

Fall 2005

# Harvard Law

*bulletin*

## Designing deals

Negotiation goes beyond 'yes'



ALSO INSIDE:

The international visions of  
Steiner and Vagts





Stairmasters of the universe, in the newly renovated Hemenway Gymnasium

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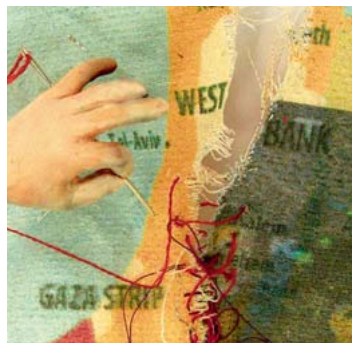
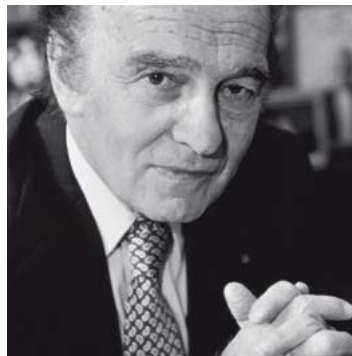
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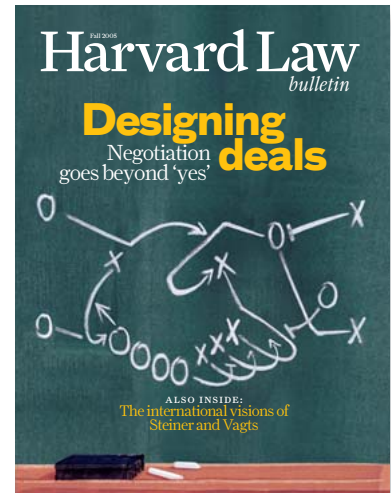
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DIRECTOR OF COMMUNICATIONS

**Michael Armini**

EDITOR

**Robb London '86**

SENIOR EDITOR

**Emily Newburger**

MANAGING EDITOR

**Linda Grant**

CLASS NOTES AND IN MEMORIAM EDITOR

**Christine Perkins**

CONTRIBUTING WRITERS

**Mary Bridges, Christine Perkins**

EDITORIAL ASSISTANCE

**Brandon Butler, Matthew Podolsky, Lori Ann Saslav, Krista Wilhelmsen**

DESIGN DIRECTOR

**Ronn Campisi**

ASSOCIATE ART DIRECTOR

**Alicia Jylkka**

EDITORIAL OFFICE

Harvard Law Bulletin

125 Mount Auburn St.

Cambridge, MA 02138

E-mail: [bulletin@law.harvard.edu](mailto:bulletin@law.harvard.edu)

Web site: [www.law.harvard.edu/alumni/bulletin](http://www.law.harvard.edu/alumni/bulletin)

Telephone: 617-495-3118

SEND CHANGES OF ADDRESS TO:

Harvard Law School, Alumni Records

125 Mount Auburn St.

Cambridge, MA 02138

E-mail: [alumrec@law.harvard.edu](mailto:alumrec@law.harvard.edu)

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COVER

Illustration by Alex Nabaum

# Negotiation, Advanced

NEGOTIATION IS, AND MUST BE, at the heart of modern legal practice. From the Middle East to Massachusetts, from corporate offices to war zones, negotiators are playing vital roles in resolving tough

disputes and seeking novel solutions to age-old problems. In this issue of the Bulletin, you'll read about how this fertile and exciting field is evolving to meet the challenges of the 21st century—and how Harvard negotiators are tackling some of the most intractable conflicts of our time.

As we chart a course through our complex world, we could have no better guide than the law school's Program on Negotiation, which over the past two decades has become the world's leading



research and teaching center for negotiation and dispute resolution. Today, in a time of rapid change, the program is “going global”—conducting pathbreaking international research, taking its training to other countries and making use of advanced technologies to expand its

reach. (Among the program's initiatives is an innovative “e-Parliament” project, which provides an electronic forum for legislators around the world to share ideas.)

There's no work more important than finding peaceful ways to resolve geopolitical disputes, and high on the Program on Negotiation's global agenda are efforts to ease tensions in the conflict-ridden Middle East. To this end, Professor Robert Mnookin '68 (PON's chairman) and others with Harvard ties are working to identify processes that will help Israelis and Palestinians find solutions to the problems that have separated and plagued them for so long. I am deeply proud of this work.

Closer to home, Professor Guhan Subramanian '98 is bringing corporate negotiations and deal making into the law school classroom. His new advanced negotiation course—Deal Design and Implementation—is drawing some of the world's most prominent deal makers to the law school for closed-door, off-the-record dissections of some of the biggest corporate negotiations ever. It's a win-win situation, with at least one high-powered guest observing that he learned as much from our students as they learned from him!

Beyond the law school campus, thousands of alumni have forged successful careers blending law and negotiation. One of these is Peter Carfagna '79, whose clients have included golf legends Arnold Palmer and Tiger Woods. Carfagna's interest in sports law was fanned during law school by Professor Paul Weiler LL.M. '65, and over 25 years, he's seen the negotiation of player contracts grow from a narrow slice of labor and employment law into a highly competitive specialty. Many of Weiler's former students are now leaders in this field.

Also in this issue of the Bulletin, we pay tribute to Professors Henry Steiner '55 and Detlev Vagts '51, who both retired this summer. Together, Steiner and Vagts were pivotal early figures in the field of transnational law and co-authors of the pioneering casebook “Transnational Legal Problems,” first published in 1968. Steiner, a leader in the field of human rights law, also leaves a legacy in the law school's extraordinarily successful Human Rights Program, which he founded. Vagts, an expert in international business law, is also a leading authority on the law of foreign relations and on public international law. Along with being outstanding scholars, both Steiner and Vagts share a dedication to teaching, and it's fitting that the Bulletin's tributes to these two great men come from former students.

I hope that you enjoy this issue of the magazine and that you come away from it with a new appreciation for the ways that creative negotiation strategies are changing our legal landscape—and often changing the world. The law school's leadership in this field is something we can all be proud of, and I take great pleasure in sharing some of our accomplishments.

A handwritten signature in dark ink, appearing to read 'Elena Kagan'.

*Dean Elena Kagan '86*

## Letters

**“The rhetoric [in your article] was the ‘same old, same old’ call to organize a new war on drugs.”**

—Linda Standridge '71 ('72)

### SIMPLY A BAD IDEA?

IT ASTOUNDS ME that Peter Ferrara '79 can blame the Democrats for the failure of the president's proposal to privatize a portion of Social Security, as described in “26 Years Later” (Summer 2005 Bulletin). The last time I looked, Republicans held the presidency and control of both Houses of Congress. How then can the failure be a “GOP capitulation to the Democrats”? Could it be instead that privatization, at least in the form proposed, was simply a bad idea?

RICHARD BORGESON '69  
*Katonah, N.Y.*

### SIDEBAR STAYS INSIDE THE BOX

IN THE SUMMER 2005 Harvard Law Bulletin, I was very happy to see an article on the so-called “War on Drugs”—with all the damage it has caused to our country, it's really a “War Against the People” and their rights to private choices. The story was in keeping with the sentiment expressed on the cover, “breaking free from old thinking about criminal law.”

In a refreshing statement, Ethan Nadelmann '84, head of the Drug Policy Alliance, a New York City-based policy group, said: “If we're lucky, our grand-

children will recall the global war on drugs of the late 20th and early 21st centuries as some bizarre mania.”

But I was shocked to see on the very next page the article “Rx for a Public Health Problem: A Public-Private Partnership at HLS Looks to Limit Illegal Internet Drug Sales.” The rhetoric was the “same old, same old” call to organize a new war on drugs. The moral high ground is as usual “to save the children.”

In fact, adults suffering from serious medical concerns have welcomed this Internet activity, because their doctors, in fear of having their lives destroyed by police actions of the Drug Enforcement Administration, avoid prescribing medications for pain and anxiety conditions. There is a chronic under-medication for pain in this country. Some sufferers have been so desperate that they have committed suicide rather than live in extreme pain. Some people move abroad to find doctors who can prescribe following their medical judgment, unimpaired by terror campaigns of police looking over their shoulders. The police do not have the medical knowledge to understand the subtleties of the doctor/patient relationship and should not interfere.

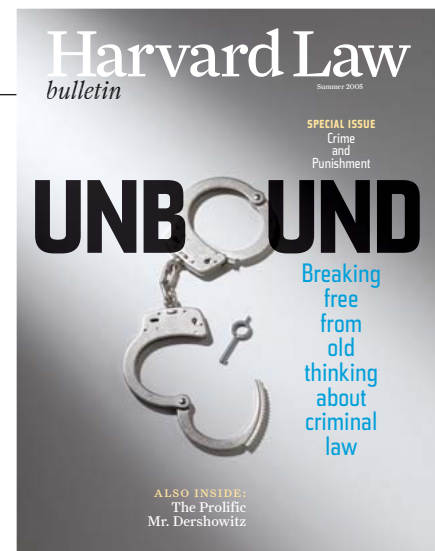
LINDA STANDRIDGE '71 ('72)  
*Huntington, Mass.*

### GUIDELINES WILL CONTINUE TO GUIDE

THIS IS WRITTEN in the hope of answering the question left by the article on sentencing guidelines in the Harvard Law Bulletin (Summer 2005): Will the Booker decision be followed by sentencing disparity in the federal courts?

### 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.



I was a member of the committee that issued a report titled “Sentencing Guidelines: Structuring Judicial Discretion,” dated October 1976. It stated: “The guidelines system, in brief, takes advantage of and incorporates the collective wisdom of experienced and capable sentencing judges by developing representations of underlying court policies.”

The guidelines represent the expected decisions of sentencing judges crystallized in a statistical system that takes account of the characteristics of each defendant and the gravity of the offense. Thus, I expect that they will be followed in the vast majority of cases.

LEO YANOFF '33  
JUDGE (RETIRED)  
NEW JERSEY SUPERIOR COURT  
*Maplewood, N.J.*

### WHAT LIFE IS ALL ABOUT

THE SPRING ISSUE of the Harvard Law Bulletin impressed me greatly. “Giving Back” is what life is all about. Lawyers do hold a “sacred public trust,” and “all of us have an obligation to society.”

As the daughter (age 87) of a lawyer and the sister of Erwin Griswold, I am proud of the profession and of the emphasis Dean Elena Kagan is promoting for HLS.

I know Erwin was hard on women law students, but they were admitted under his administration. He reflected his era, and I am grateful (I believe he would be also) for the direction the dean is pursuing.

HOPE GRISWOLD CURFMAN  
*Denver*

## Student Snapshot *Rebecca Hamilton '07 works to stop genocide now*



# Not on Her Watch

FEW STUDENTS ADMITTED to Harvard Law School question whether they should build roads instead. But when Rebecca Hamilton '07 spent the summer of 2004 in Sudan trying to help thousands of displaced people get home, she found herself longing for such concrete solutions for the war-torn country.

Hamilton came to HLS that fall, but she did so determined to use the law and Harvard's connections to make a difference in Sudan.

During her 1L year, Hamilton (who is in a joint degree program at HLS and the John F. Kennedy School of Government) founded the Darfur Action Group to stop the genocide that began in 2003 in the western region of the country. The group raised thousands of dollars for African Union peacekeeping troops and sponsored a weeklong

"Spotlight on Darfur" conference, but it was their divestment campaign that got the Harvard Corporation's attention. In April, Harvard President Lawrence Summers announced plans to divest \$4.4 million from PetroChina, a company with links to the Khartoum regime. Harvard's decision lent momentum to similar campaigns nationwide, and a few months later, Stanford divested holdings in four companies.

This summer, Hamilton returned to Sudan to follow up on what she'd started the year before. A peace agreement signed in January ended 21 years of civil war between the country's north and

south, allowing many of those Hamilton had been working with to make the trek home—despite the lack of roads. They walked for three months with their children. When they got there, although there wasn't enough clean water, or tools to build shelter, they were "incredibly happy" to be home, Hamilton found.

"There's a really positive sense there's going to be peace," she said. "It's a commitment to the future, which is something quite rare."

This year, Hamilton and the action group she formed continue to advocate for Darfur, where the killing hasn't stopped. She serves as the Africa region chairperson for HLS Advocates for Human Rights and as managing editor of the Harvard Human Rights Journal, but much of her energy is focused on the national level working with the Genocide Intervention Fund to help create an antigencide constituency. In addition to working in Sudan this summer, she clerked for the International Criminal Tribunal for the former Yugoslavia at The Hague.

"After every Rwanda or Kosovo, what we hear is that people cared but the Congress just didn't hear about it," said Hamilton. "We have to ensure that the next 'never again' is actually never again." \* —Christine Perkins



Rebecca Hamilton in Sudan, where she worked the past two summers

## Ask the Professor

# Cooling Off the Planet

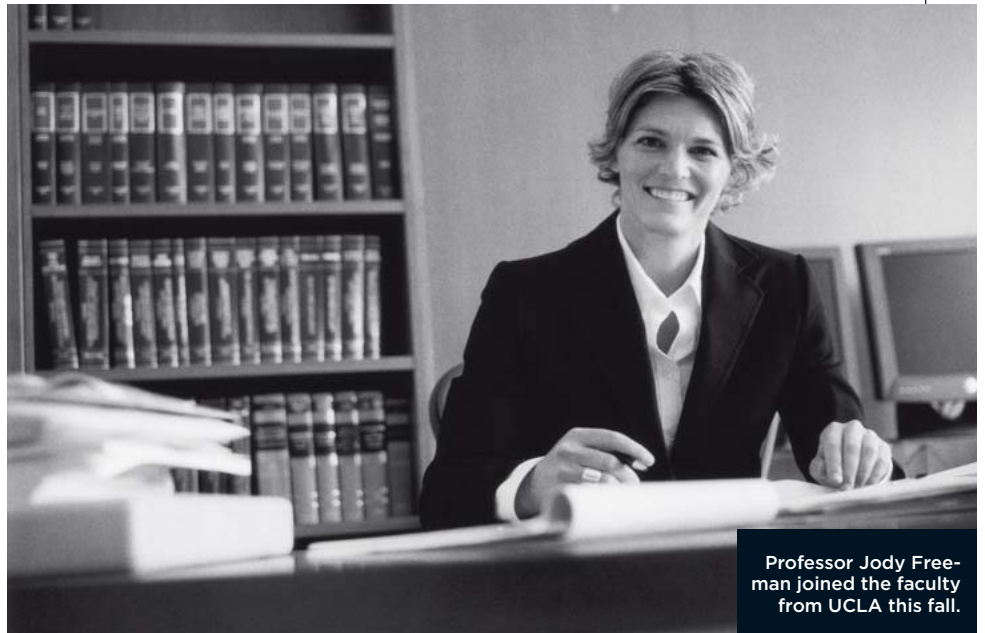
*Which works better—regulation or market-based initiatives? We ask Jody Freeman.*

In refusing to join the Kyoto Protocol, which requires signatory nations to meet targeted reductions in emissions of greenhouse gases, President George W. Bush has argued that the long-term solution to the problem will involve new technologies and initiatives by industries, not “command-and-control” regulations or emissions caps which, he says, would ruin the U.S. economy. The Bulletin asks Professor Jody Freeman LL.M. '91 S.J.D. '95, who joined the HLS faculty this year: **How much do we know about which works better?**

There is a big debate about which approach is better. But in fact we're at a stage of environmental regulation where we now draw on a broad range of tools. Whether we are talking about global warming, air pollution, water pollution, habitat protection or ocean regulation, it's not a question of “either/or” but of how to use market strategies and prescriptive regulations for maximum environmental benefit at minimum cost.

Most regulatory contexts involve hybrid approaches in which both kinds of instruments work together. For example, an emissions trading program typically operates against the background of an otherwise highly prescriptive air pollution regime, as with the Clean Air Act's sulfur dioxide trading program, which has been successful in reducing acid rain. Moreover, these policy instruments can evolve dynamically. It appears common, for example, for prescriptive approaches to develop features of market instruments over time. Indeed, many instruments are hybrids.

Some of the biggest success stories of market-based initiatives involve, upon closer examination, a mix of prescriptive and market instruments, as with the phasing out of leaded gasoline in the U.S.



Professor Jody Freeman joined the faculty from UCLA this fall.

Some research suggests that market instruments can be both more efficient and more effective than prescriptive regulation. In particular, trading schemes appear to have worked relatively well in the context of air pollution regulation. But we're also learning that at least some of the criticisms of command-and-control appear to be overstated or to miss the mark. Prescriptive regulation is not as uniform and inflexible as critics often suggest. It is no exaggeration to say that the com-

mand-and-control system is infused with negotiation and accommodation.

Whether market-based instruments will stimulate technological innovation, as is often claimed, remains still mostly a matter of speculation. And, in some instances, prescriptive regulation may still be necessary because market mechanisms are too risky or unworkable.

One lesson we've already learned, however, is that both market-based instruments and prescriptive regulation suffer from many of the same weaknesses, including a pervasive lack of monitoring and enforcement. So, regardless of the regulatory approach we choose, solving environmental problems requires close attention to the implementation process. \*

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*Jody Freeman is the co-editor, with Charles Kolstad, of “Moving to Markets in Environmental Regulation, Lessons From 20 Years of Experience,” forthcoming from Oxford University Press.*

### WHAT'S YOUR QUESTION?

Got a question for a particular professor about a current issue of general interest? If so, send it to the Bulletin. We probably won't help you with that brief you're writing, but we'll be glad to pass along questions that would interest our readers. E-mail us at [bulletin@law.harvard.edu](mailto:bulletin@law.harvard.edu).

PEOPLE ARE RIGHTLY concerned that [the Supreme Court decision, in *Kelo v. City of New London*] will give cities license to take private homes just to make wealthy developers even wealthier. But the [Massachusetts] House bill does not respond to that fear. Instead, it identifies certain places—‘a substandard, decadent or blighted open area’—as the only ones in which the power can be used. It

may be that this new requirement—given its vagueness—will prove toothless. But if the bill is meant to have bite, it appears to provide protection for those living in middle-class and wealthy neighborhoods while placing no additional limits on the use of eminent domain in poor neighborhoods. In other words, the legislation seems to suggest a simple, unjust rule: If you want to treat people unfairly, make sure it’s poor people.”



**PROFESSORS DAVID J. BARRON '94 AND GERALD E. FRUG '63**, on a Massachusetts bill to curtail eminent domain, *The Boston Globe*, Aug. 12.

For some time now, Republican and right-wing leaders have attacked the courts as ‘activist’ when they protect individual rights but not when they cut back on those rights or enlarge their own authority while shrinking congressional power.

“This is misleading. The Court is no more ‘activist’ when it protects women, members of religious minorities, or gays and lesbians than when it forbids Congress from doing so. And this Court’s supposed respect for states’ rights disappears when a state democratically approves medical uses of marijuana or physician-assisted suicide.

“The terms ‘activist’ and ‘conservative’ do not help. The meanings of both words depend on baselines that have been muddied or moved. ‘Conservative’ means to conserve, to keep—but some of those called ‘conservative’ want to overturn decisions and norms that have been in place for half a century.”

**PROFESSOR MARTHA MINOW**, on the debate over Supreme Court appointments, *The Boston Globe*, July 21.



While it is impossible here to catalog the significant judicial opinions by [Justice Sandra Day] O’Connor over the past 24 years, it is worth noting that she has been the swing vote on many significant and controversial issues including gender and race. She has affectionately and disparagingly been referred to as a ‘majority of one,’ in not allowing others to place her in a liberal or conservative box.

“Her life experiences have certainly influenced her judicial philosophy and pragmatism. Considering herself to be a ‘cow girl’ from Arizona, she has consistently stood up to challenges of all sorts. This is hardly surprising, given her own experiences and background. Although O’Connor was one of the top graduates of Stanford Law School (in the same class as Chief Justice William Rehnquist), she was not offered a position at a major law firm in California because of her gender. Ironically, she was finally hired, not as a lawyer, but as a legal secretary, before finally, as a result of the consistently high quality of her work, being promoted to a position as a lawyer. That influenced her thinking about issues of gender equality, and her significance on the Court as a woman who understood these issues helped to advance the rights of women in significant ways.”

**PROFESSOR CHARLES OGLETREE JR. '78**, on the legacy of Justice Sandra Day O’Connor, *The Boston Globe*, July 2.



If I had gone to China with the impression that psychiatrists, and particularly forensic psychiatrists, were power players in a monolithic Chinese communist bureaucracy, I came away with a quite different impression. Psychiatry in China is a struggling profession, with little market power and low income, low prestige, low sociocultural value and little public influence. The consistent response we got from the Chinese psychiatrists we met in Beijing was that their government had no need (and no use) for psychiatrists in dealing with political dissidents.”

**PROFESSOR ALAN A. STONE**, on the Chinese government and psychiatry, *Psychiatric Times*, May 2005.





“IN MORE THAN 30 oral arguments over the past 25 years, I never saw [Chief Justice Rehnquist] ask questions, as his colleagues sometimes do, to hide the ball, parade his brilliance, show up a colleague or play to the galleries. When he thought you were approaching a dead end, he told you so. ...

“That Chief Justice Rehnquist was unlike both puritanical conservatives like Warren E. Burger and movement conservatives like Antonin Scalia was evident in the character of his questions in the two gay rights cases I argued in the mid-1980s, one about firing teachers for ‘advocating’ homosexual activity and the



other about prosecuting consenting adults for same-sex intimacy. In neither case did his questions have the ‘I’m shocked’ tenor of Chief Justice Burger’s contribution to the dialogue. Justice Rehnquist simply pressed me appropriately on the absence of evidence that the challenged school board regulation had ‘ever been applied to a single living soul.’ And when I argued that consenting adults have a fundamental right to engage privately in the sex acts of their choice, while Chief Justice Burger and Justice Byron R. White could barely contain their disgust, Justice Rehnquist calmly pursued the question of just when and how that ‘fundamental right’ arose.”

**PROFESSOR LAURENCE TRIBE** ‘66, on the late Chief Justice William H. Rehnquist, *The New York Times*, Sept. 6.

“Does a \$253 million message need to be sent to Merck for the death of [Robert] Ernst? The usual figure courts use to deter wrongful deaths, say, from automobile accidents is rarely more than a few million dollars. Economists have suggested that there is no reason to beef up usual damage awards unless there is a chance that a company can escape liability for harm. If a company covertly dumps pollutants and we happen to catch it, a penalty exceeding the harm done ought to be imposed in order to deter more dumping. But the argument that Merck might escape liability for harm does not seem to apply to Vioxx, for it was sold to millions of individuals, Merck is regulated by the FDA, and epidemiologists and lawyers are on the watch for problems with drugs.”



**PROFESSOR STEVEN SHAVELL** and A. Mitchell Polinsky, on the Vioxx verdict, *The Boston Globe*, Aug. 23.

“Supreme Court appointments are like ‘Law & Order’ episodes: The cast of characters changes, but the dialogue always sounds the same. Whoever the nominees are, the script for the inevitable confirmation battles has already been written. Abortion, church and state, more abortion, gay rights, and still more abortion—interest groups and senators are setting the table, and that’s the menu. It’s strangely disconnected from what the Supreme Court actually does and from the places where the justices really exercise power. ...

“By contrast, another aspect of the Court’s work affects lots of lives. The United States incarcerates more than 2 million people in its prisons and jails today, roughly seven times the number held in 1970 and five times the 1980 figure. For the past 40 years, the Supreme Court has helped shape the process that puts those men and women behind bars. When can police officers frisk suspects on the street or search their cars? When do police have to give Miranda warnings? How hard can they push suspects to confess—and how hard can prosecutors push defendants to plead guilty? How must juries be selected? Which sentencing procedures are permissible, and which ones aren’t? Supreme Court justices answer all these questions and dozens more like them.

“The answers matter enormously. Which means that the Supreme Court’s most important job is not managing the culture wars. Regulating the never-ending war on crime is a much bigger task. Alas, it may also be the job the Court does worst.”

**PROFESSOR WILLIAM STUNTZ**, on the Court’s effect on criminal law, *The New Republic Online*, July 19.

# Faculty Pro Bono, Four Takes

*From disability in China to assisted suicide in Oregon* BY EMILY NEWBURGER



## ON THE CUSP IN CHINA

FOR NEARLY A decade, Professor William Alford '77 has been helping the Special Olympics grow in China. That's led to his appointment to the organization's board of directors and to unexpected developments in his own work.

The Special Olympics, originally created in the United States to improve the lives of people with intellectual disabilities through sports training and competition, now covers 180 countries. Whereas 10 years ago, there was little activity in China, says Alford, today it counts close to 400,000 participants—second only to the U.S. In 2007, Shanghai will host some 15,000 athletes at the organization's World Games.

Alford believes the Special Olympics fill a particular role in today's China: "There aren't many outlets for civil society—for ordinary people deciding they want to form a group, lobby for an issue, express their values and concerns."

When it comes to the treatment of the disabled in China, Alford said, although there has been progress, "there are still tremendous problems and tremendous need." The China Disabled

Persons' Federation, the quasi-official organization responsible for such issues, is attempting to address some of those needs by redrafting the country's law on disability. Fifteen years old, it was written for a different China, according to Alford: "It doesn't envision private employers refusing to hire people on the basis of disability. And it doesn't have much in the way of remedies or penalties." Alford has found himself assisting the federation. He has also taken up a new field of academic inquiry.

It started when he wanted to review China's disability law scholarship and was told there was none. The expert on Chinese law and legal history took the plunge. He has found collaborators—including American disability law expert Michael Stein '88, who is teaching at HLS this fall—and is doing what he can to persuade others, including Harvard students, to take up the work. Given that on average 10 percent of the world's population have disabilities, Alford estimates that there are some 135 million people in China who could benefit.

## LAWYERS AGAINST DEPRESSION

PROFESSOR LUCIE WHITE '81 has worked for years to help low-income women help each other. Most recently she is targeting depression, so endemic among this population, she said, it amounts to "a public health crisis."

Through an initiative she runs with a former student, Angie Littwin '02, low-income women have developed workshops on depression and its roots in poverty. They lead the sessions at a Cambridge community center and train others to do so. They have also created a program for local access TV.

To support them, HLS students and counseling students are part of a resource team that works in tandem with health care professionals. The law students practice what White calls "preventive advocacy": meeting with the women, listening to their concerns and trying to address issues that could turn into legal problems down the road.

White said in her nearly 30 years in poverty law, "it's been so wrenching to see how much talent and possibility are wasted and how much people suffer." She is excited to see women buoyed as they make use of their own experience with depression—notoriously isolating and paralyzing—to help others break the cycle. She is also gratified that the project is having an impact on the mental health care system it was designed to change.

The Cambridge Health Alliance is working on making the project—with its student support teams—one of the treatment options available to its patients.



## IN THE BEST INTERESTS OF THE CHILD?

WHEN PROFESSOR ELIZABETH Bartholet '65 spoke at a conference on international adoption in Guatemala City early this year, she addressed a room full of activists, lawyers and politicians. But at the heart of her speech, and her pro bono advocacy, are children—living in institutions or foster care around the world.

An advocate of international adoption, Bartholet says that although it has been on the rise over the past few decades, it is now meeting opposition that puts it and the children it could help at risk. Opposition comes from certain political forces within “sending” countries and from some human rights organizations such as UNICEF.

Bartholet says she and opponents agree on the long-term goal of decreasing poverty and social injustice, which lead to so many being unable to raise their children. In the meantime, she believes that international adoption not only provides a lifeline to the children who are placed, but that it also helps

others left behind, noting the financial contributions that adoptive parents make to orphanages. She says it can also change political consciousness, sensitizing adoptive parents to the political and social conditions in their children’s country of birth and making them more attuned to issues of global justice.

Arguments against international adoption, she believes, have little to do with the best interests of children. Many are grounded in “phony romanticism” and national pride. “Growing up in the desperate conditions of most of the world’s orphanages is not a rich experience in one’s cultural heritage,” she said.

Bartholet herself adopted two children from Peru in the 1980s and has been involved in the field ever since. She pushed successfully to change the law and policy in the United States



that mandated race-matching in domestic adoption. And she believes the underlying question in the debate over international adoption is similar: “Should you see kids as belonging to their racial, national or cultural group of origin, or should you see them as belonging to the world community and being entitled to a home, if one can be made available?”



## BATTLES PICKED

PROFESSOR DAVID SHAPIRO '57, former deputy U.S. solicitor general, says that one of the luxuries of being a law professor is the freedom to pick and choose your cases and causes. Recently for Shapiro, that’s meant assisting with amici briefs for Supreme Court cases involving assisted suicide and medical marijuana, among other efforts.

This term, the Court is considering the U.S. attorney general’s challenge to Oregon’s assisted suicide law, the only such law in the country. Shapiro and his co-authors argue that using the federal Controlled Substances Act to challenge the Oregon statute misinterprets the act, which was designed to give the states latitude in deciding what medical practitioners can lawfully do. “I felt very strongly that the lower court decision upholding the Oregon law was right,” said Shapiro, an expert on statutory interpretation and federal powers.

Although he declines to predict the outcome, he feels their arguments add up to a winning position—even factoring in the fortunes of another recent case involving the CSA.

In *Gonzales v. Raich*, the federal government invoked the act to challenge the use of home-grown marijuana for medical purposes, despite a state compassionate-use law. Shapiro and his co-authors wrote an amici brief making the case that Congress did not have the constitutional power under the Commerce Clause to do so.

Shapiro says the medical marijuana case was a tough one for him to take on, because he believes federal power has been unduly restricted by the Court in recent years. “But I did think that there was a rational and powerful argument to be made that federal power had been exceeded here,” he said. “We persuaded two justices, but that was two less than what we needed.”

**Emeritus** *adj* (from verb)  
to earn, deserve, serve  
—WEBSTER’S

WHEN Henry Steiner ’55 and Detlev Vagts ’51 published the first edition of “Transnational Legal Problems” in 1968, the collaboration marked a milestone in the field of international law. The casebook, currently in its fourth edition, is widely regarded as the leading compendium of materials for scholars and students in the field. “Together, [Steiner and Vagts] exemplify a commitment they placed on the first page of their joint casebook and reiterated in every edition thereafter,” said Professor David Kennedy ’80 in a recent testimonial: “The inescapable decision in the contemporary world is to participate in the life of the >>

## Tribute

# Detlev Vagts ’51

*Reflections on the retirement of a gentle giant*

By Pieter H.F. Bekker LL.M. ’91

I WAS PRIVILEGED to be a student of Detlev Vagts’ while I was obtaining my master’s degree and to work with him as his research assistant after graduating in 1991. Several years later, Vagts served on my Ph.D. committee at my alma mater in the Netherlands. Consequently, I feel myself to be in a good position to attest to the legacy of this gentle giant.

Vagts’ career at HLS spans a whopping 46 years, a half century in which the law school underwent many changes. Having received his education at both the college and the law school, he is truly a “Harvard man.”

Born of an American mother and a German father who fled Nazi Germany, Vagts grew up in Washington, D.C.

After his graduation from HLS in 1951, he entered private practice with Cahill Gordon & Reindel in New York City. He sometimes reminisced about his days on Wall Street in his Corporations class, predicting his students might be confronted with this or that question in their offices overlooking the Hudson River in the wee hours of the morning. I remembered this when I had that very experience as a fledgling attorney in New York.

Vagts was recruited by HLS the old-fashioned way. One day, he received a call from Dean Griswold inviting him to join the faculty. And so he became an assistant professor of law in 1959 and received tenure in 1962. He has been Bemis Professor of International Law since 1984.

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# Henry Steiner '55

*Pioneer, scholar and mentor*

By Makau Mutua LL.M. '85 S.J.D. '87

TODAY, THE POWER and language of human rights are ubiquitous. But this was not always the case, even a scant two decades ago. This is an idiom whose ubiquity is the direct result of a select few men and women who have dedicated their lives to its propagation. There is no doubt in my mind that Henry Steiner must be counted among them. Because of his singular vision and dedication, the Human Rights Program—now a leading forum in the field—has transformed legal education at Harvard Law School.

I first met Henry in 1984, the same year that a sketch of a human rights program was barely off the drawing board. Little did I know that this Harvard professor with a patrician

bearing would carve out a significant niche at the law school for arguably the most critical idea of the modern era. But he did so, and with such a powerful imprint that it is impossible to imagine the law school today without HRP.

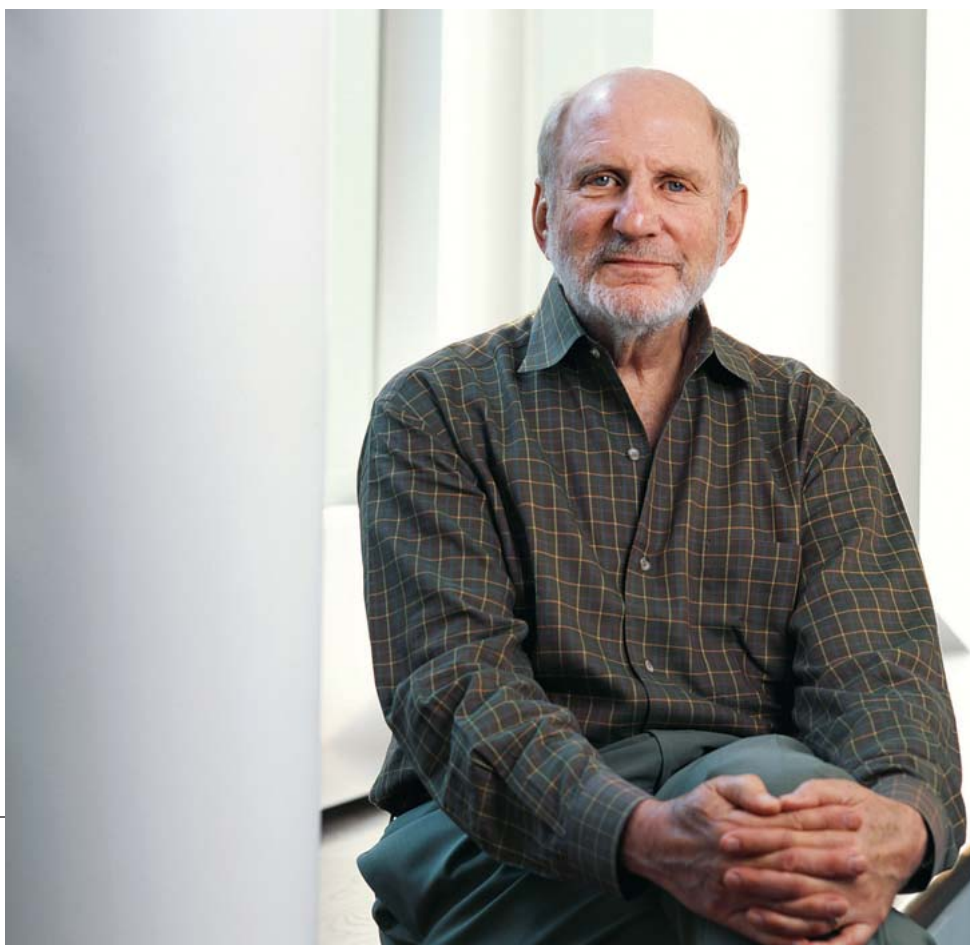
Henry believed, almost from the start of the program, that since human rights involves a language of power—of material for battle by the powerless—its legitimization in hallowed institutions was essential to its success. But he also knew that such a program in the academy had to meet exacting standards of excellence. That is why he emphasized HRP's academic mission. It was on this pillar that all the program's activities were built: coursework, research, internships, speaker series, visiting fellowships, clinical work and the

*(continued on page 13)*

international community.”

Steiner's focus has been predominantly on human rights, and a huge part of his continuing legacy will be the law school's Human Rights Program, which he founded. Vagts, too, has been an outspoken proponent of human rights, but he is also one of the world's foremost experts on transnational business problems and the laws affecting international commerce.

This summer, the two colleagues shared another milestone: retirement from the Harvard Law School faculty. In tribute to these teachers, who served on the faculty for a combined 89 years, the Bulletin asked two of their former students and protégés for summations of these two extraordinary careers.



# Vagts

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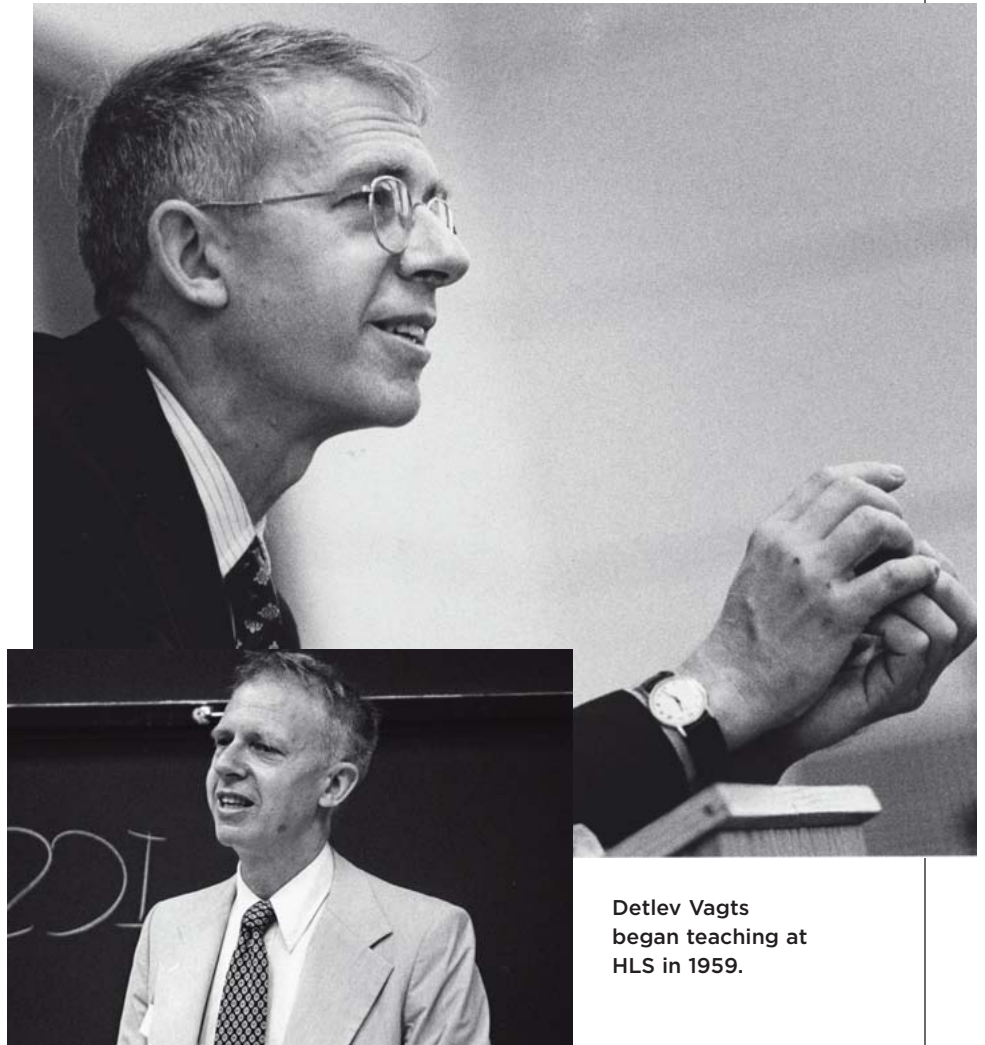
The breadth of Vagts' expertise is truly amazing, ranging from public international law to comparative lawyering and professional responsibility, and from international business transactions to securities regulation and corporate law. He has co-written two coursebooks from which teachers and students will profit for many years to come: "Transnational Legal Problems" and "Transnational Business Problems." In a legal world that has come to be dominated by specialization, Vagts has managed to remain a formidable generalist.

Vagts' articles have also contributed greatly to legal thinking. "The International Legal Profession: A Need for More Governance?" (*American Journal of International Law*, 1996) has been particularly influential. It addresses problems pertaining to professional behavior in international litigation. The article's powerful plea for regulating international lawyers (including arbitrators) continues to influence today's debate.

A likely highlight of his career was his 1993 election as co-editor in chief of the *American Journal of International Law*, the leading publication in the field. He served with great distinction.

His works and teachings show the marks of a fine comparative law tradition. In the face of strong U.S. unilateralist and even isolationist tendencies, Vagts displays an unwavering belief in the rule of international law, and the notion that no nation can claim to be above it.

My favorite recollection among the many moments that we have spent together remains the visit that he and his wife, Dorothy, paid to my native Holland in connection with the formal defense of my doctoral thesis in June 1994. He thoroughly enjoyed the pomp and circumstance associated with doctoral ceremonies at Leiden University—



Detlev Vagts began teaching at HLS in 1959.

especially the nightly festivities at my fraternity. In the thank-you note that I received from him afterward, he commented that he had not experienced such excitement since V-J Day in 1945!

While he certainly is "part of the pantheon of godlike leading citizens who define the Harvard Law School," as former Dean Clark once described Vagts' late international law colleague Abram Chayes, he is anything but an ivory-tower person. He is revered, especially by the foreign students enrolled in the LL.M. program, for being a warm and modest person.

Like so many of his students over the years, I experienced his kindness many times. When I was still single and working for a Wall Street law firm, he contacted me one day and invited me to spend the Thanksgiving holiday

with his family at his lovely house in Cambridge. In the past 14 years, I have made it a habit of looking him up, either at his Hauser Hall office or at home, whenever I am in the Boston area. This has resulted in a special friendship that I will cherish forever.

It is to be expected that Detlev Vagts' retirement will not mark the end of his remarkable career. I am confident that it will not silence his voice—a voice of reason and passionate commitment to the belief that international law and institutions are the greatest hope for peaceful resolution of conflict. It is a voice the world needs to hear, and to heed. \*

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*Pieter H.F. Bekker LL.M. '91 practices international law at White & Case in New York City.*

# Steiner

(continued from page 11)

Harvard Human Rights Journal. Henry correctly believed that HRP was above all a place for academic inquiry.

As a teacher, Henry challenged his students—myself included—to understand human rights as a discipline and to dare question its orthodoxy. Although he holds fast to its humanist and political ideals, Henry has never taught human rights as a religion.

Even so, he has often revealed a belief that, far from being an antidote to human catastrophes, the study of human rights can offer a glimpse of the good society. It is this duality of the believer and the skeptic that has allowed Henry to mentor a wide and diverse college of students. These range from the most bracing Third World critiquers of human rights discourse to the most unabashed advocates of the ideology of human rights.

Henry's book written with Philip Alston, "International Human Rights in Context: Law, Politics, Morals," captures the open texture with which he approaches human rights. There are no sermons in it. Instead—and this is why I think the book will long remain the standard—he refuses to succumb to the mentality that the classroom is a congregation, and the law school a church. There is much to stir the mind of the idealist and to inspire the student to reach for a higher human intelligence. To achieve that combination is both Henry's enigma and enduring identity.

Henry has a seductive mind and the wit of a comedian. But his penchant for excellence is unparalleled. Although he has been a mentor of mine—and I credit him with a selfless guidance of my career as a law professor and human rights scholar—he has never himself ceased to be a student. This is one of his most admirable proclivities.

He is forever learning, pushing himself to understand other cultural milieus, to better comprehend the complexity of our universe. In August 2003, at an international conference on a truth com-

## Henry challenged his students to understand human rights as a discipline and to dare question its orthodoxy.

mission in Nairobi, Kenya, he seemed to learn as much as he gave back. I know this will not change.

HRP would not have been possible without the foresight, commitment and hard work of this deeply complex man.

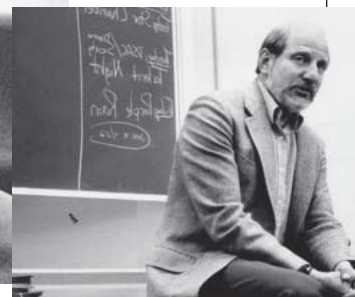
He took a possibility and made it into a reality. There is nary an important human rights institution across the globe that is not inhabited by a person who has been touched by Henry or HRP. That legacy can only grow further, even as HRP enters a new phase. In the academy, he leaves a more expanded political space in which the voices of dissent are less likely to be viewed as wild and dangerous. He has legitimized the difficult question in human rights circles. \*

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*Makau Mutua LL.M. '85 S.J.D. '87 is a professor and the director of the Human Rights Center at the University at Buffalo Law School at the State University of New York.*



Henry Steiner joined the HLS faculty in 1962.





Harvard Law  
*bulletin*

FALL 2005

special section

# high-resolution

refining the techniques  
of negotiation and adr

“NEGOTIATION IS LIKE jazz. It’s improvisation on a theme—you know where you want to go, but you don’t know how to get there. It’s not linear.”

So said Ambassador Richard Holbrooke at Harvard Law School recently, speaking on the art of negotiation. “I say ‘art’ intentionally,” he

added, “because it’s not a science and never will be.”

The following stories prove that if negotiation is an art, it’s one that can be taught, and that its techniques are constantly being refined. A quarter-century after HLS Professor Roger Fisher ’48 and William Ury published “Getting to Yes,” Harvard





Law School's Program on Negotiation, chaired by Professor Robert Mnookin '68, is elevating the art form, giving it more and more resolution with new pixels of information.

Where once it was thought that emotion should be removed as much as possible from

conflict resolution, today's negotiation students are striving to harness emotion and channel it in constructive ways.

Online, a new "e-Parliament" provides legislators worldwide with a forum for sharpening negotiation strategies on critical global issues.

Behind closed doors, in a law school classroom, some of the biggest deals ever negotiated are being dissected and critiqued by students—face-to-face with the deal makers who negotiated them.

Abroad, Harvard-trained negotiators on both sides of the Israeli-Pales-

tinian conflict are learning that before there can be peace, there must be a process. They are coming to understand that though they know where they want to go, they don't know how to get there—and that the journey, like a ride through the streets of Jerusalem, will not be linear.

# online and on the road

by Seth Stern '01  
photograph by Tanit Sakakini

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harvard's  
program on  
negotiation is  
moving into  
new territory

at

AT FIRST GLANCE, the electricity wasted by idle electric appliances doesn't seem like the kind of problem on which Harvard Law School's negotiation experts might focus their own energy. But in light of the fact that appliances in standby mode gobble up 5 percent of the world's daily energy supply, perhaps that focus is more understandable.

Waste of this kind is just one of many problems being tackled by legislators from around the world in a new Internet project launched with the help of Harvard Law School's Program on Negotiation.

The e-Parliament, a PON-backed initiative, will connect legislators from many nations



**Professor Robert Mnookin '68,  
Program on Negotiation chairman, and  
Susan Hackley, managing director**

through a Web site where they can strategize about the best ways to negotiate solutions to problems like energy waste. And it's just one of several initiatives through which PON—already prized for its oversubscribed negotiation workshops for law students, U.S. business executives and lawyers—is going global.

Since its founding 22 years ago, PON has been building on its expansive conception of the field. Today, PON scholars are likely to be chipping away at obstacles to peace among warring factions in the Middle East, or opening a door of their own to China.

“Carrying on a tradition reflected in the pioneering work of faculty giants like Roger Fisher, Frank Sander and Howard Raiffa, the Program on Negotiation has always had a broad view of the relevance of negotiation both to conflict resolution and to deal making in a wide range of contexts,” said Professor Robert Mnookin '68, who has led the program since he came to HLS from Stanford in 1993.

In a field that is necessarily interdisciplinary, said Mnookin, “our goal remains to improve the theory and practice of negotiation as a means for helping people efficiently and fairly resolve their differences, whether within families, the workplace, the shadow of the courthouse or the political arena.”

Perhaps nothing demonstrates PON's elasticity better than its support of the e-Parliament project. The idea came to William Ury, an anthropologist and one of PON's founders, while he was sitting in a pub near England's famed white cliffs of Dover in 2001, talking with a colleague about ways to democratize global institutions. “We have democracy within countries, but we don't really have democratic problem solving applied across national borders,” said Ury. “The question was how to begin to take some small steps toward applying democratic principles to global issues.”

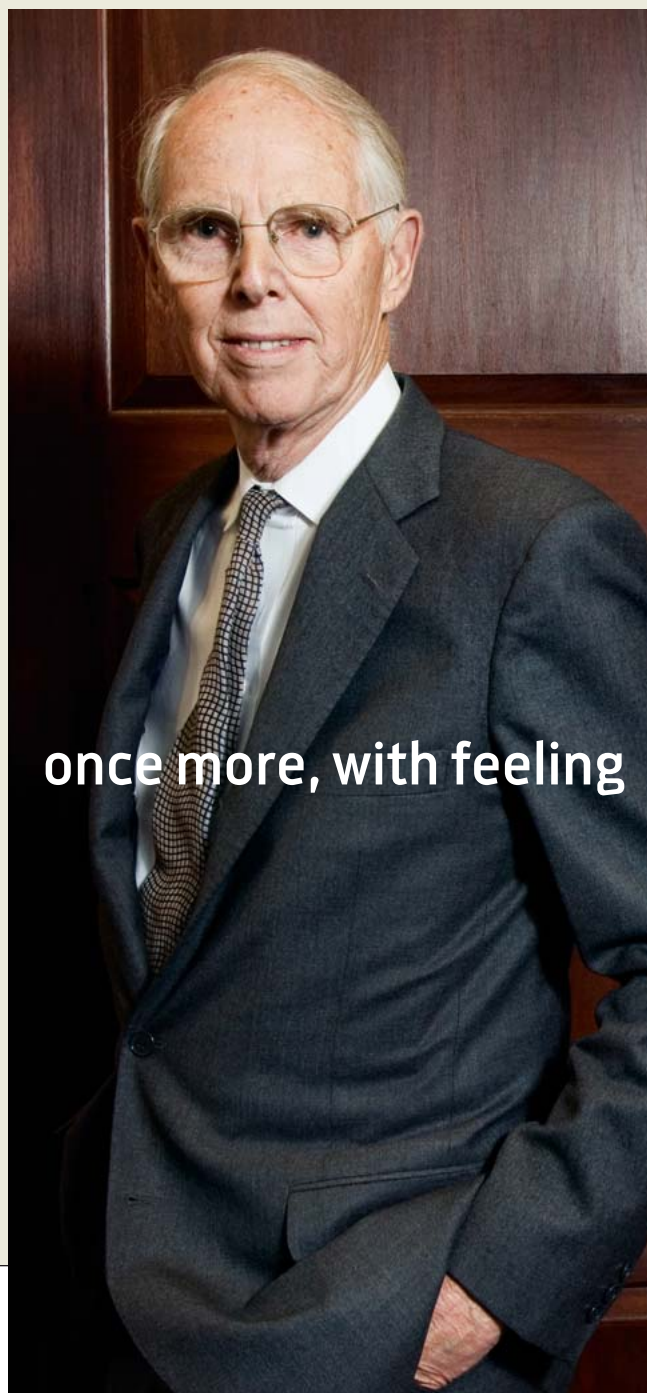
Their proposed solution was an online forum where legislators from around the world will share ideas about negotiating for legislation on issues of common concern, such as the environment, space and the oceans.

It was not hard for Ury to convince his PON colleagues that e-Parliament was worth supporting. “PON really looks at developing better methods for problem solving, and the e-Parliament is precisely designed to apply state-of-the-art prob-

*(continued on page 20)*

FOR DECADES, NEGOTIATORS have struggled to “separate the people from the problem,” one of the cardinal rules set forth in the seminal book “Getting to Yes.” But what if the people are the problem—or at least appear to be?

“Emotions can be powerful tools,” said psychologist Daniel Shapiro, associate director of the Harvard Negotiation Project. “You can't get rid of emotions, so the challenge is how to use them.” Explaining how to do just that is the goal of “Beyond Reason: Using Emotions as You Negotiate”



once more, with feeling

(Viking, 2005), a new book by Shapiro and Harvard Law Professor Emeritus Roger Fisher '48, director of the Harvard Negotiation Project for 25 years and co-author of "Getting to Yes."

Fisher and Shapiro contend that we all share "core concerns"—human wants that are important in virtually every negotiation—and that learning how to work with these concerns yields enormous benefits. For example, all of us want to feel appreciated and connected to other people. All of us want to be respected for what we do and

who we are. When others recognize these needs, we tend to feel happy and cooperative, while a sense that such concerns are being ignored prompts us to shut down or lash out. "Beyond Reason" urges negotiators to make conscious use of this idea, to "learn a strategy to generate positive emotions and to deal with difficult ones." In this way, by attending to each other's concerns, we may find that what seemed like huge barriers are more easily surmountable.

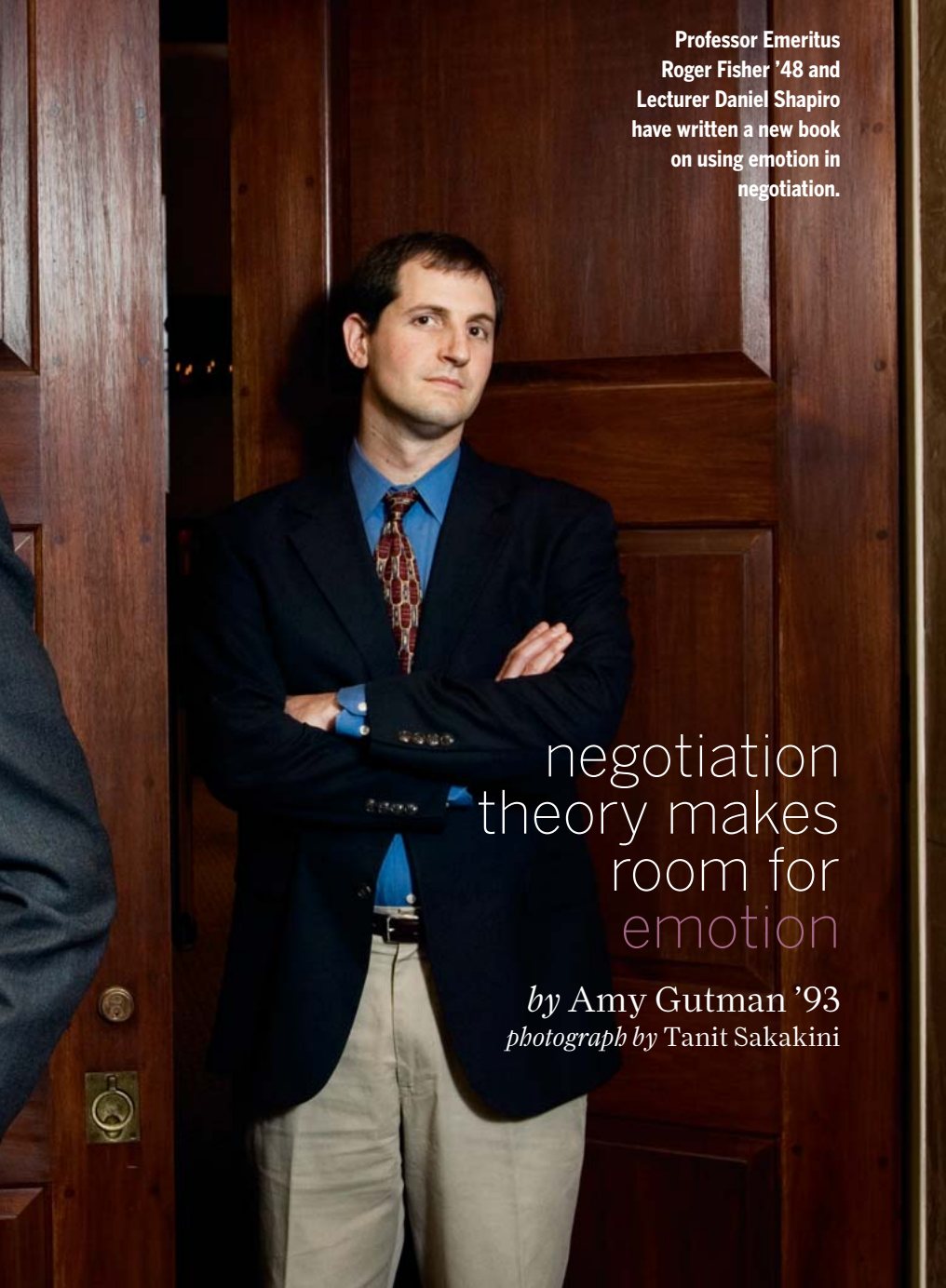
The central question addressed in

"Beyond Reason"—how best to deal with emotions in the context of tough negotiations—has been fertile ground for reflection and research since the 1980s. An awareness of the crucial role of emotions led to the introduction of the "Interpersonal Skills Exercise" into some sessions of the law school's perennially popular Negotiation Workshop, which is taught twice a year and enrolls more than 200 students over the course of the spring and winter terms. The product of a collaboration between law school instructors and experts in communication and family systems, the exercise uses techniques such as role playing and videotaping to help students become more adept at dealing with strong feelings. The best-selling book "Difficult Conversations: How to Discuss What Matters Most" (Viking, 1999), by Douglas Stone '84, Bruce Patton '84 and Sheila Heen '93, grew out of the authors' experience teaching the exercise. That component of the Negotiation Workshop continues to draw especially positive reviews from students, many of whom have described it as a high point of their law school experience, says Robert Bordone '97, HLS lecturer on law and deputy director of the Harvard Negotiation Research Project.

Bordone points to a better understanding of the role of emotion in negotiation as one of the field's defining needs. As he writes in the new "Handbook of Dispute Resolution" (Jossey-Bass, 2005), which he edited with Michael Moffitt '94: "We hope that with time, researchers will develop a richer understanding of the ways that shame, anger, hope and fear affect disputants. And we hope that scholars will find vehicles for translating these findings into advice that will be useful to practitioners." \*

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*Amy Gutman '93 is HLS assistant director for academic affairs and the author of two suspense novels: "Equivocal Death" and "The Anniversary," both published by Little, Brown.*



Professor Emeritus  
Roger Fisher '48 and  
Lecturer Daniel Shapiro  
have written a new book  
on using emotion in  
negotiation.

negotiation  
theory makes  
room for  
emotion

by Amy Gutman '93  
photograph by Tanit Sakakini

lem-solving methods to difficult issues,” he said.

PON provided seed money as well as the brainpower to help solve some of the toughest questions posed by the project. Harvard law students researched problems such as how to make it possible for legislators who speak so many different languages to communicate online.

The Web site ([www.e-parl.net](http://www.e-parl.net)) will not officially debut until next year, but the program has already signed up 800 parliamentarians—including several members of Congress—from more than 50 countries.

The first test project, which sets one watt as the global goal for energy usage by appliances in standby mode, has already generated legislation in Brazil, Norway and the European Union mandating adoption of a one-watt standard for the manufacture of appliances. Worldwide

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## PON leaders are trying to find new ways to ease seemingly intractable international conflicts.

adoption of that goal would save billions of dollars and could reduce electricity usage by nearly 5 percent.

Last year, Time magazine featured Ury and Nicholas Dunlop, the former executive director of EarthAction and now e-Parliament’s secretary-general, in its “Great Innovators” series, noting that “as the e-Parliament grows, good ideas about government could prove contagious.”

E-Parliament is not PON’s only innovation for helping to resolve global problems. The program’s leaders are also trying to find new approaches to seemingly intractable international conflicts, such as those in the Middle East.

The Settlements Project, headed by Mnookin, has focused on easing the Israeli withdrawal from settlements in the West Bank and the Gaza Strip (see story, page 24), while Ury has proposed creating a sort of Appalachian Trail for the Middle East that would highlight the common origins of the three faiths descended from Abraham: Christianity, Islam and Judaism.

And shortly after Chechen separatists took hundreds of hostages in a Russian school last

*(continued on page 22)*



## alternative lawstyle

FRANK E.A. SANDER '52 had nearly two decades under his belt teaching tax and family law at HLS when Chief Justice Warren Burger tapped him to present a paper on alternative dispute resolution 29 years ago.

That paper changed the course of Sander’s career—and helped propel the growth of alternative dispute resolution as an academic discipline and an approach that lawyers take seriously.

Nearly three decades later, he is still researching and teaching about it and thinking about how far the field has come—and has yet to go.

“On Monday, Wednesday and Friday, I think it’s unbelievable what’s happened,” Sander said. “And on



by Seth Stern '01  
photograph by Tanit Sakakini

for 30 years,  
he's been  
showing that  
you don't  
always have  
to litigate

Tuesday, Thursday and Saturday, I still think it's just a grain of sand on the beach because our society is still so adversarial and litigation-oriented."

Either way, Sander persists in trying to perfect a taxonomy for settlement to help people choose the best forum for their particular dispute. It is an idea he calls "fitting the forum to the fuss."

In a chapter he contributed to the recent "Handbook of Dispute Resolution," Sander and his co-author lay out a simple, three-step approach to choosing the right form of dispute resolution, with mediation as the presumed first step.

Looking to the future, Sander foresees a day when his vision of a "multi-door courthouse" will become a reality.

He has long argued for courthouses in which there would be multiple processes for resolving disputes. No court has adopted the notion completely, but Sander says the idea is catching on. A number of courts now offer litigants dispute-resolution alternatives to trial.

He also imagines a time when alternative dispute resolution will be a mandatory subject as early as elementary school. "When those kids come home, they tell their parents about it, their parents tell their employers about it, and that's how the idea spreads."

And by the time these kids grow up and some of them reach HLS, Sander hopes the approach will be as prestigious as litigation. Strong institutional resistance remains, he

conceded: "In the '80s, there was tremendous expansion of litigation departments. And they are expensive to maintain, so lawyers and law firms have an investment in the status quo."

But he also sees signs of progress. The wait to get into his summer workshop for nondegree candidates is four years long, and the interest in alternatives to litigation only grows among law firms and corporate counsel, he says.

"Really sophisticated lawyers recognize that if you make clients happy, and both parties leave a dispute having both won or at least not lost, they're going to use that lawyer over again," he said. "A satisfied client is the best advertising you can get." \*

year, Mnookin and Susan Hackley, the program's managing director, wrote a Los Angeles Times opinion piece arguing against the conventional wisdom that governments shouldn't negotiate with terrorists.

They suggested keeping informal channels of communication with terrorists open through intermediaries even when governments are not prepared to make concessions. "Sometimes it may be good practice to know what [terrorists] are thinking," they wrote. "FBI and police hostage negotiators nearly always negotiate with hostage-takers—to gather

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## One of Mnookin's top priorities is training the next generation of negotiation scholars.

information, to look for leverage and in an effort to gain the psychological advantage."

In addition to tackling international problems, PON has also been looking for new ways to educate decision makers around the world.

Each year, more than 2,500 participants—many of them from abroad—travel to Cambridge for PON's executive education programs. In May, Mnookin and Hackley took the program on the road for the first time, to Hong Kong.

Fifty-seven Chinese executives from both the private and public sectors participated in two days of workshops. "Ahead of time Bob and I had some concerns that the participants in Hong Kong wouldn't be interactive, that there would not be much give-and-take, which is an important part of negotiation training," said Hackley. But she and Mnookin tried to tailor the content of the workshops and materials to the cultural sensitivities and experience of the attendees. "We were pleasantly surprised by their willingness to be fully engaged and to role-play," she said.

It was an experiment Hackley says is worth repeating, most likely next in Europe. Taking the program abroad allows attendance by people who might not make the trip to Cambridge, she says. And, she adds, international participants often feel more comfortable when the workshops are in their own countries, with colleagues from similar backgrounds.

Those who cannot attend workshops can learn from a wide variety of literature and publications—including videos and interactive exercise materials—written and produced by PON faculty members and affiliates.



**Chinese executives in Hong Kong attend PON's first seminar abroad, led by Mnookin.**

**Through e-Parliament, an Internet project launched with the help of PON, legislators from around the world work together to negotiate solutions to global problems.**

These materials include "The Handbook of Dispute Resolution," published in August and co-edited by Robert Bordone '97, lecturer on law at HLS and deputy director of PON's Harvard Negotiation Research Project.

And to publicly emphasize the importance of skilled negotiators, since 2000, PON has issued the annual Great Negotiator Award to an individual whose lifetime achievements in the field of negotiation and dispute resolution have had a significant and lasting impact. Last year's winner was former Ambassador Richard Holbrooke. This year's recipient is Sadako Ogata, former U.N. high commissioner for refugees, for her negotiations with numerous foreign governments in the 1990s and this decade on behalf of international





refugees and displaced persons. “Mrs. Ogata did a lot of extraordinary negotiating, much of it unheralded, low-profile and informal,” said Hackley.

On campus, PON has been finding new approaches to engaging students. Screening films, for example, has proved to be a popular way to attract students to the field.

As part of its film series, PON has shown movies like “Hotel Rwanda,” “Bloody Sunday” (chronicling conflict in Northern Ireland) and “Occupation” (about a 21-day sit-in by Harvard students demanding wage hikes for university janitors).

After the screenings, law professors and sometimes filmmakers join students to discuss how the characters in the film dealt with conflict. Hackley says that watching a film together provides a shared context that can open up discussion of difficult issues and be a more effective collective learning tool than reading the same case study independently.

For many students, PON plays a central role in their education. Walter Scott '06 says the program, combined with his interest in alternative dispute resolution, brought him to HLS. “PON set Harvard apart,” he said, and courses like Dealing with Emotions “demonstrate its commitment to the newest and most exciting areas in negotiation research.”

One of Mnookin’s top priorities has been furthering such research by training the next generation of negotiation scholars. His main vehicle is the Hewlett Foundation Fellows Program.

Hewlett Fellows—second- or third-year law students undertaking extensive research in negotiation and dispute resolution—are exposed to a wide array of disciplines beyond law, such as game theory, strategic analysis, and social and cognitive psychology. They also do the research and writing that help prepare them for academic careers.

“It was a tremendous learning experience,” said Scott Peppet '96, who now teaches negotiation at the University of Colorado’s law school. “It gave me the time I needed to develop my voice and produce scholarship, and it was a very, very intellectually stimulating environment to be in.”

Almost a decade after the Hewlett Fellows program began, Mnookin takes pride in the roster of former fellows who can be found teaching negotiation at law schools and universities around the country.

Said Hackley: “This is an important way to seed the field.” \*

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

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**About Energy**

**Limit standby Power**  
A simple way for a legislator to help the environment and save your country millions of dollars

**Ideas**  
**Communicate**  
**Vote**  
**Act**

Increasingly we are surrounded by electrical appliances in ‘standby mode’ - computers, fax machines, video recorders, printers, copiers, microwave ovens and many others. Most of us pay little attention to these machines sitting quietly, doing very little, awaiting our instructions. But did you know that the standby mode is consuming a growing share of the electricity generated in your country - often as much as 5% already?

Producing electricity for machines to do nothing is costing your citizens millions of dollars. And it is adding hundreds of millions of tons of carbon dioxide to the global emissions that are heating our planet and disrupting our climate.

Without causing consumers any inconvenience at all, parliamentary action now can significantly reduce those costs. This Parliamentary Toolkit, produced by the e-Parliament Climate and Energy Network, explains how it can be done.

To learn more about how to limit standby power, download the full toolkit in printable format:  
[Standby power toolkit \(pdf\) >>>](#)

The e-Parliament wishes to thank the European Commission and the Friends of the Wuppertal Institute for their support for our work on energy issues.

# mission impossible?

by Dick Dahl

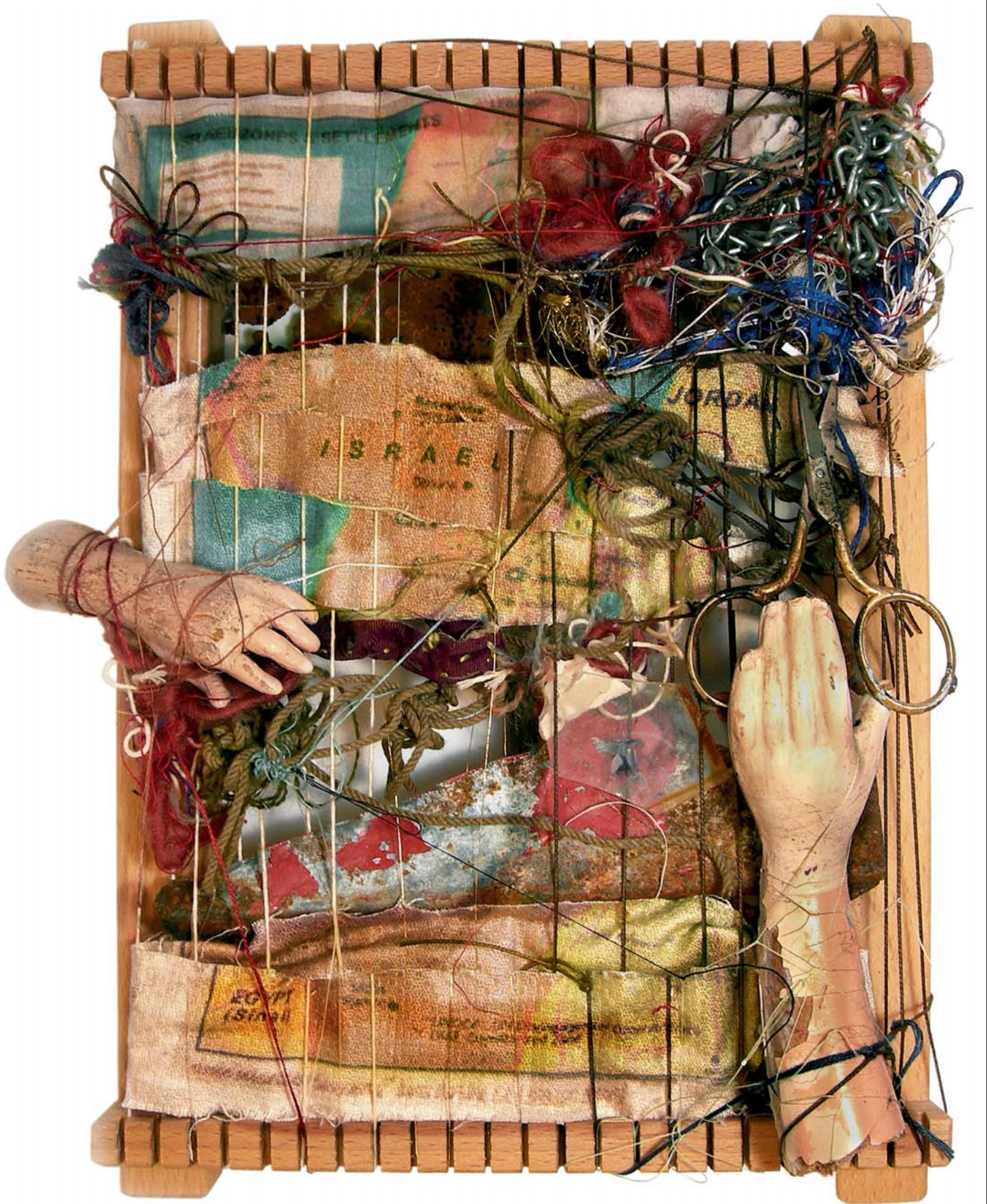
illustrations by Polly Becker

As negotiators struggle to help Israelis and Palestinians move toward peace

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THE ISRAELI-PALESTINIAN conflict may seem hopelessly intractable. Both sides have been at odds—often bloody—since Israel became a state in 1948. But to Professor Robert Mnookin '68, chair of Harvard Law School's Program on Negotiation, the truly frustrating aspect of the long-standing dispute is that the general outline of a workable deal for both sides is widely known. Unlike other ethnic conflicts where solutions are difficult to imagine, as in the Balkans, an arrangement that might greatly reduce the tensions and violence between Israelis and Palestinians isn't hard to identify, according to Mnookin. The mystery, he says, is why that can't be achieved.

To Mnookin, this paradox of continuing conflict despite an obvious solution is due, at least in part, to internal conflicts on both sides—for the Israelis, disagreement about the settlement areas; for the Palestinians,





ROBERT  
MNOOKIN '68  
*is focusing on  
internal conflicts  
among Israelis.*



EHUD EIRAN *says  
there should be  
more emphasis on  
process, not goals.*



GABRIELLA BLUM  
LL.M. '01 S.J.D.  
*'03 says some  
problems can be  
solved, others have  
to be managed.*

differences on the scope and meaning of Palestinian rights of return to homelands in Israel. The paradox is especially challenging to legal scholars working in the field of conflict resolution, and explains why Mnookin and the PON have taken a keen interest in working toward a solution that would serve the interests of most Israelis and most Palestinians. PON research fellows have applied knowledge they've gained in the program to negotiation efforts with Israelis and Palestinians, and Mnookin himself has developed a program that seeks to address the deep internal conflicts among Israelis as a necessary step toward peace.

That program, which he's called "Resettling the Settlers: Laying the Foundation," focuses on the status of Israeli settlers—the 8,500 who populated the Gaza Strip prior to their removal by Israeli soldiers in August as part of Prime Minister Ariel Sharon's unilateral "Disengagement Plan" to cede authority of Gaza back to the Palestinians, and the 220,000 who live on the West Bank. To Mnookin, it is imperative that Israel resolve the resettlement issue as part of its efforts to seek peace with the Palestinians. To that end, in addition to organizing a conference last year and writing about the issue, he has assembled a group of 11 Israeli leaders with very different views to meet periodically and discuss the resettlement question. Five of the 11, he said, are "very important figures in the settlement movement." The rest come from the center and center left. So far, the group has held four sessions in Israel.

Mnookin stresses that these meetings are not negotiations. They are off-the-record discussions. "I didn't have some kind of grand plan in my hip pocket going in," he said. "I just felt that it would be critically valuable and important for people with radically different perspectives to have an opportunity to get to know each other and understand each other's perspectives better."

Mnookin believes that the internal conflicts on both sides make it difficult for leaders to develop solutions. What is needed, he said, is for Israeli and Palestinian leaders to demonstrate "a combination of empathy and assertiveness—empathy, because of the need to demonstrate an understanding of the sacrifices on the part of those set-

tlers who may be required to give up their dreams, and assertiveness, because of the need to insist on the sacrifice for the good of the larger community. I think Prime Minister Sharon did this in terms of the evacuation of Gaza."

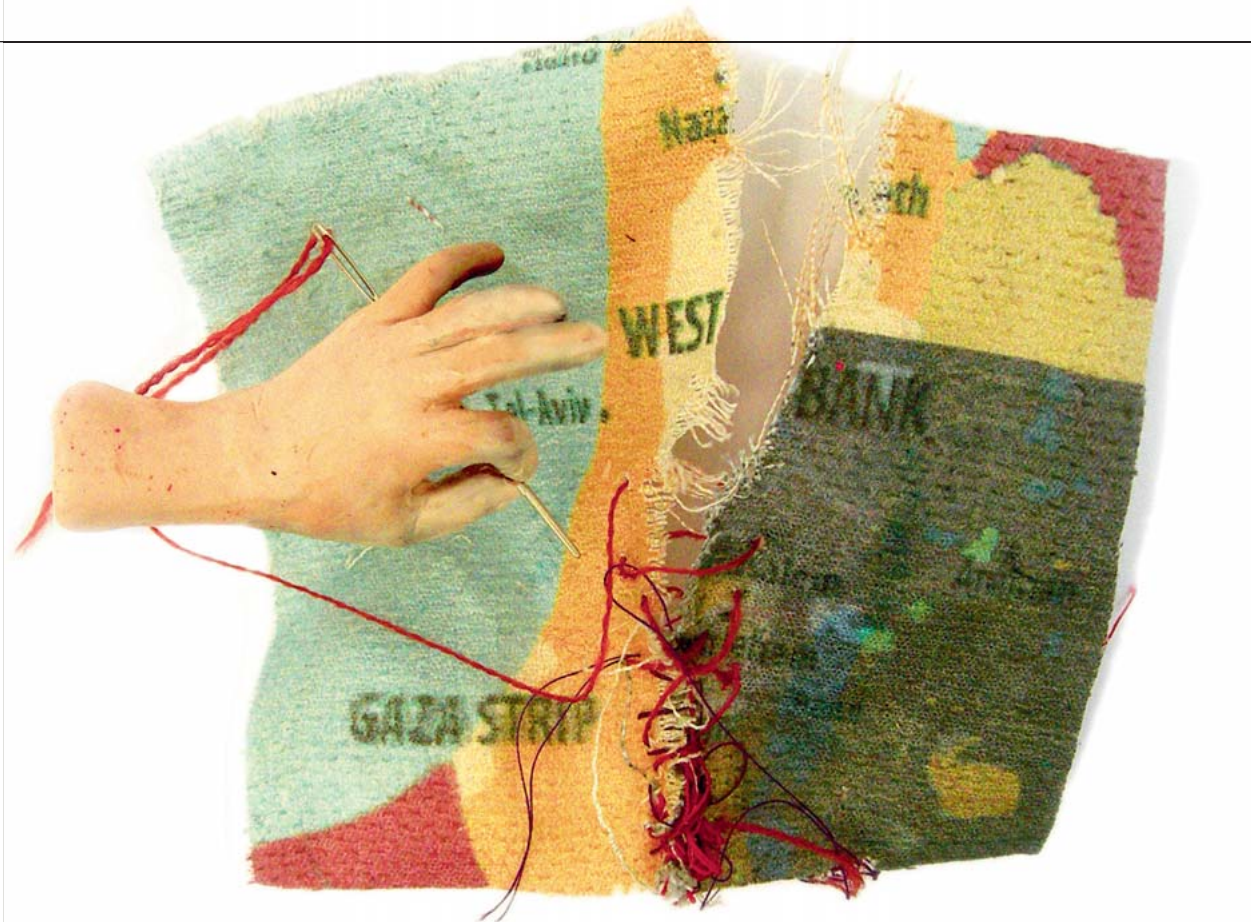
He says that these endeavors to reach some level of understanding within both societies must happen before peace talks can resume. One of the problems on both sides, he believes, is that leaders are responding to the wishes of extremist minority constituencies. In his own research on Israeli society, Mnookin has been struck by the strong influence that the "national religious settlers" have on Israeli decision making. This category, which Mnookin defines as modern Orthodox Jews who are fervently nationalistic and who view their settlement activity in messianic terms, comprises only about one-fourth of the set-

## One problem is that leaders

tlers, which translates into about 1.5 percent of the entire Israeli population.

Mnookin contends that it would be impossible for the national religious settlers to exert the influence they have if it weren't for the resonance that the settlement movement has in broader Israeli society, much as the pioneering spirit of the Old West is still cherished in the U.S. "Zionism was essentially a settlement movement," he said. "The grandparents of cosmopolitans living in Tel Aviv were settlers. They came to a somewhat hostile area at great personal risk; they settled the land, developed the land. The settlement movement sounds those themes and connects to a pioneering spirit." Good negotiators apprise themselves of this very sort of social and historical phenomenon, Mnookin says.

Ehud Eiran, a PON fellow, calls this approach "thinking about conflicts in a more conceptual way." Eiran, a major in the Israel Defense Forces, served as an assistant foreign policy adviser to Israeli Prime Minister Ehud Barak on all aspects of Arab-Israeli negotiations, including the Israeli-



## on both sides are responding to minority constituencies.

Palestinian question. “I think [the PON program] has changed my thinking in a number of ways—not only the Israeli-Palestinian conflict, and not only with the Arab world in general, but within our society as well,” he said.

One of the lessons he’s gained from PON workshops is the importance of focusing on process, as opposed to desired outcomes. Eiran has observed that much of the discourse in the Middle East tends to be “goal-driven.” Israel and Arab countries alike, he says, tend to ignore things like international law when it represents an impediment. “The settlers, or the Israeli right wing, looked the other way when Sharon was promoting their agenda using aggressive, borderline illegitimate tactics, but when he changed his position in 2003 and used the same approach against them, they suddenly began complaining about his process. One lesson for me from the Program on Negotiation has been almost the sanctity of process, which runs contrary to Israeli intuition.”

A former PON fellow who, like Eiran, was also a member of the IDF, Assistant Visiting Professor

Gabriella Blum LL.M. ’01 S.J.D. ’03 likens negotiation skills to development of a mindset. “You have to get a deep sense of what drives the people who are involved,” she said. “What is their historical background? What are their values? What are their symbols? Why do certain things matter to them the way they do?”

Blum already had extensive experience as a negotiator working with the IDF when she arrived at HLS in 2000. Her Harvard studies, including the PON fellowship, would provide an opportunity to expand upon her work as an IDF lawyer. Over the previous five years, she had spent much of her time as a negotiator with counterparts from the Palestinian National Authority. The Oslo II interim agreement of 1995 had just been signed when she started that work, and hopes had been high. “There was a huge sense of excitement,” Blum recalled. “There was a sense of a new beginning.”

By 2000 that initial optimism had waned due to a lack of progress, but new hopes again arose when President Clinton organized a summit at

Camp David in an effort to get the Oslo accords back on track. The summit ended in a finger-pointing stalemate at the end of July 2000, however, and less than two months later, escalating violence culminated in the start of the Al Aqsa Intifada, ending any short-term prospects for peace.

The violence continued, and when Blum returned to Israel in 2003 to resume her work with the IDF, she wasn't able to apply her Harvard training as she'd hoped. "I went back home to a reality that was completely different from when I first started with the IDF, with the reality of an armed conflict with over 1,000 Israeli casualties and 3,000 Palestinian casualties, tens of thousands injured. So instead of doing peace negotiations and political negotiations, I was working on the laws of counterterrorism operations."

Another HLS graduate involved in Middle East negotiations, Amr Shalakany S.J.D. '00, has worked on the other side, as a legal adviser in the negotiations support unit of the Palestine Liberation Organization in Ramallah, but he agrees with Blum on the importance of empathy as a negotiation tool. An Egyptian, Shalakany came to Ramallah and the PLO in September 2000, when he was teaching law at Birzeit University on the West Bank. By the end of September, the intifada had begun, and his time as a negotiator lasted only a few more months until the election of Sharon in January 2001, which prompted a final cessation of negotiations.

Today, Shalakany is an assistant professor at the American University in Cairo, where he has helped to establish a master's program in international and comparative law. He has taught at HLS several times and will return to the school in January to teach international commercial arbitration. Shalakany remembers his short-lived experience in Ramallah as disappointing but instructive for what it taught him about the value of empathy and perspective in negotiations. While working for the PLO, he focused on the issue of Jerusalem. The PLO position, then as now, was that it should be an open city—Palestinian authority in East Jerusalem, Israeli authority in West Jerusalem, and free movement of people between the two sectors. (The Israeli position is

that Jerusalem remain the undivided capital of Israel with no sovereignty for Palestinians in the eastern part of the city.) After the intifada broke out, it became increasingly obvious that the open-city option was not workable, so in the various negotiations that Shalakany attended, there were attempts to figure out how and where one might put a border without increasing difficulties of movement between the two halves. Nothing was resolved.

But Shalakany developed a strong working relationship with the Israeli city engineer of Jerusalem, Elinoar Barzacchi, who took him on a tour of the city when they first met. "The way I saw Jerusalem for the first time was through the eyes of the city engineer," he said. "It was fascinating to see how a huge difference in perspective can take place and seem so rational and understandable."

## In theory, there's always a way

HLS Professor Emeritus Roger Fisher '48 has written and spoken about the importance of those kinds of relationships in peace negotiations. Peace, he says, requires process. And process, he says, relies on open communication between parties to the dispute. Fisher, who created the Harvard Negotiation Project (now part of PON) in 1979, has been a longtime follower of the Israeli-Palestinian conflict. He first met PLO Chairman Yasser Arafat and Sharon (who then headed IDF's Southern Command) in 1971. The next year, his book "Dear Israelis, Dear Arabs: A Working Approach to Peace" was published, and his message now is the same as it was then.

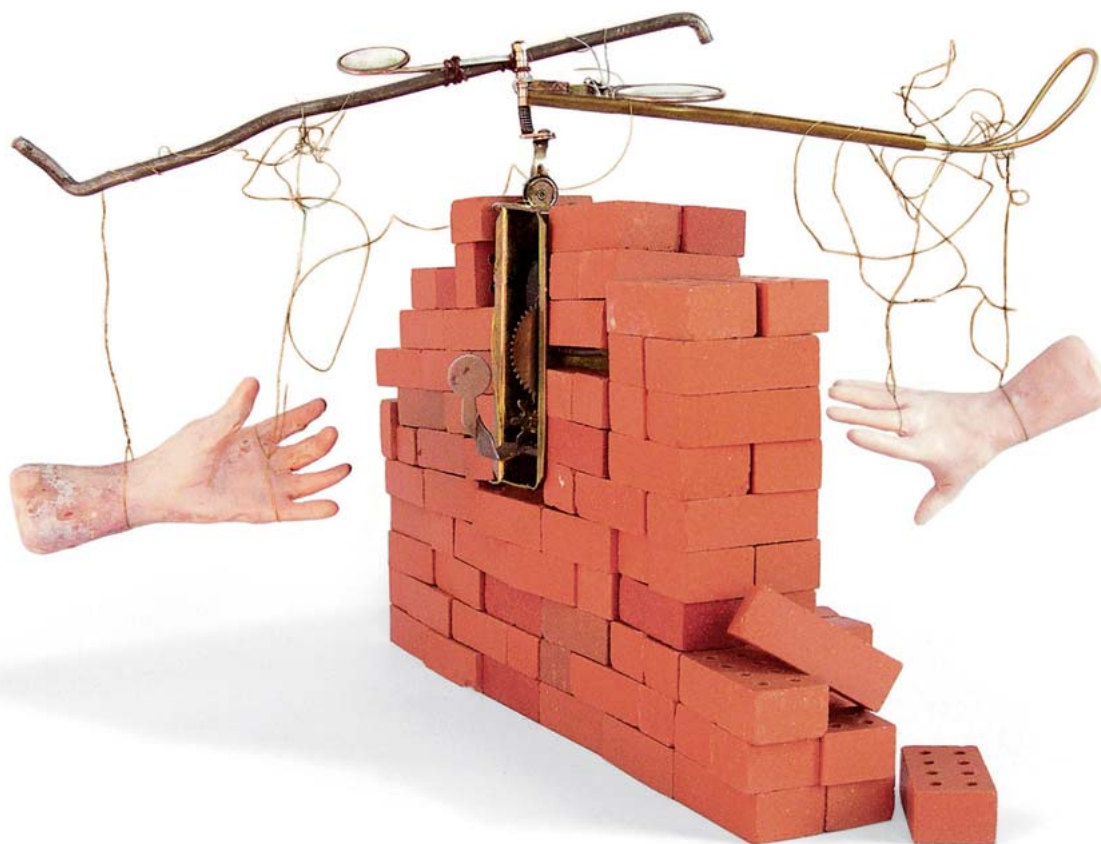
"The Arab-Israeli question is: What is the process they should use for dealing with each other? People know what they care about but don't pay much attention to how they're dealing with other people," he said. "So if you listen very carefully to the process and state your interests and ideas, you can work together to find an option that's going to meet the interests fairly well of both sides. But that's what it takes—working together."



AMR SHALAKANY  
S.J.D. '00 stresses  
the importance of  
empathy.



ROGER FISHER  
'48 says heads of  
state are not the  
best negotiators.



## around barriers to negotiation, but what about in practice?

The problem with the Arab-Israeli conflict, like many others, is that heads of state think they're the best negotiators, Fisher says. "They take positions and then they tell everyone what to do. That's a crazy way to negotiate. What you want to do is have second-level people and knowledgeable people work with each other and develop something they can both recommend for official approval by the government."

In the case of Israelis and Palestinians, everyone agrees that such a deal can't come without painful concessions on both sides. Mnookin and many others (including Professor Alan Dershowitz in a recent book, "The Case for Peace") say that the only answer, as best laid out at the Camp David summit, is a two-state solution with Israel ceding both the Gaza Strip and the West Bank, and Palestinians accepting only a limited right of return of refugees to homelands in Israel.

Can that ever happen? Can there ever be anything approaching peace between Israelis and Palestinians? Blum, who teaches international

law and international negotiation, believes it may depend on how one defines peace. "There's a kind of Western liberal bias about dealing with it," she said. "If you try to look for literature that looks at a conflict and reaches the conclusion that 'this is insoluble—we're very sorry but there's nothing that we can do about this conflict,' you won't find anything. On an academic level, there's always an answer—there are ways around the barriers to negotiation. But it doesn't always work that way."

Can the conflict be solved? "I don't know what 'solved' means," she said. "I think some of the core disputes can be resolved. I think there are solutions that can be found for Jerusalem, for the borders. So yes, on an analytical level, I think you can find a solution. But I think that what we should also accept is that there are still going to be tensions between the two societies, and this will have to be managed over time." \*

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*Dick Dahl is a freelance writer living in Somerville, Mass.*

by Michelle Bates Deakin  
*illustration by Alex Nabaum*

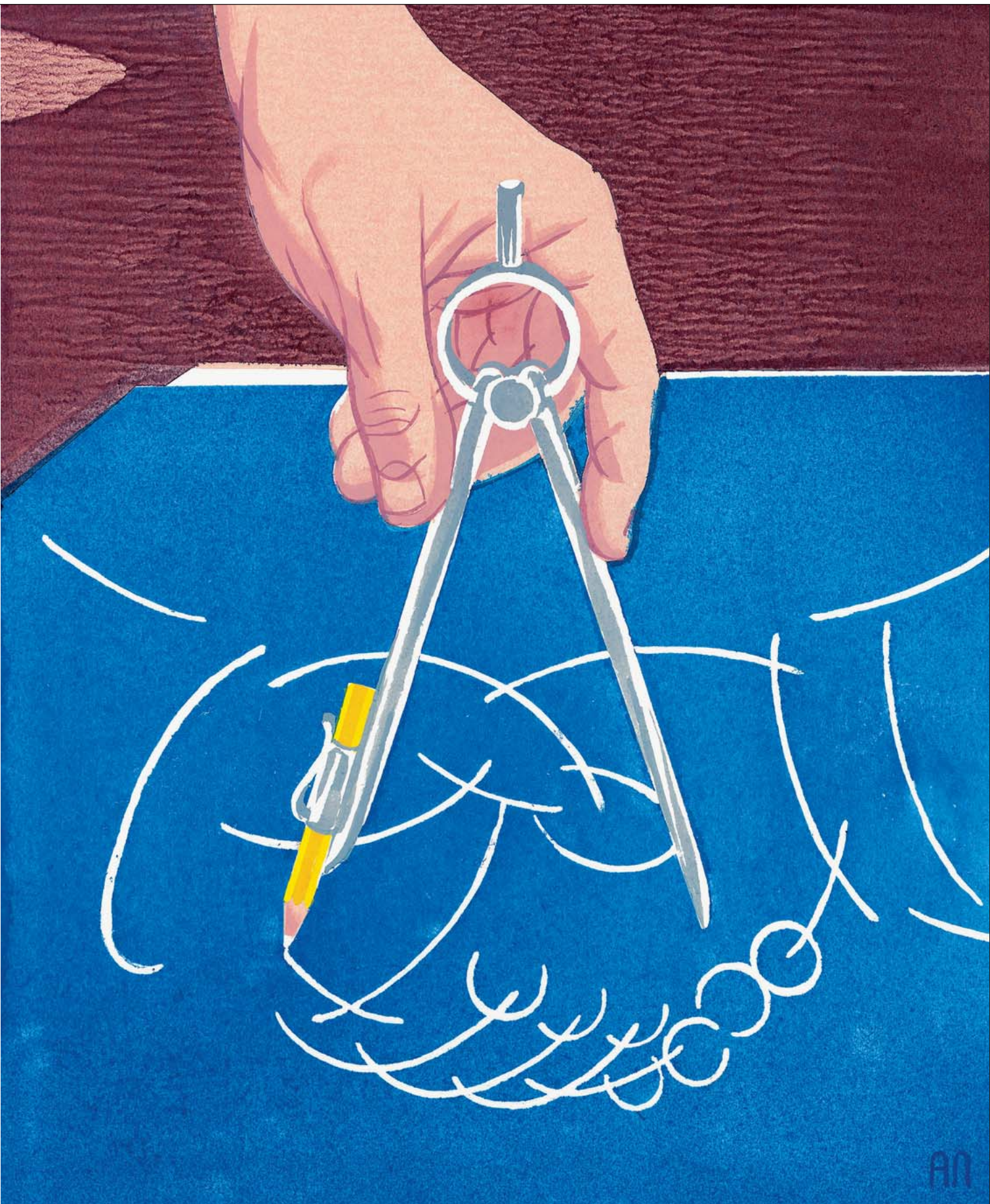
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ARC GRABOFF IS a veteran of multimillion-dollar Hollywood contract negotiations, in which impressive people regularly line up on all sides of the bargaining table. But when Graboff, the executive vice president of NBC Universal Television Group, came to speak to a class of 54 Harvard law students about corporate deal making, he was the one who was impressed. Graboff flew from California to Cambridge to explain the ins and outs of inking an agreement by

# designing the deal

where students  
apply negotiation  
theory and critique  
real-world deals





which NBC would pay just over \$5 million per episode for the hit TV sitcom "Frasier"—even though Paramount, the owner of the show, had initially demanded more than \$8 million. After instructing the class on overcoming one obstacle after another, and responding to the students' questions and observations, he came away thinking, "I learned as much from that group as they did from me."

Graboff, who has been practicing entertainment law for more than two decades, had a further thought: "I wish I could have taken a class like that when I was in law school."

Graboff was one of 15 guests in Guhan Subramanian's new course, *Advanced Negotiation: Deal Design and Implementation*. Subramanian '98, the Joseph Flom Professor of Law and Business, taught the class for the first time this past spring. It mixes rigorous analysis of corporate law with case study examination of recent business deals. To bring the deals to life for students, Subramanian brought in an array of high-powered deal makers, CEOs, senior partners and chairmen. But these boardroom veterans were not just there to lecture. Side by side with the students, they dissected the deals, examined tactical mistakes and players' personalities, and even accepted some constructive criticism along the way.

If the approach sounds a bit like a class taught across the Charles River at Harvard Business School, that is no coincidence. In addition to his J.D., Subramanian holds an M.B.A. from HBS. After a stint as a consultant with McKinsey & Co., he taught at the business school for three years before joining the law school faculty in 2002. "Many of the most interesting transactions never end in a legal opinion," he said. "So in a class like this we look at the deal from the perspective of the corporate deal maker in the trenches, rather than from the perspective of a judge writing a legal opinion after the fact." His class combines an academic, legal approach with a business school-like examination of tactics. Subramanian stated: "I like to ask: 'How can we use an academic lens to shed light on what transactional lawyers and other deal makers actually do, and should do, in practice?'"

Subramanian poses that question to his classes as well as in his own research, which involves empirical analysis of deal making and corporate law and corporate governance issues. He has collected data and written articles on topics such as "freeze-out" transactions (buyouts by controlling shareholders), hostile takeover bids and "lockup" arrangements in negotiated acquisitions. Combining theory and practice, he is writing a book demonstrating how an academic perspective can yield insights for real-world deal making. His co-author, Professor Richard Zeckhauser, an economist,

teaches at Harvard's John F. Kennedy School of Government.

"In the class we try to dissect deals to find the critical issues," Subramanian said. "It's the core teaching method at the business school, to look at 15 different situations and see the patterns and principles that arise. Then when you see something in the real world, it looks familiar, and you're better prepared to deal with it."

As high-minded, serious and academic as Subramanian is, it is clear he thinks corporate transactions are just plain fun. His eyes light up as he discusses the legal, tactical and structural elements involved. And he has designed his course to pass that enthusiasm on to his students. "I wasn't sure exactly what to expect teaching this course for the first time," he said. "But the

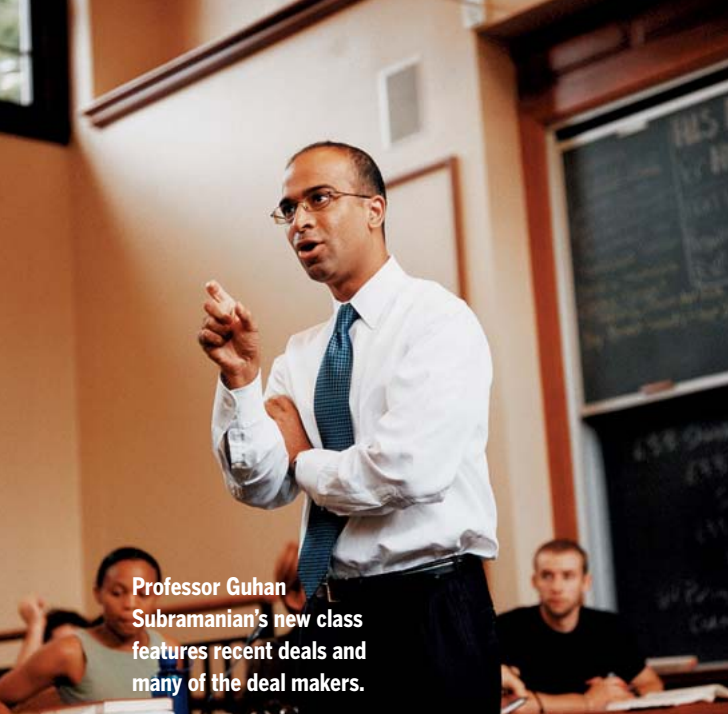
## As serious as Subramanian is,

students and practitioners really rose to the occasion, and I think it was a great experience all around."

Subramanian and his deal-design class traded insights with Richard Hall LL.M. '88, a Cravath, Swaine & Moore partner, who detailed the negotiations in a Newport News Shipbuilding deal. James Morphy '79, head of mergers and acquisitions at Sullivan & Cromwell, offered students an insider's view of Hershey's failed merger with Wrigley. From Williams & Connolly, lawyer Robert Barnett discussed the publishing deals for the memoirs of Hillary Rodham Clinton and Bill Clinton.

Before each expert arrived, the students prepared meticulously. They pored over the "deal documents"—sometimes numbering into the hundreds of pages—and read the public news reports about the deal. They were divided into small teams, with one group taking the lead for preparing and presenting each case. After meeting with Subramanian to go over their basic approach, each team participated in a conference call with a practitioner. "I asked each practitioner to spend about 20 minutes on the phone with the students to guide them for the class discussion. But the average call was more like 40 minutes," Subramanian said. "I shudder to think of the billable hours that our guests sacrificed for the benefit of our students."

The student team then presented its analysis to the class, with the visiting practitioner present. Allen Terrell '68, who represented Oracle during its contentious acquisition of PeopleSoft, was impressed with the student analysis of the case. "The students were extremely well-prepared and very involved," he said. "They were



Professor Guhan Subramanian's new class features recent deals and many of the deal makers.

The freshness of all the deals made the class particularly compelling for students. "All of these deals were done within the past three years, and most of them I had read about on the front page of *The [Wall Street] Journal*," said Mark Veblen '05, who is beginning his career as a corporate associate at Wachtell, Lipton, Rosen & Katz in New York City. Veblen said what he learned in the class is more than he could ever have gleaned from a book on corporate law: "We dealt with the theory. But when the practitioners came in, they talked about the friction at the margins and how you have to understand that to predict how these deals will come out. It was quite fascinating."

The practitioners enjoyed the rare opportunity to view their business dealings through an academic lens. "The class gave me a chance to step back and look at a

he clearly thinks corporate transactions are just plain fun.

very perceptive about the strategies of the two warring camps in the takeover battle."

There was a clear understanding among the students that the discussions wouldn't leave the classroom. "That gave me comfort," said Terrell. "I had been intimately involved as the Delaware lead trial lawyer in the case. It was very fresh and still alive to a degree."

Although the actual discussions were off-the-record, Subramanian is able to disseminate some of the case study learning from the course more broadly. Along with Professor Lynn Paine '79 at HBS and David Millstone '05, he has written a case study about the Oracle-PeopleSoft deal, which draws in part from his own involvement as an expert witness. The case will be used at HLS, HBS and other law and business schools around the country. In addition, the Harvard Negotiation Law Review is planning on publishing a symposium issue this spring with a series of deal-making case studies related to the course.

Contrary to Subramanian's expectations, not a single lawyer or executive declined the invitation to come to class. "Harvard law students are a remarkable draw," he said. The law schools at Yale, Columbia and Stanford have similar deal-making classes, he notes, but the HLS course attracts bigger players and deal makers. "Some of our class guests were on their cell phones until 10:29 a.m. working on multibillion-dollar deals that we would read about a week later," said Subramanian. "But at 10:30 a.m. the cell phones went off and they were focused on the deal in our classroom. I'm really grateful for the effort and energy they put into our endeavor."

negotiation as more of an organic entity and to understand more about the gestalt of negotiation," said NBC's Graboff. "And I was surprised to hear that there are names for some of the things I did instinctively."

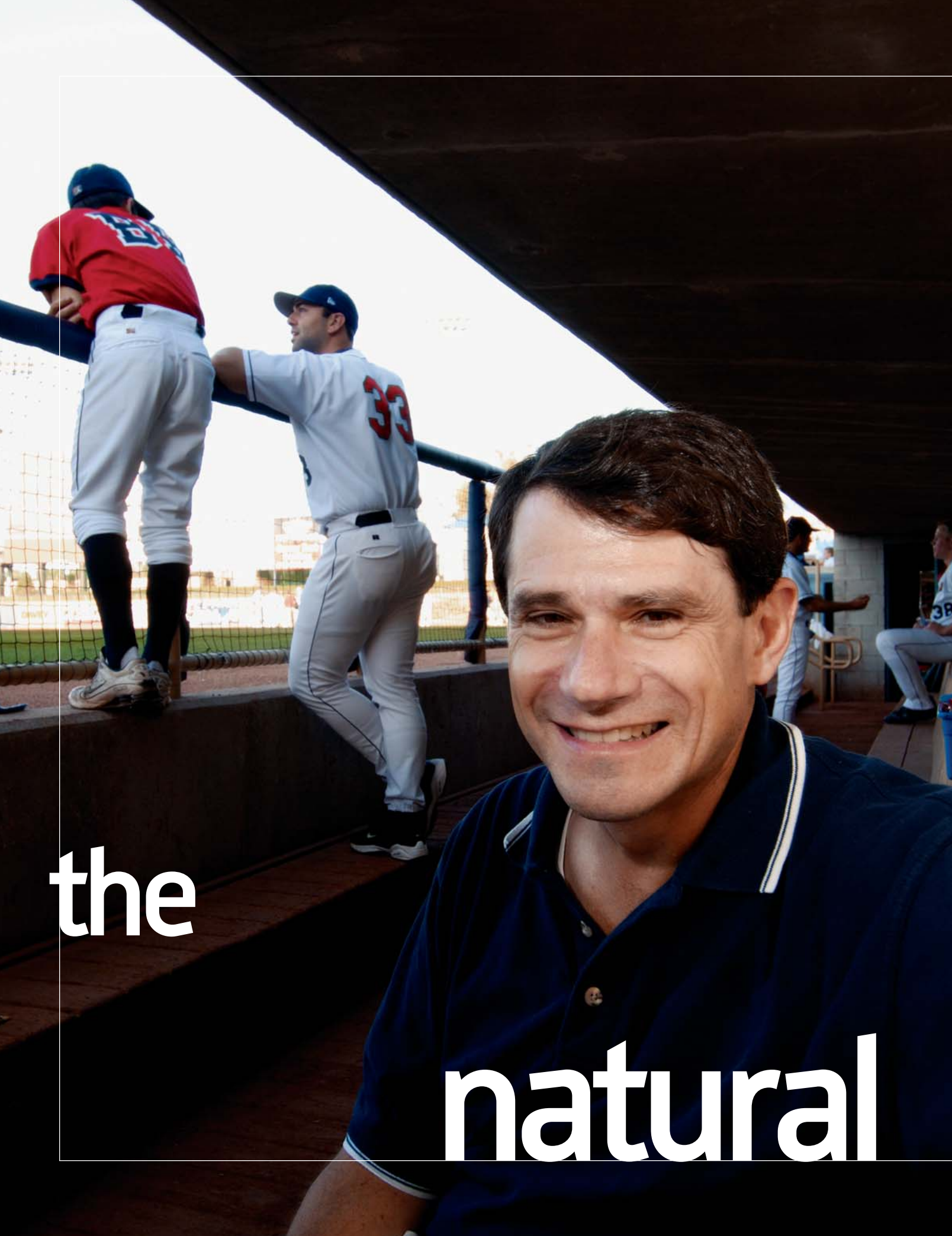
Graboff says he was deeply impressed by the students' sophistication and their grasp of the intricate points of negotiation. "They had a grounding in the real world," he said. "I would try to pepper some of my talk with glamorous Hollywood stories, but they wanted to get to the meat. No one ever said, 'Did you get to talk to Kelsey Grammer [the star of "Frasier"]?' They wanted to know about the negotiation itself."

Subramanian is already reworking the class for next spring's incarnation. He envisions changing at least 30 percent of the content each year as new deals with cutting-edge legal and transactional issues come to the fore. He picks cases that he comes across in the course of his research, through his expert testimony or consulting, and some just because they pique his interest as he reads the newspapers. For example, he is contemplating inviting experts from the Toys "R" Us leveraged buyout and maybe even examining the legal issues that emerge in forming a partnership agreement for a new Back Bay restaurant.

"In each of these deals we try to bring the negotiation theory to bear, but we also try to grapple with the messiness that is inherent in any real-world situation." \*

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*Michelle Bates Deakin lives in Arlington, Mass., and writes frequently on lawyers and legal issues. Her book, "Gay Marriage, Real Life: Ten Stories of Love and Family," is scheduled to be published by Skinner House Books this year.*



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RNOLD PALMER and Tiger Woods have both spun their mastery of golf into millions of dollars in endorsements.

But Palmer, who negotiated his early deals over informal lunches and sealed them with a handshake, might be perplexed by the sheer weight of a Tiger Woods contract. In fact, he could use a caddy just to lift one.

Peter Carfagna '79 has represented both legends over the course of a career in sports law spanning 25 years, much of it as general counsel at Cleveland-based International Management Group, one of the nation's leading sports marketing and representation firms.

In that time, Carfagna has witnessed the transformation of sports negotiation from a fledgling field marked by simple agreements and modest sums into a sophisticated specialty involving highly detailed contracts worth hundreds of millions of dollars, with clauses covering every imaginable contingency.

"When I came out of law school, sports law was

for peter  
carfagna '79,  
negotiation is  
a professional  
sport—and he's  
been in the zone

*by* Robb London '86  
*photographs by* Rick Zaidan

mainly just a small part of labor law,” Carfagna said. “Now it’s an increasingly competitive set of specialties, and it’s morphing fast into new areas.”

The term “sports law,” once a rubric for rather straightforward employment contracts between professional athletes and teams, now encompasses an expanding variety of negotiated agreements. According to Professor Paul Weiler LL.M. ’65, who supervised Carfagna’s third-year paper in 1979, it covers sports marketing deals, contracts between players’ unions and leagues, deals between leagues and television or radio networks for broadcast rights, representation agreements between athletes and agents, endorsement agreements, licensing agreements with makers of sports gear and memorabilia, amateur eligibility rules, antitrust issues, insurance policies spreading the risks of player injuries and other eventualities, franchise relocation agreements and stadium subsidies—in sum, contracts for every aspect of the commerce of sports.

Over the past several decades, as the dollar values of sports contracts have busted through one ceiling after another, the stakes have become especially huge for team franchises and corporate sponsors whose investments in athletes are increasingly vulnerable to career-ending injuries or image-tarnishing personal problems.

“When I started out, it was all boilerplate,” Carfagna said. “But the bigger the money, the more heavily negotiated the deal becomes. And I think that’s because the companies have lost huge sums paying promising athletes who then dropped off the face of the earth, whether it be due to physical or psychological problems.”

As risks have multiplied, so have the contingencies that must be anticipated and negotiated. Lawyers like Carfagna try to design contracts that answer every “what if” question under the sun. “Assume the worst,” he said. “Assume, God forbid, a terrorist attack—must the players keep playing? When do their contracts kick in and when do they release them from the obligation to perform?” Carfagna has tackled such questions in

his practice, and he also bats them around with students at Case Western Reserve University School of Law, where he is a distinguished visiting practitioner.

A recent trend, Carfagna says, is an almost obsessive attention now paid to morals clauses in sports contracts, especially in the aftermath of the O.J. Simpson and Kobe Bryant criminal cases. “Morals clauses are now the most heavily negotiated terms,” he said. “And the steroid scandal in Major League Baseball is putting even more pressure on sponsors to negotiate escape clauses in contracts with athletes who test positive for illegal performance-enhancing drugs.”

Lawyers hash out as much as they can foresee before a contract is finalized, says Michael McCann LL.M. ’05, who, together with Greg Skidmore ’05, maintains a popular sports law blog, [sports-law.blogspot.com](http://sports-law.blogspot.com). Must an athlete be convicted of a crime before a company will be released from an endorsement contract? If so, must it be a felony? Is a mere allegation or charge sufficient to void a contract? Does a single positive test for steroids give Nike an out? What about gambling, domestic violence, an admitted extramarital affair or anything in an athlete’s private life that does reputational harm—will an allegation or admission release a company from continuing to honor a contract?

“Endorsers want ‘out’ clauses for anything that could be damaging to their reputations when that affinity deal with the athlete is not what they thought it would be,” said Carfagna. “Anybody who has a ‘history’ with drinking, drugs, et cetera—the next time he or she comes up for renewal, that’s got to be front and center. So if it’s, ‘I fell off the wagon,’ you get a cancellation letter the next day: ‘We told you we were going to cancel. We’re canceling.’”

The Baltimore Orioles recently invoked the morals clause to void the remainder of the contract of pitcher Sidney Ponson after his third arrest for alcohol-related violations. Ponson had one year left to play under a contract that would have paid him \$10 million in 2006.

But in the sports world, as in other areas of contract law, cancellation letters don’t necessarily end the contractual relationship. Sometimes they trigger a new round of negotiations. The decisive factor may be whether the athlete is playing well. “The question becomes, Is he hot right now?” said Carfagna.

The latest twist in the evolution of morals clauses, said McCann, is the “reverse morals clause,” which gives athletes the right to cancel an endorsement deal with a corporation whose reputation is harmed

## the weiler effect

Peter Carfagna is just one of many former students of Professor Paul Weiler’s who have carved out careers specializing in sports negotiation. Among those who wrote third-year papers under Weiler are Jeffrey Pash ’80, general counsel for the National Football League; Rob Manfred ’83, head of labor relations for Major League Baseball; and Brian Burke ’81, who oversaw labor relations for the National Hockey League before becoming president and general manager of the Vancouver Canucks and now general manager of the Anaheim Mighty Ducks.

Pash, Manfred and Burke are scheduled to return to HLS this spring, as guest lecturers in the law school’s Sports and the Law course.



by revelations of corporate malfeasance. Agents have been negotiating such clauses in the wake of Enron and other recent scandals, he says. "I don't know of an athlete invoking a reverse morals clause yet, but it's bound to happen," he added. In addition to running his blog, McCann teaches sports law at Mississippi College School of Law in Jackson.

Hand in hand with morals clauses have come clauses requiring mediation or confidential arbitration in the event of breach. "I pretty much insisted when I was running the legal department at IMG that there'd better be a good reason not to have a mediation clause in an athlete's contract," said Carfagna. "And there'd better be a good reason not to have a confidential arbitration clause, because high-profile athletes lose if they're in court—that's money lost."

Some sponsors fight confidential arbitration clauses because they want the option of publicly distancing themselves from athletes who violate morals clauses. "That in and of itself is another negotiation point—how public can the dropping of an endorsement be?" Carfagna said.

Carfagna's gravitation to sports law seems to have been natural. After playing football for Harvard College and capping his academic and athletic accomplishments with a Rhodes Scholarship, the self-described "sports nut" attended Harvard Law School just when Weiler was showing that sports law was a subject of serious merit. After graduating, Carfagna practiced law at Jones Day in Cleveland, where he worked frequently on IMG matters. He paid his dues writing up some of the informal understandings that Arnold Palmer had reached with Mark McCormack, IMG's founder. He moved to IMG's legal department in 1994.

In 1996, Carfagna found himself drafting Tiger Woods' first representation agreement. Woods, then a junior at Stanford, was trying to decide whether to join the professional golf circuit.

"The drafting of that agreement had to be very carefully done so as not to impinge upon his amateur eligibility," he recalled. "It was unclear when he won his third amateur title whether he could or should turn pro. We had a back-to-back agreement with Nike if he decided to come out. But he couldn't commit to those things, couldn't be represented, if he was going to remain amateur eligible. And yet the main thing he needed to know was, How much can I make if I turn pro?"

Lawyers in that situation learn to walk a tightrope, says Carfagna, to line up prospective deals but make sure the deals don't add up to mutual guarantees or commitments that mean, in effect, that the athlete has already crossed the line. "The way the NCAA rules break out, the player can't have any contact with the agent. But the agent can be in the living room while the



**Peter Carfagna owns the Lake County (Ohio) Captains, the Cleveland Indians' Class A farm team.**

kid's in the kitchen. Without losing his eligibility, that college kid can be asking, through his parents, if he comes out, where is he likely to be drafted, and if he's drafted in that spot, what is he likely to be paid?"

The answer to that last question depends on a host of variables, which sports lawyers and marketing firms must be able to calculate and communicate quickly to an athlete, since athletes are often in a hurry to seal their deals. Deals hinge on the kinds of guarantees that agents can round up from companies willing to pay for endorsements.

Carfagna recently left IMG to become senior counsel at Calfee, Halter & Griswold LLP in Cleveland. And, in the last five years, he and his family have bought two minor league baseball teams—Class A affiliates of the Cleveland Indians and the Seattle Mariners. The rosters for his clubs are picked by their major league parent organizations, so he doesn't negotiate player contracts. But if he ever steps up to ownership of a major league franchise, he'll know more about negotiating player contracts than most owners. "Maybe," he said, "it would be like having a bit of a home-field advantage." \*

# Blood and Hope

## Samuel Pisar's triumph of the spirit

**A**S A RENOWNED international attorney and a Holocaust survivor, Samuel Pisar LL.M. '55 S.J.D. '59 has experienced mankind's capacity for genius and madness. His survival was a triumph of the human spirit. His advocacy for peaceful coexistence is a message from one who has lived through hell on earth.

One of the youngest survivors of the Nazi death camps, Pisar was 10 when the Soviets occupied his native Poland. The gestapo killed his father, and the Nazis sent his mother and younger sister to their deaths. Pisar was deported to Majdanek, and later Auschwitz and Dachau. He recorded his experiences in a 1979 autobiography, "Of Blood and Hope."

Pisar did what he could to survive during his four years in the camps. When the Nazis called for tailors, he said he was a buttonhole maker. When he was randomly selected to die in the gas chamber, he seized an abandoned cleaning bucket and scrubbed the floor past the guards and back to the barracks. At the war's end, he narrowly escaped a death march from Dachau and was liberated by an American tank battalion.

In the rubble of postwar Europe, the 16-year-old built a booming black market business salvaging U.S. military coffee grounds from the trash and selling them to German citizens. Soon he was trading in gas, shoes, cigarettes and liquor. A stint in juvenile detention couldn't deter him, but an aunt, invoking the memory of his

mother, convinced him to abandon his reckless living and emigrate to Australia.

"If I had stayed in Europe, I might have become a terrorist or a gangster," said Pisar.

He credits his experience in Australia with restoring his physical, moral and intellectual health. He learned "unfathomable" lessons about fair play and gentlemanly behavior. Years later, as chief counsel of the International Olympic Committee, he repaid his debt of gratitude by helping Sydney win the 2000 Olympic Games.

After earning an LL.B. from the University of Melbourne in 1953, Pisar left Australia for HLS. It was another turning point. "There was the strange cohabitation within me of these two disparate human beings," he said. "The little one—sunken eyes, shaved head, skeletal—and suddenly the scholar who is pretending to compete as if he had had a normal childhood and education."

The scholar prevailed but the other informed the scholarship. He wrote his master's thesis on the legal aspects of trade between communist and capitalist countries (published in installments in the *Harvard Law Review*) and went on to earn doctorates in law from Harvard and the Sorbonne.

In 1960, he was called to Washington to serve on President Kennedy's Task Force on Foreign Economic Policy. Pisar's recommendations on trading with the communist bloc formed the basis of his 1970 best-seller,

"Coexistence and Commerce," and became a blueprint for Nixon and Kissinger's policies toward Eastern Europe, the Soviet Union and China. In 1961, Pisar was made a U.S. citizen by a special act of Congress. In 1974, he was short-listed for the Nobel Peace Prize.

As the global market opened, Pisar expanded his Paris-based practice in international law and business transactions. At one point, he advised more than half the Fortune 100 companies, and his clients included Elizabeth Taylor, Henry Ford and Steve Jobs. But soon he was led to a broader advocacy.

In 1971, Pisar attended a high-level conference in Kiev to discuss East-West economic relations but, after listening to anti-Semitic tirades, felt compelled to speak out on behalf of Russian Jews and dissidents. He pushed for freedom of emigration, and his advocacy helped enact the Jackson-Vanik Amendment, which required the Soviet Union to grant exit visas to an increasing number of refuseniks as a condition of trade with the United States.

Once considered subhuman, identified only by the number tattooed on his arm, today Pisar is a knight of the French Legion of Honor, an honorary officer of the Order of Australia and a commander of Poland's Order of Merit. His honors and achievement are rooted in pragmatism and hope.

"In spite of everything," he said, "I have remained an active optimist." \*

By Christine Perkins | PHOTOGRAPHED BY JERRY BERNDT, PARIS, AUG. 22, 2005





# Lawman Abroad

## Kenneth Scott '79 makes sure there's no whitewash after

**A**S SENIOR PROSECUTOR in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia at the United Nations in The Hague, Netherlands, Kenneth Scott '79 investigates and prosecutes the most heinous crimes humans commit against each other. Genocide. Grave breaches of the Geneva Conventions. Crimes against humanity.

Focusing on Bosnian Croat atrocities, in seven and a half years he's won convictions in two trials and landed indictments in a third—significant accomplishments in a system where trials commonly last two years due to four-hour court days and translation delays.

"There are days when it all comes crashing in," said Scott. "You read a particular witness statement, or you see something, you talk to a witness and all of a sudden it becomes, How could this happen? How can human beings do this to each other? People have to be held accountable."

But holding ringleaders accountable is difficult in the face of constant resistance from the states of the former Yugoslavia. He and his colleagues know they will never bring to justice all those who deserve it.

"In many instances, there has been very strong state-promoted and coordinated obstruction to the tribunal's work, even from their own intelligence and police

agencies," Scott said. Evidence has been concealed, and investigated or indicted individuals have been protected. Even where there is goodwill, he adds, the bureaucracies often operate poorly in the postconflict environment, where ethnic and political differences persist.

"Consider investigating and prosecuting the most complex cases with only the most limited traditional police powers, on territory which is not controlled by the investigative or prosecutorial authorities," he said, "where much of your evidence-gathering depends on the goodwill of the formerly warring parties, where you are essentially asking the various parties to give you evidence which incriminates them or their leaders."

With only the most limited subpoena power, no grand jury, no compelled immunity process, he added, "it's often 'one step forward, two steps back.'"

Compounding these challenges is a mandate of the U.N. Security Council calling for trials to finish by 2008 and all work by 2010. No additional indictments will be brought. Only current cases will go to trial.

But Scott and his colleagues have been buoyed by the help they've received from some quarters. "It comes from the victims you deal with and the people who come out of the process. Witnesses come here from

[their home countries]. They've never traveled before. Some say they were really terrified to come. But then they say, "The process was part of my healing," Scott said. "When witnesses feel better for having testified, you think, 'Yeah, this is good, this is important.'"

At Harvard, Scott didn't study international law. But he spent many hours working for the Harvard Legal Aid Bureau, an experience that inspired him to pursue a career in the public sector.

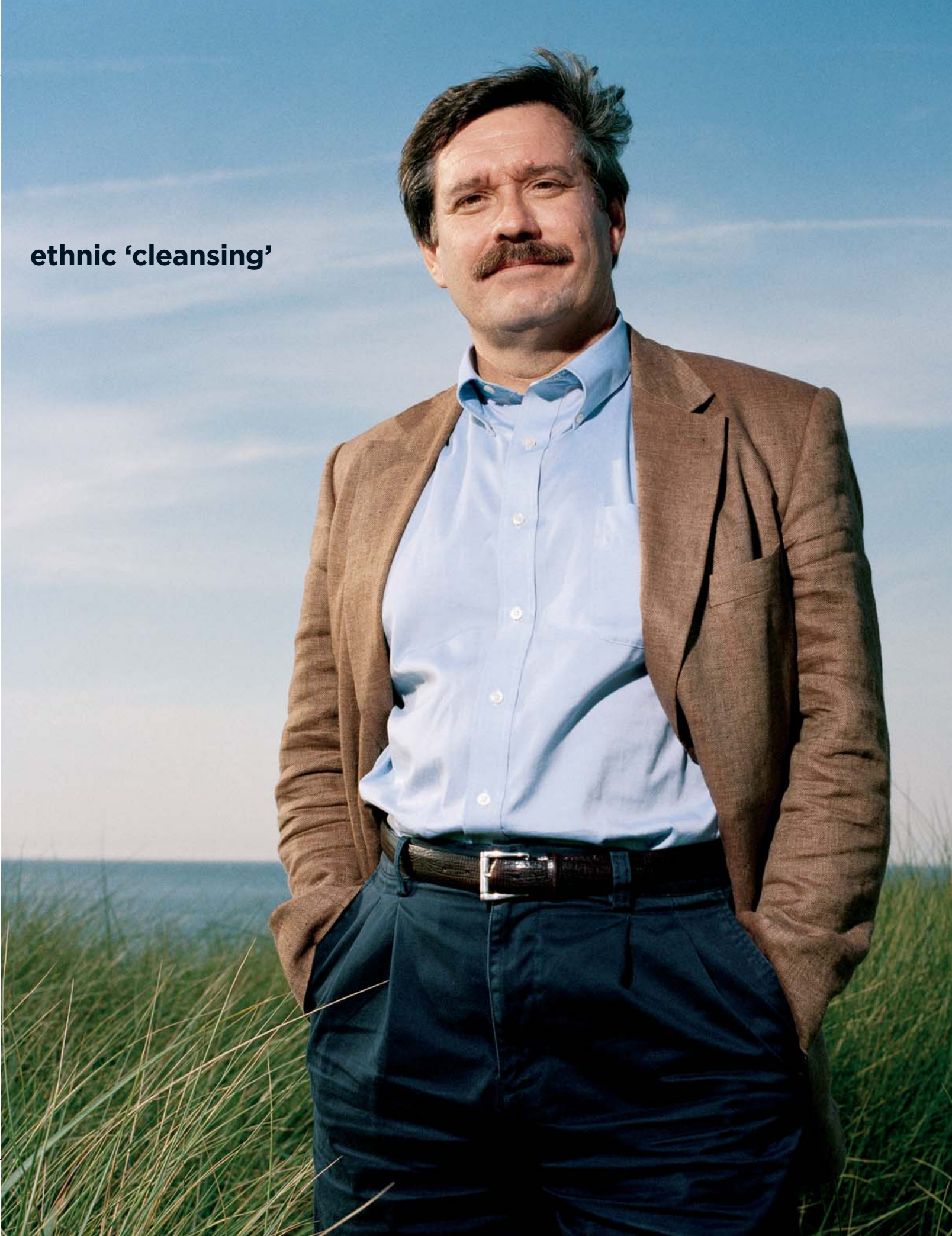
He served for 12 years as a federal prosecutor and, in the 1990s, began following the conflicts in the Balkans with growing interest. When the chance to work at The Hague came his way, he saw it as a once-in-a-lifetime opportunity.

Scott knew his decision to go to Europe would mean upheaval for his wife and especially for his two sons, who were teenagers at the time. "I give them a lot of credit," he said. "They made the adjustment. Now, looking back, they value the experience and are glad they did it." One son attends college in Boston and the other in London.

On a recent trip to Bosnia, war crimes victims welcomed Scott into their homes, showering him with modest, sincere hospitality. "They were very appreciative of the fact I was there," he said. But, he added: "There's just a huge amount of work still to be done." \*

By Amy Conner Johnson | PHOTOGRAPHED BY JUDITH DEKKER, THE NETHERLANDS, AUGUST 2005

**ethnic 'cleansing'**



# Tougher Goals, Softer Style

**A** HARD HAT SITS on a bookshelf in her office. It's a requirement for visiting the construction site across from the Dimock Community Health Center, but the prop fits Ruth Ellen Fitch '83, the center's president and CEO, in more ways than one. After only a year at Dimock, Fitch has plowed through challenges with her no-nonsense, hard-driving style.

"I am a good delegator, and I am also good at holding people accountable," Fitch said. "It's ingrained in me—don't want to waste time, want to get things done. Time is money."

Fitch took the helm at Dimock—a health and human services center for Boston's inner city—after more than 20 years in private law practice. She's had plenty of experience in leadership positions: She specialized in municipal finance at Palmer & Dodge and in 1991 became the firm's first African-American woman partner.

Fitch didn't wait long to initiate change at Dimock. Originally founded in 1876 as a hospital for women and children, Dimock is now a community center with a rehabilitation clinic, transitional housing, Head Start programs and AIDS care. As CEO, she has overseen renovations of the center's halfway house and pushed to modernize its services.

After only a few months on the job, she concluded that Dimock's job training program needed to be cut in order to free up resources

for more essential programs. "It was sad because it was work that Dimock had been doing for about 20 years," she said. "But it just wasn't adding to our core mission."

Fitch has also learned that being president doesn't just require making the right decision, but proposing it in a manner suited to the institution.

"The main thing I've found that I have to do is really soften my lawyer style," she said. "As lawyers, working with each other, we get used to interacting that way and expect it, [but] in an organization that's not used to that kind of a style ... it can be perceived as a very confrontational and off-putting style."

While she credits HLS with refining her lawyerly instincts, her determination predated law school. Fitch grew up in Boston's Roxbury neighborhood, only several blocks from Dimock's campus—an area that was known for racial tensions and crime in the 1960s and 1970s. She studied economics at Barnard College but did not decide until 15 years later to pursue a J.D.

By that time, she had worked as an administrator in the Brookline Public Schools and taught literature at the University of Massachusetts Boston. Enrolling in HLS in 1980, Fitch not only had the life experience of a mature professional, she also had a

husband and two children, ages 12 and 14.

These extra responsibilities and life experiences helped her avoid a problem she noticed among some younger classmates. "I saw what I think was 'drift' in law students," she said. "They were there because it was another way to fill up three years."

Fitch said her children in particular kept her focused on her studies. "They thought it was really great that I was back in school—had to take a lunch, had to do homework. They wanted to see my report card, and I drew the line there," she said.

Throughout the swerves in her career, Fitch has followed a single mantra: "One seizes opportunities and then maximizes them for the next opportunity." And the walls of her Dimock office show the legacy of that mantra: They are decorated with plaques honoring her leadership roles in Boston, a scarf commemorating her position on the board of trustees of Roxbury Community College, a photo of HLS's Celebration of Black Alumni in 2000 (which she attended) and, of course, the hard hat.

"I'm not sure I ever drifted, frankly," she said. "I had a lot of responsibilities, so you just do what you've got to do." \*

## Ruth Ellen Fitch '83 leads a community

By Mary Bridges | PHOTOGRAPHED BY SADIE DAYTON, BOSTON, AUG. 24, 2005



center blocks away from where she grew up

# Building Homes on the Range

## Lance Morgan '93 helps the Winnebago

**W**HEN LANCE MORGAN '93 looks out his office window, he sees a collision between the past and the future: A herd of buffalo passes on a hilly expanse nearby, while just beyond it an entire town is beginning to take shape.

"We really are walking in a couple of different worlds—trying to figure out how to be a modern entity and still be Indian," said Morgan, the founder and CEO of Ho-Chunk Inc., an economic development corporation that is reshaping the future of the Winnebago Tribe of northeastern Nebraska.

A decade ago, this 134,000-acre reservation nestled in the hills along the Missouri River was quickly becoming a ghost town. There was no town center—just scattered rows of government housing, a gas station and a grocery store. Winnebago families had been leaving the impoverished reservation for years in search of work, and the community was suffering.

Morgan was raised in Omaha, though he and his family spent summers and holidays on the reservation. Growing up poor, he dreamed of becoming financially independent. He joined the military to pay for college at the University of Nebraska-Lincoln and then attended Harvard Law School.

After HLS, Morgan went to work at a Minneapolis law firm that represented Indian tribes. When his own tribe's casino venture was

threatened by new competition, the tribal council approached him for help diversifying its revenue stream. "I basically couldn't let it go," said Morgan, who'd written his third-year law paper on economic development. "I left my job to come do this."

Using revenue from the WinneVegas operation, the tribe's lone casino, Morgan founded Ho-Chunk Inc., a startup that has invested in businesses on the reservation that provide the community with goods and services and, more important, jobs and job training.

Since its launch in 1994, Ho-Chunk (loosely meaning "the people") has gone from \$400,000 in annual revenue to a projected \$115 million this year. It employs 499 people in 11 companies focused on everything from housing construction and banking to hotels, tobacco sales and the Internet. One of its Web sites, Indianz.com, is, according to Morgan, the most popular Native American destination online.

But perhaps most critical to the tribe's future has been another HCI venture, the nonprofit Ho-Chunk Community Development Corp., which is building a town from scratch on a 28,000-acre stretch of the reservation bought from the federal government.

Ho-Chunk Village will include the reservation's first-ever town center, with commercial and government buildings surrounded by single-family homes and

townhouses that Morgan says will be sold to tribal members at affordable prices.

"Right now about 70 percent of housing on the reservation is government-owned," said Morgan. Under this system, he explains, even those who are doing well can't own their homes, and the lack of tax revenue makes it hard for the community to thrive.

HCI's impact on the Winnebago Tribe can't be overstated. Already, it has given more than \$30 million back to the community in jobs, scholarships, expansion of the tribal college, and job training programs. It has also had a major role in building a new high school and a hospital.

Ho-Chunk Inc.'s success has been noticed by other tribes. Morgan has already consulted with 74 tribes seeking to replicate his model for economic development. He is also a consultant to the federal Bureau of Indian Affairs and lectures around the country on the state of reservations.

Morgan envisions an end to the archaic reservation system that is rooted in long-outdated assumptions about the inability of tribes to manage their own affairs.

"We've been living under this system for so long we've forgotten the underlying reasons for it," he said. "Every other person in this country can control his own land, but we can't. Now, we're taking control of our destiny, and it makes me proud." \*

By Margie Kelley | PHOTOGRAPHED BY AMANDA FRIEDMAN, WINNEBAGO, NEB., FEB. 6, 2004

**Tribe shape its future**



## Celebrating Black and Crimson



1

### Many Miles Traveled, Many Still to Go

*More than 1,000 alumni, students and guests discussed race, justice and other matters at the Celebration of Black Alumni at HLS between Sept. 16 and 18.*



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1. Sen. Barack Obama '91, recipient of the Harvard Law School Association Award  
 2. Panelists Deirdre Stanley '89 and James Potter '82 3. Between sessions 4. Dean Elena Kagan '86 greets Judge George Leighton '43 ('46) at a luncheon in his honor 5. A program break 6. During the group photo 7. Sharon Jones '82, CBA co-chair 8. Neil Brown '78 ('79), CBA co-chair 9. Glenn Harris '81 with wife, Sandra Washington-Harris, and son Nile 10. David Lammy LL.M. '97 11. Participants with the CBA accessory 12. Peter C.B. Bynoe '76



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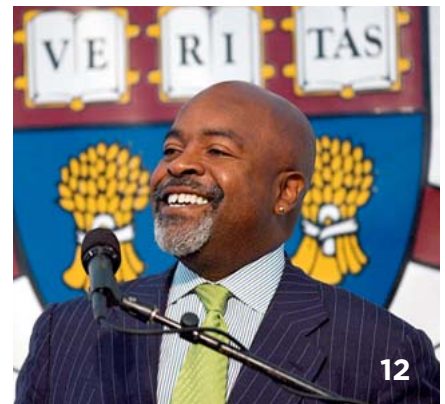
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11



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12



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**Legacy of a Great American** *A new institute on race and justice is dedicated to Charles Hamilton Houston '23, an architect of Brown v. Board of Education*



2

1. Civil rights attorney Oliver Hill (seated), Oliver Hill Jr. and Professor Charles Ogletree Jr. '78, executive director of the Charles Hamilton Houston Institute for Race and Justice
2. Celebration banner
3. Charles Hamilton Houston III, grandson
4. Kurt Schmoke '76, dean of Howard University School of Law
5. June Baldwin '76, Ann Williams and Barbara Margolis
6. Charles Hamilton Houston Jr., son
7. Caren Houston, granddaughter



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# Calendar



NOV. 9, 2005

**HLSA of New Jersey Vanderbilt Lecture**  
West Orange, N.J.  
Speaker: Professor Charles Ogletree  
Jr. '78  
617-495-4698

JAN. 27, 2006

**HLSA of New York City Annual Luncheon**  
617-495-4698

APRIL 27-30, 2006

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

APRIL 28-29, 2006

**HLSA Spring Meeting**  
Harvard Law School  
617-495-4698

MAY 27-29, 2006

**HLSA of Europe Annual Meeting**  
Italy  
617-495-4698

JUNE 7, 2006

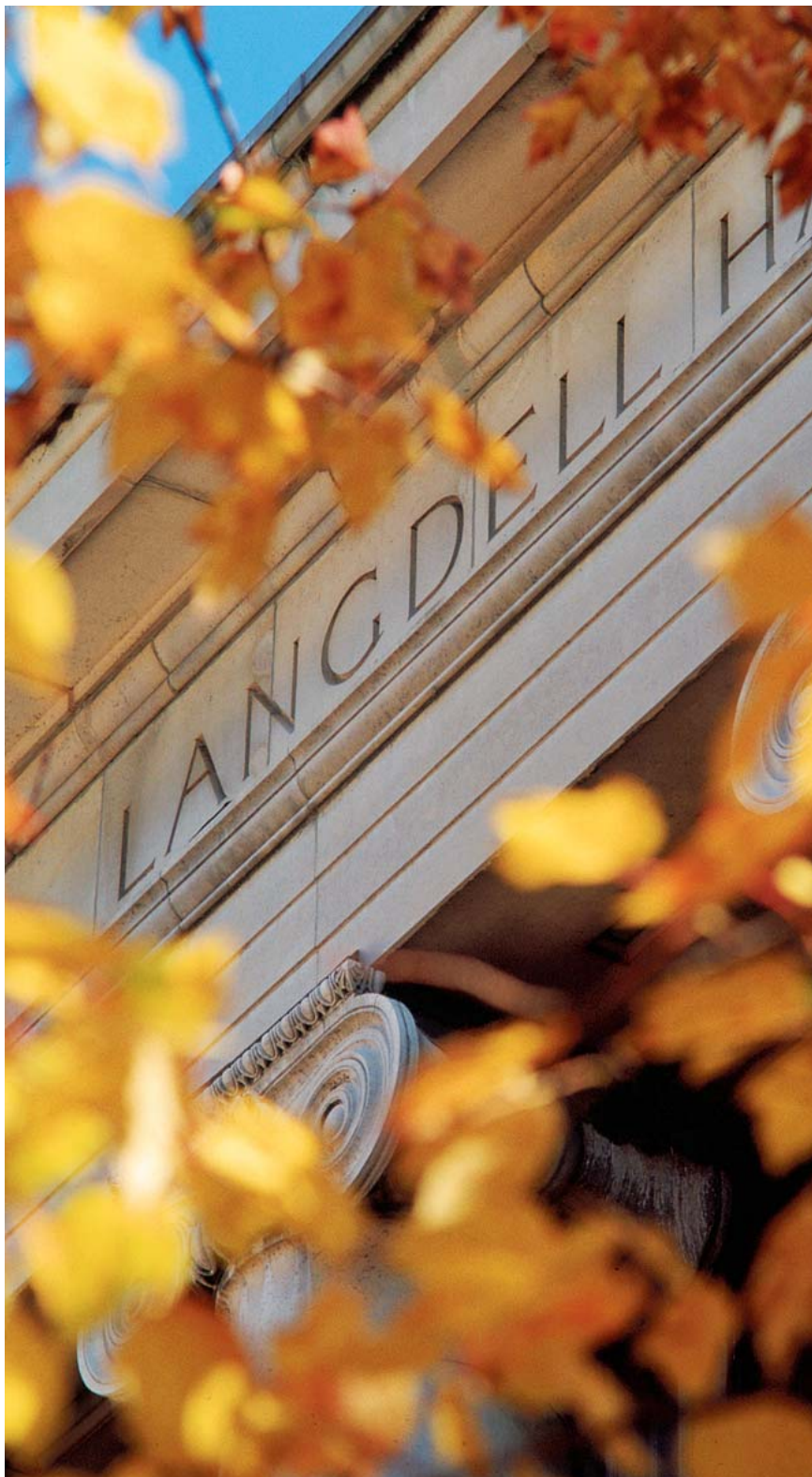
**Alumni Spread and Class Day Exercises**  
Harvard Law School  
617-495-4698

JUNE 8, 2006

**Commencement**  
Harvard Law School  
617-495-3129

OCT. 26-29, 2006

**Fall Reunions Weekend**  
Classes of 1944-47, 1951, 1961, 1976, 1986,  
1991, 2001  
Harvard Law School  
617-495-3173





If only you knew  
then what you know  
now.

Help tomorrow's Harvard lawyers make good decisions today: [www.law.harvard.edu/alumni/advising](http://www.law.harvard.edu/alumni/advising)

The Harvard Law School **Alumni Advising Network** offers students the opportunity to contact HLS alumni for general career-related advice. The goal of the Network is to create a community of alumni volunteers who are willing to assist students (and graduates) by answering questions on topics such as course selection, judicial clerkships, career development, job search strategies, work/family balance, switching practice areas, and relocating.

To assist users in finding appropriate alumni mentors, the Network is searchable by a range of fields, including name, employer, location, practice area, practice settings and specific advising topics.

Access to the Network's database is password protected and restricted to Harvard Law School students and alumni.

**To learn more, please visit [www.law.harvard.edu/alumni/advising](http://www.law.harvard.edu/alumni/advising) or call 617-495-4981.**

# In Memoriam

## Obituary Information

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

### 1930-1939

**Robert F. Levin '31-'32** of Lexington, Va., died June 24, 2004. Formerly of Newton, Mass., he spent his career in law and business before teaching at the Loker School, a public elementary school in Wayland, Mass., from 1963 to 1976.

**Milton Band '32** of Yonkers, N.Y., died July 3, 2004. Formerly of Winthrop, Mass., he was a solo practitioner in Boston, where he specialized in real estate law and finance. He also was a violinist for Florida Atlantic University Community Symphony Orchestra and a tenor for Florida Atlantic University Festival Chorus.

**Robert J.G. Morton '34-'36** of Columbus, Ohio, died April 7, 2005.

**R. Stuart Hoffius '35-'37** of Grand Rapids, Mich., died Jan. 19, 2005. He was chief circuit court judge of Kent County and of counsel at Varnum, Riddering, Schmidt & Howlett in Grand Rapids. In the 1950s, he was a prosecuting attorney for Kent County before being elected a circuit judge in 1959. He served on the bench for 30 years, retiring in 1988. An officer of many professional and civic boards, for nearly 13 years, he was a director of the Michigan Supreme Court Historical Society. During WWII, he was a special agent in the FBI.

**Saul Balmuth '37** of Ballston Spa, N.Y., died Feb. 14, 2005. He was in private practice in Ballston Spa for more than 50 years and served as a Saratoga County Family Court judge. During WWII, he served in Italy in the U.S. Army's Judge Advocate General's Office.

**William R. Basch '37** of Hartford, Conn., died June 3, 2005. He spent most of his career in the automobile industry, as vice president and comptroller of Russell Pontiac and later Pontiac Center in West Hartford. He also worked for the Connecticut Department of Labor and the Veterans' Administration. During WWII, he served in the U.S. Army.

**Eliot L. Bernstein '37** of Chestnut Hill, Mass., died May 30, 2005. He was president of the Biltrite Corp., a rubber-manufacturing firm. A member of many organizations, he was a fellow of Brandeis University and a life trustee of Combined Jewish Philanthro-

pies. During WWII, he was a lieutenant in the U.S. Navy and served as a communications and executive officer of a destroyer in the Atlantic.

**H.B. Ritchie LL.M. '38** of Portland, Ore., died April 6, 2005. Formerly of Summit, N.J., he was vice president of Pacific Molasses Co., an importer and distributor of molasses in New York City. An attorney in Georgia and Washington, D.C., he moved to Portland in 1998. He served in the U.S. Army Air Corps.

**Charles W. Pachner '38-'39** of Scarsdale, N.Y., died April 3, 2005. He was chairman and president of Frenkel & Co., an international insurance brokerage firm. He joined the firm in 1951 and helped it become a pioneer in providing risk management services to many prominent firms. He was a board member of Westchester Jewish Community Services and the Musician's Foundation.

**C. Keating Bowie '39** of Lutherville, Md., died June 30, 2005. Formerly of Oxford, Md., he was a longtime Baltimore corporate lawyer and joined what became Bowie, Burke and Leonard in 1939. He also worked for Miles & Stockbridge before being named a partner in 1968 at what is now known as McGuireWoods. Early in his career, he was an assistant city solicitor, and in the 1960s, he was a mayoral adviser on housing matters. In 1965, he was appointed head of the Commission on the Revision of the Corporate Laws of Maryland. A 31-year board member of the Enoch Pratt Free Library in Baltimore, he played a key role in raising money to renovate the Peabody Library at Johns Hopkins University. He also served on the board of the Talbot County Library and Talbot County Historical Society.

**Ronald B. Jamieson '39** of Gaithersburg, Md., died Feb. 5, 2004. He was a circuit court judge in Hawaii and presided over the state's 1960 presidential election dispute. In a close race between John F. Kennedy and Richard M. Nixon, an initial tally of Hawaii's votes produced a victory for Kennedy, but the state's lieutenant governor later certified the race for Nixon after discovering voting irregularities in 34 precincts. As circuit court judge, Jamieson called for a recount of ballots and later ruled that Kennedy won Hawaii, and the state's three electoral votes, by a 115-vote margin.

### 1940-1949

**Stanley Gewirtz '40** of New York City died July 23, 2005. He spent the bulk of his career in the aviation industry, retiring in 1985 as vice president of Pan American World Airways, in charge of Washington affairs; public, state and urban affairs; employee communications; and public relations. He served as special adviser on government and business matters to the vice chairman of the company. A consultant to the U.S. secretary of transportation, the Federal Aviation Administration and NASA, he also served as vice chairman of President Kennedy's Task Force on National Aviation Goals. He was of counsel to Opton Handler Gottlieb Feiler Landau in New York City and lectured at Harvard Business School, Northeastern University and the law school at the University of Utah. During WWII, he served in the U.S. Army Air Corps, Air Transport Command, and was awarded the Bronze Star.

**Vincent A. Theisen '40** of Wilmington, Del., died April 17, 2005. He was president of and later of counsel to Theisen Lank Mulford & Goldberg in Wilmington, where he specialized in corporate law.

**Charles Conston '40-'42** of Bala Cynwyd, Pa., died April 8, 2005. A clothing retailer, he helped expand his family's business of dress shops to more than 300 national stores, including Famous Maid, Kristy's Korner and 16 Plus stores. The company, Conston Corp., went public in 1986, and he retired as president in 1990. He was vice chairman of the United Way campaign in Philadelphia and the Federation of Jewish Agencies of Greater Philadelphia. He was president of the Jewish Community Centers of Greater Philadelphia and the Jewish Exponent, a weekly newspaper in Philadelphia. In 1977, he received a community award from the Federation of Allied Jewish Appeal in Philadelphia. During WWII, he served in the U.S. Navy in the Atlantic and Pacific.

**William M. Ferguson '41** of Wellington, Kan., died June 9, 2005. He was a Kansas attorney general in the 1960s, and in the 1950s, he represented Wellington and Sumner counties in the Kansas House of Representatives. He also was active in ranching and managed the Ferguson Ranch and the

Ferguson Cattle Co. After his retirement in 1979, he became an aerial photographer of Indian sites and wrote three books about Mayan ruins in Mexico and Central America and two books on the Pueblo Indians of the American Southwest. During WWII, he served as an officer in the U.S. Naval Reserve.

**Stephen H. Fuller '41-'42** of Melvin Village, N.H., died Jan. 25, 2005. An authority on labor relations and organizational behavior, he was the Jaime and Josefina Chua Tiampo Professor of Business Administration, Emeritus, at Harvard Business School, where he served as associate dean from 1963 to 1969. For 11 years, he was a vice president at General Motors Corp., and later he was chairman and CEO of World Book. Most recently, he was a professor at Ohio University. He played a key role in establishing the Asian Institute of Management in Manila, the first full-time graduate school of management in Southeast Asia. The Philippine government awarded him the Medal of Merit.

**Keith Anderson '42** of Englewood, Colo., died June 5, 2005. He was a partner at Baker & Hostetler in Denver, where he specialized in probate, banking and real estate law. He was a director and treasurer of Rocky Mountain Planned Parenthood and a director of the Dominion National Bank of Denver.

**Mario Umana '42** of Boston died April 27, 2005. He was a Massachusetts Senate majority leader, and from 1973 to 1991, he was a judge for the Boston Municipal Court. He served two terms in the Massachusetts House of Representatives before being elected to the Senate in 1951. The Boston School Committee named the Mario Umana Harbor School of Science and Technology in his honor in 1976. During WWII, he served in the China-Burma-India theater as a U.S. Army Air Forces staff sergeant.

**Wilbur M. Rabinowitz '43** of Boca Raton, Fla., died April 29, 2005. He was the director of Republic New York Corp., a bank holding company, and author of "Almost Everywhere: Odysseys to Unusual Places." He was a trustee of Dickinson College in Carlisle, Pa., and Mendeleev University in Moscow.

**Leonard Schlesinger '45-'46** of Newton, Mass., died June 11, 2005. He practiced law in Boston for more than 60 years, including 30 years with his son at Schlesinger and Schlesinger. In the 1950s, he was metropolitan districts chairman for the Combined

Jewish Philanthropies. His collection of travel memorabilia is housed in the Boston Public Library.

**James C. Daubenspeck '46** of Hilton Head Island, S.C., died July 15, 2005. An attorney with Kirkland & Ellis in Chicago beginning in 1955, he was head of the firm's estate planning department. He began his career with McDermott Will & Emery. He served on several boards, including the Park Ridge (Ill.) School Board and the Barrington Hills (Ill.) Zoning Board, and was a trustee of Knox College and DePaul University. During WWII, he served in the U.S. Navy as a navigator aboard the USS Weehawken.

**Nelson Schwab Jr. '47** of Cincinnati died April 9, 2005. For more than 50 years, he practiced corporate law at Graydon Head & Ritchey. He was president of the Greater Cincinnati Chamber of Commerce and a member of the Cincinnati Board of Education. He received the Great Living Cincinnati Award from the Greater Cincinnati Chamber of Commerce, was named "Cincinnatian of the Year" by the Juvenile Diabetes Foundation and was a member of the Ohio Senior Citizens Hall of Fame. During WWII, he was a commander in the U.S. Navy.

**Arthur L. Bartlett '48** of Nantucket, Mass., died May 12, 2004. He spent his career as an attorney at Johnson & Clapp in Boston, specializing in conveyancing and utility law.

**Donald G. Harrison '48** of Saint Clair Shores, Mich., died March 12, 2005. He was a senior partner and specialized in corporate law at Cross Wrock in Detroit.

**Wilfred G. Howland '48** of Sun City Center, Fla., died March 31, 2005. An insurance executive, he retired from the America Group, now known as Allmerica Financial Corp., in Worcester, Mass., in 1979, having served as senior vice president as well as chief executive and director of some of the group's companies. Earlier in his career, he practiced law at Nutter McClennen & Fish in Boston and was general counsel and later senior vice president and director of the Springfield Fire and Marine Insurance Cos. A board member of many property-casualty insurance company rating and service organizations, he developed a plan to provide insurance for areas of Boston where it was difficult to meet underwriting standards. After his semiretirement, he was insurance editor of *The United States Banker and Investor*. A philatelist and fellow of the Royal Philatelic Society, London, he was known for his research, writings and prizewinning

collections of early Peruvian stamps and other historical postal materials.

**Edward R. "Ned" Kimmel '48** of Wilmington, Del., died July 1, 2005. A longtime attorney in the antitrust division of DuPont, he was founder and director of the World Affairs Council of Wilmington and a founding member and president of the Greenville Country Club. He was also president of the Active Young Republicans in New Castle County. For two decades until the time of his death, he fought to clear the name of his father, a naval admiral at Pearl Harbor, who was cited for dereliction of duty, demoted and forced to resign after the Japanese attacked on Dec. 7, 1941. Kimmel served in the U.S. Navy during WWII and attained the rank of lieutenant commander.

**David I. Wendel '48** of Alameda, Calif., died April 22, 2005. He practiced real estate and business law for 50 years. He joined what is now Wendel, Rosen, Black & Dean in Oakland, Calif. in 1951 and resigned as managing partner in 1991. He was an Alameda County Bar Association president and chairman of the board of directors and legal counsel for the Oakland Chamber of Commerce. He served in the U.S. Army during WWII and attained the rank of lieutenant colonel.

**Lyle R. Wolff '48** of Salem, Ore., died June 21, 2005. A circuit court judge in Baker County from the late 1950s to 1977, he was later an administrative law judge in Salem. He practiced law in Baker County before being elected to the court. During WWII, he was a bomber pilot and flew missions over Europe.

**Roger J. Kuhns '48-'49** of Fitchburg, Mass., died March 28, 2005. He was president and CEO of Avant Inc., a photo identification and lamination business in Fitchburg. He was involved in licensing government and industrial security patents. Early in his career, he was a civilian procurement officer for the U.S. Navy and established a contracting department at the National Science Foundation before joining American Machine & Foundry.

**J. Raymond Clark '49** of Saint Simons Island, Ga., died Dec. 12, 2004. Formerly of Washington, D.C., he specialized in transportation law as a solo practitioner and was treasurer and executive committee member of the Association of Interstate Commerce Commission Practitioners.

**John W. Hird II '49** of Warwick, R.I., died June 7, 2004. Formerly of Lower Waterford,

Vt., and East Longmeadow, Mass., he was a legal consultant in Vermont. Earlier in his career, he briefly served in the United Nations before beginning his practice of law in Springfield, Mass. He also taught law at Western New England College and served as a television talk show moderator. During WWII, he served in the U.S. Navy, aboard the USS Renshaw, supporting amphibious landings in the South Pacific. On Navy Day 1946, he was assigned the job of escorting President Truman around the USS Renshaw as he reviewed the fleet.

**William T. Seawell '49** of Pine Bluff, Ark., died May 20, 2005. A brigadier general in the U.S. Air Force, he served as commandant of cadets at the U.S. Air Force Academy in Colorado, and he was later president and chairman of Pan American World Airways. He held many positions during his military career, including military assistant to the deputy secretary of defense. He later worked in the private sector for American Airlines, Rolls-Royce Aero Engines and Pan American. During WWII, he served in the U.S. Army Air Corps in Europe and became a commander of a bombardment group of B-17s. He flew 30 missions and received the Silver Star.

**Douglas L. Manley '49-'50** of Guilderland, N.Y., died Jan. 27, 2005. For many years he served as assistant attorney general in New York state and was a member of the Appeals and Opinions Bureau of the attorney general's office. Earlier in his career, he practiced law in Buffalo. He helped establish the Social Justice Center of Albany, helped seek sanctuary for refugees from the Central American wars of the 1980s and was a member of Americans Against Nuclear War and the Nuclear Weapons Freeze Campaign. He also was a longtime member of the World Federalist Association, now known as Citizens for Global Solutions. During WWII, he served in the U.S. Army.

## 1950-1959

**Mortimer Barr '50** of Merritt Island, Fla., died Dec. 12, 2004.

**William A. Cook LL.M. '50** of Harbor Island, S.C., died March 18, 2005.

**James W. Rigrish '50** of Akron, Ohio, died Feb. 24, 2005. He worked in the law department of the Goodyear Tire & Rubber Co.

**Vincent H. Yano '50** of Honolulu died May 11, 2005. A state senator from 1963 to 1970, he served as chairman of the Senate Ways and Means Committee. A prominent Catholic

and a Knight of St. Sylvester appointed by Pope Paul VI, he was chairman of the Senate Health Committee in 1970 when the bill to legalize abortion was referred to his committee. After initially holding up the bill because of personal opposition, he later reversed his position. The bill was ultimately passed by both houses, making Hawaii the first state to legalize abortion. He established the Legal Aid Society of Hawaii and helped start the Association for Retarded Citizens. He was also the president of Rubber Stamp House for 30 years, and he had a Taco Bell franchise with seven locations. He served in the U.S. Army and as a civilian attorney for the Army on Okinawa, Japan, from 1952 to 1954.

**C. Robert Burt '51** of Avon, Conn., died Feb. 23, 2005. Formerly of Columbia, Mo., he worked for 22 years for Farm Credit Banks of St. Louis, where he served as general counsel. Earlier in his career, he practiced corporate law in Columbia and was city attorney there. He served in the U.S. Army during WWII and received the Bronze Star. After the war, he continued to serve in the military, primarily in Vienna, Austria, and Berlin, and attained the rank of major.

**Ishier Jacobson '51** of Stamford, Conn., died July 20, 2005. A public utility executive, he worked at Citizens Utilities Co. for 36 years. He was named company president in 1970 and CEO in 1981. He was chairman of Silver Hill Hospital and Connecticut Ballet and a director of the Harvard Alumni Association. A veteran of WWII, he served in the U.S. Navy aboard a submarine in the Atlantic and the USS Washington in the Pacific.

**Thomas H. Robinson '51** of East Rochester, N.Y., died Nov. 25, 2004. He was an executive with Eastman Kodak Co. in Rochester, where he was involved in antitrust/trade regulation and government contracting.

**Lawrence M. Woods '51** of Kane, Pa., died June 22, 2004. He was a partner at Woods Baker & Ross in Kane and a director of the Community Hospital of Kane, the McKean County Industrial Council and the McKean County Industrial Authority. He also served as director, president and chairman of the First Federal Savings and Loan Association of Kane.

**William T. Rountree Jr. '52** of Pensacola, Fla., died April 8, 2005. A faculty member at Emory Law School from 1967 to 1992, he taught constitutional law, urban government and legislation. After retiring, he joined the faculty at Regent University School of Law in Virginia Beach, Va., and he was

instrumental in helping the school achieve its accreditation. Earlier in his career, he taught law at what is now the University of Memphis. During WWII, he served in the U.S. Army Signal Corps as a cryptographer in the China-Burma-India theater.

**James F. Ryan '52** of Boston died April 3, 2005. He was a solo practitioner in Boston.

**Walter Jay Skinner '52** of Concord, Mass., died May 8, 2005. A U.S. District Court judge in Boston, he presided over the 1986 water contamination case in Woburn, Mass., portrayed in the book and movie "A Civil Action." Before his appointment to the federal bench in 1974, he was an assistant district attorney in Plymouth County and an assistant attorney general in Massachusetts. After retiring from the bench in 1993, he focused on painting. His portrait of Judge Charles Wyzanski '30 hangs in the federal courthouse in Boston.

**Raymond W. Murray Jr. '53** of Vero Beach, Fla., died March 20, 2005. He was a senior partner at Bond, Schoeneck & King in Syracuse, N.Y., where he focused his practice on labor and employment law.

**Gavin P. Murphy '54** of New York City died April 7, 2005. He was counsel to J.P. Stevens & Co., Standard Brands Inc. and Fiduciary Counsel Inc. Earlier in his career, he was associated with Dewey Ballantine. A mediator and arbitrator, he also taught law at New York University and Yeshiva University and mathematics at Northeastern University. He was a member of several professional and civic organizations and founded an organization that served mentally disturbed adolescents. He was a program producer of In Touch Networks and an editor of The Recorder, the journal of the American Irish Historical Society. During WWII, he served in the U.S. Navy.

**Ramon L. Posel '54** of New York City died June 24, 2005. Formerly of Philadelphia, he was a real estate developer and founder of Ritz Theatres, which originally showed only independent and international films. He built his first movie theater in Philadelphia in 1964, and in 1976, he founded what was then the Ritz Three there. Early in his career, he worked in the real estate division of WolfBlock in Philadelphia. He was on the board of managers at Swarthmore College from 1986 to 1991.

**Warren Brody '55** of Roselle, N.J., died April 25, 2005. He was a judge in New Jersey for 22 years. Appointed to the Union County Juvenile and Domestic Relations Court in

1973, he became a superior court judge five years later and a presiding judge of the appellate division in 1992. He returned to private practice in 1995, and from 1997 to 2003, he served on the Disciplinary Review Board of the New Jersey Supreme Court. He also taught at Rutgers School of Law-Newark, wrote for the New Jersey Lawyer and was a trustee of the HLSA of New Jersey.

**David A. Sutherland '55** of Luray, Va., died March 25, 2004. He was a partner at Sutherland & Mackey in Alexandria.

**Sherman Winthrop '55** of St. Paul, Minn., died June 6, 2005. A founding partner of Winthrop and Weinstine in Minneapolis, he began his career at Oppenheimer, Wolff & Donnelly in Minneapolis before forming his own firm in 1979. A director of many organizations, he served on the Minnesota Lawyers Professional Responsibility Board and the executive counsel of the Ramsey County Bar Association. He was posthumously honored as a 50-year senior counselor by the Minnesota State Bar Association.

**Alfred K. Kestenbaum '56** of Leonia, N.J., died March 31, 2005. A litigator in New York City for 40 years, he was a partner at Blumberg, Singer, Ross & Gordon as well as at Paradise & Alberts. After retiring in 1996, he was active in local government in Leonia. During the Korean War, he served in the U.S. Army.

**Frederick H. Condon '58** of East Andover, N.H., and Fort Myers, Fla., died July 7, 2005. An insurance executive, he worked for Chubb Life America and Jefferson Pilot Financial Insurance Co., retiring in 1998 as general counsel and senior vice president of the latter. In 1961, a car crash left him a paraplegic and inspired his friend and classmate Ralph Nader to crusade for safer cars. Nader dedicated his 1965 book, "Unsafe at Any Speed," to Condon.

## 1960-1969

**Thomas A. Skornia '61** of San Francisco died April 27, 2005. A Silicon Valley attorney for more than 30 years, he focused his practice on high-technology startup and emerging growth companies. He was founding counsel, secretary and director of both Applied Materials and Advanced Micro Devices. He also was the organizing counsel to the Semiconductor Industry Association and counsel to Joint Valley Network, Santa Clara County Manufacturing Group, Smart Valley Inc. and CommerceNet.

**Walter E. White '61** of Portland, Ore., died Feb. 9, 2004. He was an attorney for the California attorney general's office in Sacramento and later worked in maintenance for the Portland Public Schools. He served in the U.S. Army.

**Barry L. Costilo '62** of Takoma Park, Md., died Feb. 19, 2005. A government antitrust lawyer for four decades, he was lead counsel for the Federal Trade Commission's Bureau of Competition and prosecuted groundbreaking antitrust cases involving the American Medical Association and the Indiana Federation of Dentists. In the AMA case, he challenged the restriction on physicians' advertising that was part of the association's code of ethics and opened the door for competition in the medical field. He joined the FTC in 1971, after having worked at the U.S. Department of Justice, and retired last year. He received the commission's Award for Distinguished Service.

**Donald S. Harry '62** of Wilmington, Vt., died May 26, 2004. He was a solo practitioner in Wilmington, where he focused his practice on business and corporate law.

**James T. Marshall '64** of Boulder, Colo., died July 28, 2005. He worked in the investment field and as president of Key Pharmaceuticals in Miami. Earlier in his career, he was an associate at Davis Polk & Wardwell in New York City. After graduating from HLS, he served in the U.S. Army.

**Harvey S. Price '67** of Gaithersburg, Md., died Aug. 7, 2005. He was a Washington, D.C., lawyer and biotechnology consultant, and in 1981 he founded what is now known as the Biotechnology Industry Organization. He was a part-time executive with biotechnology trade groups before joining Zuckerman Spaeder in Washington in 2003. He began his career as an assistant U.S. attorney in Washington and later joined the staff of the U.S. Nuclear Regulatory Commission. In 1973, he was named vice president and general counsel of the U.S. Council for Energy Awareness.

**Cornelius J. Dwyer Jr. '68** of New York City died May 7, 2005. For 35 years, he practiced law at Shearman & Sterling in New York City. After retiring, he volunteered at P.S. 36 in Harlem and studied the Irish language.

## 1970-1979

**Mark I. Weinberger '74** of Berkeley, Calif., died July 14, 2005. In 1980, he co-founded

one of the first law firms dedicated to environmental protection in California, Shute, Mihaly & Weinberger in San Francisco, and was known for developing innovative strategies for preserving open space and protecting environmental values. After graduating from HLS, he worked in the environmental unit of the California attorney general's office.

**Michael H. Skelton '76** of New York City died Nov. 30, 2004. He was managing director of Mistral Management.

**Thomas O. Sargentich '77** of Arlington, Va., died April 21, 2005. A constitutional scholar, he was a professor at American University Washington College of Law for 22 years. He was co-director of the college's program on law and government, director of its Master of Laws program on law and government, and chairman of the faculty board for the Administrative Law Review. He also worked in the Office of Legal Counsel for the U.S. Department of Justice. In 1990, he was honored with the American University Award for Outstanding Research and Scholarship, and this year he received the Pauline Ruyle Moore Award for Scholarship in Public Law for his article "The Rehnquist Court and State Sovereignty: Limitations of the New Federalism." He was the brother of HLS Professor Lewis D. Sargentich '70.

## 1980-1989

**David H. Peipers '81** of Tallahassee, Fla., died April 13, 2005. Formerly of New York City, he was a venture capitalist and president of Peipers & Co. He served on the boards of the John F. Kennedy School of Government and the Harvard School of Public Health and was a trustee of Groton School in Groton, Mass.

**Frederick T. Smith '85** of Newark, N.J., died April 4, 2005. A product liability defense attorney, he practiced at McCarter & English in Newark for 18 years. He also served as an adjunct professor at Seton Hall University School of Law and was a presiding judge for employee disciplinary hearings for Essex County. He served on the editorial board of the New Jersey Lawyer and was a board member of the Newark YMWCA, the Newark Boys Chorus School and St. Peter's Preparatory School. A member of the 100 Black Men of New Jersey, he was named a Minority Achiever in 2000 by the national YMCA.



# Suzanne L. Richardson, 1949-2005

*Student advocate, adviser and friend*

SUZANNE L. RICHARDSON—a passionate student advocate whose artistry, emotional wisdom and humor left an imprint on the lives of others—died of stomach cancer on June 30. She was 55.

“An entire generation of Harvard Law students experienced the school as a far better and warmer place because Suzanne was here,” said Dean Elena Kagan ’86.

As dean of students from 1993 to 2004, Richardson built community at the law school by organizing retreats and scheduling “Meet the Dean” breakfasts, but she is best remembered for her sensitivity to students, whether they needed a hand to hold, someone to counsel them in the midst of grave difficulties or a friend to celebrate their successes.

“I met a lot of amazing people during my three years at HLS, but none of them touched my life quite like Suzanne,” said Ashley Morgan ’00. “She was the kind of person that you could talk to about anything and know that she was really listening and that she really cared.”

A 1971 graduate of Boston University College of Fine Arts, Richardson taught kindergarten and second and eighth grades in Winchendon, Mass., before starting a business in 1973 that drew on her art background.

She joined the law school in 1977, worked for the Government Attorneys Project, a counterpart to the Harvard Defenders, and served as administrative director of the Clinical Programs. In 1987, she earned a master’s degree at Harvard’s Graduate School of Education, and two years



MARTHA STEWART

later, she was named director of student activities. In 1993, she was appointed dean of students by then Dean Robert Clark ’72.

“She was a tremendous problem solver,” said Stephen Kane, HLS registrar, who recalled Richardson’s ability to diffuse tense situations with humanity, empathy and humor and her willingness to go head-to-head with other administrators on students’ behalf.

Her connection to students continued long after they graduated. Through phone calls and e-mails, she

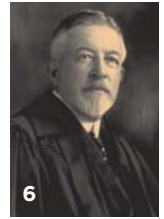
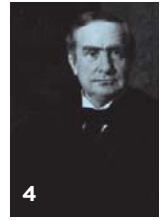
kept updated on bar admissions, career changes, weddings and illnesses.

In February 2004, as her own illness progressed, Richardson resigned her position, but she remained a special adviser to the dean.

“The countless ways that she positively affected the lives of the students at Harvard Law School will be manifested in the successes of future leaders for years to come,” said Tamara Yang Demko ’00. “She found her life’s calling in her students, and her legacy of love, compassion and guidance will endure.”\* — *Christine Perkins*



**JOHN G. ROBERTS JR. '79** is the first graduate of Harvard Law School to become chief justice of the United States. He takes his place with 18 other HLS alumni who have served on the U.S. Supreme Court. In addition to **Oliver Wendell Holmes Jr. 1866**, **Louis D. Brandeis 1877** and **Felix Frankfurter 1906** (all pictured with Roberts above), the HLS legacy includes current justices **Antonin Scalia '60**, **Anthony M. Kennedy '61**, **David H. Souter '66** and **Stephen G. Breyer '64**. **Ruth Bader Ginsburg** attended HLS from 1956 to 1958 but graduated from Columbia.



## DICTUM

Can you name the other 10?

1. Benjamin R. Curtis 1832
2. Horace Gray 1849
3. Melville Weston Fuller (1830-1910)
4. Henry B. Brown (attended 1859)
5. William H. Moody (1857-1922)
6. Edward T. Sanford 1859
7. Harold H. Burton 12
8. William J. Brennan Jr. 31
9. Harry A. Blackmun '32
10. Lewis F. Powell Jr. LL.M. '32

Susan Lytle Lipton LL.M. '71 practiced securities law and was the first woman to become a partner at Greenberg, Traurig, Hoffman, Lipoff & Quentel in Florida. She then spent 10 years as an investment banker, at Goldman Sachs and then L.F. Rothschild, Unterberg, Towbin. Between 2003 and June of this year, she was chair of the Harvard Law School Fund, part of the school's current \$400 million campaign.

## From a Bangkok High School to HLS

**You spent two of your high school years in Bangkok. How did that happen?**

My father was in the Army, assigned to an advisory group to the Thai army. This was 1960—before we were heavily involved in Vietnam—and there were very few U.S. military personnel there. I spent two years at an international school for Foreign Service children and children from other countries.

**When and why did you decide to go to law school?**

I went to the University of Miami at a time when women were basically interested in whether they had an engagement ring by their senior

year. Nobody in my family had ever been a lawyer. I had just gotten back from Bangkok, and I thought I might join the Foreign Service. I became a government major, took a course on the Supreme Court and was on the Honor Council when we had a huge cheating scandal. I spent many hours trying those cases. All of those things came together and I applied.

**You've encountered many good negotiators in both law and business, and you've done quite a bit of negotiating yourself. Are great negotiators born, or can they be taught?**

Some people are born good negotiators, or, frankly, good manipulators. But intelligent people can learn techniques that can help them be better business negotiators. I was mentored by the two senior lawyers I worked with at Greenberg Traurig, both of whom were terrific negotiators. At HLS, I took a newly offered course from Professor Alan Stone on psychology and law, and one of the course's goals was understanding psychological factors and their use in negotiation. I remember being very struck by the concept of needing a good psychological understanding of the person you were negotiating with. I think the courses have gotten even more sophisticated since then.

**Do women negotiate differently from men?**

There are certain traits that one is more likely to see in women—for example, empathy, which is a very important trait for a negotiator. Also, one of my biggest strengths was that I was not macho. Sometimes the men would get carried away with what I call the formalities of position—whether you held the meeting at your office or theirs, where you sat, and so on. I was rather bemused by some of the gamesmanship, and I con-

centrated instead on a straightforward methodology. Another advantage I had as a woman was that I could get people to tell me things that they might not feel as comfortable sharing with a male counterpart.

**What's your answer to those who may think Harvard Law School doesn't need their money?**

The law school runs on a loss basis if you take out the fundraising. Tuition is only about 44 percent of the budget. The endowment is actually the third lowest of any of the schools at the university. Without the fundraising, tuition would have to jump dramatically. The school couldn't continue its great programs, couldn't provide the financial aid, couldn't encourage people to go into the public sector through the loan forgiveness program and couldn't continue to increase the size of the faculty—all the things they are doing to make it an even better place. \*





CORBIS

“ We try to bring **negotiation theory** to bear,  
but we also try to grapple with the  
**messiness** that is inherent in  
any **real-world** situation. ”

*Professor Guban Subramanian '98*

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