hamilton '34** of Glendale, Calif., died Oct. 17, 2004.

**C. Francis Petit '34** of Palo Alto, Calif., died Feb. 13, 2005. A lawyer and businessman, he worked for two law firms before joining Harvill Corp. and Southwest Products in Duarte, Calif. He was involved in the citrus industry and served as president of C.W. Petit Ranch and vice president of Reimer Petit Ranch. He also served on the board of La Vina Hospital in Altadena. In 1974, he won the American Lawn Bowls Association National Open Singles Championship; 10 years later, he was named manager of the association's World Bowls Team; and in 1985, a tournament of the Pasadena Lawn Bowling Club was named in his honor.

**Santo J. Salvo '34** of Millville, N.J., and Hutchinson Island, Fla., died Jan. 8, 2005. A senior partner at Salvo & Salvo, he specialized in corporate law and was the first municipal judge of Millville. He served on the Millville Hospital Board and was chairman of the board of AAA of South Jersey for more than 55 years.

**Robert S. Fuchs '34-'35** of Newton, Mass., died Dec. 1, 2004. For 20 years, he was the New England regional director of the National Labor Relations Board, and he worked for the board for nearly 40 years. His father was owner of the Boston Braves baseball team from 1923 to 1935, and Fuchs was a third-string catcher and president of the Harrisburg (Pa.) Senators. He later

wrote a book about his and his father's experiences in baseball. For 25 years, he taught labor law at Boston College and Suffolk University. He served in the U.S. Army during WWII.

**Norman Annenberg '35** of New York City died Jan. 8, 2005. A solo practitioner in New York City, he specialized in matrimonial, corporate and estate law. He was a benefactor of the Summer Undergraduate Research Fellowship Program at Columbia University. He was awarded the Bronze Star for his service in WWII.

**James C. Phelps '35** of Van Nuys, Calif., died July 6, 2004. He was a corporate director for industrial relations for Fibreboard Corp., a developer of forest products.

**George E. Ray '35** of Dallas died Jan. 11, 2004. He was president of Ray Trotti Hemp-hill Shearin & Finfrock in Dallas, where he specialized in tax and estate planning. He was president of the Texas Bureau for Economic Understanding, advisory director of the Small Business Council of America and a longtime board member of the Dallas Council on World Affairs. He served on Baylor University's development council for 14 years and was named an honorary alumnus of the university's law school in 1982. He wrote "Incorporating the Professional Practice."

**Elliott E. Ruskin '35** of Boynton Beach, Fla., and Merrick, N.Y., died Nov. 28, 2004. For more than 50 years, he practiced law in New York City. He specialized in trusts and estates and taxes as a partner at Halperin Ruskin & Klau.

**Robert Y. Taliaferro '35** of El Dorado, Kan., died Feb. 19, 2005. He was a co-founder of the Butler County Abstract Co. After the company was sold in 1971, he continued to work for the new company until his retirement at the age of 75. He wrote columns for local newspapers and served on the boards of the American Red Cross and El Dorado's Chamber of Commerce, Community Concerts and Library. During WWII, he served in the U.S. Navy and was aboard the USS Terror on May 1, 1945, when the ship was hit by a kamikaze, causing 171 casualties.

**Robert Bygrave '35-'36** of Bath, Maine, died Feb. 11, 2005.

**Thomas H. Brown Jr. '36** of Westport, Conn., died April 9, 2004. He was president of All State Venture Capital Corp., a small-business investment company.

**William F. Delaney Jr. '36** of Reno, Nev., died Aug. 3, 2004. Formerly of Allenhurst, N.J., he was president of Delaney Offices, a reinsurance firm in New York City.

**Gerald P. Rosen '36** of Roswell, Ga., died Oct. 9, 2004. Formerly of Marina Del Rey, Calif., he was a professor at Loyola Law School in Los Angeles. He joined the faculty in 1971 and was dean from 1981 to 1982. During his career, he was director of the Vanderbilt Group of Mutual Funds and president of the Pegasus Income & Capital Fund.

**Bertram D. Sarafan '36** of Southbury, Conn., died Dec. 5, 2004. A specialist in administrative law, he was chairman of the New York State Racing and Wagering Board and the New York State Liquor Authority. Earlier in his career, he was an assistant district attorney in New York. He was a veteran of WWII.

**Ralph E. Clark Jr. '36-'37** of Gunnison, Colo., died July 17, 2004. Formerly of Cincinnati, he was an attorney specializing in probate and trust law. He was a director and treasurer of the Cincinnati Travelers Aid Association and a trustee of the Ohio Bar Association. He later moved to Crested Butte, Colo., and restored the Rio Grande Railroad Depot, which he donated to the town for a community center. During WWII, he served with the 37th Infantry Division in the South Pacific.

**C. William Cooper '37** of Cranberry Township, Pa., died Feb. 20, 2005. Formerly of Falmouth, Mass., he was a solo practitioner there. He was a legal adviser to Falmouth Nursing Association, a director of the College Light Opera Co., and an officer of Falmouth Hospital and the Falmouth Village Improvement Association.

**Winfield T. Durbin '37** of La Jolla, Calif., died Jan. 24, 2005. He lived in the Chicago area for more than 60 years and practiced law there.

**Maurice F. Joyce '37** of Norwood, Mass., died March 5, 2004. Formerly of West Roxbury and Cambridge, Mass., he was a longtime real estate lawyer and an assessor for the city of Boston for 25 years. He also taught real estate at Burdett College.

**Salvatore E. Pirro '37** of Garden City, N.Y., died July 7, 2004. He was a solo practitioner

specializing in immigration law. He taught adult education Spanish, Italian and French classes and served as editor of the *Kiwanis Bulletin of Garden City*.

**Jay E. Rubinow '37** of Manchester, Conn., died Jan. 4, 2005. A Superior Court judge and state probate court administrator, he presided over a 1970s trial that found that Connecticut's system of funding public school education was unconstitutional. He was named the best trial judge in Connecticut in 1976 by Connecticut Magazine and the Connecticut Bar Association. From 1961 to 1967, he served as chief judge of the Connecticut Circuit Court. A lifelong resident of Manchester, he practiced law there for 23 years prior to his judicial appointment. After retiring from the bench in 1982, he served as a state trial referee.

**Frederick Bold Jr. '38** of San Francisco died Dec. 14, 2003. A specialist in California water law, he founded the Diablo Water District in 1953 and served as general counsel to both the Diablo and Contra Costa water districts for many decades. For 23 years, he was a partner in the firm of Carlson, Collins, Gordon, and Bold in Richmond, Calif., and in 1970, he organized the firm now known as Bold, Polisner, Maddow, Nelson & Judson in Walnut Creek. When he retired in 2003, at the age of 90, he was one of the oldest practicing lawyers in the state. During WWII, he served in the U.S. Army and participated in D-Day. He later served in the U.S. Army Reserve, attaining the rank of colonel.

**Henry G. Fischer '38** of Washington, D.C., died Jan. 3, 2005. A Washington, D.C., lawyer and publisher, he was president of Pike & Fischer, a legal publishing company in Silver Spring, Md. He founded the firm in 1939 and published "Federal Rules Service," a treatise on the federal rules of civil procedure, as well as other treatises on federal regulation. His company later became a subsidiary of the Bureau of National Affairs. He also concentrated in communications law and civil procedure at Fischer Willis & Panzer. During WWII, he served in the U.S. Army Signal Corps.

**Sidney I. Roberts '38** of New York City died Feb. 26, 2005. An international tax lawyer, he co-founded Roberts & Holland in New York City. He was president of the U.S. branch of the International Fiscal Association and wrote many treatises and articles on tax matters. He also taught at Columbia Law School.

**Sidney H. Willner '38** of New York City died March 14, 2005. He was a longtime

executive of Hilton International, joining the company in 1958 as vice president. He negotiated purchases and sales, leases and contracts for the company and helped it expand from four hotels to 90 worldwide. At 73, he and a partner started a hotel chain, Medallion Hotels, and he served as chairman. Earlier in his career, he worked for the U.S. Securities and Exchange Commission as an associate director of its public utilities and corporate reorganization division and practiced international and corporate law in Washington, D.C. During WWII, he served in the U.S. Army Judge Advocate General's Corps, attaining the rank of captain. After the war, he reorganized the German coal and steel industries, breaking up three companies into 30 enterprises, and helped negotiate a treaty that created the European Coal and Steel Community.

**Stanley H. Gaines '39** of Falls Church, Va., died Jan. 17, 2005. An attorney and CIA officer, he worked for the agency in Germany and Washington, D.C., before retiring in 1973, and received its Intelligence Medal of Merit. He later was in private practice with Keating & Johnson. During WWII, he was an artillery officer and scout in the U.S. Army, landing at Normandy Beach three days after D-Day. He attained the rank of captain and served in the Judge Advocate General's Office after the war ended.

**Warner H. Henrickson '39** of La Mirada, Calif., died April 11, 2005. Formerly of Homewood, Ill., he was tax counsel to Amoco Oil Co. in Chicago for 30 years. He also taught at Marquette University Law School in Milwaukee.

**Frederick S. Lane '39** of Hingham, Mass., died March 21, 2005. A specialist in real estate law, he was a longtime partner at Nutter McClennen & Fish in Boston, where he was chairman of the real estate and finance department and a member of the executive committee. He was also chairman of the ABA's section on real property, probate and trust law; the first chairman of the Anglo-American Real Property Institute; and the first president of the American College of Real Estate Lawyers, which established an award in his honor. He served in the U.S. Navy during WWII.

**Robert K. Mardfin '39** of Hilton Head Island, S.C., died Oct. 28, 2004. Formerly of Darien, Conn., he was a benefit plans adviser for Exxon Corp. in New York City.

**John H. Weaver '39** of Great Falls, Mont., died July 31, 2004. A member of what is now known as Jardine, Stephenson, Blewett &

Weaver in Great Falls for 44 years, he specialized in trial and tax law. For 10 years, he served as managing partner. He served on the Montana Supreme Court Commission on Practice from 1967 to 1979 and was president of the Montana Bar Association. During WWII, he served as a captain in the U.S. Army.

**Robert B. Wolf '39** of Conshohocken, Pa., died March 25, 2005. He was a senior partner at Wolf, Block, Schorr & Solis-Cohen in Philadelphia and an advocate for juvenile justice. In the 1960s, he served as chairman of the Pennsylvania Committee on Crime and Delinquency, and he later was head of a Philadelphia Bar Association committee to develop a program to pay for legal representation for juveniles. In 1984, he was appointed a special master for the Youth Study Center in Philadelphia. He was director of the Greater Philadelphia Movement, which spearheaded political reform in the city, and was counsel to the Federal Housing Administration. In 1989, he received the Fidelity Award from the Philadelphia Bar Association for his pro bono contributions to the city's justice system. During WWII, he served in the U.S. Army, and in 1945, he was assigned to the staff of the chief U.S. prosecutor for the Nuremberg war crimes trials.

### 1940-1949

**Albert H. Hoopes '40** of Bloomington, Ill., died Sept. 29, 2004. For more than 55 years, he practiced law in Bloomington. He was a director of State Farm Insurance Mutual Funds and Hoopes Enterprises.

**Henry W. Lewis '40** of Chapel Hill, N.C., died Dec. 19, 2004. A professor of public law and government at the Institute of Government at the University of North Carolina at Chapel Hill, he joined the faculty there in 1946. He served as the institute's assistant director for 27 years and was acting vice president of the university during the late 1960s. He was active in the Episcopal Church, and in 1951, he wrote a book about the history of the Anglican Church in Northampton County. He served in the U.S. Army during WWII.

**John C. Lovett '40** of Benton, Ky., died Sept. 6, 2004. A longtime Benton attorney, he was a circuit court and special appellate judge and a partner at Lovett, Johnson & Mattingly. Earlier in his career, he worked for the FBI and as principal trial attorney with the Tennessee Valley Authority in Knoxville. He was a director of the Bank of Benton. During WWII, he served in the U.S. Army as a staff sergeant in Georgia.

**George W. Singiser '40** of Troy, N.Y., died Jan. 28, 2005. A general practice attorney in Troy, he worked at two different firms before founding his own practice in the late 1940s. He went on to specialize in real estate and probate law. He served as trustee, president and counsel of the Rensselaer County Historical Society. In 1991, he was awarded a 50-Year Award from the New York State Bar Association. During WWII, he served in the U.S. Army Air Forces.

**Robert D. Crassweller '41** of Chapel Hill, N.C., died July 18, 2004. An author and expert on Latin America, he was general counsel for ITT Latin America. He was counsel for Pan American World Airways from 1954 to 1966. A visiting fellow on the Council on Foreign Relations in New York City, he also was a visiting professor at Sarah Lawrence College and Brooklyn College. He wrote three books, including "Trujillo: The Life and Times of a Caribbean Dictator." He reviewed books for The New York Times and for Foreign Affairs, the magazine of the Council on Foreign Relations. During WWII, he worked for the U.S. State Department's Division of World Trade Intelligence.

**Robert L. Foote '41** of Bellingham, Wash., died March 5, 2005. Formerly of Evanston, Ill., he was a senior partner at Sidley & Austin in Chicago. During WWII, he served as a lieutenant in the U.S. Navy.

**Robert G. Moch '41** of Issaquah, Wash., died Jan. 18, 2005. For 55 years, he was an attorney in Seattle. He was coxswain of the University of Washington crew team that defeated Italy and Germany to win the gold medal at the 1936 Summer Olympics in Berlin. While attending HLS, he coached crew at MIT, and he later served as a rowing steward for the University of Washington for many years.

**Stanley M. Epstein '42** of Wayland, Mass., died March 10, 2005. He was a senior partner at Epstein, King & Isselbacher, a firm he founded as Epstein, Salloway and Kaplan in 1965 after working in private practice for 19 years. After closing his firm in 1995, he joined Berlin, Clarey, Axten & Levee as counsel. He was chairman of the United Way of Newton, was a director of local chapters of the American Red Cross and helped establish the first elderly housing complex in Weston.

**Humphrey Nash Jr. '42** of San Antonio died Aug. 5, 2004. He was a businessman and tax attorney. During his career, he practiced law at Ropes & Gray in Boston and was a tax attorney for Aramco.

**William D. Tucker Jr. '42** of Scituate, Mass., died March 7, 2005. He was a senior partner and then senior counsel specializing in corporate law at Davis Polk & Wardwell in New York City and was a director of Chubb Corp.

**Ralph J. Balducci '43** of Fayetteville, N.Y., died March 8, 2005. He was a partner at Love & Balducci in Syracuse. During WWII, he served as a cryptographer in the U.S. Army Signal Corps.

**John J. Dwyer '44** of Shaker Heights, Ohio, died Jan. 21, 2005. For 12 years, he was president and chief executive of Oglebay Norton Co., a mining and lake transportation company in Cleveland, where he had worked since 1946. He briefly worked for Thompson Hine in Cleveland after graduating from HLS and returned to the law firm as a partner after leaving Oglebay Norton. He served as chairman of the Greater Cleveland Growth Association in the early 1980s, head of the distribution committee of the Cleveland Foundation and founding chairman of the Cleveland Education Fund, as well as in executive positions for a number of nonprofit organizations. He was also a trustee of Notre Dame College and DePauw University in Indiana.

**Edward L. Fix '45-'46** of Pacific Palisades, Calif., died March 14, 2004.

**Albert L. Goldman '46** of Lexington, Mass., died Dec. 29, 2004. During his 56-year legal career, he was an advocate for the labor movement and an authority on advising all phases of a union's activities. He joined the law firm now known as Angoff, Goldman, Manning, Pyle, Wanger & Hiatt in Boston in 1948 and went on to become its president. He advocated for the teachers' union during the Boston school busing controversy in the 1970s and pioneered the establishment of employee health and welfare benefit funds in Massachusetts. He served in the Naval Aviation Service, where he flew on dirigibles and worked as a cryptographer.

**William M. Higgins Jr. '46** of South Yarmouth, Mass., died Nov. 16, 2004.

**Herbert F. Schmelzer '46** of New York City died Nov. 10, 2004.

**I. Murchison Biggs '46-'47** of Lumberton, N.C., died Feb. 25, 2005. For more than 50 years, he practiced law in Lumberton. He was also a businessman and helped build Biggs Park Mall and K.M. Biggs Inc., and he served as president and chairman of both

businesses. He was an attorney for Robeson Community College for 30 years and for the Robeson County Board of Education for 13 years. He also served as city attorney for Lumberton. In 1990, he was inducted into the North Carolina Bar Association's General Practice Hall of Fame.

**Samuel M. Fahr '47** of Iowa City, Iowa, died Aug. 28, 2004. A professor of law at the University of Iowa, he also taught at the University of Pennsylvania, at the University of Minnesota, and in Peru, France and England. During WWII, he served in the U.S. Navy as a submariner in the South Pacific.

**Irvin M. Kent '47** of Greenwood Village, Colo., died March 13, 2005. A career military officer in the U.S. Army, he retired as a colonel in 1971. He later went into private practice and served as president of the Aurora Bar Association in Colorado. During his career, he served as a civilian attorney for the Nuremberg war crimes trials in Germany and as a judge advocate during the Vietnam War, presiding over military tribunals in the Saigon region. He also served as a legal officer for Operation Mercy, helping Hungarian refugees arrive in the U.S. in the late 1950s. He earned two Purple Hearts and the Bronze Star with an oak leaf cluster for his military service during WWII.

**Clinton A. Reynolds '47** of Riverside, Conn., died March 11, 2005.

**James F. Bell '48** of Washington, D.C., died Feb. 6, 2005. He was a partner practicing administrative and banking/finance law at Jones, Day, Reavis & Pogue in Washington, D.C. After retiring, he worked for the Board of Hospice of D.C. and for Bread for the City.

**Gerald Bouvier '48** of Bradenton, Fla., died Dec. 27, 2004. Formerly of Orchard Park, N.Y., he was a partner at Bouvier O'Connor Cegielski & Levine in Buffalo, where he specialized in litigation.

**Albion W. Fenderson '48** of Wadsworth, Ill., died March 19, 2004. He was senior vice president and general counsel of the Federal Home Loan Bank of Chicago. He later joined Hopkins & Sutter, where he became a partner in 1981. Earlier in his career, he was a trial attorney with the U.S. Department of Justice Office of Alien Property and the Federal Home Loan Bank Board. He was a director and later president of Neighborhood Housing Services of Chicago. He served as an aerial photographer in the U.S. Army Air Forces during WWII.

**Joseph H. Gainer Jr. '48** of Wilmington, N.C., died Dec. 27, 2004. Formerly of Potosi, Md., he was acting general counsel of the Export-Import Bank of the U.S. in Washington, D.C.

**James L. Guest '48** of Houston died Feb. 13, 2005. He worked for Statesman National Life Insurance Co. in Houston.

**Wilfred G. Howland '48** of Tampa, Fla., died March 31, 2005.

**Fiorenzo V. Lopardo '48** of Escondido, Calif., died Jan. 24, 2004. He was a superior court judge for the state of California, appointed in 1971 by then Gov. Ronald Reagan. He was instrumental in developing the North County Law Library in Vista. After retiring from the bench in 1987, he worked as a private judge, specializing in settling complex civil cases. Earlier in his career, he practiced law in Los Angeles and was president of the Escondido Union School District. During WWII, he served in the U.S. Marine Corps and was the commanding officer of Headquarters and Service Company, 3rd Battalion 38th Marines, 5th Division.

**John Clancy Mullen '48** of Houston died March 19, 2005. He served in various public offices and owned his own law practice in Alice, Texas, for many years. During WWII, he served in the U.S. Army Air Forces.

**Walter P. Muther '48** of Newton, Mass., died March 9, 2005. He was general counsel and president of Associated Industries of Massachusetts and served as a lobbyist on Beacon Hill in Boston for 37 years. During the 1960s and 1970s, he led successful fights against measures for a graduated state income tax and for a flat electricity rate. He also championed an amendment to the state constitution allowing cities and towns to offer incentives for industrial development. During WWII, he served in the U.S. Army.

**Royal S. Radin '48** of Staten Island, N.Y., died Nov. 8, 2004. He was a judicial hearing officer for the New York State Supreme Court and president of the Staten Island Institute of Arts & Sciences.

**Herbert R. Winick '48** of Woodmere, N.Y., died Jan. 2, 2005. A CPA and solo practitioner, he was president and budget director of Congregation Sons of Israel. During WWII, he served as a lieutenant in the U.S. Army.

**Norman E. Anderson '49** of Portland, Ore., died Jan. 19, 2005. A longtime Portland attorney, he practiced estate planning, probate and tax law. He was president of the

Portland Golf Club and served in the U.S. Navy during WWII.

**Boce William Barlow Jr. '49** of Silver Spring, Md., died Jan. 31, 2005. Formerly of Hartford, Conn., he was a Connecticut judge and state senator. In 1957, he became the first black judge in Connecticut history, and in 1966, he was the first black person elected to the state Senate. He later went into private practice, retiring in 1981. In 1987, the city of Hartford named a street in his honor. He served in the U.S. Army in the southeast Pacific during WWII.

**George A. Bender '49** of Washington Depot, Conn., died Nov. 14, 2004. A real estate broker, he was associated with the DeVoe Realty Co. in New Milford, Conn., and later with Auchincloss & Silk Real Estate in Washington Depot. Formerly of Bronxville, N.Y., for 10 years he was president of Texaco Ventures, a real estate subsidiary of Texaco. He had been with Texaco since 1950, practicing law in Chicago and New York. He served as chairman of the Planning Commission for the Town of Washington, Conn., and was named "Town Volunteer of the Year" in 2003. He was also a trustee and finance committee chairman of the Washington Art Association. During WWII, he served in the U.S. Army, attaining the rank of captain.

**Arthur H. Gemmer '49** of York, Pa., died Aug. 12, 2004. An attorney in Indianapolis, he practiced general and appellate law and served as deputy prosecutor for Marion County and as deputy attorney general for the state of Indiana. He was secretary of the Indiana State Bar Association and a member of the Indianapolis chapter of the Junior Chamber of Commerce, where he was instrumental in establishing the Indianapolis Zoo.

**Gabriel B. Schwartz '49** of New York City died Oct. 12, 2004. He was a litigation partner at Hahn & Hessen in New York City.

**Maurice Shire '49** of Mount Vernon, N.Y., died Aug. 28, 2004. For more than 40 years, he practiced law in New York City. During WWII, he served in the U.S. Army Air Forces and was stationed in the Pacific.

## 1950-1959

**James F. Fallon Jr. '50** of Hampton, N.H., died Feb. 15, 2005. He practiced law with McWalter and McWalter in Concord, Mass. After retiring in the early 1960s, he moved to Hampton and managed his family's drugstore. He was a Hampton selectman and served on the town's municipal budget

committee. During WWII, he served in the U.S. Army's 32nd Red Arrow Division and was stationed in New Guinea, Australia and Japan.

**Hans A. Adler '51** of McLean, Va., died Jan. 29, 2005. He was a senior economist at the World Bank and an expert on the economics of transportation issues. He joined the World Bank's International Bank for Reconstruction and Development in 1961. Earlier in his career, he was an economist in the Office of Management and Budget in Washington, D.C., assisting the counsel on tariff and trade policy during the Kennedy administration. He also worked with the Federal Reserve Bank of New York and was part of the U.S. Strategic Bombing Survey, studying the effect of Allied bombing on the German aircraft industry. After retiring in 1986, he served as a consultant to Poland's minister of finance and taught economics at George Mason University. He served in the U.S. Army Air Forces in Berlin from 1946 to 1948 and helped reorganize Germany's banking system.

**Norman Alberts '51** of New York City died June 2, 2004.

**Richard Denton '51** of Elmira, N.Y., died Jan. 17, 2004. He practiced real property law as a partner at Denton Keyser LaBrecque & Moore in Elmira.

**Charles E. Grodberg '51** of Bayonne, N.J., died Nov. 2, 2004. He was an attorney and real estate broker in New Jersey.

**Ernest London '51** of Jupiter, Fla., died Aug. 11, 2004.

**Robert E. Mertz '51** of Pittsburgh died Dec. 17, 2004. A longtime Pittsburgh attorney, he was a partner at Buchanan Ingersoll and an attorney for Westinghouse Air Brake Corp. He also served as vice president, general counsel and secretary of the Dravo Corp. He worked in the U.S. Air Force General Counsel's Office in the early 1950s.

**Robert M. Shea '51** of Wellesley, Mass., died Feb. 22, 2005. Formerly of Brookline, Mass., he was vice president and counsel of John Hancock Mutual Life Insurance Co. After retiring in 1984, he continued to work as a consultant to the company. He wrote a number of legal papers for the Association of Life Insurance Counsel and the American Life Convention and was a trustee of Labouré College in Dorchester. During WWII, he served in the U.S. Army and participated in campaigns in Normandy and northern France. He was awarded the Bronze Star.

**John L. Globensky LL.M. '52** of St. Joseph, Mich., died Jan. 8, 2005. For 50 years, he practiced law at Globensky, Gleiss, Bittner & Hyrns in St. Joseph. He was president of the Berrien County Bar Association, a director of the Twin Cities Chamber of Commerce and Shoreline Bank, and a trustee of the Lakeland Hospital Foundation.

**Sheldon M. Goodman '52** of Eastchester, N.Y., died Oct. 26, 2004. A longtime Eastchester attorney, he focused his practice on estate planning/probate, real estate and elder law. He served in the U.S. Army.

**Benjamin T. Richards Jr. '53** of Darien, Conn., died Jan. 16, 2005. He joined Exxon Corp. in 1963 and was on the company's legal staff for 29 years, retiring as assistant general counsel in 1992. Earlier in his career, he was an attorney in New York City and an assistant U.S. attorney for the Southern District of New York.

**David J. Caliri '54** of Southern Pines, N.C., died Dec. 28, 2004. He served on the Heritage Book Committee of Moore County, N.C., and wrote "The Pine and the Thistle: Two Hundred Years, Bethesda Presbyterian Church."

**Ivan A. Hirsch '56** of Fairfield, Conn., died July 8, 2004. He was a founding partner of Hirsch and Levy and a member of the Citizens Advisory Council for Housing Affairs.

**William E. Wiggin '56** of Wilmington, Del., died Aug. 13, 2004. He was of counsel at Richards, Layton & Finger in Wilmington.

**Robert H. Janover '57** of Bloomfield Hills, Mich., died Jan. 7, 2005. A solo practitioner and corporate lawyer, beginning in the 1970s, he focused his practice on litigation. During his career, he practiced law in New York, Bloomfield Hills, and Washington, D.C. He wrote an account of his life in "Book of Our History."

**Benito M. Lopez Jr. '57** of Alexandria, Va., died Jan. 21, 2005. For more than 30 years, he practiced law as a partner at Dewey Ballantine in New York City. He later served as vice president of Iona College in New Rochelle, N.Y., and executive director of the Association of Colleges and Universities.

**Sidney H. Schneck '57** of Chappaqua, N.Y., died July 7, 2004. For 25 years, he was vice president of Citibank's estate and trust business. He was head of several state and national estate administration organizations, and in 1984, he helped draft a fidu-

ciary responsibility law for New York state.

**Edward S. Godfrey '57-'58** of Portland, Maine, died Jan. 12, 2005. He was dean emeritus of the University of Maine School of Law and a justice of the Maine Supreme Judicial Court from 1976 to 1983. Earlier in his career, he was a professor at Albany Law School for almost 15 years, and in the 1950s, he served as a consultant to the New York State Law Revision Commission, preparing a study of the Uniform Commercial Code before its adoption in New York. After retiring from the court in 1983, he taught as a visiting professor at the University of New Mexico in Albuquerque and as an adjunct professor at the University of Maine. He served on several boards, including as chairman of the Maine Labor Relations Board. During WWII, he served in the U.S. Army, and in 1946, he was a management control officer in General MacArthur's headquarters in Manila. He was awarded the Bronze Star and attained the rank of major.

**Robert H. Binder '58** of Jacksonville, Fla., died April 1, 2004. Formerly of Washington, D.C., he was a transportation attorney and president of the Transportation Association of America in Jacksonville. He was appointed assistant secretary of transportation by President Ford. He served in the U.S. Army in Japan, Korea and Honolulu.

**Hugh Cannon '58** of Charleston, S.C., died Jan. 4, 2005. A practicing attorney in South Carolina, North Carolina and the District of Columbia, he was vice president and general counsel for Palmetto Ford and of counsel at Everett, Gaskins, Hancock & Stevens in Raleigh, N.C. He served as assistant to the governor, secretary of administration and state budget officer of the state of North Carolina. He was a member of the University of North Carolina board of governors, a trustee of Davidson College and the North Carolina School of the Arts, and vice chairman of the Charleston County School Board. A professional parliamentarian beginning in 1965, he wrote "Cannon's Concise Guide to Rules of Order," a handbook on parliamentary procedure. He was the parliamentarian for the National Democratic Party and its national conventions from 1976 to 1996, and for the National Education Association and a number of its state affiliates.

**Richard Khachian '58** of Fairfield, Conn., died Jan. 11, 2005. He was a general practitioner before founding an automobile dealership, RiTar Ford, in Norwalk, Conn. A dealer for 37 years, he sold his business in 2000 and went on to manage a family-owned real estate business.

**William D. Coakley '58-'59** of Londonderry, N.H., died Sept. 1, 2004. He had a career in banking and served in executive positions in banks in Greater Boston and elsewhere in Massachusetts. A longtime resident of Westford, Mass., he promoted the construction of affordable housing, and in January, an affordable housing complex being constructed there was named in his memory. He served in the U.S. Navy.

**John C. Hardin '58-'59** of Wilmette, Ill., died May 31, 2004.

**Edward R. Schwartz '59** of Livingston, N.J., died Oct. 13, 2004. He was a judge of the Superior Court of New Jersey. He also was president of Schwartz & Andolino in Newark and then Livingston, where he focused his practice on litigation, products liability, insurance, admiralty and aircraft litigation.

**Sanford B. Gabin '59-'61** of Yardley, Pa., died Nov. 27, 2004.

## 1960-1969

**Grady Avant Jr. '60** of Birmingham, Ala., died June 2, 2004. Formerly of Grosse Pointe, Mich., he was senior vice president of North American Capital Advisors. Earlier in his career, he practiced law in Birmingham with Bradley, Arant, Rose & White, and in Detroit with Dickinson, Wright, Moon, Van Dusen & Freeman. He was a captain in the U.S. Marine Corps.

**Ivan L. Head LL.M. '60** of West Vancouver, British Columbia, Canada, died Nov. 1, 2004. A law professor and foreign policy adviser, he was a senior policy adviser to Prime Minister Pierre Trudeau from 1968 to 1978. With Trudeau, he co-wrote "The Canadian Way: Shaping Canada's Foreign Policy 1968-1984." He later served as president of Canada's International Development Research Centre and head of the Canadian International Development Agency. In 1991, he joined the faculty at the University of British Columbia, and he was the founding director of the university's Liu Institute for Global Issues. Earlier in his career, he practiced law in Calgary and was a professor of law at the University of Alberta.

**Robert A. Krantz Jr. '60** of Short Hills, N.J., died Dec. 18, 2004. He was vice president, secretary and general counsel of Kidder, Peabody & Co. He previously worked for Sullivan & Cromwell.

**David H. Knutson '61** of Roxbury, Conn., died Nov. 30, 2004. He practiced corporate

and business law as a vice president and senior associate counsel of Chase Manhattan Bank in New York City.

**David M. Elwood '64** of Truro, Mass., died Sept. 28, 2004. He was vice president of the Boston Company Advisors, and for more than 25 years, he worked for Gaston & Snow in Boston, where he had a general corporate securities practice.

**Lewis E. Striebeck Jr. '64** of St. Louis died Dec. 21, 2004. For 34 years, he worked with the Stolar Partnership of St. Louis, where he practiced tax law and served as chairman of the tax department.

**David F. Polatsek '65** of Potomac, Md., died July 7, 2004. He was a senior attorney at the U.S. Department of Housing and Urban Development in Washington, D.C.

**Lee E. Teitelbaum '66** of Salt Lake City died Sept. 22, 2004. He was a family law scholar and, during his career, served as dean of Cornell University's and the University of Utah's law schools. He joined the law faculty at the University of Utah as a visiting professor in 1985 and was dean from 1990 to 1998, before his appointment as dean at Cornell Law School. He began his teaching career at the University of North Dakota and taught at several universities, including Indiana University Bloomington, where he was director of the Center for the Study of Legal Policy Relating to Children. He wrote seven books, including three on juvenile courts and a casebook on family law. He was on the board of editors for the *Journal of Legal Education*, the *Law and Society Review*, and *Law and Policy*.

**Edwin N. Sidman '67** of Boston died March 16, 2005. He was chairman of the Beacon Companies, a development and management firm, and Beacon Properties. Among the Boston-area projects he helped develop were Rowes Wharf, One Post Office Square and 75 State Street, as well as thousands of units of affordable housing. Prior to joining the Beacon Companies in 1971, he practiced law in Boston. He was chairman of the Combined Jewish Philanthropies of Greater Boston.

**Jeffrey M. Smith '69** of Newton, Mass., died Jan. 25, 2005. He practiced law for 25 years, representing a number of health care providers. He also developed and taught courses on pharmaceutical and health care law for medical professionals. In 1998, he founded his own firm. He was an officer or board member of a number of nonprofit organizations, including the American Dia-

betes Association and the John Winthrop School.

## 1970-1979

**George N. Corey '73** of Columbus, Ohio, died Feb. 25, 2005. A tax attorney, he was a partner at Vorys, Sater, Seymour and Pease in Columbus. He was a trustee of the Ronald McDonald House, Columbus Foundation, Catholic Foundation and Columbus Academy, where he also served as president.

**Alden D. Holford '73** of Houston died Sept. 7, 2004. He was a solo practitioner in Houston, where he practiced litigation.

**Charles L. "Chuck" Potuznik '73** of Excelsior, Minn., died March 22, 2005. He was a partner in the corporate group at Dorsey & Whitney in Minneapolis, where he practiced securities law.

**Wayne S. Braveman '78** of Los Angeles died Nov. 14, 2004. He was of counsel at Heller Ehrman White & McAuliffe in Los Angeles. Earlier in his career, he was senior vice president and director of legal research of the Legal Research Network and a litigation partner at Tuttle & Taylor in Los Angeles.

## 1980-1989

**Michelle K. Wardlaw '85** of New York City and Oahu, Hawaii, died July 26, 2004. She worked as a Japanese interpreter and was involved with many arts and cultural institutions in New York.

**Arata Fujii LL.M. '86** of Tokyo died Jan. 25, 2005. An official of Japan's Foreign Ministry, he was chief of the Northeast Asia division and was in charge of North Korean affairs during the first round of six-way talks held in Beijing last August. He joined the ministry in 1982 and served as an envoy at the embassy in the Philippines and the Japanese mission to the United Nations.

## 1990-1999

**Elisabeth M. Todaro '97** of Boston died Feb. 2, 2005. She was a senior associate in the business law department at Goodwin Procter in Boston. She joined the firm in 1997 and handled a number of important mergers and acquisitions for many of the firm's public company clients. She was a volunteer on the 2004 Kerry-Edwards presidential campaign.

# Keep us posted

*Please send us your news by  
July 29, 2005, for the fall issue.*

Fax: 617-495-3501  
E-mail: [bulletin@law.harvard.edu](mailto:bulletin@law.harvard.edu)  
U.S. Mail: 125 Mount Auburn St., Cambridge, MA 02138

## Career

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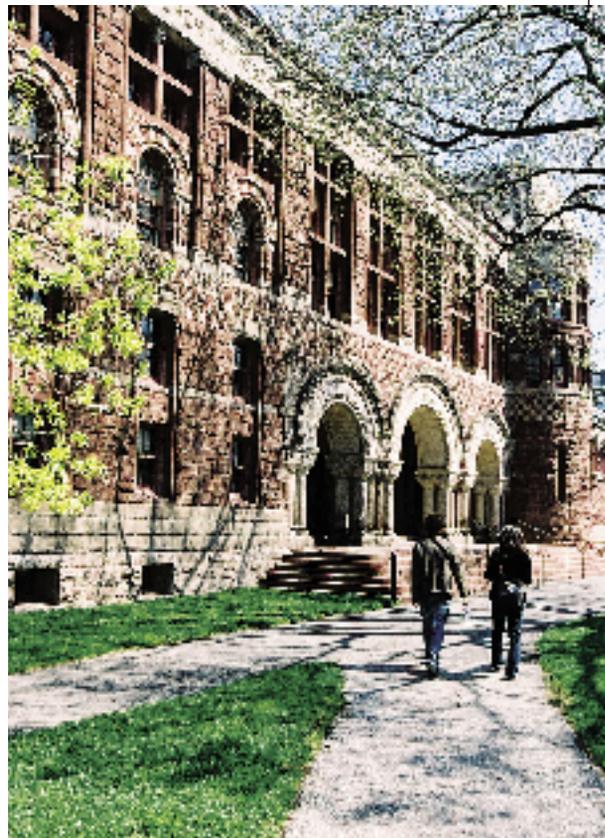
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## Personal

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## Name

(FIRST)

(LAST)

(MAIDEN, IF APPLICABLE)

## Firm/Business

(CITY)

(STATE)

## Title

## Phone

## E-mail address

## Year and degree

## Address change?

yes

no

## I would like to read more about

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An HLS collection illustrates the history of crime and capital punishment in 19th-century England.

## Crime Pays

FOR 19TH CENTURY printers, crime was good business. Brutal murders and other horrific crimes translated into profit when they became the subjects of single-page printings.

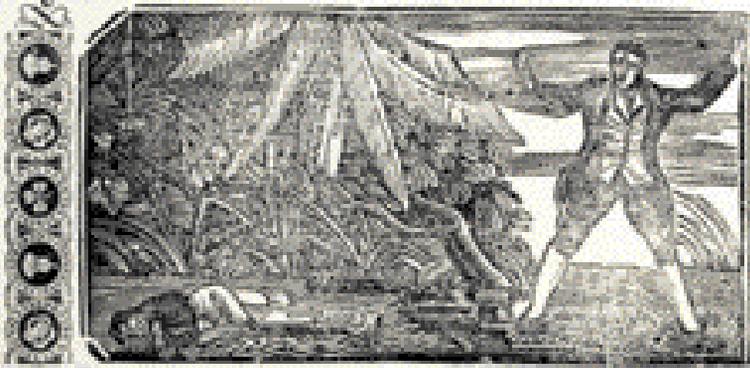
Today close to 400 of these broadsides, most printed in England from 1820 to 1860, are preserved in an HLS library collection. They highlight acts of wrongdoing, purported confessions from the accused (often set in verse), and accounts of trials and public executions. Many are illustrated with woodcuts.

As the collection is digitized through a grant from the Peck Stacpoole Foundation in memory of S. Allyn Peck '28-'29, the stories of crime and punishment, once hawked in the streets of England, will be available to a much wider audience. \*

The Horrid and Wilful

# MURDER,

at Enfield Chase Committed on the Body of Mr Benj Couch DANDY  
a Tailor, of the Robert Edwards, a Greenlandman.



D. and H. CARPENTERS, Printers, 1 Great South Street, Station Garden London

## Examination & Commitment to Newgate of the 3 Prisoners & the AWFUL CONFESSION, Of One of the Murderers,

During the last two days the neighbourhood of Enfield has been in a state of extreme excitement and alarm, in consequence of the discovery of the horrid and wilful Murder of Mr Benj Dandy, aged 74 years, Information of this shocking event was conveyed given at Various Police Establishments in the Metropolis, and the following authentic particulars may be relied upon:—The Deceased, Mr Dandy, was the son of Mr Dandy, a Lawyer, who formerly resided in the Temple, some years ago, he attended his Father and was his

A few weeks since he returned to London with a considerable sum of money, when he went to reside with a relation Mr Adlington, Master Barber of Enfield, he was in the habit of visiting Public Houses and conversing freely with any one whom he fell in with. On Wednesday night deceased left the residence of Mr Adlington and proceeded to a neighbouring Public house, known by the name of the Crown & Horse Shoe, close side, where he got into conversation with 3 men, named Wm Johnson, a Gardner, Saml Fair, a Weaver's dayman, & Cooper a Labourer, who perceived that he had money, invited him to join them in a game of dominoes, in which he consented, and they play'd till the Landlord was obliged to stop them.

During the game it appears the Deceased lost, and rendered himself in a most careless manner, he did not return to his lodgings during the whole of night, nothing was heard of him until Thursday morning, when at a early hour a labourer was going along a bye lane, when he observed marks of blood on the road, and the ground described as if a struggle had taken place, on proceeding further he perceived in a ditch the feet & part of the body of a human being, he pulled the body out, and recognized it to be Mr Dandy, dead and mangled in a most horrid manner. The right side of the deceased face, was cut across, as if he had struggled with the murderer, when he attempted to Cut his throat, his flesh was cut completely through, the Jugular vein & carotid were severely injured and it is supposed that if the perpetrator had made an effort to cut it thro', the vein was Cut off, the feet severely mangled, his fingers nearly cut off, no doubt in laying hold of the body, to save himself, and distinguish from his game.

Cooper made a full confession before the Magistrate as to the manner the murder was committed.

### A Mouthful Cope of Verses,

<p>GIVE hear you tender Christians And listen unto me, While to you I will relate, A Horrid Excalcity, At Enfield Chase there did live, Mr. DANDY aged Twenty-four, Discovered Murdered in a Ditch, And lay'd Waiting in his grave.</p> <p>There I have Rollers out gambling, Vain of Fear and Shame, They Playing at Dominoes Ask him to have a game, He agreed their company for to take Like a Bull's Spirit so bold, He treated them with the best And freely spent his Gold.</p>	<p>This young Man, and his Friends could not agree So even they had him sent, When he had returned home, To see a friend at Fiddlers he went, Into the Crown and Horse-shoe, To have some Liquor as we are told, Was the occasion of losing his life Besides his Curse of God!</p> <p>There was Johnson, &amp; Cooper All in the Deal of Night Murdered this Unhappy Man, Before the Almighty's Sight, A Labouring man was going to work When blood he saw on the Ground But with haste he was struck On turning his head around,</p>	<p>The body he saw lying in a Ditch, Such a Spectacle to View, The Head was nearly sever'd off Like-wise the Fingers too, His Chin was cut completely off, Not content what they had done, Fair Blood'd him of 15 Pounds, And left his Blood to run.</p> <p>Before the Magistrate they were sent And Cooper a full Confession made Of the Horrid Murder And sent the Justice Field, We have been guilty of this crime With me Johnson &amp; Fair did agree To take away this Young Man's Life For the sake of his Property.</p>
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An 1832 English crime broadside from the library's collection

HLS SPECIAL COLLECTIONS

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## Revenue Man

**You came to Harvard Law School after serving in World War II. What was it like to go from real combat to combat in the classroom?**

Well, it was not the easiest thing in the world. At that point the Harvard professors were quite intimidating. Having a last name that begins with A, I was the first one to be called on in the first class. I rose to my feet and gave the citation of *Pierson v. Post* to [former] Dean Pound. He bawled me

out by saying, "Young man, I know the citation!" I said, "Sir, I know you know the citation and you know the case. Why did you ask me to tell you about it?" That didn't go over very well.

**You served as commissioner of the Internal Revenue Service in the 1970s. What was that like?**

Almost pure hell.

**Why?**

During Watergate, all government agencies were under attack—rightly so, in some cases. The IRS, of course, had more contact with more people than any other agency, and had the difficult job of separating people from what they often thought was their own money. The IRS was under particular attack, called an evil organization and part of the Nixon political apparatus. And I was determined to help the IRS get through that and prevent any misuse of IRS people and powers.

**Did you have any interactions with President Nixon?**

Sure, he tried to fire me three times. The third time was just a gesture, however. All I had to do was go and be bawled out by Alexander Haig, who was then the White House chief of staff. But the first time was real, and my boss, George Shultz, a wonderful guy and secretary of the Treasury, told me that if I was fired, he was going to quit. I told him that would be a great loss to the nation. Nixon eventually calmed down, and I was not fired and George Shultz did not quit.

**Given all of the interest groups that have a stake in the current tax system, is it possible to enact reform that simplifies the tax code?**

It's going to be very, very difficult unless everything breaks the right way. No matter what you do to revise the code, you're going to have some winners and some losers. The losers are going to complain vociferously, and the winners are going to smugly stay quiet.

**You've been a strong supporter of the law school. People have many reasons for giving to Harvard. What's yours?**

I'm trying to promote tax research. I think Harvard should be the center of tax research. While academic research isn't always taken into account in the heat of the politics down here [in Washington], sometimes it is. I want Harvard to be the leader in producing sound federal tax policy and state tax policy, and also to promote a rational approach to international tax law, to make sure we don't engage in possibly disastrous tax competition with other countries.

**If you could give the Class of 2005 some advice, what would it be?**

This advice might be largely ignored, but here it is: Plan to do some public service at some time in your career. I think we all owe it to our country and our communities. Don't rush off and try to make as much money as you can as quickly as you can. The best chance [to work in public service] may be right after graduation. \*





**CORRECTIONS** "There's a strong current in society that wants to believe the justice system doesn't make mistakes. We want to make sure there's some effort to fix the broken processes that are churning out all these mistakes, not to mention stealing decades from people's lives."

BENJAMIN MAXYMUK '06,  
CO-FOUNDER OF THE HARVARD

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