

ALSO INSIDE **DO RESTRAINING ORDERS HURT THOSE THEY ARE MEANT TO HELP?** { PAGE 6 }

Spring 2007

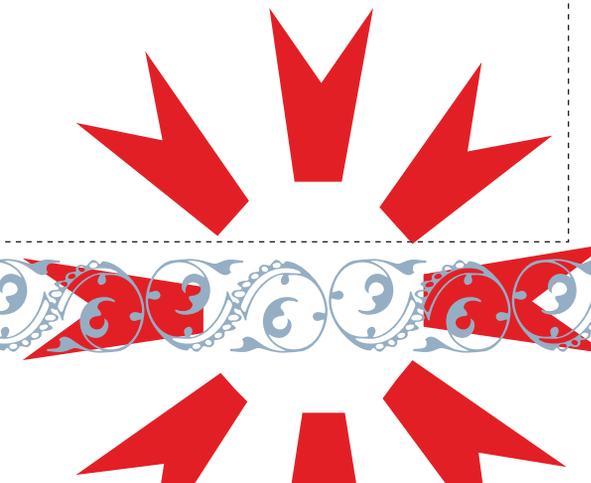
Harvard Law

bulletin

STOCK	SYM	CLOSE	NET CHG	STOCK	SYM	CLOSE	NET CHG	STOCK	SYM	CLOSE	NET CHG
ChicoilHesA	CMG	60.59	-0.42	CrownHldgs	CFR	23.60	0.29	EdwardsLife	EW	48.62	-0.05
ChicoilHes	CMH	36.28	0.41	CullinFrst	CFI	93.61	-0.30	EPass	EP	13.99	0.01
ChicoilP	CP	28.27	0.01	Commis	CMJ	136.43	2.02	Ebn ADS	ELN	12.56	0.01
ChicoilP	CP	28.27	0.01	CyprSem	CMK	15.19	-0.15	EDS	EQ	27.29	-0.09
ChicoilP	CP	28.27	0.01	CyprSem	CMK	15.19	-0.15	EPS Cp	EQ	53.67	0.51
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STOCK TAKING

(Corporate governance in a global economy)



Camera *Photograph by Bob O'Connor*



FRIEZE AFTER FREEZE Can spring's first rays warm the grimaces left by so many winters of bitter cold?

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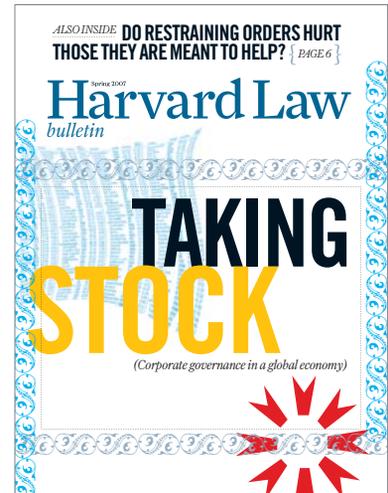
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Corporate governance in the new global economy

HARVARD LAW SCHOOL boasts what is, without a doubt, the world's greatest business law faculty. Not surprisingly, one of the most exciting aspects of our corporate renaissance is the diversity of viewpoints, strategies and approaches now represented. (This is, after all, HLS!)

During the past year alone, our professors have made headlines on issues ranging from executive compensation to shareholder rights to the Sarbanes-Oxley reforms—and as you'll read in this issue of the Bulletin, their work is reshaping our economic landscape in fundamental ways.

Another sign of our stature: For the past five years, HLS faculty members have accounted for nearly one-third of the articles appearing on a "top 10" list of corporate law and securities articles compiled annually by corporate law professors around the United States.

One high-profile figure on the corporate scene is Professor Lucian Bebchuk LL.M. '80 S.J.D. '84—director of our Program on Corporate Governance—who is now engaged in a multifront effort to strengthen shareholders' rights. Known for his rigorous empirical research—and for his incisive voice in *The New York Times*, *The Wall Street Journal* and other popular publications—Bebchuk has recently also embarked on a remarkable solo campaign to improve corporate governance. He is the world's most influential scholar on corporate governance issues, and I hope you enjoy this inside view of his endeavors.

The corporate scandals of the past five years—those at Enron, WorldCom and Tyco, to name just a few—have spurred major reforms, most notably the Sarbanes-Oxley Act (a brainchild of Sen. Paul Sarbanes '60). But have things gone too far? Professor Hal Scott says, "Yes." Scott—director of the Law School's eminent Program on International Financial Systems—believes that burdensome regulation and litigation have cost the United States its competitive edge among the world's capital markets. In an effort to turn the tide, he spearheaded formation of the Committee on Capi-

tal Markets Regulation, a blue-ribbon panel of business leaders and academics. The committee's report—whose contributors include Professors Allen Ferrell '95 and Reinier Kraakman—was prepared with a major assist from HLS students, and its recommendations are garnering substantial interest among our nation's policy-makers (including a number of prominent HLS alums).

And of course, our faculty continues to break new ground well beyond the business world. Assistant Professor Jeannie Suk '02—one of our most recent additions—argues that prosecutors' use of protective orders in domestic violence cases has sometimes resulted in "de facto divorces," against women's real interests. Faculty at our Berkman Center for Internet & Society are teaching students to think strategically about complex intellectual property cases. And Professors Terry Fisher '82 and David Kennedy '80 offer up a collection of the all-time great American law review articles. You'll learn about these projects—and more—in the following pages.

Also in this issue, we remember Professor Emeritus Richard Musgrave, a renowned political economist who died in January at the age of 96. Widely considered to be the founder of modern public finance, Musgrave was a mentor to generations of students. He leaves behind many admirers at HLS and will be deeply missed.

In corporate law—as in so many other fields—HLS professors are at the forefront of research and policy-making, shaping the ways we think about some of the world's most pressing issues. I'm immensely proud of all they've done—and of all they will do.



Letters

“The fact that many of us don’t stick around to run law firms may speak to the differing calculus of men and women.”

—Lisa Ferreira ’84

A STORY THAT WASN’T TOLD

WELL, I HAVE to hand it to the Harvard Law Bulletin. Here I was, an honors graduate, with a state supreme court clerkship under my belt, as well as 21 years of practice in criminal appellate defense work, thinking that I had pulled off something remarkable in being able to raise three strong, healthy daughters while being happily married to a fellow HLS grad who routinely bills 2,400 hours a year.

Thanks for setting me straight. I now know that because I haven’t become the managing partner of a major U.S. law firm, I have not reached “the highest levels of the legal profession,” and have somehow let down both my alma mater and my sisters in the practice of law. And thanks for noting, in an entire paragraph of a three-page article [“Traffic on the off-ramp,” Fall 2006], that women such as myself, who have toiled in the fields of nonprofit and government service, actually exist.

Success comes in many forms, and many of us have put our skills in analysis, ingenuity and perseverance to work in the service of our own lives and the lives of our clients. The fact that many of us don’t stick around to run law firms may speak to the differing calculus of men and women. For those of us who are living the demands of child rearing and our own human limita-

tions, the rewards of the former just don’t add up.

By devoting only that single paragraph to nonprofit work, you have discounted the achievements of many of us who consider our legal work not just a career, but a calling. It has been my privilege to represent my indigent clients, and it has been my honor to be a part of the foremost system of indigent criminal appellate defense work in this nation. It is no accident that at least half of my colleagues are women and mothers, and probably no accident that achievements like ours don’t appear to count for much in your review of the state of women in the legal profession.

LISA FERREIRA ’84
Los Angeles

Editor’s note: *In the fall issue, an article called “The Coming Wave” focused on the experiences of women and men in public interest law.*

COMMUNITY LAWYERING (AND DOCTORING)

THE LAST HARVARD Law Bulletin includes a mention of legal practice in underserved communities [“The Coming Wave”]. In fact, many communities in America suffer from a lack of doctors as well. Many alumni can remember when doctors and lawyers lived locally. Their presence made for a sense of community, now missing in America, and they helped to solve problems at a community level. One present solution is to grant tax incentives, both through property and state tax abatements, for doctors and lawyers living and practicing out of their homes in the community.

LEONARD R. FRIEDMAN ’69, M.D.
Middleton, Mass.



LETTER FROM CANTLEY

THE INVASION AND destruction of Iraq will live on among the greatest shames in American history. How sad to see Harvard Law graduates involved [“Letter from Baghdad” by Col. Mark Martins ’90, Fall 2006]. It lies ill in the mouth of those who have denied habeas corpus and spirited detainees into illegal detention, without charge or genuine fair trial, to invoke the “rule of law” as the key to stability.

MICHEL G. PICHER LL.M. ’74
Cantley, Quebec, Canada

IDEALISM AND BRAVERY

I AM A former Navy JAG U.S. Marine Corps officer. “Letter from Baghdad” was a welcome recognition of an outstanding lawyer and JAG officer graduate of the Harvard Law School. Specifically, it demonstrates the enormous contributions Harvard’s JAG officers are making in a very chaotic and lethal situation, both to the civilian government and to the combat forces. Col. Martins and his JAG officers are crucial to the war effort to bring about a representative government, an independent judiciary and an effective private bar.

Col. Martins is “humbled by the idealism and bravery” he sees in the servicemen, and I share his admiration. In a recent letter to the Marine Corps’ Leatherneck, someone said the elite expect others to do their fighting. It appears that Col. Mark Martins ’90 and Capts. Earl Matthews ’98 and Robert Caridad ’03 are proving the exception.

DANIEL H. MCKINNEY ’54
Captain, USMCR
Cincinnati

WE WANT TO HEAR FROM YOU

The Bulletin welcomes letters on its contents. Write to the Harvard Law Bulletin, 125 Mount Auburn St., Cambridge, MA 02138, e-mail bulletin@law.harvard.edu or fax 617-495-3501. Letters may be edited.

A Brazilian prosecutor builds a case—and a prison—to last 100 years

By Emily Newburger

WHEN THREATENED IN court by the leader of a death squad known for killing its victims with chainsaws, Brazilian prosecutor Raquel Ferreira Dodge was undeterred.

Today what comes closest to unnerving the LL.M. student is not the memory of the threats but the possibility that they could have stopped her from seeking justice.

That's been her job for nearly 20 years at Brazil's Ministério Público Federal. Its prosecutors are charged with defending and advocating for society and protecting minorities through criminal prosecution and civil action. The office enjoys a rare independence (admittance is through rigorous public exams, and prosecutors receive lifetime appointments), which has allowed its attorneys to take on powerful individuals and to represent victims against a culture of impunity.



UNFLINCHING:
Raquel Ferreira
Dodge LL.M. '07

Dodge has brought criminal cases against state representatives with ties to organized crime. She's led crack-downs on wealthy landowners holding workers in a state of modern slavery—despite criticism from politicians, including the head of Brazil's House of Representatives (who himself was later charged with forced labor). But first there was the case of Hildebrando Pascoal.

A former colonel of the military police in the small western state of Acre, for years Pascoal controlled the region, ordering police officers to torture and murder—with chainsaws and acid—and bringing cocaine into the country from neighboring Bolivia—by the truckload. In 1998, he was elected to Congress in Brasilia, where official immunity shielded him from prosecution.

But on Sept. 22, 1999, after an internal committee had begun to expose his crimes, Pascoal was expelled from Congress. That same day, Dodge and two other prosecutors were assigned to the case. Because of their legal maneuvering, by the next morning, before he could flee the country, Pascoal was arrested, and Dodge began one of the most intense periods in her life.

Because they believed Pascoal's grip made the local police incapable of investigating, she and her two colleagues left their homes in Brasilia and spent the greater part of the next eight months working the remote state. They scoured newspaper archives as well as reports of human rights groups that had been quietly documenting local murders. After months spent in the humblest lodgings, where they hoped Pascoal's connections in the area would not find them, Dodge and her colleagues were able to piece together enough evidence to charge the former congressman with six federal crimes, including tax evasion, international drug trafficking and homicide.

But Dodge knew Pascoal had been

tried before. In state court he'd been accused of the murder of his mother's doctor. Plenty of people saw it—he shot the surgeon in the head while he was operating on a patient—but Pascoal's powers of intimidation were such that he was acquitted.

To get people to testify, Dodge and her colleagues were the first to use the country's recently established federal witness protection program.

And to incarcerate Pascoal and the 53 others who were charged on related crimes, Dodge and the other prosecutors got the country's first federal prison built. In the past, state inmates had been released to commit murders at Pascoal's behest for which they had alibis as solid as prison doors.

As the trial proceeded, Pascoal repeatedly made death threats against the prosecutors and judge and "even the chickens of the persons involved in the trial," Dodge recalled.

Dodge's family—including her father, a retired judge and federal prosecutor himself—worried for her, though she would not worry for herself. The mother of two (still breast-feeding her younger child during the investigation), she knew even some of her colleagues believed she should be excused from the case.

Dodge was determined not to quit, in part—she recalled with visible emotion—precisely because she is a woman, and the equal treatment she received on the job was so precious and hard-won.

And under the well-intentioned advice, she heard the assumption, shared by the nation:

Pascoal would never be convicted.

The final phase of his trial was completed days before Dodge spoke with the *Bulletin* (the first time she'd been interviewed about the case). Altogether, Pascoal was sentenced to more than 100 years in prison. "We won everything," she said.

But Dodge is driven by the idea of how much more there is to do. After a fellowship at the HLS Human Rights Program and this year's coursework, she is opening her mind to new ways to challenge the status quo. As she considers the relationship between crime and the staggering inequality in Brazil, she believes fighting for equal access to education may be her next tack. "I have this feeling life is short, and we have to do something important." *



"ISN'T THIS WHAT you wanted, you vultures?" asked Hildebrando Pascoal, escorted by Brazilian police officers to a 1999 court hearing in Rio Branco.

When do protection orders go too far?

OVER THE PAST 30 YEARS, feminists have struggled to make domestic violence a public issue—not just a family matter, but a crime recognized by the police and punished by the courts. But according to Assistant Professor Jeannie Suk '02, in the process of correcting for shameful past inaction, the criminal justice system may now be too involved in private life. In a recent *Yale Law Journal* article, Suk takes a critical look at the use of protection orders. Who is being harmed, the *Bulletin* asked Suk, by these protective measures?

The criminal justice system's growing control of the home harms women. The point of domestic violence protection orders—in fact, the point of legal measures against domestic violence—is to protect the autonomy of women.

When a woman seeks a protection order, you can be pretty confident that she believes it will improve her situation. But in many jurisdictions, the decision isn't up to her. The moment a misdemeanor domestic violence arrest enters the system, prosecutors routinely seek a protection order banning the alleged assailant from the home whether or not the woman wants this. Then, in a standard exchange for a plea to a lesser charge or a plea that leads to dismissal, prosecutors might make that protection order "permanent," essentially divorcing the couple.

Even if the woman asks her partner to come home, the relationship is illegal. The police may make unannounced visits to check that he isn't around. His

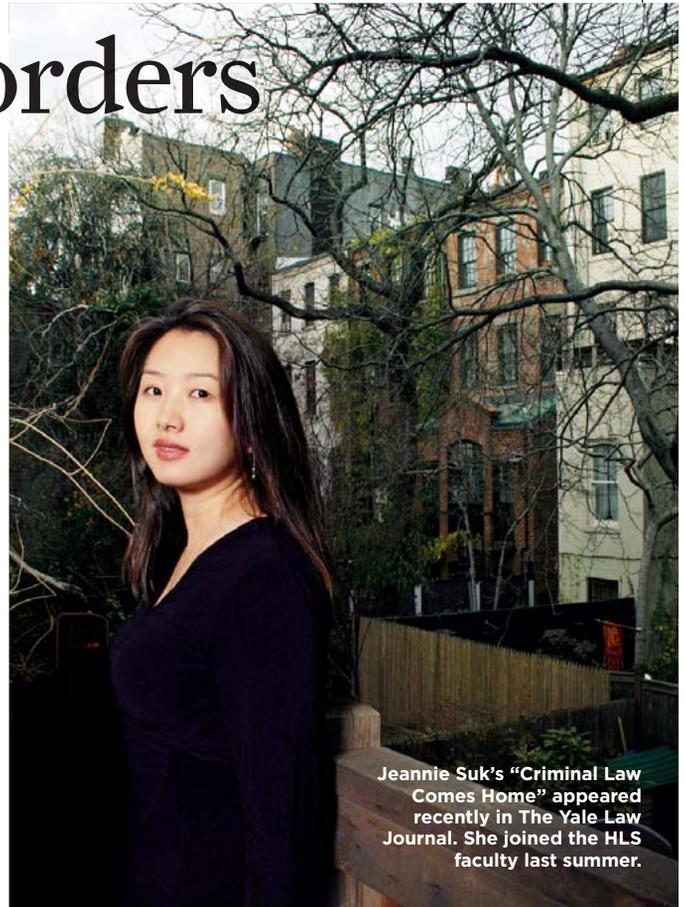
mere presence—even contact through a phone call—can result in arrest and imprisonment. In fact, that's precisely the result the system seeks. It's hard for prosecutors to prove violence when women won't cooperate with the prosecution—especially in the case of misdemeanors, which don't involve serious physical injury. But violations of protection orders are easier to prove. They become a proxy crime—a way of circumventing the burden of proof.

Frequently, women who are having their intimate relationships criminally prohibited by the state ask prosecutors not to intervene. Whose judgment on this is better—the prosecutor's or the woman's? Much law enforcement proceeds on the view that these women don't know or can't say what's best for them because they are locked in a terrifying dynamic of abuse and coercion. I find that paternalism troubling when

applied uniformly in a world of mostly misdemeanor arrests, especially considering that many women brought into the system are poor and, often, minorities.

Another problem is that there's often no coordination between the criminal system and a family court that might deal with issues that arise when you separate a couple. Excluding a husband from the home may mean there is nobody to pay the rent and the bills. So imposing de facto divorce through the criminal system can be worse for the women than actual divorce, where alimony and child support can be set.

Now that we've had some success in getting domestic violence taken seriously as a public issue, it's time to be vigilant that techniques of state control don't negate the goal of that reform—to improve women's autonomy. *



Jeannie Suk's "Criminal Law Comes Home" appeared recently in *The Yale Law Journal*. She joined the HLS faculty last summer.

Getting at the truth

“WHAT [IRANIAN PRESIDENT Mahmoud] Ahmadinejad’s conference [of Holocaust deniers] proclaims is that truth has no place in the world of politics; that if your ends are just, you can say anything, no matter how far-fetched. ...

“But Ahmadinejad’s tortured logic seems almost broad-minded compared with Turkey’s stringent criminal prohibition on any suggestion that such a thing as its genocide of the Armenian people ever happened. ...

“And then there is the converse: What about countries like Canada and many in Europe that make it an offense to offer propositions derogatory of races or religions, or to deny the Holocaust, or proposed legislation in France that would make it a crime to deny the Armenian genocide.



FRIED

Here, too, the truth and how we come to know it suffers. States that forbid such palpable lies degrade the currency of truth as much as those who proclaim a lie as their national policy.

“For in the end, the only way to bite the nickel to make sure it’s genuine is in discussion, debate, assertion and counterassertion. ...

“There is such a thing as truth; that is why Holocaust deniers are fools or liars. But that is exactly why there can be no such thing as official truth.”

PROFESSOR CHARLES FRIED
The Boston Globe, Dec. 13.

“Palestinian-Arab terrorism is virtually missing from Mr. Carter’s entire historical account.”
—Alan Dershowitz

What about terrorism?

“PALESTINIAN-ARAB TERRORISM is virtually missing from [former President Jimmy] Carter’s entire historical account [‘Palestine: Peace Not Apartheid’], which blames nearly everything on Israel. Incredibly, he asserts that the initial violence in the Israeli/Palestinian conflict occurred when ‘Jewish militants’ attacked Arabs in 1939. The long history of Palestinian terrorism against Jews, which began in 1929, was motivated by religious bigotry. The Jews responded to



DERSHOWITZ

this racist violence by establishing a defense force. There is no mention of the long history of Palestinian terrorism before the occupation, or of the Munich massacre and others inspired by Yasser Arafat.”

PROFESSOR ALAN DERSHOWITZ
National Post, Dec. 2.

Real superpowers negotiate

“THIS PRESIDENCY’S FOREIGN policy is at a crossroads. A midterm correction, animated by a unilateral openness to bilateral talks [with North Korea], however it may seem to the unsophisticated observer, is not weak. After all, our strongest asset during bilateral talks is our power to say ‘no’—to refuse demands that fail to meet American economic and security interests. Sitting down to listen and talk knowing that we reserve the full right and ability to say ‘no’ at



BORDONE



CHANG

any moment, gives up nothing. It is a sign of our power, not our weakness; our maturity as the world’s strongest democracy, not our churlishness as a schoolboy on the playground of world politics.”

ASSISTANT CLINICAL PROFESSOR ROBERT BORDONE ’97, DIRECTOR, HARVARD NEGOTIATION AND MEDIATION CLINICAL PROGRAM, AND ALBERT CHANG ’09
The Washington Post, Oct. 26.

The Israeli model for detainee rights

“[U]NLIKE THE LAW in Israel, the U.S. [‘Detainee Bill’] gives government officials immunity from prosecution for any maltreatment of detainees that



MINOW



BLUM

does not amount to ‘grave breaches’ under the Geneva Conventions of 1949. This is especially striking, given the exposure of abuses at Abu Ghraib and Guantánamo Bay and of the rendition of detainees to countries known to engage in torture. ...

“[T]he law in Israel is more protective of individual rights—without

resulting in security risks. It would have been unthinkable for any Israeli governmental lawyers to devise a legal framework that would strip the courts of their powers of judicial review.

“The cost of overreaction by the U.S. Congress is enormous.”

PROFESSOR MARTHA MINOW AND VISITING ASSISTANT PROFESSOR GABRIELLA BLUM LL.M. ’01 S.J.D. ’03
The Boston Globe, Oct. 18.

• For more faculty op-eds, go to www.law.harvard.edu/news/commentary.php.

Litigating the *new frontier*

Practical lawyering in cyberspace

By *Bill Ibelle*

AN AMBITIOUS NEW player has appeared on the Internet scene, determined to dominate the flow of information across the Web.

The activities of this behemoth—including mining the personal data of subscribers, acquiring competing companies and facilitating the copying of copyrighted music and videos—plunge it into some of the most heated controversies in Internet law.

This hypothetical company is the focus of the final session of an HLS seminar, Practical Lawyering in Cyberspace, in which students are assigned to represent the affected parties—privacy advocates, Web site operators, a file sharing Web site, copyright holders and the company itself—in simulated lawsuits and takeover scenarios.

“The goal is to teach students how to function as real lawyers on a very high level in a complex intellectual property case,” says Lecturer Phillip Malone, who teaches the seminar with Jeffrey Cunard, managing partner of Debevoise & Plimpton’s Washington, D.C., office, and HLS Clinical Professor John Palfrey ’01, executive director of the Berkman Center for Internet & Society.

3L Robert Kent is assigned to represent FaceSpace, a fictitious company about to be bought by the behemoth. It has just been sued by copyright owners for encouraging users to share protected music, videos and movies.

Kent tells his clients they are likely to prevail on a motion to dismiss, but expresses concern that protracted litigation could jeopardize the company’s imminent sale. A victory in court, he says, would not necessarily be the best way to achieve their long-term goals.



“I suggest that we offer a small cash settlement for past infringement and then focus our negotiations on obtaining a favorable licensing agreement going forward,” he says. “We want an agreement that doesn’t require us to filter out copyrighted works, but monitors the use of these works so that we can pay the owners of popular material more from our advertising revenues.”

And then Kent shows that he understands how to finesse the situation to promote the company’s interests.

“Ultimately, we want the plaintiffs to view FaceSpace as a partner of the copyright owners,” he says. “So we want to emphasize our ability to give them pre-release publicity and publicity interviews.”

This is exactly the type of strategic thinking, solidly grounded in the evolving law in the area, the professors have hammered home.

During the course, students read from the cases that are changing the landscape of cyberspace law, including trial testimony, deposition transcripts, expert reports, complaints, motions and court decisions.

They also learned from professors who played key roles in these cases. Malone, for example, was the lead career prosecutor in the landmark antitrust case against Microsoft, and he

shared samples of trial presentations.

Cunard is a key figure in two other cases studied during the semester. He and his firm served as defense counsel when Sony BMG was sued by customers who claimed the anticopying software on its music CDs damaged their computers. He also serves as plaintiffs’ counsel for McGraw-Hill and other publishers in their suit to prevent Google from scanning copyrighted books into a searchable Internet database and displaying snippets of them.

Students also received insiders’ views of Internet lawyering from guest speakers, including Microsoft associate general counsel Thomas Rubin and former Massachusetts Attorney General Scott Harshbarger ’68.

Palfrey notes that some of the law the students studied was developed at HLS, including a flexible online copyright licensing system, a brainchild of the Berkman Center think tank, Creative Commons.

“This class is intended to create a strong bridge between doctrine—which is taught all the time—and the reality of law on a practical level,” says Malone, a director (with Cunard) of Berkman’s Clinical Program. “We focus on the combination of substantive and strategic thinking that goes into a case from start to finish.” *

In legal scholarship, what defines staying power?



Professors David Kennedy and William Fisher offer up the 20 articles they believe have been most influential in shaping American legal thinking.

By Seth Stern '01

WHAT DOES IT MEAN to “think like a lawyer”—in particular, an American lawyer? After wrestling with that question for years, Harvard Law Professors David Kennedy '80 and William W. Fisher III '82 have

given us an anthology of the articles they believe yield the answer. “The Canon of American Legal Thought” (Princeton University Press, 2006) brings together the 20 articles they deem to have been most influential in shaping American legal thinking and a distinctly American style of reasoning across the 20th century.

Harvard Law School is well-represented throughout the

collection: A third of the articles first appeared in the Harvard Law Review. Authors include HLS professors and alumni ranging from Supreme Court Justice Oliver Wendell Holmes Jr. LL.B. 1866 and former HLS Dean Albert Sacks '48 to current Professors Duncan Kennedy and Frank Michelman '60.

Each article is introduced by an essay from Fisher or Kennedy situating “the work in the author’s trajectory and in the intellectual climate of the era,” says Fisher. The editors divide the canon of American legal thought into

eight schools, including Legal Realism, The Legal Process, Modern Liberalism, Law and Economics, and Feminist Legal Theory. While those labels are familiar to many students and practicing attorneys, Kennedy says the ideas behind them are too often reduced to mere shorthand. “Indeed, we were both struck by the intellectual sophistication with which so many of the clichés of everyday legal argument were originally formulated,” he adds.

The editors say the collection shows a rhythm that has been repeated for

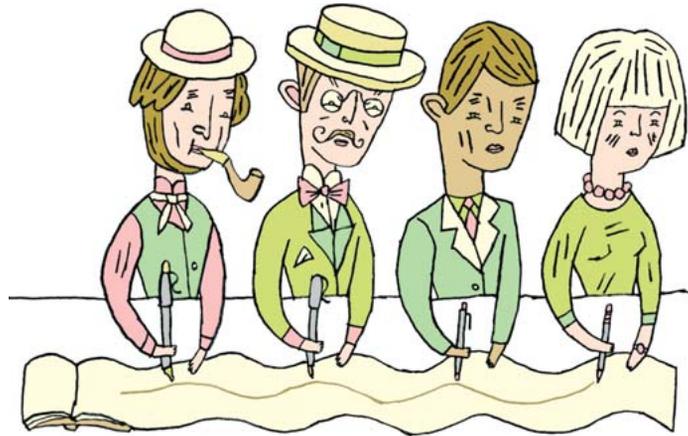
more than a century: A single idea or “orthodoxy” dominates for a while, then a “critique” follows, and finally there is fragmentation, when consensus breaks down. For example, the formal rules of classical legal thought were criticized in the early 20th century by functionalist, pragmatic and “legal realist” modes of reasoning.

After World War II, a new consensus emerged which focused on the legal process and the legitimacy of institutional arrangements. Starting in the 1960s, Fisher and Kennedy explain, the

Twenty for the ages

Kennedy and Fisher’s picks

- 1 **Oliver Wendell Holmes Jr. LL.B. 1866**, “The Path of the Law” (1897).
- 2 **Wesley Hohfeld LL.B. 1904**, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1913).
- 3 **Robert Hale LL.B. 1909**, “Coercion and Distribution in a Supposedly Noncoercive State” (1923).
- 4 **John Dewey**, “Logical Method and Law” (1924).
- 5 **Karl Llewellyn**, “Some Realism About Realism—Responding to Dean Pound” (1931).
- 6 **Felix Cohen**, “Transcendental Nonsense and the Functional Approach” (1935).
- 7 **Lon L. Fuller**, “Consideration and Form” (1941).
- 8 **Henry M. Hart Jr. '30 and Albert M. Sacks '48**, “The Legal Process: Basic Problems in the Making and Application of Law” (1958).
- 9 **Herbert Wechsler**, “Toward Neutral Principles of Constitutional Law” (1959).
- 10 **Ronald H. Coase**, “The Problem of Social Cost” (1960).
- 11 **Stewart Macaulay**, “Non-Contractual Relations in Business: A Preliminary Study” (1963).
- 12 **Guido Calabresi and Douglas Melamed**, “Property Rules, Liability Rules,



The collection shows a pattern repeated through the centuries: A single idea dominates, a critique follows, and finally, fragmentation.

- and Inalienability: One View of the Cathedral” (1972).
- 13 **Marc Galanter**, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change” (1974).
- 14 **Ronald Dworkin '57**, “Hard Cases” (1975).
- 15 **Abram Chayes '49**, “The Role of the Judge in Public Law Litigation” (1976).
- 16 **Duncan Kennedy**, “Form and Substance in Private Law Adjudication” (1976).
- 17 **Catharine A. MacKinnon**, “Feminism, Marxism, Method, and the State” (1982-1983).
- 18 **Robert Cover**, “Violence and the Word” (1986).
- 19 **Frank Michelman '60**, “Law’s Republic” (1988).
- 20 **Kimberlé Crenshaw '84, Neil Gotanda LL.M. '80, Gary Peller '80 and Kendall Thomas**, eds., “Introduction,” “Critical Race Theory: The Key Writings that Formed the Movement” (1996).

Legal Process “consensus was in turn itself shattered by the emergence of an array of methodologies associated variously with economics, sociology, liberal theory and the work of critical legal studies scholars.”

They call the years since 1960 “the emergence of eclecticism,” in which no single idea dominates. “Whether in some future moment legal consciousness will be consolidated as in the late 19th century or postwar period, it’s very hard to know.”

The collection began to take shape 15 years ago when Kennedy first offered a course at HLS on American legal thought to introduce LL.M. students—as well as second- and third-year J.D. candidates—to the ideas behind the first-year curriculum. Fisher became involved when the two professors compiled a “canonical list” for a summer workshop series for new law teachers. As Kennedy and Fisher consulted widely, the list evolved. The articles that made the final cut are those that garnered the most consensus, that have been taught most successfully and that seem to stand most clearly for methodological innovation.

They hope the collection will be useful to many audiences. “The most obvious one,” says Fisher, “is law students hungry for immersion in the theoretical materials of which they ordinarily get snippets in their classes. Those tend to be unsatisfying because they are not connected to full-blown arguments.”

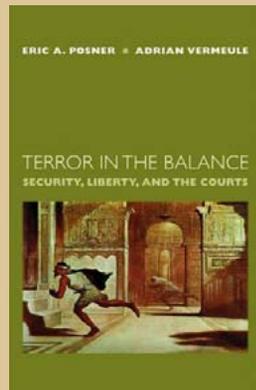
Kennedy says the book should also prove helpful to law professors “who are presumed to know these texts but may never have read them whole or with bibliographical notes.” Finally, he adds, he hopes there’s a broader audience among lawyers: “The volume can take them back to the best days of law school” and give them occasion “to reflect on whether what they learned still makes sense.” *

For stories about other books by HLS faculty, go to www.law.harvard.edu/intellectual-life/ideas.php.

Recent Faculty Books

In “Terror in the Balance: Security, Liberty, and the Courts” (Oxford University Press, 2007), **Professor Adrian Vermeule ’93** and **Eric Posner ’91** caution against burdening the executive branch with too

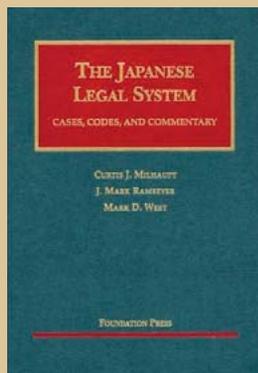
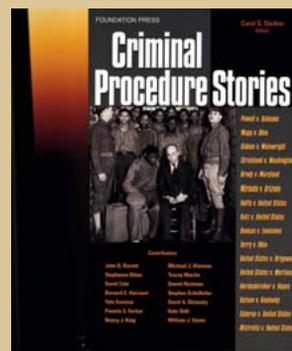
many legal and procedural rules in times of war, saying that legislators and courts should not restrict the ability of the executive to make emergency decisions. The authors argue that executive performance during emergencies is not likely to be worse than during normal times, and that emergency conditions hamper congressional and judicial decision-making more than they hurt executive action.



“Criminal Procedure Stories” (Foundation Press, 2006), edited by **Professor Carol Steiker ’86**, presents the stories behind

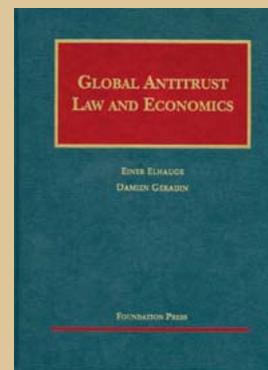
the major Supreme Court rulings that have shaped criminal procedure. **Professor William J. Stuntz** is a contributor to the volume. In her introduction, Steiker sets the tone with the question, “Who would have thought that the pornographic pencil doodle seized by the police from Dollree Mapp would lead to the incorporation of the

Fourth Amendment exclusionary rule, or that Paul Hayes’ bad check to the Pic Pac grocery store would launch a thousand pleas?”



Professor J. Mark Ramseyer ’82, Curtis J. Milhaupt and Mark D. West are co-editors of “The Japanese Legal System: Cases, Codes, and Commentary” (Foundation Press, 2006). Drawing from sociology, anthropology, law and economics, the book addresses a wide range of subjects related to the Japanese legal system.

In their new casebook, “Global Antitrust Law and Economics” (Foundation Press, 2007), co-editors **Professor Einer Elhaage ’86** and Damien Geradin survey U.S. and foreign antitrust laws and make the argument that a growing body of laws from many countries must be consulted and obeyed by companies doing business globally. Competition law is increasingly international in scope, they contend, and lawyers practicing in this area must look well beyond the antitrust regimes of their own countries in order to properly advance the interests of their clients, especially multinational companies.



██████████
ARE U.S. corporations
regulated too much? *Are they
not regulated enough?*

WHAT'S SO lucky about
"lucky grants"? *And who
ARE "Lucky CEOs"?*

WHAT'S A Bebchuk Bylaw?
Who IS Bebchuk, anyway?

SHOULD executive pay
depend on performance?

DOES CORPORATE
accountability hurt
the bottom line? *Should
shareholders have more power?*

WHO IS HARMED when U.S.
capital markets lose ground
to foreign markets?

These and other
questions are
taken up in
the pages that
follow, with a
liberal dose
of acronyms,
such as

GG
SOX
LBO
M&A
NASDAQ
TSE
LLC
CFO
and
HLS/PCG*



Harvard Law School's Program on Corporate Governance →

Lucian
Bebchuk
is
trying
to
change
the
way
corporations
are
governed

the shareholders'

cham

By Elaine McArdle PHOTOGRAPHS BY KATHLEEN DOOHER

**UNASSUMING BUT
EFFECTIVE**, Lucian
Bebchuk is having
an impact in board-
rooms nationwide—
and beyond.



●
pion



FOR ANYONE WHO FOLLOWS FINANCIAL NEWS, it's becoming harder to miss the name or influence of Lucian A. Bebchuk LL.M. '80 S.J.D. '84, the director of Harvard Law School's Program on Corporate Governance.

In a single week this past December, for example, stories about a new study co-written by Bebchuk appeared in *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *the Financial Times*, *the Guardian* and other newspapers around the world. Another study issued a month earlier garnered similar attention. In the past few years, as concern over corporate governance has grown, Bebchuk's research—extensive empirical studies as well as scores of theoretical and policy articles—has been at the heart of discussions over executive pay, corporate elections, takeover defenses and shareholder proposals.

For shareholders and others seeking expert guidance on restructuring corporate administration in a post-scandal world, Bebchuk has become the go-to guy—as close as a corporate law professor can get to attaining rock-star status. “He’s the Elvis Presley of shareholder activism,” says Theodore Mirvis '76, a prominent mergers-and-acquisitions litigator.

to those who know him well, it's a blend of law, economics and empirical rigor—fueled by seemingly inexhaustible energy and boundless curiosity—that has been apparent since he arrived at HLS from Israel as a graduate student in 1978. He pursued his LL.M. and S.J.D. while also getting a master's degree and a Ph.D. in economics from Harvard, and he was appointed to the prestigious Harvard Society of Fellows.

From the start, he drew on his training in both law and economics. His framework for analyzing how parties make litigation and settlement decisions based on imperfect information became the standard tool of analysis, and it has remained so

for the past two decades. His option-based mechanism for smoothly resolving Chapter 11 reorganizations was described as “ingenious” by noted economists Aghion, Hart and Moore, who built on it in their subsequent work.

An early opportunity set Bebchuk on the path to corporate governance. “I got into this field by chance,” he says. “I was a graduate student doing research on the jurisprudential dimensions of economic analysis of law under Professor Frank Michelman's supervision, when Professor Victor Brudney suggested that I use my economics knowledge to write a reply to a just-published Harvard Law Review article on takeover defenses by Easterbrook and Fischel.” The Review took the unusual step of publishing a piece by a student, and later that year the Stanford Law Review published a follow-up exchange on takeover policy among Bebchuk, University of Chicago Law Professors Easterbrook and Fischel, and Stanford Professor Ronald Gilson. The

For shareholders and others seeking expert guidance on restructuring corporate administration in a post-scandal world, Bebchuk has become the go-to guy.

In the space of just a few months, Bebchuk has testified before the U.S. Senate and the House of Representatives; written op-ed articles for *The Wall Street Journal*, *The New York Times* and *the Financial Times*; provided expert opinions in a variety of matters; and participated in an amicus brief filed in a Second Circuit case, *AFSCME v. AIG*, establishing the right of shareholders to introduce a proposal for shareholder access to a company proxy card. In each of the past four years, he has had one or more articles on the list of the 10 best corporate law articles selected by a national poll of corporate law faculty. The Social Science Research Network ranked Bebchuk first among all law professors in all fields in terms of how much his work has been used by its members.

And he recently persuaded several top American corporations to make their bylaws more shareholder-friendly.

What makes Bebchuk so influential? According



BEBCHUK WANTS
boards to be less
insulated from what
he calls “the disci-
pline of the market.”

Harvard and Stanford exchanges became corporate law classics, and Bebchuk was in the field to stay. He joined the HLS faculty in 1986 and received tenure in 1988.

In the years since, his work has led him to the view that corporate boards are insufficiently accountable to shareholders and that corporate governance could be considerably improved, with benefits to investors and the economy, by strengthening shareholder rights. To this end, he advocates making it easier for shareholders to replace directors via proxy contests. He is a staunch advocate of shareholder access to the ballot—an issue that has been on the SEC agenda for the last several years. In “The Myth of the Shareholder Franchise,” an article based on his Raben lecture at Yale Law School, he offers a detailed blueprint for reforming corporate elections to give shareholders real power to replace directors.

Bebchuk also supports making boards less insulated from “the discipline of the market” by lowering the array of anti-takeover defenses that incumbents have erected over time. And he calls for expanding the role of shareholders in governance arrangements. In a 2005 Harvard Law Review article, “The Case for Increasing Shareholder Power,” he identifies the costs resulting from directors’ control over the rules that govern their own election and behavior, and he argues for giving shareholders broader power to initiate rule changes.

BEBCHUK HAS BUILT THE CASE for his proposed reforms partly on his empirical work—for example, demonstrating the costs to shareholders of staggered boards, which he views as a major impediment to director removal via takeover or proxy contest. A study he conducted with HLS Professors John Coates and Guhan Subramanian ’98 found that staggered boards don’t benefit the shareholders of takeover targets but rather reduce the expected stock returns they capture. A subsequent study by Bebchuk and Alma Cohen showed that staggered boards are correlated with lower firm value in general. These findings led the investment firm TIAA-CREF to adopt voting policies disfavoring staggered boards and have contributed significantly to the movement to dismantle them at a variety of

companies, says HLS Professor Robert Clark ’72, who has served on the TIAA board.

Although Bebchuk argues that substantial legal reform is necessary, he also believes that investors can accomplish significant governance improvements in publicly traded companies by using their right to amend corporate bylaws—a right that has been thus far little used. He recently started developing model bylaw provisions designed to improve investor protection. “I could have put forward my ideas on how this could be done through an article,” he says, “but I thought that an alternative way of doing so would be by submitting my model bylaws as shareholder proposals in some companies.”

Following his submission of proposals, Bristol-Myers Squibb, AIG and, most recently, Home Depot agreed to amend their bylaws along the lines he proposed. At several other companies, his proposals went to a vote, garnering substantial levels of support—more than 40 percent in some cases, an unusual outcome for proposals that were both novel and binding.

The model bylaw that has attracted the most attention concerns the “poison pill”—a device that boards can use to prevent shareholders from accepting an attractive premium offer a bidder has made for their shares. There has been a long-standing debate over whether state laws allow shareholders to adopt bylaws that limit board use of pills. “The pill bylaw I designed,” says Bebchuk, “seeks to reduce the potential costs of pills to shareholders but in a way that is consistent with both the letter and the spirit of state law.” In an article titled “The Bebchuk Bylaw,” The M&A Journal quoted a renowned litigator as saying: “It’s brilliant. Devilish. But brilliant.”

When CA Inc. (formerly Computer Associates) attempted to exclude Bebchuk’s pill bylaw proposal from its ballot, Bebchuk took the case to the Delaware Court of Chancery. He won a decision that forced CA to place the proposal on the ballot and that would preclude companies from excluding such proposals in the future. His bylaw proposal went on to obtain 41 percent of the vote, an outcome that induced the

board to adopt a shareholder-friendly pill whose terms would allow shareholders to vote to remove the pill.

Bebchuk has also zeroed in on the subject of executive pay. In 2004, he and Jesse Fried ’92 published a book, “Pay without Performance: The Unfulfilled Promise of Executive

“The flaws of executive pay packages reflect structural problems in underlying governance arrangements.”
—Lucian Bebchuk

as china privatizes, corporate governance will be critical, says a key player

new rules for a tiger

In the past, state-owned Chinese banks were known for bad loans and poor corporate governance. Recently, four of these institutions went public, with one IPO raising a record \$21.9 billion. International investors have proved eager to buy shares, although the government retains a controlling interest.

For a take on these financial institutions' transformation, the Bulletin went to an HLS alumnus (and a former student of Professor Lucian Bebchuk's) who has an insider's perspective. Bo Li '99 serves as deputy director general of the Legal Affairs Department of the People's Bank of China, the country's central bank and the coordinating agency in state banking reform.

As government-owned banks become publicly traded, how are corporate governance factors taken into account?

In the past two decades, China has been promoting joint-stock reforms in state-owned enterprises with corporate governance at its core aimed at maximizing shareholders' value. Reforms of state-owned banks are no exception. The reforms usually follow the same sequence. First, a state-owned bank is financially restructured by receiving additional capital from the government and stripping off nonperforming loans with the government's assistance. Second, the bank is corporatized by becoming a joint-

stock company with shareholders, a board of directors, a board of supervisors and management. Third, international and domestic strategic investors are invited to invest in the bank. Fourth, the bank is listed in Hong Kong (with simultaneous private placement in the U.S. and Europe) and, in some cases, listed in the domestic A-share market in Shanghai. Establishing and improving corporate governance is a crucial aspect of the second, third and fourth steps. Fifth, throughout (and after) the above process, the bank goes through various organizational, operational, cultural and other restructurings and reforms, with the goal of becoming

a truly well-managed, market-oriented and profit-making entity. The fifth step, still under way for all such banks, is the hardest and may take the longest time. Corporate governance reform is still ongoing.

In this process, we have been facing several challenges. First, how to distinguish between the government's role as an owner-shareholder of the bank and its role as a regulator of the bank. Second, how should the government, as an owner-shareholder of the bank, exercise its shareholder rights? Third, how to make the bank a truly market-oriented institution. We see a proper system of corporate governance as an important part of the solution to the challenges.

More broadly, what are the biggest corporate governance challenges facing publicly traded companies in China? How could the situation be improved?

Generally, there is a lack of appreciation of shareholders' value in publicly traded companies. Board and management do not pay enough attention to share-

holders' value, and minority shareholders are particularly vulnerable to abuses of controlling shareholders and management. The stock market as a means of corporate governance is not well-developed. There is a lack of effective legal remedies for wronged shareholders.

China's company law was substantially amended in 2005. Several legal mechanisms designed to protect minority shareholders and creditors, including derivative suits, piercing the corporate veil and cumulative voting, have been incorporated into the amended company law. The effectiveness of such mechanisms remains to be seen. China is also in the process of drafting its first property law, which is expected to be enacted in 2007. These new laws will help build a good legal foundation for sound corporate governance practices in China. In addition to the legislative efforts, government agencies and market participants are helping improve corporate governance in public companies. Market forces will play an important role. *



SEA CHANGE COMING:

Bo Li '99 studied corporate governance with Lucian Bebchuk. Today he is a key player in the privatization of China's banking sector.

Martin Lipton says Bebchuk is “one of the most brilliant people in the academic world ... but we are just on diametrically opposite paths.”

Compensation” (Harvard University Press), providing a comprehensive account of how boards have failed to negotiate at arm’s length with executives. The book details how pay practices have decoupled compensation from performance and camouflaged both the amount and what Bebchuk calls the “performance-insensitivity” of pay. The Washington Post called it a “devastating critique of the way public companies pay their executives.” Nobel Laureate Joseph Stiglitz predicted the book “will shape debates ... for years to come.”

Bebchuk views “Pay without Performance” as an integral part of his work on corporate governance. “The flaws of executive pay packages analyzed in the book are ones that reflect structural problems in underlying governance arrangements,” he says. “These flaws can be fully addressed only by improving directors’ incentives to focus on shareholder interests, which strengthening shareholder rights would do.”

SINCE WRITING THE BOOK, Bebchuk has been conducting further empirical studies on executive pay. In a widely noticed study co-written with Yaniv Grinstein, he analyzed how much CEO pay has grown since 1993 beyond what could be explained by changes in firms’ earnings and other characteristics. His empirical study with Robert Jackson ’05 was the first to document systematically the large sums of nonperformance executive compensation via pension plan arrangements not disclosed to investors.

This winter, Bebchuk’s empirical work shed new light on the option backdating scandals. “Lucky CEOs” and “Lucky Directors,” two studies he co-wrote with Grinstein and Urs Peyer, examined the incidence of “lucky grants”—options awarded at the lowest price of the month—that could not be explained by sheer luck. “Lucky CEOs” demonstrated the link between CEO lucky grants and factors associated with CEO influence on internal decision-making. “Lucky Directors,” which, according to the Financial Times, opened a “new front” in the examination of the subject, provided the first evidence that opportunistic timing affected not only executives’ grants but also grants awarded to outside directors.

Bebchuk’s calls for reform have struck a nerve, and he has no shortage of critics. Last year, for example, the Harvard Law Review published responses by Vice Chancellor Leo E. Strine Jr. of the Delaware Court of Chancery and UCLA’s Stephen

Bainbridge to Bebchuk’s arguments for a greater shareholder role in governance arrangements. This spring the Virginia Law Review will publish five responses by prominent practitioners and academics to Bebchuk’s “The Myth of the Shareholder Franchise.”

Even critics who strongly disagree with Bebchuk appear to appreciate the rigor of his work. Martin Lipton, founding partner of Wachtell, Lipton, Rosen & Katz and one of the country’s top corporate lawyers, says that Bebchuk “is one of the most brilliant people in the academic world, particularly with regard to corporate law, but we are just on diametrically opposite paths with regard to most of the issues he’s concerned with.” Lipton has written replies to Bebchuk’s work on election reform and takeover policy.

Bebchuk welcomes engagement with his ideas, and his academic stature has only grown as his work has generated debate. When the American Academy of Arts & Sciences elected him a member in 2000, it cited him as “one of the nation’s leading scholars of law and economics,” who “has made major contributions to the study of corporate control, governance and insolvency.” Last year, he became president-elect of the American Law and Economics Association.

“Lucian has had significant influence on the corporate law field not only through his writing but also through his students,” says Columbia Law School Professor Jeffrey Gordon ’75. Bebchuk has long invested in mentoring HLS students and fellows aspiring to become academics, and many of them now hold teaching positions at law schools including Harvard, Yale, NYU, Berkeley, Chicago, Michigan, Virginia and Penn. One former student, Bo Li ’99, is an architect of the privatization of China’s banking sector (see sidebar, p. 19) and says studying under Bebchuk was formative.

Bebchuk says that, as a student, he benefited greatly from the mentoring of Victor Brudney and learned how valuable mentorship can be: “My debt to Victor is large and can never be repaid. It can only be—with luck—partly passed on to others.” *

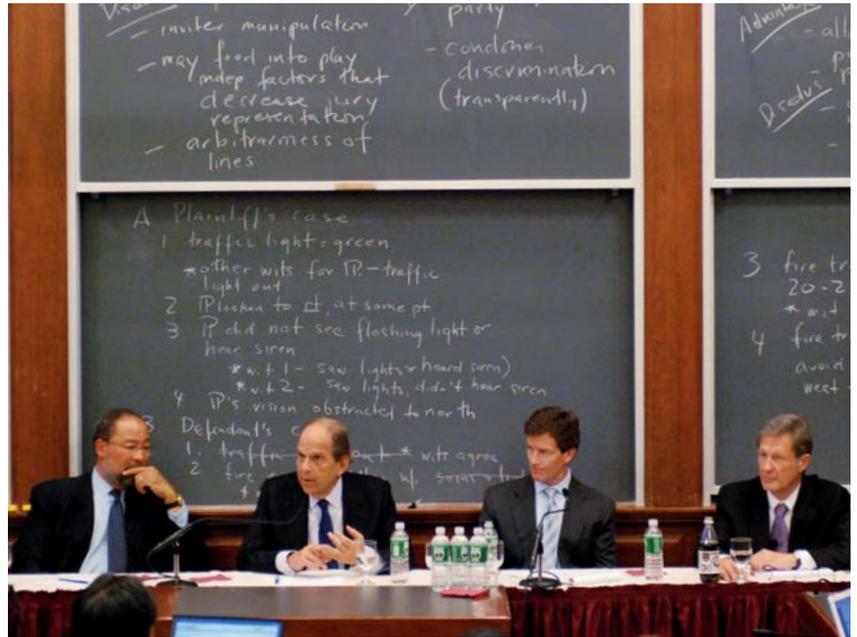
Elaine McArdle is a freelance writer. Her feature on managing the legal profession appeared in the Fall 2006 Bulletin.

A new program represents a merger of classrooms and boardrooms
reaching out to practitioners and policy-makers

One of the main goals of the recently established **Program on Corporate Governance** is to strengthen ties between academia—especially HLS—and the worlds of practice and policy-making.

The program has established a board of advisers made up of prominent practitioners in the corporate governance area. Its members are **Peter A. Atkins '68** (Skadden, Arps, Slate, Meagher & Flom); **Joseph E. Bachelder '58** (Bachelder Law Offices); **Byron S. Georgiou '74** (Lerach Coughlin Stoia Geller Rudman & Robbins); **Robert V. Mendelsohn '71** (former CEO, Royal and Sun Alliance Insurance Group); **Theodore N. Mirvis '76** (Wachtell, Lipton, Rosen & Katz); **Robert A.G. Monks '58** (Lens Governance Advisors); **James C. Morphy '79** (Sullivan & Cromwell); **Toby S. Myerson '75** (Paul, Weiss, Rifkind, Wharton & Garrison); **Eileen T. Nugent** (Skadden); **Paul K. Rowe '79** (Wachtell, Lipton); and **Rodman Ward Jr. '59** (Skadden). All have already participated in corporate governance events at HLS.

“Being able to draw on the advice and perspective of such a distinguished group is invaluable for the



program,” says Program Director Lucian Bebchuk LL.M. '80 S.J.D. '84. “Both faculty and students have learned much from their visits.”

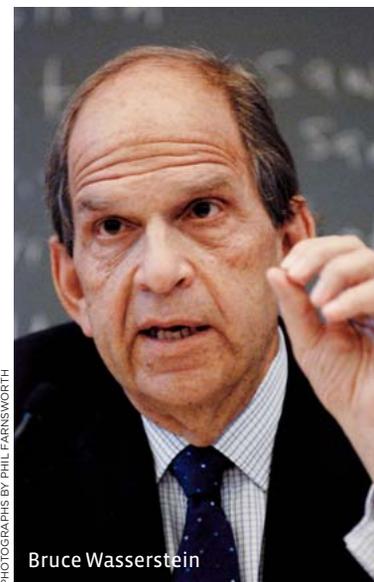
The program is also able to draw on Harvard Law School’s corporate law faculty. “We have an exceptionally strong pool of talent in this field,” says Dean Elena Kagan '86, “and facilitating connections between them and practitioners and policy-makers creates real synergies.”

Last fall, the program sponsored a series of events organized by HLS Professor Robert Clark '72 and Lecturer Leo E. Strine Jr., vice chancellor of the Delaware Court of Chancery, that brought many prominent practitioners to HLS. One panel focused on the recent takeover battle between Time Warner and Carl Icahn, assembling most of the key players in the contest—including Time Warner CEO Richard Parsons and Lazard’s CEO Bruce Wasserstein '70. Another panel focused on shareholder activism, with a debate between Martin Lipton (founding partner of Wachtell, Lipton, Rosen & Katz), Morphy and Bebchuk. Atkins lectured on the future of mergers and acquisitions.

Video recordings of these and other events, as well as more information about the program, are available at the program’s Web site: www.law.harvard.edu/programs/olin_center/corporate_governance/. *

DEBRIEFING:

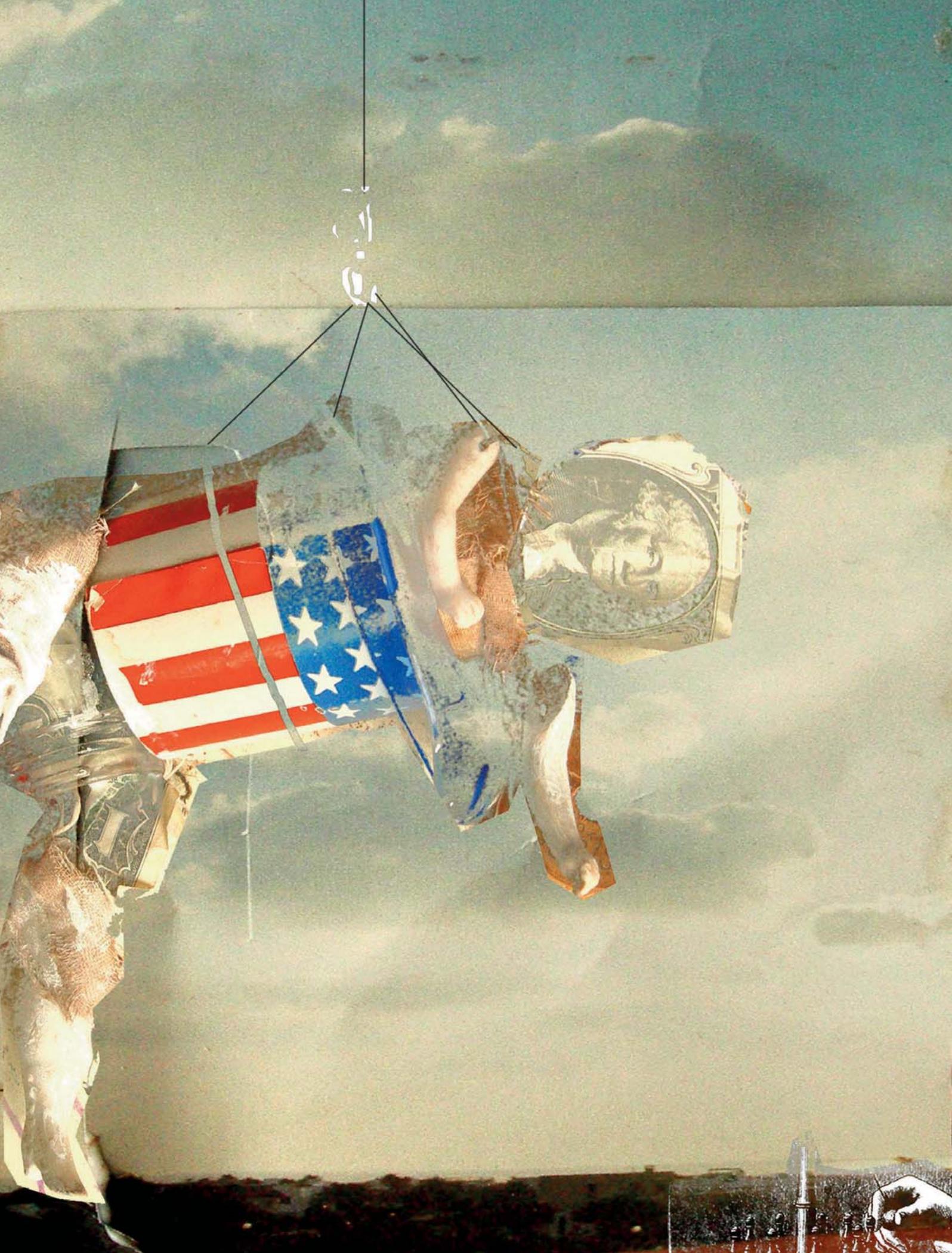
(Above, from left) Time Warner CEO Richard Parsons listens as Lazard CEO Bruce Wasserstein '70 discusses the Time Warner takeover battle, along with Gene Sykes of Goldman Sachs and Professor Robert Clark '72.



PHOTOGRAPHS BY PHIL FARNSWORTH

Bruce Wasserstein





U.S. capital markets are being dragged down by foreign competition. But we aren't playing by the same rules.

Endgame?

By Michelle Bates Deakin ILLUSTRATIONS BY POLLY BECKER

On a snowy February evening in 2006, a small group of luminaries in the world of international finance gathered for dinner at the Harvard Club in New York City at the invitation of Professor Hal Scott, director of Harvard Law School's Program on International Financial Systems.

His guests included R. Glenn Hubbard, dean of the Columbia Business School; John Thornton, chairman of the board of the Brookings Institution and former president of the Goldman Sachs Group; Donald L. Evans, CEO of the Financial Services Forum and former U.S. secretary of commerce; and Kenneth C. Griffin, managing director and CEO of Citadel Investment Group.

The conversation focused on a single topic: Had the United States lost its competitive edge among the world's capital markets because of overly burdensome regulation and litigation?

Scott and his companions fretted over the fact that companies are increasingly going public in the London and Hong Kong exchanges rather than in the U.S. Possible reasons include the stringent reporting requirements of Section 404 of the Sarbanes-Oxley Act—passed by Congress after corporate accounting scandals at companies such as Enron and World-

reforming financial reform

SOME OF THE COMMITTEE'S KEY RECOMMENDATIONS

SHAREHOLDER RIGHTS

- Classified boards of directors (who serve terms of different, staggered lengths, making hostile takeovers more difficult) should be required to obtain shareholder authorization to adopt "poison pill" strategies for discouraging hostile takeovers.
- Shareholders should enjoy majority, rather than plurality, voting.
- To reduce the high costs of litigation, shareholders should be given the chance to decide how disputes with their companies should be resolved, such as through arbitration or nonjury trials, which are less expensive than jury trials.

THE REGULATORY PROCESS

- The SEC and self-regulatory organizations, such as the National Association of Securities Dealers, should apply a cost-benefit analysis to new rules.
- The SEC should periodically assess existing rules to ensure they still meet reasonable cost-benefit standards.
- Public enforcement bodies such as the SEC, the Justice Department, and state securities commissions and attorneys general should coordinate their activities and make sure there is federal precedence when enforcement implications are national in scope.

PUBLIC AND PRIVATE ENFORCEMENT

- There should be greater clarity for private litigation under SEC Rule 10b-5, which prohibits the use of any measure to defraud, make false statements or otherwise deceive someone else during stock or securities transactions.
- Criminal enforcement against companies should be a last resort, and the law should not hold outside directors responsible for corporate malfeasance that they cannot possibly detect.
- The SEC should protect outside board members against liability from relying in good faith upon the validity of audited financial statements.
- Congress should explore protecting audit firms against catastrophic loss through the provision of caps or safe harbors, as do some European countries and as the European Union is considering. However, any such protection must be balanced by stiff action against those responsible for misconduct.

SARBANES-OXLEY

- The SEC should adopt a more reasonable "materiality standard" both for internal controls and financial statements.
- The SEC and the Public Company Accounting Oversight Board (a private-sector, nonprofit corporation created by SOX to oversee the auditors of public companies) should adopt enhanced guidelines on auditors' roles and duties in testing for compliance with Section 404.
- Small companies should be exempt from auditor attestation and be subject to a more reasonable standard for management certification, if a revised Section 404 is still too burdensome.



From a blue-ribbon panel, a slate of prescriptions for improving the health of U.S. capital markets

Com—and the burden of the U.S. litigation system.

The numbers were hard to ignore, they found. In 2005, only 5 percent of the money raised through global initial public offerings of stock was raised in the United States, compared to 50 percent in 2000. The U.S. share of equity capital raised in the world's top 10 economies was an anemic 27.9 percent in 2006, down from 41 percent in 1995. And private equity firms—almost nonexistent in 1980—sponsored more than \$200 billion of capital commitments in 2005 alone.

The immediate effects of a decline in U.S. capital markets are felt primarily on Wall Street. Once a market begins to lose its competitive position, the exodus of talented financial professionals begins, making the other markets even stronger. And, said Scott, “Once a market moves abroad, it is very difficult to get it back.” But Scott believes it's not just Wall Street or Fortune 500 companies that will be affected. Without a vibrant domestic capital market, some U.S.

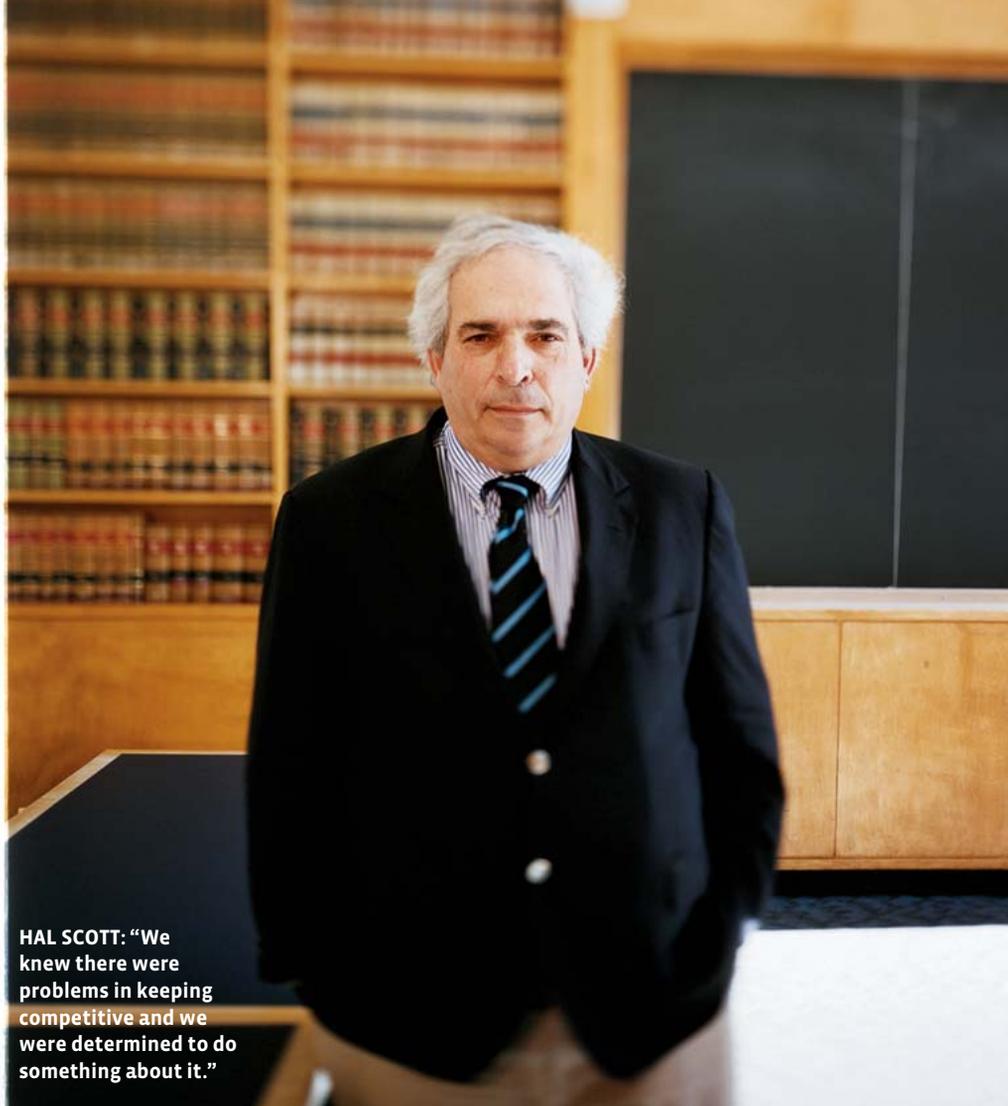
companies would not have access to capital markets at all—particularly smaller companies, which are steady incubators of jobs and wealth for the U.S. economy.

Scott and his guests believed they were witnessing a crucial moment in economic history. “We knew there were problems in keeping competitive in [this] area and we were determined to do something about it,” he said. They agreed to be the steering committee of a new group, which they called the Committee on Capital Markets Regulation.

The steering committee recruited members for what it hoped would be an influential, blue-ribbon team to examine the problem. “We never planned for this to be a purely academic exercise,” said Scott. “We felt it was not worth doing unless people believed it was going to have an impact.”

The panel they assembled included “the best and the brightest out there who had thought for years about these issues,” Scott said. CEOs Samuel DiPiazza Jr. of PricewaterhouseCoopers, Steve Odland of Office Depot, William Parrett of Deloitte and Jeffrey M. Peek of CIT Group were part of the group. Noted academics also joined the committee, including Peter Tufano of Harvard Business School and Luigi Zingales of the University of Chicago Graduate School of Business.

In September, when the committee formally



HAL SCOTT: “We knew there were problems in keeping competitive and we were determined to do something about it.”

announced that it would conduct a major study of how to improve the competitiveness of the U.S. public capital markets, the new treasury secretary, Henry M. Paulson Jr., announced his support of the project and his keen interest in the panel's anticipated report and recommendations.

Paulson's support was important, but Scott and his colleagues knew they would need to capture the attention of other Washington policy-makers, too. To do that, timing would be key. New initiatives typically attract most attention after an election and before the new Congress returns. That meant an early November release of the report would be optimal, to have a chance at earning a spot on the calendars of legislators and regulators alike. And that gave the committee just two months to craft a plan for reform.

Working groups were divided into four areas of study: shareholder rights, the regulatory process, public and private enforcement, and Sarbanes-Oxley. HLS Professor Allen Ferrell '95 was assigned primary responsibility for the shareholder rights section of the report. His colleague Professor Reinier Kraakman worked on the enforcement portion. And Robert Glauber, visiting professor of international financial systems at HLS, was tasked with writing the section on the regulatory process. >> 27

in d.c., no rush to roll back “sox”

SARBANES MAKES HIS EXIT, BUT HIS LAW MAY BE HERE TO STAY

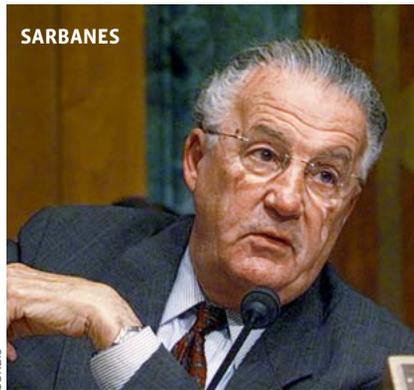
A year ago, it looked as if the Sarbanes-Oxley Act might face a serious overhaul after its two principal authors, Rep. Michael Oxley (R-Ohio) and Sen. Paul Sarbanes '60 (D-Md.), retired from Congress at the end of 2006.

Business groups complained that the accounting oversight requirements of the landmark law enacted in 2002 were too costly, and started lobbying Congress for changes.

They took aim at the law's most controversial provision, Section 404, which requires companies to adopt financial reporting controls, submit to outside auditors and report annually on the effectiveness of those controls.

Many Washington observers predicted that the business community would gain an important new ally in rolling those requirements back, when Christopher Cox '76 ('77) left Congress to become the new chairman of the U.S. Securities and Exchange Commission in 2005.

But as Sarbanes' tenure in the Senate ended in December, the legislation bearing his name appeared on firmer ground. And he could largely thank Cox and fellow HLS alum Barney Frank



CORBIS

'77, who became chairman of the House Committee on Financial Services this year following the Democratic takeover of Congress.

Frank and his Senate counterpart, Connecticut Democrat Christopher J. Dodd, the new Banking Committee chairman, have both indicated they believe legislation isn't needed to address concerns that the law's auditing requirements are too burdensome on small companies.

"I had already told Chris Cox and Mark Olson of the Public Company Accounting Oversight Board that we hoped they would use their statutory authority to reduce the amount that companies have to certify under Sarbanes-Oxley," Frank told reporters in December. "I

think there's a general consensus: You can preserve the principles of Sarbanes-Oxley without exempting anybody, but by making it much less burdensome."

Cox has shown himself less intent on deregulating than some observers predicted. During testimony before Congress in September

2006, he hinted that he didn't believe any major overhaul of the law was necessary. "The Act is not perfect in every respect," Cox told the House Committee on Financial Services. "But the vast majority of its provisions are net contributors to the nation's economic

health."

That tempered response was reflected in December, with the announcement of modest proposed new rule changes by the SEC and the Public Company Accounting Oversight Board, the independent agency created by Sarbanes-Oxley to be a watchdog of the accounting industry. In less than a week, both the SEC and PCAOB proposed looser interpretations of how the auditing provision should be applied to smaller companies.

Business groups, which had pushed for broader exemptions for smaller businesses, nonetheless reacted positively to the announcements. Consumer groups suggested that the changes could further dampen the rush for legislation.

But that doesn't mean corporate governance won't be on Congress' agenda this year. Frank is expected to press the issue of excessive executive compensation. And observers predict that many of the recom-

mendations of HLS Professor Hal Scott's Committee on Capital Markets Regulation may wind up being introduced as legislation individually or collectively.

One wild card remains Democratic Sen. Charles E. Schumer '74 of New York, who has blamed Sarbanes-Oxley for making American financial centers less competitive globally.

But as Sarbanes ended his Senate tenure, he seemed confident that investor pressure will help to ensure the survival of his signature accomplishment. Congress and regulators, he told the Bulletin, "seem to be working in the right direction" by "sustaining the objectives of the



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legislation, but if there are needless burdens, [doing] something about it."

Entering the Senate chamber for one of his final votes, he asked a reporter, "Would you invest your money in a company that didn't have financial controls?" He added that he won't abandon his stake in the issue: "I don't lose all my interest in public policy issues simply because I'm retiring from the Senate. This has been my life's work, and I remain interested in it." *

—Seth Stern '01



CORBIS

<< 25 “It was a whirlwind,” said Scott. “And if I hadn’t been at Harvard Law School, this couldn’t have been done.” The project was aided by a team of 10 Harvard Law students. “They went into this 24/7,” he said, “researching, proofing, editing, going to meetings, taking notes. It was extraordinary. In terms of mobilizing people, there is nothing to compare with the platform of HLS, with its size, talent and depth.”

The committee released its 135-page report on Nov. 30, 2006. It made 32 recommendations in the four key areas it examined (see sidebar, p. 24), with the twin goals of reducing overly burdensome regulation and litigation while enhancing shareholder rights. “As shareholders are able to take more control over companies in which they are stakeholders, regulation can be more targeted,” the authors explained.

Washington began to take notice immediately. Scott traveled to the Capitol in early December as Congress was rearranging itself after the Democrats gained control of both houses. He met with the new chairmen of the House and Senate financial services committees.

In the House, Barney Frank ’77, the ranking member of the Committee on Financial Services, expressed an interest in holding hearings this year on capital market competitiveness. On the Senate side, Christopher J. Dodd of Connecticut, the new chairman of the Banking Committee, said the report “makes a valuable contribution to our ongoing examination of international competitiveness, and I intend to review this report thoroughly in the coming days.” Dodd indicated an interest in holding hearings as well.

But it wasn’t welcomed in all quarters. Gov. Eliot Spitzer ’84 of New York, who rose to national prominence battling fraud on Wall Street when he was the state’s attorney general, warned that the recommendations would weaken the power of regulators and prosecutors. Scott replied: “Spitzer’s concern was about our proposed limitations on state regulation of capital markets through their enforcement powers—but we can’t let 50 states’ attorneys general regulate a national market of such importance.”

Scott is hopeful the report will attract the interest of the President’s Working Group on Financial Markets. Headed by Secretary Paulson, it counts among its members the chairmen of the Federal Reserve Board, the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission. “We’ve sent a letter to the president asking him to issue an executive order asking the group to look at this problem and make a recommendation,” said Scott.

“The timing for the report is great,” he added, noting that some had feared that a Democrat-controlled Congress might not take an interest in its findings. “My read is the opposite of that. The Democrats can now



Oscar Hackett, Pengyu He and eight other HLS students “went into this 24/7,” said Professor Scott.

claim credit for being part of the solution.”

The students who were involved in the panel’s work said the experience was invaluable. “It was the highlight of my first semester,” said 1L Oscar Hackett. Before matriculating at HLS, Hackett worked for Deutsche Bank for three years. He appreciated the chance to rub elbows with professionals in the top echelons of finance and was impressed that Scott fielded calls from the White House during their meetings. “I came here to get involved in this sort of work, where I could potentially have an immediate impact on the U.S. economy,” Hackett said.

Pengyu He, a 3L from China, got involved in the project after an earlier research effort with Scott that examined why Chinese companies avoid U.S. capital markets. He said both projects “have been very illuminating in gaining a comparative view of markets. I’m very indebted to Professor Scott. I have learned a lot about his vision, and I like the combination of research and real-world issues.”

Scott isn’t idling as he waits for Washington’s attention. In December, he traveled to Europe to convey the report’s message at the behest of U.S. Ambassador to the European Union C. Boyden Gray. “If we reform our system and make it more like Europe’s, in the long term it will benefit everyone,” said Scott. “Then we can sit down and deal with the rules globally, instead of competing on the legal rules. To get to that, our rules have to be closer to theirs. If we’re successful in this effort, that will happen.” *

Freelance writer Michelle Bates Deakin is author of “Gay Marriage, Real Life: Ten Stories of Love and Family” (Skinner House Books, 2006).

the view from the boardroom

RUNNING A CORPORATION IN THE POST-ENRON ERA

When Jim Clark, chairman of online photo sharing giant Shutterfly, resigned from his company's board of directors in January, he became the first CEO to blame the Sarbanes-Oxley Act for his departure, saying the law had taken reform too far and had crimped his ability to lead.

Here, the Bulletin asks corporate leaders and top lawyers for some views on managing in the era of Sarbanes-Oxley, heightened regulatory scrutiny and shareholder activism.



JOHN C. WILCOX '68 is senior vice president and head of corporate governance at TIAA-CREF. "Shareholders should have certain fundamental rights. I advocate strongly on behalf of majority voting in elections. Our system has basically held back on basic shareholder rights, such as the right to vote against directors, requirements for majority vote and the right to call special meetings. If these adjustments are made, shareholders are going to behave differently than they have in the past. I think the confrontational nature of the relationship between shareholders and companies in this country is the result of the way securities laws are written. That will change for the better and will become less confrontational as rights are more balanced and accountability is increased."

LAURA STEIN '87 is senior vice president, general counsel and corporate secretary of Clorox Corp. “Sarbanes-Oxley has generally had a positive impact on Clorox. It has helped enhance corporate governance practices and controls to protect shareholder value. Consumer packaged goods companies, like Clorox, have long acted in a manner to protect their reputations and brands in the eyes of consumers, and Sarbanes-Oxley has reinforced what companies already should have known—integrity in the tone at the top and doing the right thing will protect shareholder value. But Sarbanes-Oxley has also increased complexity and cost and has led to some non-value-added bureaucracy. I have spoken to colleagues in foreign companies who will no longer access the U.S. capital markets, and we also see many companies going private and more top executive talent being attracted to private companies, to avoid the cost and complexity of Sarbanes-Oxley.”



GERALD L. STORCH '82 became the chairman and CEO of Toys R Us in February 2006 after a dozen years at Target Corp. "If you are a disciplined company, then there is very little not to like about Sarbanes-Oxley's rules. I don't necessarily agree with every detail of the rules. But fundamentally I believe that following the rules and the kinds of controls mandated by the rules makes for a more disciplined operation and leads to better results, and that's ultimately what matters."





DEIRDRE STANLEY '89 *has served as the senior vice president and general counsel of the Thomson Corp. since 2002.* “I would hope, in enacting any new regulations, the SEC or Congress would do more of a cost-benefit analysis and ask whether this is something that will broadly address a kind of bad behavior or is something that may catch one or two bad actors but generally doesn’t minimize broader wrongdoing. What I hear identified as a problem with Sarbanes-Oxley throughout the halls of corporate America is that you can’t legislate against someone who wants to commit a fraud. They’ll find a way to commit a fraud or somehow manipulate information. Looking back to 2002, Congress felt it had to act. The SEC felt it had to respond. I think you had laws enacted without anyone knowing what the cost would be. The challenge and the frustration has been, as people looked at what it would require to comply with the letter of the law, that the cost has been beyond what anyone anticipated.”

as globalization transforms
business, some corporate law
experts are engaging a
world of issues

by robb london '86

diversified portfolio

IN THE PAST FIVE YEARS, Harvard Law School's corporate law scholars have accounted for nearly a third of the top 10 articles on corporate law and securities published nationwide, as ranked by an annual poll of corporate law professors around the country.

The honor reflects what faculty members are describing as an especially prolific and influential moment for corporate law at the school. "Harvard Law School has absolutely the finest business law faculty in the world right now—scholars who are engaged in pathbreaking scholarship and innovative teaching, who are also making significant contributions at the highest levels of policy-making," says Dean Elena Kagan '86.

"Globalization is changing American corporate and legal culture," Kagan adds, "and all of our faculty experts, in their own ways, are at the forefront of understanding important aspects of these changes."

From Sarbanes-Oxley reform to executive compensation in companies listed on the Tokyo Stock Exchange, the HLS corporate faculty is looking at myriad ramifications of an increasingly competitive global economy and how corporations are—and should be—governed. Professors Lucian Bebchuk LL.M. '80 S.J.D. '84 and Hal Scott have made headlines recently, but Harvard's other corporate scholars have been just as busy, often in collaboration with each other. >>





- ① Cooperation / Voice / information
- ② Teamwork
- ③ Locked-in Geographic preference



④ Fit w/ Finance

→ Sweat equity

50K
25K
75K

PROFESSOR MARK ROE'S course on corporate governance offers students the latest scholarship in the field, much of which is produced by HLS faculty.

TAKING STOCK

Last year, the University of Iowa College of Law and its *Journal of Corporation Law* published a volume of scholarly articles marking the 20th anniversary of the publication of the treatise “Corporate Law” by former HLS Dean **Robert Clark ’72**.

“Bob Clark’s pathbreaking treatise is arguably the single most influential work of scholarship in corporate law in the past quarter century,” says his colleague **Reinier Kraakman**, a principal editor of “*The Anatomy of Corporate Law: A Comparative and Functional Approach*” (Oxford University Press, 2004).

Looking back at the 20 years since he first published the treatise, Professor Clark points to several trends that have emerged. The first, he says, has been the rich development of doctrines relating

to hostile takeovers and defenses against them, particularly in Delaware.

A second major change has been the rise of limited liability companies and other business forms that are more attractive to owners of closely held businesses than the traditional close corporation, says Clark. Another trend, he notes, “is the federalization of much of corporate law litigation,” including the rise of securities fraud class actions, and the growing



robert clark '72

role of the Securities and Exchange Commission and the Department of Justice in addressing major accounting scandals.

Other trends Clark points to include a sharp rise in regulatory concern about executive compensation, and the wave of corporate governance changes resulting from the Sarbanes-Oxley Act of 2002 and related phenomena like new listing requirements and the rise of corporate governance rating agencies. “My perception,” he wrote recently, “based in part on service as a director of several large public companies, is that for about three years, these changes dwarfed takeover and M&A-related issues in terms of the time, money and worry demanded of corporate managements and boards.”

Looking at possible Sarbanes-Oxley reforms, Clark cautions legislators to include explicit provisions that authorize and mandate serious empirical study of the effects of particular regulatory changes.

Furthermore, Clark says, in the rush to enact new safeguards in the post-Enron environment, a distinction should be made between the governance of for-profit and nonprofit corporations. Rules appropriate for the for-profit world may not be needed in the nonprofit world, he recently argued at a symposium sponsored by the law school and Harvard University’s Hauser Center for Nonprofit Organizations. “In paradigmatic nonprofit corporations, the moral systems are often more important and potentially more effective, and the legal system is often less important and less potentially effective, than in the case of for-profit corporations,” he says.

Clark taught an oversubscribed course on mergers, acquisitions and split-ups this fall with Delaware Court of Chancery Vice Chancellor Leo E. Strine Jr. One of the highlights: a session analyzing the failed attempt by investor Carl Icahn to win control of Time Warner AOL in 2005. In an unusual corporate “postgame wrap-up,” Icahn’s adviser during the bid, Lazard CEO Bruce Wasserstein ’70, and his rival during the drama, Time Warner CEO Richard Parsons, traded questions, answers and observations in front of an overflow crowd of students and faculty.



reinier kraakman



john coates

Mergers, friendly or otherwise, have been a particular interest of Professor **John Coates**, an expert on takeover defenses who, with Bebchuk and Professor **Guhan Subramanian '98**, has examined the anti-takeover effects of staggered boards of directors. Recently, Coates and Kraakman examined the role played by a CEO's age, tenure and share ownership in explaining why the CEO's company is sold.

THE HEALTH OF U.S. CAPITAL MARKETS

"I am studying the operation of the [National Association of Securities Dealers] markup rule in the equities market using proprietary data provided to me by the NASD," reports Professor **Allen Ferrell '95**, who has been serving on the board of economic advisers and as an academic fellow at the association.

Ferrell played a major role in the work of the Committee on Capital Markets Regulation and was the primary author of the shareholder rights portion of the committee's report. (Kraakman, too, lent his expertise to the committee's work.)

Ferrell has also written three forthcoming articles: one on "structured products" (in a Brookings Institution volume on new financial services), one on cross-border stock exchange mergers (in a volume by Euromoney), and an article on the effects of disclosure requirements on stock market efficiency (in the *Journal of Legal Studies*).

Meanwhile, focusing on what he calls "the divide between public and private companies in the aftermath of SOX" and, more broadly, on global competition between public and private capital markets, Subramanian has published papers examining buyouts by controlling shareholders, in *The Yale Law Journal* and the *Journal of Legal Studies*. "They are no longer interested in subjecting themselves to SOX's regulatory



guhan subramanian '98

requirements for the benefit of a public minority float," he says. One of his findings: "Freeze-outs" of minority shareholders in companies that are going private have more than doubled since 2001.

Subramanian has also undertaken an empirical study of private equity deal-making and is looking at "club" deals—in which private equity firms team up to do massive buyouts of public companies—and "go shop" provisions, a contractual innovation in private equity leveraged buyouts that potentially allows private equity firms to buy out public companies at lower prices.

REGULATORY ISSUES, SEEN FROM ABROAD

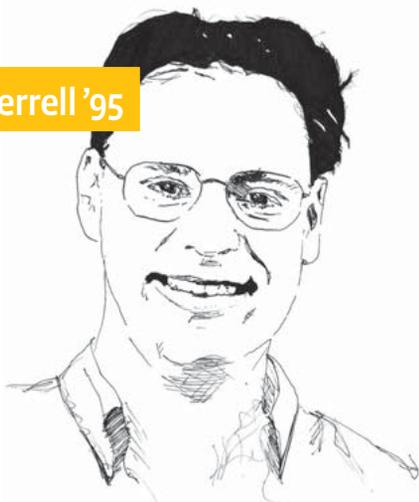
Professor **Howell Jackson '82** has been dealing with global regulatory issues from overseas. On sabbatical in England this year, he recently collaborated with S.J.D. candidate Stavros Gkantinis on a paper comparing market oversight in eight jurisdictions. He has also been looking at the regulatory conflicts between the U.S. and other jurisdictions—particularly the European Union.

In 2005, Jackson co-sponsored a roundtable conference in England, bringing European and American academics together to explore areas of conflict between U.S. and EU regulators. Partly as a result of the conference, he has co-written an article with two former students analyzing the way the SEC regulates foreign exchanges, particularly those located in the EU. They recommended a change in SEC policy, and two senior SEC officials have recently proposed changes in the SEC's treatment of foreign exchanges and broker dealers.

Jackson has also been looking at the intensity of financial regulation in different jurisdictions, in a study



howell jackson '82



allen ferrell '95



mark roe '75

comparing U.S. and Canadian enforcement activity. He and Professor **Mark Roe '75** have collaborated on what Jackson calls “an empirical extension of this project,” to determine whether higher budgets and staffing in securities market oversight improve capital markets. “They do,” Jackson says. From England, he has also been collecting information on enforcement activities in European and Asian jurisdictions.

Finally, working from interviews with practicing lawyers, Jackson has been studying how international securities transactions are undertaken. This research has demonstrated the extent to which U.S. investors are increasingly going overseas to purchase securities and are making it less necessary for foreign issuers to come to the United States.

DISPELLING MYTHS

Roe has been looking at whether the health of a nation's capital markets depends on the origins of its legal system. In an article published in December in the *Harvard Law Review*, he examines the widely held assumption that the strength of a country's financial

markets is determined by whether its legal origins are rooted in civil law or instead in common law. Common law institutions have been said to protect outside shareholders, he writes, whereas civil law institutions are said to be less protective and therefore less conducive to healthy capital markets.

Roe finds, however, that the importance of a country's legal origins has been overstated, and that political factors have been more influential in determining the health of its capital markets. “The stakes aren't just academic,” he says—there's a powerful normative reason to get this assessment right. “The developing world and international agencies are told that transplanting the correct legal code (i.e., the common law) will enhance economic development,” he explains. Policy-makers at international development agencies such as the World Bank denigrate civil law-style institution-building, such as regulation, codification and public enforcement, he writes. “Yet, by accepting the academic thinking positing the power of traditional common law tools, they may miss other needed tools not traditionally associated with the common law.”

Roe argues that a country's legal origins don't—and shouldn't—stop it from developing the institutions, legal and otherwise, that capital markets need.

Meanwhile, in his latest book, “The Fable of the Keiretsu: Urban Legends of the Japanese Economy,” published last year by University of Chicago Press, Professor **J. Mark Ramseyer '82** and his co-author, University of Tokyo economist Yoshiro Miwa, set out to disprove some widely held assumptions about the Japanese economy, including the notion that “keiretsu,” or insular business alliances among powerful corporations, like Mitsubishi, dominate the Japanese economy. They also refute the idea that the Japanese government skillfully engineered the postwar economic miracle, and they rebut the popular view that poor corporate governance caused the 1990s recession.

Recently, Ramseyer completed a working paper he co-wrote on the levels of executive compensation in Japanese firms listed on the Tokyo Stock Exchange. He is also at work on an article studying the levels of executive compensation at unlisted Japanese firms.

FROM CORPORATE RESPONSIBILITY TO GLOBAL ANTITRUST LAW

Professor **Jon Hanson** is engaged with the idea of what he calls “progressive corporate law,” and in April he will give a lecture on the topic at an event sponsored by the American Constitution Society. Hanson's remarks will focus, he says, on “the significant but often over-



j. mark ramseyer '82



jon hanson

looked connections between corporate law and many of the concerns occupying progressives, such as racial injustice and economic inequality.”

Hanson comes at the subject of corporate law from a critical legal studies perspective, whereas his colleague **Einer Elhauge '86** takes a law and economics approach. Recently, Elhauge examined what he calls the “canonical view” that corporate managers do and should have a duty to maximize profits and let the legal system redress any harms that their businesses inflict on others. This view is mistaken, he argues in a *New York University Law Review* article, because the law gives managers considerable discretion to sacrifice profits for the sake of the public interest. Elhauge says that profit-maximization is not a socially efficient goal because even optimal legal sanctions are imperfect and require supplementation by social and moral sanctions. Pure profit-maximization worsens corporate conduct by overriding these social and moral sanctions, he says, and, in addition to being socially inefficient, harms



einer elhauge '86

shareholders whenever they value the incremental profits less than they value avoiding those sanctions.

Elhauge has also been studying the increasingly global nature of antitrust law and has just published a casebook, “Global Antitrust Law and Economics” (Foundation Press, 2007), with co-author Damien Geradin. It is, he says, the first law book—not just on antitrust but on any subject—to cover that subject in a global way. “A typical merger between large U.S. corporations must get approval not just in the United States but also by the European Community, for their activities often affect both markets,” Elhauge and Geradin write. And countries are increasingly entering into treaties with each other about the content or enforcement of competition laws, they note. Thus, businesspeople, lawyers and lawmakers can no longer content themselves with understanding the antitrust and competition laws of only their own nations. “This combination of laws from varying nations in actual practice presents a truer picture of the overall regime of competition law that now faces multinational market players,” they write.



george triantis

INNOVATION

Finally, the newest member of the corporate law faculty has been delving into the world of innovation—specifically, how parties to contracts can be more creative in designing their deals. Since joining the HLS faculty this academic year from the University of Virginia School of Law, Professor **George Triantis**, an expert on corporate finance and commercial law, has been focused on the ways that lawyers and clients produce novel and creative contractual terms. In a yearlong seminar, he has been looking at some of the factors that promote or impede innovation, including the impact of judicial, legislative and regulatory action, and in a recent article, he examined ways of anticipating litigation in contract design. *

The Knight of Mindoro

AS A YOUNG girl growing up in the 1930s on a small island in the Philippines, Erlinda Arce Ignacio Espiritu LL.M. '51 found inspiration to become a lawyer in the legends of the Knights of the Round Table.

"The knights were always defending the defenseless, and I thought, How could I do that?" said Espiritu.

Her father, a four-term governor of the province of Mindoro, and her uncles were lawyers, but Espiritu said not many women took up law. "Women were supposed to stay at home, and even if they were studying, they were studying to teach," she said.

She persevered, and despite a world war and Japan's occupation of her country, she became one of the few women lawyers in the Philippines in 1947, and in 1951, she was the first woman to receive a degree from HLS.

But like the quests of King Arthur's knights, Espiritu's path to HLS was not direct, nor was her journey without difficulty.

While studying at Manuel L. Quezon School of Law in Manila, she met her future husband. The couple planned to marry after graduation, but her father requested she first take a postgraduate year in the United States. "I told my father, if he wanted me to study abroad, I would go—provided it would be at Harvard Law School," said Espiritu. "At that time, I knew Harvard Law accepted only male students."

When Espiritu submitted her application, she found the Harvard Corporation had recently reversed its long-standing policy of denying women law school admission, and she was accepted.

Initially, Espiritu said, she was "at a loss" at Harvard. She had difficulty adapting to the case method and to "Americans' slurring manner of speech." But, she says, she had very good professors, and she credits her HLS experience with teaching her how to think.

Her fiancé, Benjamin Espiritu LL.M. '52, enrolled at HLS halfway through her LL.M. year. They married in Cambridge, but just two years after returning to the Philippines, and two months after the birth of their son, her husband died of leukemia.

According to a 1950s profile of Espiritu, her parents thought she would not survive her bereavement. But Espiritu, a devout Catholic, now reflects, "I always think of it that the Lord has his reasons." She returned to her parents' home, and while they helped raise her son, she worked as corporate



In 1947, she was one of the few women lawyers in the Philippines, and in 1951, the first woman to receive a degree from Harvard Law School.

Erlinda Espiritu returned to HLS in October for the first time in 55 years.

legal counsel for one of the biggest land developers in the Philippines.

In 1959, Espiritu—who had never before handled a criminal case—received a telegraph from the Philippines Supreme Court appointing her to represent a prisoner sentenced to death for the murder of a fellow inmate. She believed her client was innocent and recommended the case be remanded. (The opposing counsel, Frine Zaballero LL.M. '58, concurred.) Although the court praised Espiritu's memo, it approved the death sentence—upholding the law of no mitigating consideration for a recidivist. Undeterred, she appealed to the board of pardons, and just before his scheduled execution, her client received a commutation from the country's president. As a result of the case, which was later made into a movie, a review of existing law was initiated.

By the early 1960s, Espiritu—at her parents' request—left her career in Manila to manage the family's business in Mindoro. For the next 32 years, she was president of a family-owned rural bank. She helped the poor finance small businesses, buy homes and send their children to school. She continued to do pro bono legal work until May 2006. In July, she underwent surgery for brain cancer.

The 82-year-old Espiritu returned to HLS in October for the first time in 55 years. As the guest of honor at an LL.M. dinner, she thanked Harvard for "the opportunity to learn well, not only in the matters of law but in improving the lives of our fellow men." After her speech, many recent LL.M. graduates flocked to her table to thank her for blazing a trail for them. *

—CHRISTINE PERKINS

Labor's laborer

WHEN PAUL TOBIAS '58 was not yet 30, he wrote to Herbert Hoover, Carl Jung and several hundred others, seeking advice on turning 70.

The project was a birthday gift for his father, but the wisdom he received—keep a youthful spirit, pursue meaningful work, find happiness in helping others—foretold his advocacy on behalf of working people.

For the past 25 years, Tobias has defended the rights of nonunion employees, waging a “David and Goliath” fight for workplace fairness. In 1985, he banded together with a dozen other plaintiffs’ attorneys and founded the National Employment Lawyers Association, whose now 3,000 members form what he calls

“the thin red line,” protecting the rights of millions of American workers.

Tobias drifted into law school after a four-year stint with the CIA, contemplating government service. After landing in Archibald Cox’s class, he found the varied aspects of labor law captivating, the conflict exciting.

He began by representing management in Boston and went on to defend both companies and unions in his hometown of Cincinnati. But over time, he developed a niche representing union members in cases involving the duty of fair representation.

“I think my liberal instincts came out,” said Tobias. “I just felt more comfortable representing individuals than I did

management.”

This role didn’t endear him to union leaders, and breaking into a bar association dominated by management and union lawyers wasn’t easy. While he won important victories, he also gained a reputation as a rebel. “I’ve made peace with them over the last 15 years,” said Tobias, now a governor of the College of Labor and Employment Lawyers.

By the mid-1970s, just as Tobias was setting up his own shop, now known as Tobias, Kraus & Torchia, the tide began to turn. In the wake of legislation barring discrimination in the workplace, there was a new demand for employment lawyers.

In 1984, Tobias called for a meeting



The growth of the plaintiffs’ bar has been thrilling for Tobias, but he is discouraged that there is still so much unfairness in the workplace.

Paul Tobias
co-founded the National
Employment Lawyers
Association.

of lawyers in his field, arguing, “We have nothing to lose but our cases!” The following year, the Plaintiff (now National) Employment Lawyers Association was born.

For the first five years, he ran the association out of his Cincinnati office. He wrote to the Equal Employment Opportunity Commission requesting the names of attorneys on Title VII discrimination cases. Within two years of its founding, the association had 450 members in 42 states. Almost 300 new members joined each year, and the number reached more than 2,000 by 1995.

In 1987, Tobias co-wrote the first major treatise geared to plaintiffs’ attorneys, “Litigating Wrongful Discharge Claims.” He also published two survival guides for employees and helped create an educational nonprofit, the National Employee Rights Institute, now known as Workplace Fairness.

Between 1990 and 2000, the number of employment discrimination cases filed in federal court increased by almost 250 percent. “Companies are much more cautious in the way they run themselves now, because of their fear of lawsuits,” said Tobias.

Watching the growth of the plaintiffs’ bar has been thrilling for him, but he is discouraged that there is still so much unfairness in the workplace, such as the “antiquated and nefarious” at-will doctrine, which allows many employers to terminate employees at any time, for any reason.

“People think that if they are treated unfairly, a lawyer can help them,” said Tobias. “But they think the law is better than it is.”

Now 76, Tobias says he has no plans to retire. He is currently an ALI adviser on the “Restatement of Employment Law.” He has also helped form a senior law division of the Cincinnati Bar and is hoping to develop a National Senior Service Corps. And he is completing a book of advice for those over 70, compiled from his father’s birthday letters.

“There is a great deal to be done in the world after one has achieved his three score and ten,” wrote Roscoe Pound to the senior Tobias. “There is nothing that keeps one alive like steady attention to worthwhile ventures.” ✱

—CHRISTINE PERKINS

Envoy for justice

YASH PAL GHAI LL.M. '63 has spent his professional life quietly advising countries ravaged by war and colonialism on how to use the law to build democratic societies. Recently, though, his work has received extensive coverage, particularly in Asia, for his sharp criticisms of Cambodia's current human rights record—and the even sharper response of that country's prime minister, Hun Sen.

In November 2005, Ghai was appointed the United Nations special representative on human rights in Cambodia, where his role is both to scrutinize the government's record and to encourage legal structures and policies that will improve the situation on the ground. In 2006, he released a searing report arguing that in a country that started on the road to democracy 15 years earlier, with the signing of the Paris Peace Agreements, "human rights continue to be violated on a massive scale"—and that these violations are "deliberate, pervasive and systematic." He placed much of the blame on the centralized government of the Cambodian People's Party, for intimidating its political opponents, banning protests and rallies, undermining the country's constitution and interfering with the judiciary. Hun Sen responded angrily—much as he had to reports by previous U.N. representatives—refusing to meet with Ghai and calling for his dismissal; it was an approach, Ghai wryly notes, that brought more attention than otherwise would have been paid to the human rights violations he is working to expose.

Even if Cambodia's prime minister would argue otherwise, Ghai couldn't be better suited for the job he's been asked to do. Throughout his career, he's blended scholarship on constitutional law and human rights with practical work on constitution-making—particularly, he said, as a "device to resolve violent internal conflict" in places like Iraq and Nepal.

Born in Nairobi, Kenya, in 1938, to parents who migrated from India, he studied at Oxford and HLS and is now a member of the law faculty at the University of Hong Kong. Although he's taught and lived all

over the world, it is to East Africa that Ghai feels the strongest ties. It's where he grew up and where his interests in constitutional law began. "I became interested in constitutions as a young student," he said, "because of the decolonization of Africa, particularly my own area, Kenya, Uganda and Tanganyika, where constitution-making was the principal form of negotiating for independence."

Ghai tried to bring a new constitution to his native country when he chaired the Kenyan Constitution Review Commission from 1999 to 2004. With Kenya's weak tradition of democracy, Ghai sought above all for the process to be "as democratic and participatory as possible." Representatives traveled to towns and villages throughout the country, holding explanatory meetings and inviting submissions from groups and individuals on their ideas of what a new Kenyan constitution should be. The commission received over 37,000 responses and came up with a constitution that would have increased the accountability of the government and given the provinces more localized power. In the end, though the

document was adopted by Kenya's National Constitutional Conference, the executive branch, in Ghai's words, "sabotaged it," and it was not brought into force—a reminder, he said, that democracy is a slow process and that, at its heart, "constitution-making is a highly political act, often controversial and bitter."

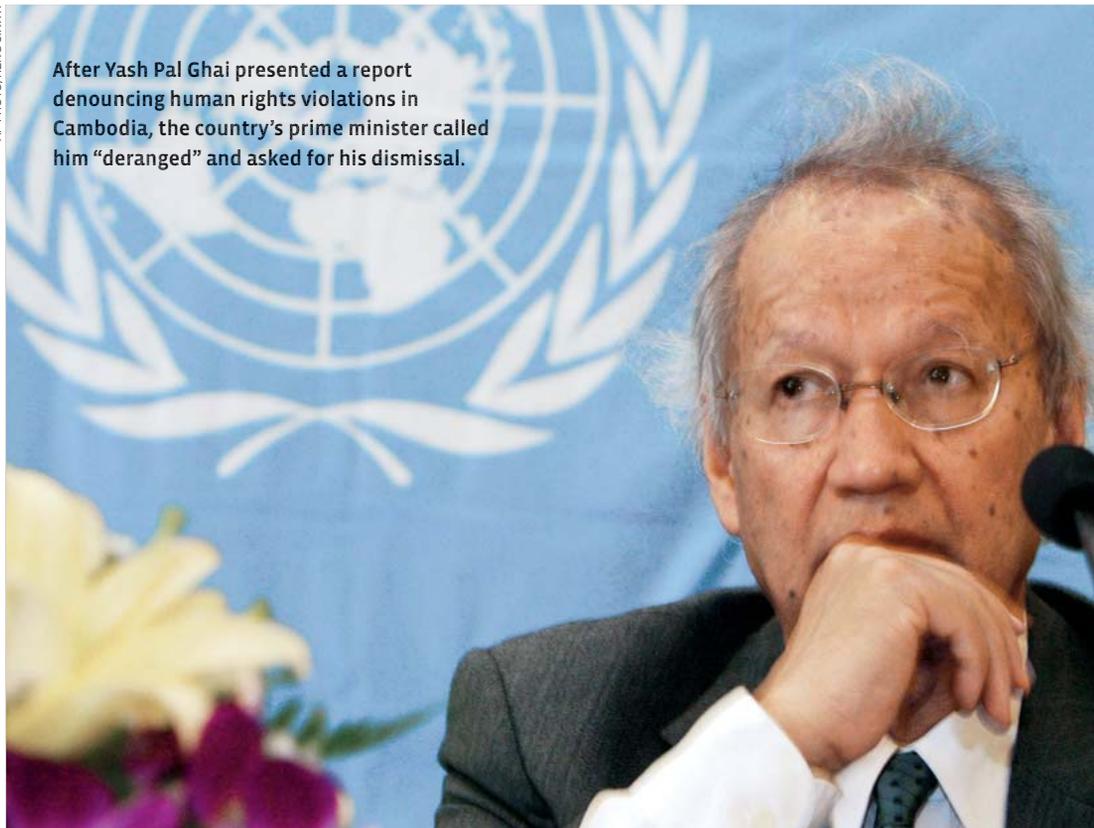
Still, Ghai said, his "hope is to become more engaged with Africa's pursuit of democracy and justice." And he hopes, too, that an increasing number of young lawyers will follow in his path, helping conflict-ridden countries around the world build the legal frameworks necessary to begin the process of repair.

While Ghai is disappointed that so many law students prefer to study "commercial law subjects, where money is to be made," he does see progress. "There is much greater interest in human rights and public law now than when I first started teaching," he said. "This trend seems to be universal—as the contradictory aspects of democratization and globalization are played out in the public domain." ✨

—KATIE BACON

AP PHOTO/HENG SINITH

After Yash Pal Ghai presented a report denouncing human rights violations in Cambodia, the country's prime minister called him "deranged" and asked for his dismissal.



After Story

BILL CLENDANIEL '75 likes what he does for the living. And the dead.

Since 1988, he's been president and CEO of the nation's first garden cemetery, near Boston, one that gave birth 175 years ago to the idea that a rambling park-like setting was the ideal place to both bury the dead and console the rest of us.

Founded in 1831, the 175-acre Mount Auburn Cemetery is known just as much for its living collections of over 5,000 trees and thousands of shrubs and plants—diverse landscaping ranging from natural woodlands to elaborately ornamented Victorian areas and contemporary gardens—as for its some 30,000 monuments. The National Historic Landmark is also a museum of sorts, with 19th- through 21st-century monuments, collections of family papers, photographs and fine art dating back to its founding.

“Every day there are reminders of those who have gone before who have built what we are enjoying today,” said Clendaniel, who is the second Mount Auburn president to have a Harvard Law School connection. The first was Joseph Story, a leader at HLS in the 19th century and a Supreme Court

President of Mount Auburn since 1988, Bill Clendaniel is helping the cemetery celebrate its 175th anniversary.

LEAH PASTEREN

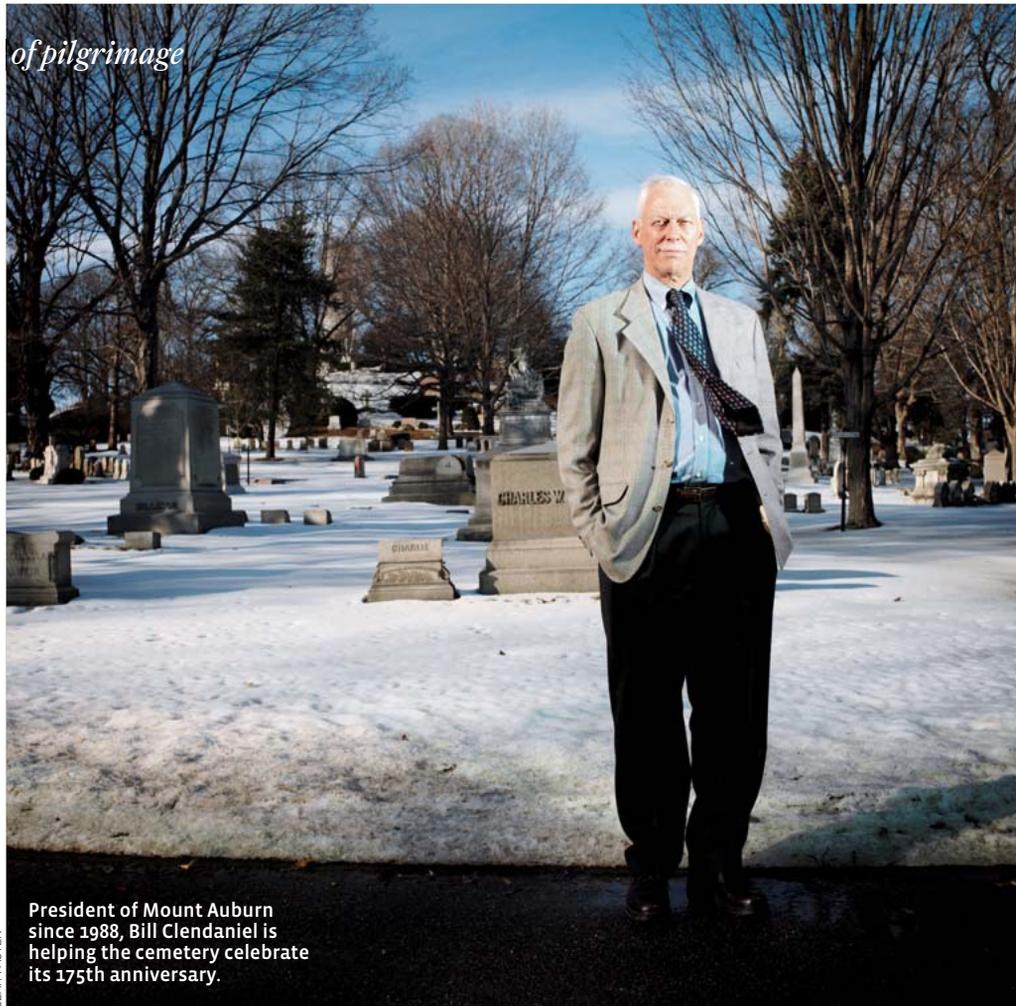


IMAGE COURTESY OF MT. AUBURN CEMETERY ARCHIVES

“All around us there breathes a solemn calm, as if we were in the bosom of wilderness, broken only by the breeze as it murmurs through the tops of the forest, or by the notes of the warbler pouring forth his evening song,” said Joseph Story, Mount Auburn’s first president. In 1845, he was buried under the obelisk pictured above.

justice, who described the rural cemetery as having “all of the advantages” to ease human fears and to “cast a cheerful light over the darkness of the grave.” Mount Auburn was so successful that it was quickly replicated in other parts of the United States.

For the past 19 years, Clendaniel has run the complex nonprofit organization that Mount Auburn is today, modernizing the institution in ways that ensure its growth for many generations to come. He is also trustee of the Friends of Mount Auburn Cemetery—a separate tax-exempt charitable trust created to help fund the preservation of the land and structures. On a day-to-day basis he worries about preserving the history of the community as well as the habitats of birds and small animals.

The cemetery is also a place of pilgrimage. “We get visits from people from all over the world looking to pay homage to someone they have admired,” said Clendaniel, who notes that Story and many other HLS luminaries are buried there, including Christopher Columbus Langdell LL.B. 1854, Felix Frankfurter, Roscoe Pound and Erwin Griswold '28 S.J.D. '29. * —LINDA GRANT

Part monk, part riddler

RANDY KOMISAR'S trajectory from corporate counsel to executive to "virtual CEO" to author to venture capitalist was not at all planned. "My career makes sense only in a rearview mirror," says Komisar '81.

His current gig—he doesn't like to call it a job—is as a partner at one of the country's most successful venture capital firms, Kleiner Perkins Caufield & Byers. The Silicon Valley firm has a nearly prophetic ability to pick and fund fledgling businesses that will strike it big. In its stable of successes are Google, Palm, drugstore.com and Travelocity.

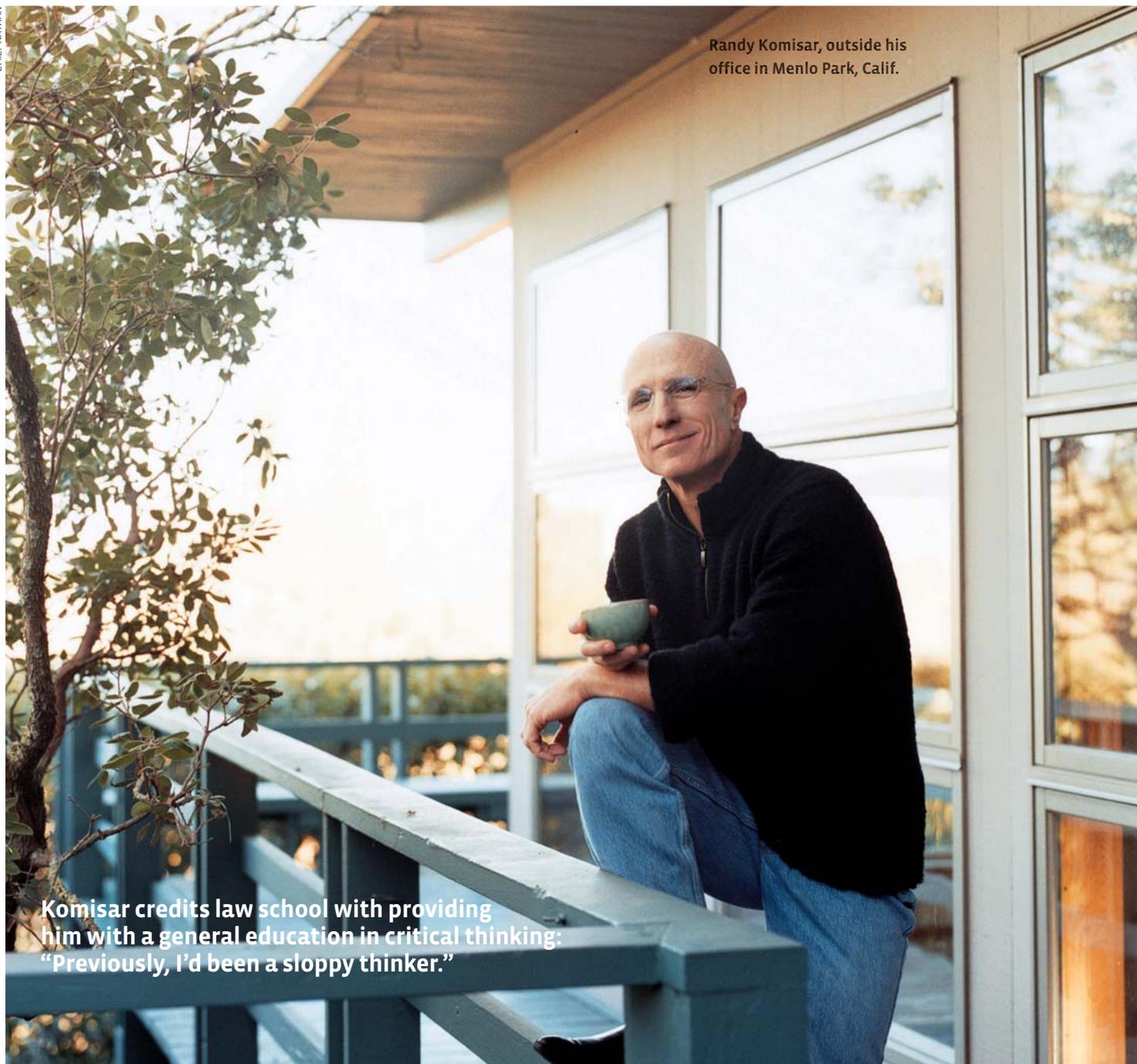
Venture work is ideal for Komisar, 52, who joined Kleiner Perkins in 2005 to guide emerging tech companies and entrepreneurs. For him, the work's biggest draw is creativity: "building a new enterprise and inventing the future, which entrepreneurs get to do every day."

Komisar credits law school with providing him with a general education in critical thinking. "Previously, I'd been a sloppy thinker, able to slide by on rhetoric," he says. "Law school made me an honest thinker."

After a brief stint working at law firms in Boston and San Francisco, Komisar joined Apple Computer Corp.'s legal department in 1985. When he realized he was drawn to structuring and negotiating deals, he left legal work to help found Claris Corp., a software company. "I wanted to start something out of nothing. That's the sort of zeitgeist of this place," he says, gesturing broadly in his sunny office to encompass all of Silicon Valley.

Komisar later became president and CEO of video game companies LucasArts and

Randy Komisar, outside his office in Menlo Park, Calif.



EMILY NATHAN

Komisar credits law school with providing him with a general education in critical thinking: "Previously, I'd been a sloppy thinker."

Crystal Dynamics. During his decade as an executive, he discovered he was excited by the creativity of entrepreneurship and much less interested in what followed. "After the florid creative period, then I had to deal with the tactical, day-to-day running of everything," he says.

It was time for Komisar to reinvent himself again. In 1996, he fashioned himself as a "virtual CEO," a seasoned executive and entrepreneur who guided startups by mentoring, raising capital and creating business plans. His timing couldn't have been better. The dot-com boom was on the horizon, and Silicon Valley was awash in capital and young, ambitious talent. He lent his expertise to companies including WebTV and TiVo.

His experiences led him to write "The Monk and the Riddle: The Education of a Silicon Valley Entrepreneur" (Harvard Business School Press, 2000). In the book, he cautions entrepreneurs against being motivated by greed rather than passion for innovation and "integrity of lifestyle." The 2001 edition's subtitle was changed to "The Art of Creating a Life While Making a Living," which Komisar much prefers.

His office decor is evidence that he's integrated work and play. Mounted on the wall above his tidy desk is an American team bicycle from the 1991 Tour de France. Lean and energetic, Komisar bikes as much as 10,000 miles a year.

Bill Campbell, who's known Komisar for two decades, says his Claris co-founder has a staggering intellectual curiosity that encompasses every aspect of business. "A lot of venture capitalists are investment bankers, but here's a guy who's got a lot of operating experience and vision and understands technology," says Campbell, who is now chairman of the board of Intuit Inc. "And he's an accessible guy. Entrepreneurs love him."

Komisar muses that while corporate lawyers strive to eliminate risk for their clients, as an entrepreneur coach, he examines a risk from many angles and decides if it's worth taking.

"From the outside, entrepreneurs look like gamblers, but from inside, it looks like a sure thing. I consider myself not a risk taker but a risk manager. To the outside world," he says with a smile, "I'm a very risky guy." *

—JUNE D. BELL

Celestial reasonings

ASTRONOMY just may have saved Ted Vosk's life.

As a teenager, the Michigan native had become homeless after a "messy home situation led to a mutual agreement" between Vosk and his parents: He left, and they kicked him out. After some time on the streets, a friend who was in college invited him to sit in on an astronomy class.

"The professor was talking about the inverse square law of light," recalls Vosk '99,

now a defense attorney in the Seattle area. "It was the coolest thing I'd ever seen. I just dove in from there."

Vosk says he set out on "a search for truth," reading piles of math and physics books he'd managed to acquire, until he realized he needed more guidance. He finished high school and got a job at McDonald's, living in a tent behind the fast-food restaurant. He worked his way off the streets and was accepted to Eastern

Michigan University.

Majoring in physics and math, Vosk won numerous accolades and awards, graduating magna cum laude in 1995. Then, after he spent a year in a physics fellowship at Cornell, his quest took a sharp turn.

"I got to a point where I no longer thought I could find what I was looking for through physics and math, and I wanted to be able to give something back to society," says Vosk, who saw law as an answer. "When I was homeless, I'd gotten into trouble. I wanted to help others who might have made some bad decisions and didn't want to have their lives ruined because of it."

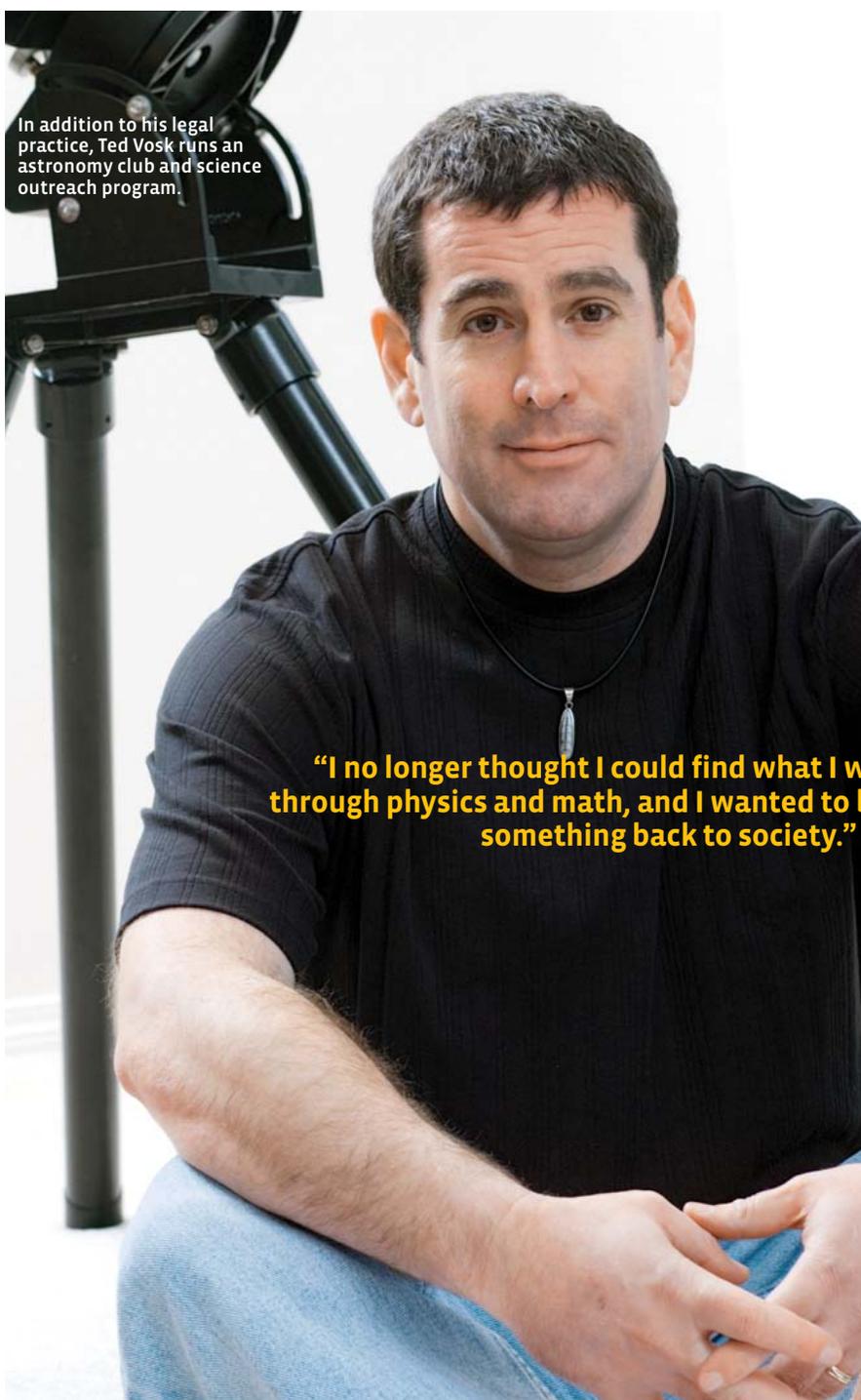
At Harvard Law School, Vosk joined the Harvard Defenders and worked at the Hale and Dorr Legal Services Center. After graduation, he and his wife settled near Seattle, where he has since set up a thriving private criminal defense practice. He has recently taken the case of Darrell Sky Walker, who is appealing a manslaughter conviction in the death of a University of Oregon student after a late-night brawl in 2005. Vosk believes Walker is innocent and sees a system increasingly slanted against defendants. "I don't know what's happened to the presumption of innocence, let alone a fair and neutral hearing," he says, acknowledging the fight ahead.

Outside the courtroom, Vosk remains passionate about astronomy and now runs Celestial North, the astronomy club he founded in 2003 with friends he met through the Seattle Astronomical Society. They co-host an astronomy radio show called "It's Over Your Head" and bring their science talks to school and community groups as well.

Celestial North recently won an award from Astronomy magazine for excellence in science outreach, recognition that will help them fund a new initiative to design online interactive lessons on astronomy and space sciences for schools and the general public.

"Kids can play with the lessons and see how, if they change a variable, it changes the solar system," says Vosk, who knows firsthand how a lesson in astronomy can help change a kid's universe. ✨

—MARGIE KELLEY

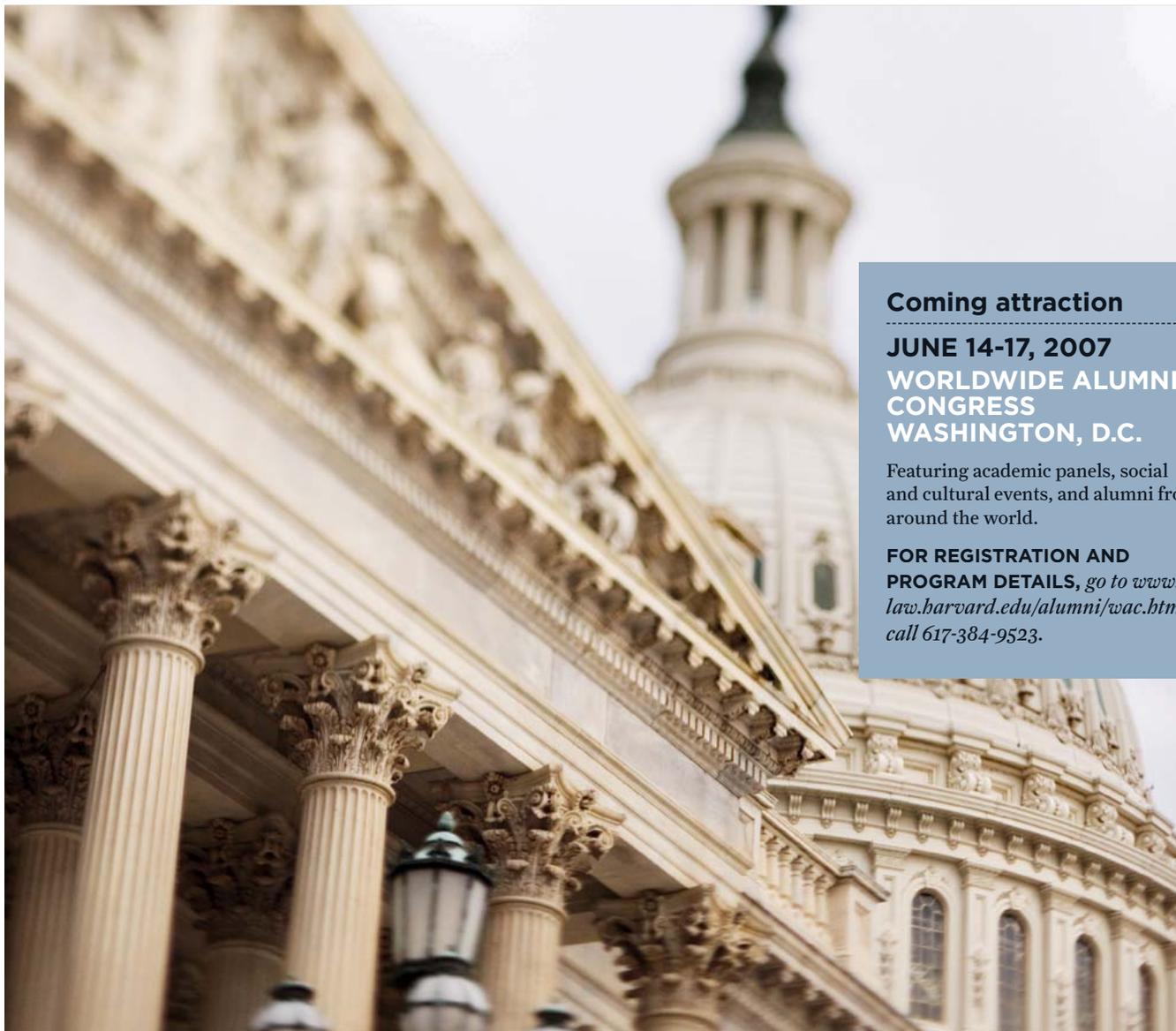


In addition to his legal practice, Ted Vosk runs an astronomy club and science outreach program.

"I no longer thought I could find what I was looking for through physics and math, and I wanted to be able to give something back to society." —Ted Vosk '99

AMANDA KOSTER

Calendar



Coming attraction

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HLSA EUROPE
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LEADERSHIP SUMMIT**
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ADOBE STOCK PHOTOS

Welcome back!



Fall reunions



PHOTOGRAPHS BY KATHLEEN DOOHER

1. A.L. Wheeler '44, Jerome E. Hyman '47, Murray Gartner '45
2. Jerome E. Hyman '47, Sheldon B. Guren '47 (top row); Donald F. Potter '44, Clyde E. Williams Jr. '45, Arthur Litz '47 (middle row); Leonard Robbins '44, Rev. David Granfield '47 (front row)
3. 1991 classmates Nicole Y. Lamb-Hale, Judith Gliniecki **4.** 1976 classmates Eugene Iredale, Chuck Cole **5.** 2001 classmates **6.** 1991 classmates William Wall, Jason Adkins, Scott Lessing, Michael Mellis **7.** Jonathan Chan '01, Philip Lee '00, Sue Perng Lee '01 **8.** 1961 classmates L.E. "Dean" Stringer, Walter Baker **9.** 2001 classmates Daniel Konieczny, Sozi Tulante **10.** Hyunsu Ko, Edward Kang '01, Jeremy Kamras '01 **11.** 1986 classmates Adriana Ospina-Lara, Duffey Asher **12.** U.S. Supreme Court Justice Anthony M. Kennedy '61, Dean Elena Kagan '86 **13.** 1991 classmates James R. Burke, Rhoda Weeks-Brown **14.** 2001 classmates Russell Lippman, Andrea Santoriello, Rosalind Wang, William Jay **15.** 1951 classmates Jerrold M. Sonet, Howard J. Aibel, Jerome P. Facher, Ira Siegler, Albert L. Cohn, Charles Cramas





In Memoriam

Obituary Information

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

1930-1939

Herman Snyder '31 of Chestnut Hill, Mass., and Palm Beach, Fla., died Nov. 4, 2006. He was a partner at Hinckley, Allen & Snyder in Boston. He founded the firm as Snyder, Tepper and Berlin in 1947 and specialized in construction law.

Elliott W. Finkel '33 of Oakland, Pa., died Sept. 9, 2006. A Pittsburgh lawyer for more than seven decades, he practiced corporate and estate law at Tucker Arensberg. From 1939 to 1942, he was an assistant U.S. attorney in the Western District of Pennsylvania. He later practiced law at what became Finkel, Lefkowitz, Ostrow and Woolridge, which, in 1988, merged with Tucker Arensberg. He was president of what is now the Agency for Jewish Learning, and he was a founder of the Jewish Assistance Fund. During WWII, he served in the U.S. Army Air Forces' 392nd Bombardment Group.

Sidney Sherman '34 of Lake Worth, Fla., died Aug. 25, 2006. For 40 years, he worked for the National Labor Relations Board in Washington, D.C. He began his career there in 1935 and retired as an administrative law judge in 1975. After his retirement, he worked as a public defender for the District of Columbia.

Charles B. Carroll '36-'37 of San Rafael, Calif., died Oct. 12, 2006. A captain in the U.S. Navy, he was a career military officer. Commissioned in 1939, he served in three wars, saw nearly 30 years of active duty and retired in 1968. He joined the submarine service in 1941, and 10 years later he commanded the USS Lowry, leading the ship on a 35-month tour of duty around the world.

C. Guy Ferguson Jr. '37-'38 of Norfolk, Va., died Aug. 30, 2006. Formerly of Falls Church, he worked for NASA for many years. After working for the National Advisory Committee for Aeronautics in Virginia for 12 years, he transferred to Washington, D.C., in 1955, and he was later appointed a member of NASA's Inventions and Contributions Board. The board was activated on Dec. 4, 1958, 14 months after the Russians successfully launched Sputnik I. He served on the NASA board for 16 years.

Eli Cantor '38 of Sarasota, Fla., died Oct. 17, 2006. Formerly of New York City, he

was a businessman, novelist, playwright, composer and poet. Early in his career, he worked in the legal department of CBS Television and later was an editor of Esquire magazine and head of the Research Institute Report. In 1940, he won the O'Brien Short Story Award, and one of his science fiction novels, "The Nest," was made into a horror movie in 1998. His plays appeared off Broadway and on NBC's "Armstrong Circle Theatre" in the 1950s, and in 1992, the Sarasota Ballet of Florida choreographed a composition he wrote for a string quartet. During WWII, he was an editor for the U.S. Office of War Information.

Ernest Fasano '38 of Red Bank, N.J., died Oct. 18, 2006. A longtime resident of Red Bank, he practiced law with Quinn, Doremus, McCue and Russell and later with Russell, Fasano, Nicosia and Goodall, both in Red Bank. During WWII, he was stationed in India as a captain in the U.S. Army.

Morton J. Holbrook Jr. '38 of Owensboro, Ky., died Aug. 25, 2006. A Kentucky lawyer, he helped reform the commonwealth's court system. He headed Kentucky Citizens for Judicial Improvement and was instrumental in drafting a constitutional amendment that made sweeping changes in the commonwealth's judicial system, including introducing the requirement that judges be lawyers. He practiced law at what is now known as Sullivan, Mountjoy, Stainback & Miller, retiring in 1994. For 20 years, he served on the Kentucky Council on Higher Education, and he helped to establish Owensboro Community & Technical College. In 2000, he received Owensboro's first Joseph Hamilton Daviess Award, recognizing extraordinary public service, and in 2004, Daviess County's judicial center was named in his honor. He served in the U.S. Army during WWII, attaining the rank of major.

Bernard H. White '38 of Haverford, Pa., died Dec. 7, 2006. Formerly of Wayne, he was counsel for General Electric for 29 years in Philadelphia and Valley Forge. He retired in 1977 and was in private practice in Wayne until 1993. A Radnor Township commissioner, he encouraged preservation of open space and was involved in the township's purchase of the Willows, a 47-acre estate. He and his wife, parents of a girl with mental illness, co-founded Planned Lifetime Assistance Network of Pennsylvania and

helped found Torrey House, a residence for the mentally disabled in Haverford. During WWII, he served in the U.S. Army and in the Office of Strategic Services.

Alexander C. Cushing '39 of Newport, R.I., and Olympic Valley, Calif., died Aug. 19, 2006. He founded Squaw Valley USA and was an innovator in the development of the ski industry in the United States. He opened the Squaw Valley ski area in 1949, and he secured his site for the 1960 VIII Olympic Winter Games. In 1999, he was inducted into the Ski Industry Hall of Fame. Early in his career, he worked for Davis Polk & Wardwell in New York City and for the U.S. Department of Justice. During WWII, he served in the U.S. Navy in South America and the Pacific, attaining the rank of lieutenant commander. (For a Bulletin story on Cushing, go to www.law.harvard.edu/alumni/bulletin/2003/spring/.)

1940-1949

Morton H. Greenblatt '40 of North Branford, Conn., died Aug. 24, 2006. He practiced law at Pomerantz, Drayton and Stabnick and served in the Connecticut Attorney General's Office, specializing in workers' compensation. A longtime resident of Meriden, he was head of the city's law department for 16 years. Earlier in his career, he worked for the Ellmore Silver Co. and managed a separate branch of the company, the Amston Silver Co. During WWII, he served in the U.S. Army as part of the War Crimes Commission in Japan.

Dulany Mahan Jr. '40 of Palm Harbor, Fla., died Sept. 25, 2006. Formerly of White Plains, N.Y., he was a partner at Kurnik and Hackman in New York City. From 1948 to 1952, he was an assistant attorney with the Federal Trade Commission in Washington, D.C. He was involved in philanthropy in connection with the city of Hannibal, Mo., and the Mark Twain Home Foundation in Hannibal, where he was born and where his family helped to preserve the boyhood home of Mark Twain. During WWII, he was a corporal in the U.S. Army and did historical research while stationed in Georgia.

Sol Schildhouse '40 of Bethany Beach, Del., died Sept. 15, 2006. He was the first chief of the Federal Communications Commission's cable television bureau and was a

principal player in many of the regulatory battles over cable television from its inception through the early 1990s. He joined the FCC in 1947, and in 1966, he was appointed head of the newly established CATV task force. After retiring in 1974, he was managing partner of the Washington, D.C., office of Farrow, Schildhouse & Wilson. After his second retirement in 1993, he was a board member of the Media Institute in Washington, D.C. He co-edited the treatise "Cable TV Act of 1992 Source Book."

Anthony S. Amoscato '41 of Nutley and Spring Lake, N.J., died Sept. 3, 2005. He was a solo practitioner specializing in real estate and corporate law and a judge of the Nutley Municipal Court. He was also acting judge of the Belleville Municipal Court and treasurer of the Essex County Municipal Court Judges Association.

Richard P. Carroll '41 of Yorba Linda, Calif., died Feb. 6, 2006. He was an attorney for 60 years.

Francis X. Reilly '41 of Evanston, Ill., died Nov. 13, 2006. He was vice president and general counsel of Rollins Burdick Hunter, an insurance brokerage, in Chicago. During his career, he was vice president and treasurer of B.F. Goodrich Co. in Akron, Ohio, and Katy Industries in Elgin, Ill. From 1943 to 1946, he served in the U.S. Navy and was assistant counsel in the Bureau of Naval Personnel and Bureau of Aeronautics in Washington, D.C. He attained the rank of lieutenant commander and continued to serve for many years in the U.S. Naval Reserve. He was a life member of the Naval Order of the United States and a national vice commander, national recorder general and commander of the Illinois Commandery.

Alvah W. Sulloway '41 of York, Maine, died Nov. 1, 2006. He began practicing law in Connecticut and was a partner at Cummings and Lockwood in Stamford. In 1960, he left the law to become an English teacher (and, later, head of the English department) at Moses Brown School in Providence, R.I. When he retired to Maine in 1970, he established the Maine Right to Know movement, winning a lawsuit which ended secret meetings of the Kittery, Maine, town council. During WWII, he served in the Office of Strategic Services, attaining the position of chief, secretariat.

William R. Carter '42 of Madison, N.J., died Oct. 15, 2006. He was a partner at Brown, Wood, Fuller, Caldwell & Ivey and a director of the Checker Motors Corp. He was also president of Peter Tare Inc. and a trust-

ee and elder of the Presbyterian Church of Madison. During WWII, he served in the U.S. Navy and was captain of a PT boat.

Allan R. Moltzen '42 of Belvedere Tiburon, Calif., died June 29, 2006. A California lawyer, he was a solo practitioner specializing in probate and real estate law. He was director and chairman of the public affairs, patient rights and long-range planning committees of the National Mental Health Association.

Lino J. Saldaña '45 of San Juan, Puerto Rico, died Dec. 12, 2006. A judge of Puerto Rico's Supreme Court, he was appointed in 1955 by the first elected governor of Puerto Rico. He remained on the court until 1961.

Frederick Doppelt '46 of New York City died Nov. 18, 2006. A lawyer for six decades, he was a solo practitioner specializing in the fields of estates, trusts and taxes. He was village justice of Saddle Rock, Great Neck, N.Y., for 30 years. During WWII, he was a lieutenant and navigator in the China-Burma-India theater.

Robert B. Corpening '47 of Los Angeles died Aug. 12, 2006. He was a private practitioner in Los Angeles. From 1955 to 1975, he was chief legal counsel for TRW, and earlier in his career, he practiced law in New York City. He co-wrote "California Condemnation Practice" and served as a judge pro tem in the Los Angeles Municipal Court. During WWII, he served as a U.S. Navy officer in the South Pacific.

Joseph Edwards '47 of Barnstable, Mass., died Oct. 6, 2006. He was a longtime partner at Bingham, Dana & Gould, now known as Bingham McCutchen, in Boston. He represented the First National Bank and the Boston Red Sox. During WWII, he served in the 1st division and later commanded an artillery battery during the Battle of the Bulge.

Robert R. Hurst '47 of Bamberg, S.C., died April 29, 2005. He was chairman of the board of Phoenix Specialty Manufacturing Co.

William F. Quinn '47 of Honolulu died Aug. 28, 2006. He was Hawaii's last territorial governor, appointed by President Eisenhower, and its first elected governor in 1959. He helped transform Hawaii from a territory to America's 50th state, and he urged land-use planning, decried the overbuilding of Waikiki and called for a planning commission. After government service, he went into private practice and served as president of Dole Co. from 1965 to 1972. He was chair-

man of the board of the Honolulu Symphony and the East-West Center. During WWII, he served in the U.S. Navy.

George R. Walter '47 of Washington, D.C., died Oct. 17, 2006. An insurance executive, he was a longtime employee of Acacia Mutual Life Insurance. He joined the company in 1947 and was appointed assistant to the president in 1956. In 1969, he was named senior vice president, and from 1975 until his retirement, he was senior executive vice president. During WWII, he served in the U.S. Army and was responsible for personnel and matériel movements in the China-Burma-India theater. He attained the rank of major and was awarded the Bronze Star.

Harry H. Almond Jr. '48 of Arlington, Va., died Jan. 19, 2006. An international law scholar, he was a senior lawyer and adviser in international law at the U.S. Department of Defense in the office of the secretary of defense. He joined the Defense Department in the late 1960s and worked on legal matters affecting outer space and the law of the sea. In the late 1970s, he represented the joint chiefs of staff at the strategic arms limitation talks (SALT II). He was placed on administrative leave in 1979 after he was alleged to have provided crucial information to a leading SALT opponent. A year later, he was exonerated of all charges but declined an offer to return to his former office. He lectured at the National Defense University at Fort Lesley J. McNair in Washington, D.C., and after retiring in 1993, he taught as an adjunct at Georgetown University.

George H. Esser Jr. '48 of Chapel Hill, N.C., died Nov. 5, 2006. He was a consultant to public- and private-sector organizations on public affairs issues. In 1963, he was appointed head of the North Carolina Fund, a project designed to tackle problems of poverty and racism in the state. The fund developed a variety of programs across the state, including the North Carolina Volunteers, a service corps for college students. He helped establish the Legacies Fund to support the organizations that grew out of the North Carolina Fund project. Later, he was a program adviser for the Ford Foundation, executive director of the Southern Regional Council in Atlanta and executive director of the National Academy of Public Administration in Washington, D.C. In 1995, he received the North Carolina Philanthropy Award. At the time of his death, he was a board member of MDC Inc., a job-training program established by the fund in 1967.

Eugene Greener Jr. '48 of Naples, Fla., died Sept. 25, 2006. He practiced law in

An economist for a decent society

RICHARD A. MUSGRAVE, professor emeritus of economics at Harvard Law School and the faculty of arts and sciences, died on Jan. 15 at the age of 96. Musgrave, a renowned political economist, was considered by many in his field to be the founder of modern public finance. Two of his books, “The Theory of Public Finance” (1959) and “Public Finance in Theory and Practice” (1973), became widely consulted classics.

Musgrave brought to his work the belief that governments should develop fair, efficient tax policies to redistribute resources and provide public services to the population. “He had a deep interest in the preservation of a decent society,” his wife, Peggy Brewer Musgrave, also an economist,

told *The Boston Globe*.

Born in Koenigstein, Germany, in 1910, Musgrave graduated from the university of Heidelberg in 1933 before moving to the United States. He received his master’s degree and Ph.D. in economics from Harvard, and from 1941 to 1947 he worked as an economist for the Federal Reserve Board. After holding teaching positions at the University of Michigan, Johns Hopkins and Princeton, he returned to Harvard as a professor of economics at the faculty of arts and sciences and the law school in 1965.

Professor Emeritus Oliver Oldman ’53 was an early advocate of Musgrave’s appointment to the law school faculty, partly so that Musgrave could work more

closely with the International Tax Program, which Oldman headed. It was the first time a professor of economics held a joint appointment at HLS. Musgrave acted as both mentor and inspiration to several generations of students.

“Richard’s lively engagement with his subject, his contagious enthusiasm and his genuine curiosity were as strong in his 90s as they were when I took one of his courses 25 years earlier,” said Professor Louis Kaplow ’81. After his retirement from Harvard in 1981, Musgrave taught at the University of California in Santa Cruz for over 20 years. Kaplow recalled sending drafts of his work to Musgrave for comments: “He sparked my own interest, and a countless number

of students’ interests, in economics and taxation.”

While Musgrave’s position on the HLS faculty was a boon to students of public finance, his collaborations at the law school had a strong influence on his own work. “He was a great theoretician all along,” Oldman recalled, “but his time at the law school led him to expand his research and writing into the realm of practice as well.”

In addition to his work as an academic, Musgrave was sought as a fiscal policy adviser by foreign governments, including those of Bolivia, Colombia, Chile, Japan, South Korea and Taiwan. He played a similar role in the United States, consulting for the U.S. Treasury, the President’s Council of Economic Advisers, the Department of Housing and Urban Development, and the World Bank. *

—MARIAH ROBBINS

A MEMORIAL SERVICE for Professor Musgrave will be held at the Harvard Memorial Church on Friday, May 18, at 3:00 p.m. For more information, contact Lori Reck at llmorris@fas.harvard.edu.

FOUNDING FATHER: Richard Musgrave had a major influence on leading economists, including Nobel laureate Paul Samuelson and Harvard Professor Martin Feldstein.

HARVARD UNIVERSITY NEWS OFFICE

Memphis, Tenn., and in Marco Island and Naples, Fla. He was on the board of Temple Israel in Memphis and Temple Shalom in Naples. He served in the U.S. Navy during WWII and later during the Korean War.

John E.D. Grunow '48 of Old Greenwich and Stamford, Conn., died Oct. 18, 2006. He was vice president of Martin Marietta and president of its natural resources division. He began his career at Newmont Mining and was president of Atlantic Cement before joining Martin Marietta. He and his wife founded the Old Greenwich Tennis Academy, and he was president of Innis Arden Golf Club. During WWII, he served in the U.S. Army Horse Cavalry under the command of then Maj. George Patton and was later transferred to the U.S. Army Air Forces, where he was a flight instructor at Wright Field in Dayton, Ohio. In 1944, he was flying a B-24 Liberator bomber when he was shot down over Berlin, and was held prisoner in a camp in Poland for 18 months. He wrote a memoir, "Citizen Soldier."

Joseph H. Koffler '48 of Whitestone, N.Y., died Nov. 13, 2006. For more than 50 years, he taught at the New York Law School. He joined the school in 1950 and taught torts. In 2001, he was given the school's Special Trustees Award in recognition of his teaching and scholarship. He retired in 2003 as professor emeritus. He co-wrote "Common Law Pleading." During WWII, he served in the U.S. Army in the European theater.

Albert R. Mezoff '48 of Delray Beach, Fla., died June 21, 2006. Formerly of Chestnut Hill, Mass., he was a civil trial/litigation attorney.

George C. Perkins '48 of South Dartmouth, Mass., died Oct. 21, 2005. For 37 years, he was an attorney in New Bedford. He was a founder of the Waterfront Historic Area League in New Bedford and a chairman of the New Bedford Whaling Museum and the Swain School of Design. During WWII, he served in the U.S. Navy.

James A. Reed '48 of Castine, Maine, died Aug. 23, 2006. Formerly of Longmeadow, Mass., he was a lawyer, investment banker and assistant secretary of the U.S. Treasury during the Kennedy administration. He founded an international financial firm in the mid-1970s. During WWII, Reed served in the U.S. Navy, where he befriended John F. Kennedy aboard a ship en route to the South Pacific. He later served as a special assistant to Attorney General Robert Kennedy, and in 1962, he joined the U.S. Treasury Department, where he worked on a reorgani-

zation of the U.S. Customs Service.

Paul H. Roney '48 of St. Petersburg, Fla., died Sept. 16, 2006. A longtime St. Petersburg attorney, he was appointed to the U.S. Court of Appeals, 5th Circuit, by President Nixon in 1970. Eleven years later, when the jurisdiction was divided, Roney became one of the 12 original judges of the 11th Circuit. In 1986, he was named chief judge, and he held senior status beginning in 1989. A longtime pioneer for civil rights, he helped racially integrate the bar association in St. Petersburg. He began his law career in New York, and in 1957 he opened his own practice in St. Petersburg.

Vincent L. St. Johns '48 of Pittsburgh died Nov. 28, 2006. A 20-year member of Pittsburgh's law department, he researched assessment and tax exemption cases, assembled Pittsburgh's code of ordinances and advised the City Council. Early in his career, he worked in the city's Urban Redevelopment Authority before his appointment in 1971 to the law department. After retiring, he and his wife wrote a book of poetry, "Dragons Slain and Stars Whole."

Walter B. Williams '48 of Seattle died Nov. 9, 2006. A Seattle banker and state legislator, he was president and chairman of what is now known as HomeStreet Bank for more than 25 years. He was elected to the Washington state House of Representatives in 1961, and in 1963, he moved to the state Senate, where he served for eight years and worked to pass a public-works package for parks and infrastructure in King County. He was president of Mortgage Bankers Association and a director of Fannie Mae. He was also a chairman of the Woodland Park Zoo Commission, helping to revitalize Seattle's zoo in the 1980s. During WWII, he served as a Japanese-language officer in the U.S. Marine Corps in Guam and Iwo Jima. He later was president of the Japan-America Society of the State of Washington.

William W. Wyse '48 of Portland, Ore., died Dec. 11, 2005. He was founder of Wyse Investment Services Co., a Portland-based real estate investment company focused on commercial real estate investors. Prior to founding the company in 1988, he was a real estate and business attorney for more than 40 years at Stoel Rives in Portland.

Ralph D. Buck Jr. '49 of Ivoryton, Conn., died Aug. 21, 2006. He was tax counsel and associate general counsel for Caltex Petroleum, a division of Chevron Texaco. He began his law career at Paul, Weiss, Rifkind, Wharton & Garrison, where he practiced

for eight years before joining Caltex. During WWII, he served as an officer with the U.S. Army in the Philippines.

George Hardy Rowley '49 of Tenuille, Ga., died Oct. 19, 2006. Formerly of Greenville, Pa., he was a trial lawyer and practiced law at Whiteman, Voorhies, Dilley and Keck. From 1950 to 1952, he was an assistant U.S. attorney for the Western District of Pennsylvania. For many years, he served as chairman of the Mercer County Courts' Civil Rules Committee. In 1975, he was elected a fellow of the American College of Trial Lawyers. During WWII, he served as a deck officer in the U.S. Navy.

1950-1959

George H. Babcock '50 of Placentia, Calif., died Aug. 2, 2006. For more than 35 years, he practiced law in California. He was a partner at Parker Stanbury McGee Babcock & Combs in Santa Ana.

Stanley B. Cohen '50 of Bethesda, Md., died Nov. 26, 2006. A communications lawyer, during his career, he was a partner at Cohn and Marks in Washington, D.C., a Federal Communications Commission attorney and a solo practitioner. During WWII, he was captured at the Battle of the Bulge and was imprisoned in Berga, a Nazi slave labor camp, and forced to dig tunnels. When the Nazis abandoned the camp on April 5, 1945, he was part of a death march before being rescued by American troops. Cohen received two Purple Hearts. His experience was reflected in the 2003 PBS documentary "Berga: Soldiers of Another War."

Robert L. Maddox '50 of Louisville, Ky., died Sept. 18, 2006. He joined what is now known as Wyatt, Tarrant & Combs in 1950 and retired as a senior partner. During WWII, he served in the 10th Mountain Division and was awarded the Bronze Star. He served on many corporate boards, including Whip Mix Corp., Nugent Sand Corp. and Eady Construction Co. He was a trustee and treasurer of Louisville Collegiate School and Lees Junior College in Jackson, Ky.

Stuart A. White '50 of Bradenton, Fla., died Aug. 9, 2006. Early in his career, he was a partner specializing in patent litigation at Ward, Haselton, McElhannon Orme Brooks & Fitzpatrick in New York City. He later practiced law at Curtis Morris & Safford, also in New York City.

Harold M. Guzy '51 of Fort Lauderdale, Fla., died Nov. 27, 2006. Formerly of South Orange and West Orange, N.J., he was a

management consultant and an executive vice president of Mangel Stores Inc., a developer of shopping centers. He was active on the National Republican Senatorial Committee.

William Pendleton Hackney '51 of Shadyside, Pa., died July 31, 2006. For more than 40 years, he practiced corporate law at Reed Smith Shaw & McClay in Pittsburgh, retiring as senior partner in 1994. He later was counsel to the firm. In the 1960s, he was a member of the Pennsylvania Constitutional Convention. He was vice president of the Pittsburgh Playhouse and president of what is now the Pittsburgh Center for the Arts. During WWII, he served in the U.S. Army Air Forces as a lieutenant and flew transports in the Pacific.

John H. King '51 of Falmouth and Islesboro, Maine, died July 23, 2006. A trusts and estates attorney for more than 50 years, he began his career at Sherburne Powers & Needham in Boston and later formed his own firm, King & Navins, in Wellesley, Mass. He was a member of the American College of Trust and Estate Counsel. An avid golfer, he was club champion of every club he belonged to and was president and a trustee of the Francis Ouimet Caddy Scholarship Fund. He served in the U.S. Army Air Forces during WWII and was a judge advocate during the Korean War.

Peter S. Heller '52 of New York City died Oct. 21, 2006. For nearly 40 years, he was a corporate lawyer at Webster and Sheffield, serving as managing partner for three years before retiring in 1990. An overseer of Harvard College, president of the Harvard Club of New York and vice president of the Associated Harvard Alumni, he was awarded the Harvard Medal in 1994. A chamber music composer, he studied under composer Stanley Wolff at the Juilliard School and was vice president of the board of the New York Philharmonic.

Richard L. Welch '52 of Woods Hole and Belmont, Mass., died Nov. 6, 2006. A registered investment adviser, he was co-trustee of three trusts and chief investment counsel for Trustees and Investors Co. in Boston. Earlier in his career, he practiced law at Badger, Pratt, Doyle & Badger in Boston and was corporate counsel for Northern Steel Co. During the Korean War, he served as a lieutenant in the U.S. Army.

Fred Kilbride '53 of Toluca Lake, Calif., died July 5, 2006. He was a solo practitioner in Burbank, Calif. From 1954 to 1968, he was a Los Angeles County public defender.

John A. Lodge '53 of Nantucket, Mass., died May 26, 2006.

Stanley Rothenberg '53 of Dobbs Ferry, N.Y., died Nov. 3, 2006. A partner at Moses & Singer in New York City, he worked on copyright and entertainment law cases, including ones involving "Rocky and Bullwinkle," "Cats" and "Amos 'n' Andy." He was president of the Copyright Society of the U.S.A. and chairman of the Association of the Bar of the City of New York. He wrote the books "Legal Protection of Literature, Art and Music" and "Copyright and Public Performance of Music" and taught at a number of law schools, most recently Fordham Law School.

Ruth (Schechtman) Dreyfus '54 of New York City died Aug. 23, 2006. For 40 years, she was a solo practitioner in Stamford, Conn. In 2000, she earned an M.A. in bioethics, medicine and society, and she later served as a member of the institutional review boards at Greenwich Hospital in Connecticut, the State University in Brooklyn and the Harlem Hospital Center. She also served as a member of the Center for Urban Bioethics Advisory Group and was a contributor to a monthly publication of the Hastings Center.

Judson A. Parsons Jr. '54 of Summit, N.J., died July 18, 2006. He was special counsel to Laughlin, Markensohn, Lagani & Pegg in Morristown, N.J., and president of Orbiting Clef Productions, a music publishing and record sales firm. Earlier in his career, he was a partner at Dewey Ballantine.

Frederick G. Tate '54 of Washington, D.C., died Feb. 27, 2006. Formerly of New York City, he was a partner at Rogers & Wells there. He joined the firm right after HLS, became a partner in 1967 and retired in 1992.

Barton P. Cohen '55 of Leawood, Kan., died Dec. 11, 2006. A Kansas lawyer for 50 years, he was of counsel at Blackwell Sanders Peper Martin in Overland Park at the time of his death. He joined the firm as a partner in 1988. For the previous 20 years, he was a solo practitioner. He was a director of Metcalf Bank and was on the advisory boards of the Bleeding Kansas National Historic Site and the Johnson County Museum. He served in the U.S. Army in the Third Armored Division in Gelnhausen, Germany.

Robert D. Peckham '55 of Athens, Ga., died July 19, 2006. A career military officer, he served in the U.S. Army from 1947 to 1968, attaining the rank of lieutenant colonel. He later taught for almost 20 years

at the University of Georgia School of Law. During his tenure at UGA, he was director of the school's Legal Aid and Defender Society. He also served as a judge pro tem for the Magistrate's Court in Clarke County, Ga. He was counsel and a trustee of the Georgia Federal/Military Coalition and served on the Governor's Consumer Advisory Board. A trombone player, he was a founding member of the Classic City Band of Athens, Ga., and president and director of both that organization and Windjammers Unlimited, a circus music historical society.

Julian L. Weber '55 of New York City died Aug. 20, 2006. He was in private practice in New York City and was president of the National Lampon.

Samuel Weinstein '55 of Loon Lake, N.Y., died Dec. 7, 2006.

Merih O. Erhan '55-'56 of Philadelphia died Aug. 9, 2006. A solo practitioner, she was an immigration attorney in Philadelphia for 30 years. Active in the Philadelphia Bar Association, she served on a number of committees and was the advisory editor of the Philadelphia Bar Reporter. She was also a volunteer for the Legal Clinic for the Disabled.

Joseph Handros '56 of New York City and Southampton, N.Y., died Aug. 18, 2006. A longtime employee of General Electric, he joined the company as an attorney in 1956 and presided over major acquisitions, including Utah International and RCA. In 1990, he retired as vice president, deputy general counsel and joined the law firm of Arnold & Porter.

Arthur F. Abelman '57 of New York City died Sept. 23, 2006. He was an intellectual property attorney at Moses & Singer in New York City, where he concentrated his practice on patents, trademarks and copyrights, and charities and other tax-exempt entities.

Roland William "Ron" Donnem '57 of Charleston, S.C., and Shaker Heights, Ohio, died Oct. 4, 2006. He was senior vice president for law and casualty prevention at Chessie System Railroads in Cleveland. He also served as the company's chief legal officer, merging it with Seaboard Coastline Railroad to form CSX Corp. Earlier in his career, he worked for Standard Brands in New York City, as director of policy planning at the U.S. Department of Justice's antitrust division in Washington, D.C., and as an attorney at Davis Polk & Wardwell. After retiring from the law, he held executive positions at various real estate companies

and was a founding board member of the Director's Association of Sheraton Franchises of North America. He served in the U.S. Navy as the chief legal officer aboard the USS Baltimore.

Ward M. Miller Jr. '57 of Glen Ridge, N.J., died Oct. 17, 2006. He was general counsel of Nabisco Brands and Avon Products. He began his legal career at Carter Ledyard & Milburn before joining Standard Brands (now Nabisco Brands) in 1961. He became the company's senior vice president and general counsel and was involved in the RJR-Nabisco leveraged buyout in 1988. He later joined Avon Products and retired in 2001.

Hartley James Chazen '58 of Greenwich, Conn., died June 30, 2006. A specialist in securities, tax and transactional law, he practiced law for more than four decades and was the founding partner of Chazen & Fox in New York City. In 1959, he received an LL.M. with distinction from New York University School of Law, where he also taught. He was a captain in the U.S. Army Reserves and was stationed in Germany.

James E. Courtney '59 of Fort Myers, Fla., died Nov. 30, 2006. He was vice president of international operations for M.A. Hanna Co. in Cleveland and retired in 1990 as vice chairman. After moving to Florida, he was president of the Mariner Group. Earlier in his career, he was a partner at Jones Day. He was a director of the Florida Gulf Coast University Foundation and Robb and Stucky Furniture Co., and director and treasurer of the Clinic for the Rehabilitation of Wildlife on Sanibel Island. He was also a published novelist. He served as a U.S. Navy officer in the Middle East from 1954 to 1956.

1960-1969

Herbert Parker '63 of Fort Valley, Va., died June 23, 2006. He practiced law in Arlington, specializing in trusts and estates, and was vice president of First American Bank of Virginia. He was treasurer of the Optimist Club of Arlington, a civic youth service club.

George H. Link '64 of Los Angeles died Dec. 14, 2006. A managing general partner of Brobeck, Phleger & Harrison, he joined the firm's San Francisco office in 1964 and was named a partner in 1970. He was managing partner of the Los Angeles office from 1976 to 1992, when he was named general managing partner of the entire firm. A trustee and vice president of the California Historical Society, he was also chairman of the Pacific Rim Advisory Council, a trustee of the Berkeley Foundation Junior States-

men and a director of the Ancient Egypt Research Associates.

William J. McGirr '64 of River Forest, Ill., died Oct. 14, 2006. A longtime resident of Oak Park, he worked in the trust department at JPMorgan Bank and in the private client services area of the former Continental Illinois National Bank.

Edward F. "Ned" Hines Jr. '69 of Andover, Mass., died Aug. 14, 2006. A partner at Hines & Corley in Lexington, Mass., he previously practiced at Choate, Hall & Stewart in Boston. He focused his practice on federal and state tax law, with an emphasis on representing owners of closely held businesses and taxpayers in disputes with the Massachusetts Department of Revenue. He was president of the Boston Bar Association, the Boston Bar Foundation and Massachusetts Continuing Legal Education.

Edward B. Kostin '69 of Darien, Conn., died Sept. 30, 2006. A taxation advisory specialist, he was a managing partner at PricewaterhouseCoopers in Stamford, Conn., and during his career worked at many of the company's offices in the U.S. and in London. After his retirement, he was a professor of tax policy and law at the Wharton School at the University of Pennsylvania and taught at Penn's law school. From 1962 to 1966, he served in the U.S. Navy and was stationed in Adak, Alaska, and Yokoshuka, Japan.

1970-1979

Paul C. Irwin '72 of Groton, Mass., died Sept. 8, 2006. An attorney and architect, he co-founded an independent youth soccer league, MAPLE, in 1993, helping it grow to nearly 500 teams throughout the state of Massachusetts.

John P. Lilly '72 of Dallas died Dec. 4, 2006. A Dallas attorney for 30 years, he specialized in business and securities litigation and arbitration. Most recently, he was senior partner at Hurt & Lilly. From 1973 to 1976, he was a lieutenant in the U.S. Navy JAG Corps.

Douglas W. Jones '73 of East Hampton, N.Y., died Aug. 9, 2006. He was a senior partner at Milbank, Tweed, Hadley & McCloy in New York City. A treasurer of Empire State Pride Agenda, he was also a board member of Lambda Legal Defense and Education Fund. He was the life partner of **Louis A. Bradbury '71** for 34 years.

Richard A. Barnett '75 of Hollywood, Fla., died Nov. 27, 2006. A solo practitio-

ner, he founded his own firm in 1981 and practiced in the areas of plaintiff personal injury and civil appeals and specialized in inadequate security, insurance coverage and medical malpractice. In 1978, he co-founded the Liberia Economic and Social Development Corp., a community development organization, which helped build more than 400 low-cost homes in Liberia. He was a board member of the Florida Initiative for Suicide Prevention, and he counseled a number of charitable organizations through the Beacon Program.

Joel Kirschbaum '77 of New York City died Aug. 16, 2006. He was a board member of Bally Technologies in Las Vegas. From 1994 to 1995, he was chairman of the company's board of directors, and since 2004, he had served as a member of the company's office of the chairman. Earlier in his career, he worked for Kirkland Investment Co. and was a general partner at Goldman Sachs.

James Z. Pugash '78 of Belvedere Tiburon, Calif., died Sept. 20, 2006. He was a co-founder and chairman of Hearthstone, an institutional investor in residential development projects. During the 1990s, he pioneered the concept of using pension fund money to finance moderately priced, for-profit housing in the United States. He was previously a special limited partner at Montgomery Securities, and he also served as vice president of Occidental Petroleum. He was founding chairman of the Homebuilding Community Foundation and founder and chairman of the board of Sonoma Jazz +, an annual festival of music, food and wine in California's wine country.

1990-1999

Melissa (Lumberg) Zagon '92 of Deerfield, Ill., died Jan. 2, 2007. She co-founded LUNgevity Foundation, a private provider of lung cancer research funds, in 2001, after being diagnosed with stage 4 primary lung cancer that had metastasized to her brain. She went on to serve as the organization's president and chairwoman. A nonsmoker, she was a spokesperson for lung cancer research. She began her career at the Chicago office of Goldberg Kohn, where she was the first female partner in litigation. She later joined True North Communications as an employment lawyer. (For a Bulletin profile of Zagon, go to www.law.harvard.edu/alumni/bulletin/2003/summer.)

Lynda Hendrix '93 of Dunnellon, Fla., died Aug. 31, 2006. She was a director of the Spruce Creek Preserve, where she also served as president for six years.



Both in law and in life, said Professor Paul Freund, “the art is to see the balancing truths and to reach a satisfying accommodation.” By his example, he taught “the virtues of balanced judgment to a generation of constitutional law students and teachers,” said Professor Andrew Kaufman ’54 at the opening of the Freund exhibit. Freund is pictured above circa 1985 in his Langdell office.

Freund’s path

PAPER ABOUNDED IN Professor Paul Freund’s office; the stacks left only a narrow path to his desk. Those who strayed from the route left footprints on the papers that had spilled to the floor.

The stacks grew over the course of his 37 years at HLS. A leading authority on constitutional law and the Supreme Court, Freund ’31 S.J.D. ’32 began teaching at the law school in 1939. Earlier, as a government lawyer, he worked on New Deal cases being brought before the Supreme Court by the Roosevelt administration. Over the course of his long career, his interests ventured beyond constitutional law and included such topics as medical ethics and Electoral College reform.

Selected materials (including a few items with footprints) from the 249-box Paul A. Freund Papers collection were recently highlighted in the HLS library exhibit “Balancing the Truth: Paul Freund, 1908-1992.” A searchable index of the collection is now available through <http://www.law.harvard.edu/library/collections/special/index.php>.

“The law and the nation have been most fortunate to have Paul Freund as a thinker and as a poet of the law,” said Professor Laurence Tribe ’66 at the opening of the exhibit, noting his former teacher and colleague’s “gentle erudite wisdom and his wise and genuine erudition.” *



Tony Bloom LL.M. '64 is the former chairman and CEO of The Premier Group, which grew from a small business founded by his family at the turn of the last century into one of South Africa's largest industrial companies. Since 1988, he has been a London-based investor, and also a director and manager of several major businesses. He is a member of the HLS Dean's Advisory Board.

Corporate governance—against apartheid

How did your family settle in South Africa and build one of the region's major enterprises?

They came from Lithuania to escape the persecution of Jews, started off as peddlers, and then got into selling animal feeds, then the milling business, and it grew from there. The company was listed on the Johannesburg Stock Exchange in 1913, and then control passed to an English company in 1963, while I was at Harvard.

You went from the University of the Witwatersrand to HLS. What was that like?

Harvard was a life-transforming experience—the intellectual rigor, the brilliance of the faculty and the students. I had Dean Griswold for tax, Louis Loss, David Herwitz and Dean Vorenberg, among others. I used to audit Kissinger's lectures on defense policy at the college. For somebody who came from a provincial backwater, it was mind-blowing.

Did you ever have doubts about going back to South Africa?

I thought about it, but I had always intended to go back and practice law there. My family were all there. I practiced at a firm in Johannesburg after Harvard, and was made a partner, but then I was persuaded to join the company that had belonged to my family. I started as its legal counsel and moved up through the ranks.

How did you deal with apartheid in your business?

I never accepted the basis for apartheid. Everybody says that today, but I think there are enough public records to demonstrate that I didn't. I had a deep dislike of discrimination, which affected every facet of life in South Africa. So, we were one of the few companies to employ political detainees after they were released. We supported the families of people who were up on treason charges. My annual chairman's report used to call for repeal of discriminatory legislation and call upon the government to open up negotiations with black trade unions and black leaders.

In 1985, you went to Zambia to meet with exiled leaders of the African National Congress. What happened?

Five of us made a secret trip up there, to a game farm in the bush, to meet with the ANC, which was banned at the time. But it leaked, and created a major stir, and was viewed as virtually treasonable. The state president, P.W. Botha, was incandescent with rage. Didn't do anything in particular,

other than rail against us, but I was subjected to a deluge of hate mail, and it got bad enough that I had to have a body-guard.

How much of a role did lawyers play in chipping away at apartheid?

There were some high-profile barristers who were magnificent in constantly attacking the government. George Bezos, who's a huge unsung hero, gave endless time to defending people who were up on various charges. There were challenges to the legislation. And of course, Richard Goldstone, when he was a judge, delivered some very courageous judgments.

And the banned leaders you met with in Zambia—are you still in touch?

Yes. Thabo Mbeki, for one. I used to see Thabo a lot, but when he became state president, I put it on ice. I'm sure Thabo would see me anytime over a cup of tea, but he'll be looking at his watch and have six appointments waiting. So, when he's no longer president, I'm sure we'll pick up again. We became very good friends. *



Tony Bloom, outside his offices in Spencer House, in London



ADOBE STOCK IMAGES

“FOR MUCH OF the 60 years since the end of World War II, firms raising capital did not so much choose to come to the United States, they came *naturally*. Today, ... U.S. financial markets need to attract business that has a choice, and therefore how our markets are regulated by rules and laws really does matter. ...”
—*Interim Report of the Committee on Capital Markets Regulation*
PROFESSOR HAL S. SCOTT, COMMITTEE DIRECTOR

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