

ALSO INSIDE: Obama v. Clinton, in perspective  
Letter from Haiti | Kagan's first five years

# Harvard Law

Summer 2008

*bulletin*

-----> **CHANGING THE CLIMATE** of environmental law <-----



## The Changing Climate of Environmental Law

IN THIS ISSUE of the Bulletin, you will see how hard Harvard Law School has been working to ensure that it has an environmental law program truly worthy of its students and alumni—and how this program is fast becoming an international leader in showing how law schools (and lawyers) can actively shape a field that will in many ways determine the world's future.

The director of our program is Professor Jody Freeman LL.M. '91 S.J.D. '95, an important and wonderfully creative environmental and administrative law scholar who joined our faculty three years ago and brings to the program a striking combination of energy, charisma and vision. More recently, we have had the extraordinary good fortune to recruit Cass Sunstein '78, whose expertise in environmental law—as in so many other fields, including administrative law and policy, constitutional law and theory, and behavioral economics and law—makes him the most wide-ranging, prolific and influential legal scholar of our time. And, our environmental program also benefits from a remarkable younger scholar, Matthew Stephenson '03, whose talents and energies are already yielding enormous dividends.

Until fairly recently, environmental legal practice was built mainly on litigation, but today—largely because of the growing perils posed by greenhouse gas emissions and global climate change—the field is expanding well beyond that model. For this reason, HLS students are learning to tackle environmental issues in new ways—through team-based problem-solving built on solid grounding in statutory, regulatory, and international law and making use of interdisciplinary approaches that bring science, economics and other academic perspectives to bear. (If these strategies sound familiar, they should—they are also central to our recent comprehensive curriculum reforms.)

At the heart of our environmental program is our new environmental clinic. Under the guidance of the terrifically

accomplished Wendy Jacobs '81—one of our newest clinical professors—HLS students are involved in a growing array of placements that give them a chance to effect change in the real world. For example, some have been helping the Kansas secretary of health and environment fend off a legal challenge to his denial of a permit application for two coal-fired plants—the first such denial based on reasons of climate change. Others are focused on ways of encouraging investors to make environmentally conscious investment choices. And, some have gotten involved in the nitty-gritty of advocacy before the EPA and other federal and state agencies.

And of course, the efforts—and impact—of our students continue long after they graduate. As you'll read in these pages, many of our alumni are leaders in the search for solutions to pressing environmental issues, in places ranging from Alaska (where, after the loss of 20 percent of the Arctic sea ice, some alumni have crafted a legal strategy to fight carbon emissions) to the Philippines (where Antonio Oposa Jr. LL.M. '97 continues his efforts after bringing a landmark suit that established a plaintiff's standing to sue on behalf of future generations in an environmental case).

I am enormously proud of everything our students and alumni are doing. I am especially grateful, too, for the support of those of you who have helped us build our environmental program into what it is today—especially Dan Emmett '64, David Bonderman '66 and Joy Covey '89, whose vision and extraordinary generosity could not have come at a more critical time.

As you read this issue of the Bulletin, I hope you'll share my pride in the work that students, faculty and alumni are doing to tackle the environmental dangers we all face—and my determination that Harvard Law School continue to make a difference in this vital sphere of law and policy.



DEAN ELENA KAGAN '86



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## LETTERS

*“As someone who worked in international commercial arbitration for 14 years, I applaud the school for bringing more international and comparative law courses into the first year.”* —BENJAMIN DAVIS '83



### WARMTH AND CONCERN

I FEEL COMPELLED to write to express both warmth and concern about certain portions of the Winter 2008 Harvard Law Bulletin.

First, I want to second the warm comments about Professor Clark Byse. I never had him in class, but I found him warm and encouraging when I was a 40-year-old searching how to come into law teaching.

Second, as someone who worked in international commercial arbitration for 14 years, I applaud the school for bringing more international and comparative law courses into the first year. Back in the early '80s, questions about international or comparative approaches to similar problems (How did Japanese law deal with sparks coming off trains?) were met with blank stares. Thanks for helping students become aware earlier of the world. My only quibble is that I hope that the international law classes are truly international law—not U.S. foreign relations law. Coming from the traditions of Professors Detlev Vagts and C. Clyde Ferguson, I am

worried that the content of these courses might do more damage than the profound current ignorance of the subject if students “think” they are learning international law when in fact they are just learning a portion of U.S. constitutional law with regard to U.S. foreign relations. I hope that the comparative courses draw from European, Latin American, African and Asian traditions. For example, one of the marvelous things I learned in international commercial arbitration was that the Libyan Civil Code was largely drawn from the Egyptian Civil Code, which itself drew on the French Civil Code. Knowing such history helps the students represent their clients in difficult cases.

BENJAMIN DAVIS '83  
*Toledo, Ohio*

### A GREAT PROFESSOR AND CARING HUMAN BEING

I WAS FOUR weeks into my first year at the law school when my father passed away, causing me to miss a week of classes. My roommate went to each of my professors and requested that he be allowed to tape, solely for my use, the sessions I would miss during the week I would be out. With the exception of Professor Harold Berman, each one turned down the request. The death of Professor Berman (see story, p. 73) brings back memories of not only a great professor, but a warm, caring human being. He will be missed.

BRUCE JAY COLAN '66  
*Miami*

### CLINTON AND THOMAS REDUX

THIS LETTER CONCERNS a “short take” in the Winter 2008 Bulletin by Assistant Professor Jeannie Suk

'02 regarding Supreme Court Justice Clarence Thomas. Ms. Suk wonders why “Justice Thomas has fared so badly while Mr. Clinton seems to have fared relatively well since he left office.” She asserts that “our country put Clarence Thomas through hell on the basis of accusations that don’t approach the sexual allegations that we have rightly allowed to recede into the background of Bill Clinton’s distinguished career.”

The Senate had a duty to explore the allegiance of Ms. Hill in an effort to determine Mr. Thomas’ fitness to serve on the highest court in the land. Nor did Mr. Clinton escape unscathed. He was put through the hell of an impeachment proceeding which resulted in less than a majority vote, let alone the required two-thirds vote required for a conviction. He was also barred from practicing law for five years by the Arkansas Supreme Court.

ROBERT KAPLAN '37  
*Pompano Beach, Fla.*

### NOTE FROM A STAKEHOLDER

FROM P. 21 of the Winter 2008 issue:

“... there was remarkable agreement among all the stakeholders that change was needed in three key areas.”

For shame.

This misuse of *stakeholder* has been a fad in the lay press for the last few years. Somebody who didn’t know what the word meant obviously saw it and said, Gee, that’s a clever way to refer to a person who has a stake in something, not realizing that it means exactly the opposite: a disinterested party who holds the stakes pending the outcome of an issue between the interested parties.

THADDEUS HOLT '56  
*Point Clear, Ala.*



# War Crimes Through the Looking Glass

For a handful of students, the *UNREAL* becomes *suddenly real*

By Emily Newburger

THIS JANUARY, when the trial of former Liberian President Charles Taylor resumed in The Hague, much of the world was watching. So were 11 Harvard Law students—from about 20 feet away.

In preparation for the War Crimes Prosecution Workshop that he taught this spring, Assistant Clinical Professor Alex Whiting took the students enrolled in the class for an up-close look at the institutions they would be working with: the International Criminal Court, the Special Court for Sierra Leone (which is trying Taylor at the ICC) and the International Criminal Tribunal for the former Yugoslavia.

Albert Chang '09 says it was a surreal experience to see Taylor—charged with murder, rape and sexual enslavement, among other crimes—walk into the courtroom, and then look with apparent perplexity into the small glassed-in viewing gallery where the students were seated.

“The idea of international criminal justice had seemed very far removed,” says Chang. Not anymore.

Whiting, a former senior trial attorney for the ICTY, arranged for students to sit in on trials and also to meet with judges, prosecutors and defense lawyers—including Taylor’s counsel.

Scott Leslie '08 says the trip was one of the best experiences he’s had in law school. “We were given free rein to learn from the speakers and ask whatever questions we had on our minds,” he says. “And we met with higher-level officials than I ever expected.” Chief Prosecutor of the International Criminal Court Luis Moreno-Ocampo was among those who sat down with the students and answered their questions—about how he goes about prosecutions, why so many of them are based in Africa, how many he expects to be successful and the future of the court.

Leslie, an editor-in-chief of the Interna-



FORMER LIBERIAN PRESIDENT *Charles Taylor, right, makes his first appearance at the Special Court for Sierra Leone, in The Hague.*

tional Law Journal, says he knows much has been written about how these tribunals should run. But after seeing the day-to-day work, he was struck by the constraints that prosecutors, defense attorneys and judges face. “I think that gets lost in the literature.”

Whiting, who served as a federal prosecutor before joining the ICTY, says it all comes down to constraints on resources: The international tribunals have no police forces, so witnesses cannot be compelled to come testify. The crimes happen during wartime, at a location distant from the courts, so gathering evidence is difficult, “let alone gathering it in the

manner that we are accustomed to in domestic police investigations,” he adds. “The question becomes not, Is this how I expect things to be done, but rather, Is this sufficient and reliable or is it too compromised?”

It was this sort of question that fueled student discussions—on the train back to the hotel, at dinner and back in Cambridge during the spring workshop. In addition to studying relevant international law, students completed projects to help the courts they’d visited in January.

Chang, who hopes for a career “at the intersection of foreign policy and the law,” worked with the State Department to provide legal and logistical support to the various tribunals. Leslie did research for the office of the prosecutor in the ICTY on issues of command responsibility. Although the student work was done long-distance, international criminal justice was no longer an abstraction. \*

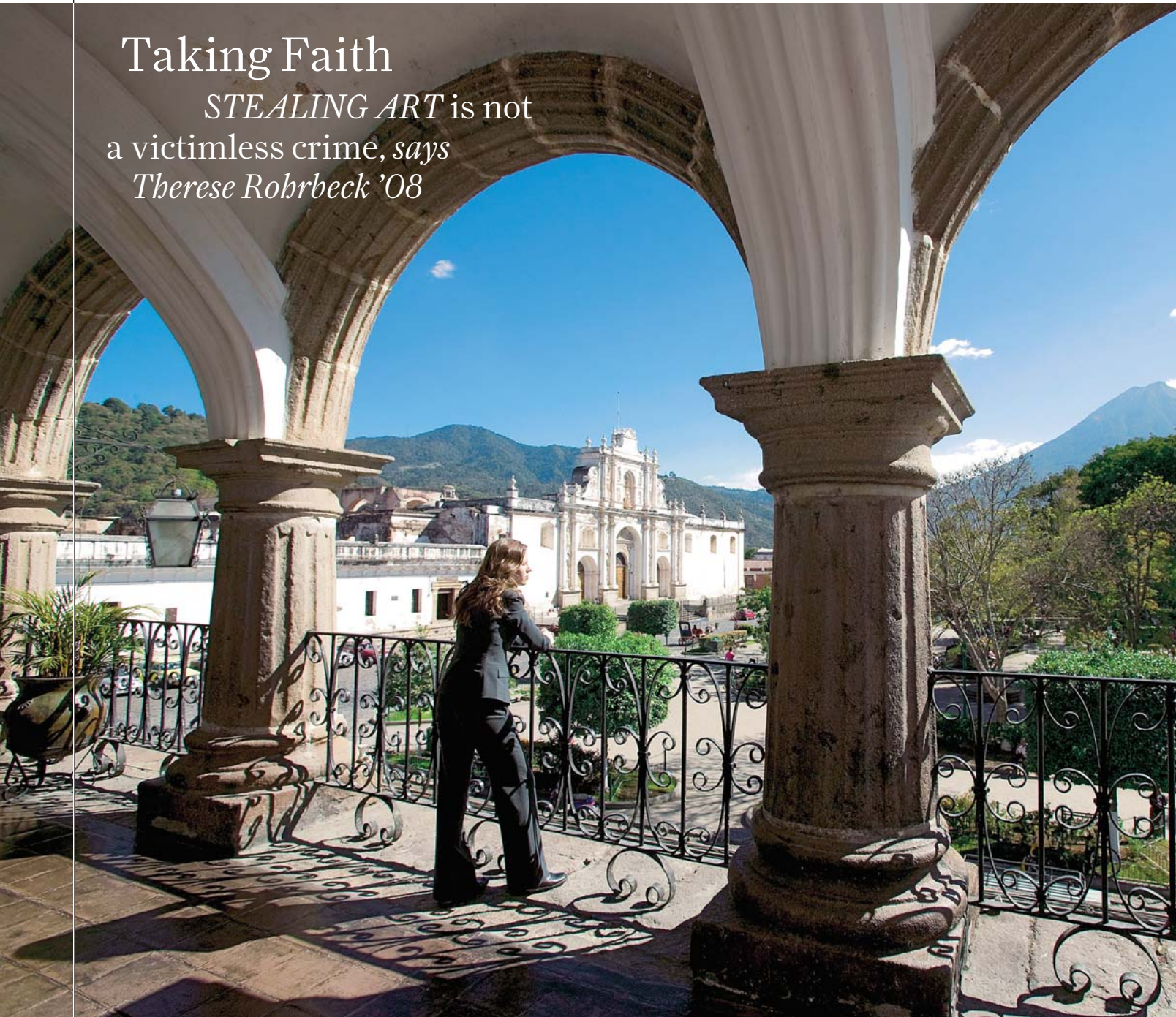


ASSISTANT CLINICAL PROFESSOR ALEX WHITING, *far right, and students in his War Crimes Prosecution Workshop at the ICC in January*



# Taking Faith

*STEALING ART* is not  
a victimless crime, says  
*Therese Rohrbeck '08*



*By Christine Perkins*

WHILE IN GUATEMALA this winter, Therese Rohrbeck touched what remains of *The Dream of Pope Gregory IX*.

In a 2004 heist that left a security guard dead, the 17th-century painting was cut jaggedly from its frame at

Antigua's Museum of Colonial Art, leaving only strips of canvas. It's one of hundreds of cultural artifacts that have been looted from Guatemala's churches and museums to meet a rising demand for colonial religious art.

Rohrbeck, a 3L with a focus on cultural property law, visited the mu-

seum as part of an independent clinical project researching legal strategies for fighting the illicit trafficking of cultural heritage. During her 18-day stay, she met with officials in the Ministry of Culture and museum curators, and toured colonial churches and museums in Guatemala City and Antigua,



GUATEMALA  
CANVAS: *Therese Rohrbeck '08 takes in the tableau from a balcony of the Palacio del Ayuntamiento in Antigua, including the Agua Volcano. At right, Rohrbeck in the courtyard of one of the city's colonial buildings*



the former capital of Spain's nearly 300-year colonial empire in Central America.

For Rohrbeck, who has degrees in art history from Duke and the University of St. Andrews in Scotland, experiencing the art and architecture firsthand was an education in itself.

She was moved by the artists' skill and the role their work still plays in local people's lives.

"When you see people in front of these objects, actually praying in front of them in a church, you see that it's so much more than a representation," said Rohrbeck. Pillaging these ecclesial objects from small churches in rural towns, she believes, is especially egregious. "People usually go to these places for a sense of connection," she said. "It's more than just taking a statue. It's taking part of their faith."

Looting also spurs the loss of a nation's cultural identity, says Rohrbeck, who is Cuban-American and a native of Miami. "[These places] possess a history of a people that came before us and require our respect for future generations to enjoy."

In graduate school, Rohrbeck considered pursuing a Ph.D. in art history, but after attending a talk on the legal issues in archaeology, she felt law might be the best way to bring together her interests in history, archaeology and social advocacy.

During her 1L summer, she joined the Harvard-Cornell Archaeological Exploration of Sardis in western Turkey. It was her second such trip—she worked at an Early Iron Age and Archaic site in eastern Crete after graduating from Duke. At Sardis, instead of excavating, she researched the repatriation of Turkish artifacts and cataloged finds from the dig.

While in Turkey, Rohrbeck met a Boston University anthropologist with expertise in Mesoamerican archaeology, and in the fall she worked with her to create training materials for U.S. customs officials to help stop antiquities trafficking—the first in a series of independent clinical projects that eventually led Rohrbeck to Guatemala.

After immersing herself in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the Cultural Property Implementation

Act, she began a research project on the feasibility of a Guatemala-U.S. agreement, which would create U.S. import restrictions on colonial artifacts.

Rohrbeck, who describes her grasp of Spanish as "functional," spent months in Harvard's international law library translating Guatemala's cultural property legislation.

During her winter meeting with the director of Guatemala's unit on illicit trafficking of cultural property, she was surprised to learn the country



has not declared national ownership of its colonial art—as it has for its pre-Columbian artifacts. She says this will complicate repatriation, but Guatemala should still petition the U.S. for import restrictions.

Rohrbeck submitted her research paper to the U.S. State Department and Guatemala's Ministry of Culture this spring. In the fall she will be an associate in the corporate law department at Goodwin Procter in Boston. She'd also like to gain some experience in trusts and estates, tax law and perhaps even litigation—specialties that have applications to the world of art.

Ultimately, through her writing and legal work, Rohrbeck wants to be a voice for these objects—so they are respected not just as beautiful pieces, but as pieces of history. \*

*For a slideshow on some of the art and architecture Rohrbeck has been working to preserve, go to [www.law.harvard.edu/news/bulletin/2008/summer/snapshot.php](http://www.law.harvard.edu/news/bulletin/2008/summer/snapshot.php).*

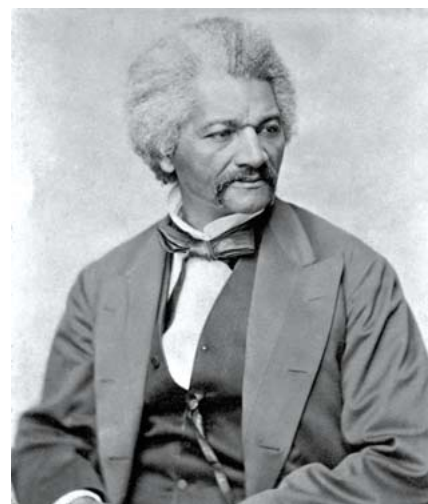


## The Slugfest, in Historical Perspective

➔ *Some say the Clinton-Obama fight reflects a historical tension between blacks and women in the struggle for equality. A legal historian says the truth is not so simple—and far more interesting.*

The Clinton-Obama battle can't be characterized—as many commentators have asserted—as a continuation of a historical struggle over who should go “first,” or as a competition in the “oppression sweepstakes,” because the underlying premise itself—that there has been a political struggle between African-Americans and women—is an oversimplification.

It's certainly true, as some have pointed out, that after the Civil War, when the 14th and 15th Amendments were being framed and ratified, the black abolitionist Frederick Douglass and the white feminist Elizabeth Cady



**19TH-CENTURY SUFFRAGE** *advocate Elizabeth Cady Stanton (left) and abolitionist Frederick Douglass (right) represented constituencies that crossed racial and gender lines. Some members felt pulled in both directions, says Professor Kenneth Mack '91 (lower left).*

Stanton debated whether African-Americans or women should be guaranteed the right to vote. But the enfranchisement issue wasn't simply a competition between black men and white women. At the time of the Douglass-Stanton debate, there was a split within the feminist movement itself. The group that formed around Stanton opposed the 15th Amendment because it enfranchised black men but not white women, while a rival group of prominent feminists supported the amendment. Black women feminists such as Sojourner Truth were pulled in both directions, but Truth and her peers ultimately supported

Stanton's opponents. Both feminist groupings claimed a mandate as *the* national feminist organization, and each saw itself as the true successor to the legacy of the antebellum woman's movement.

Likewise, some observers of the Clinton-Obama contest have recalled the 1960s as another moment when African-Americans and women competed for equality. For instance, the nation's highest-profile feminist organization, the National Women's Party, opposed the original version of the Civil Rights

Act of 1964 for its failure to include protections for white women. The act's prohibition on sex discrimination was added at the behest of Howard Smith, a segregationist congressman who had a longtime association with the NWP. But it is also true that once sex equality was added to the bill, it

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*The historical context is not as simple as black and white.*

# Mightier Than the S-word

*Answering critics, Randall Kennedy pens new book on RACIAL BETRAYAL*

By Dick Dahl

RANDALL KENNEDY KNOWS what it's like to be called a sellout.

Throughout his 24-year career at Harvard Law School, Kennedy has developed a reputation as a professor who is not afraid to challenge orthodoxies—sometimes to the alarm of liberals and black Americans. His 2002 book, “Nigger: The Strange Career of a Troublesome Word,” was criticized by some as providing the noun with a damaging certificate of acceptability.

Then, in a 2006 trial of a white defendant charged with the racially motivated beating of a black man, defense lawyers asked Kennedy to testify about the word. (The assailant was charged with using the epithet before hitting the victim with a bat.) Kennedy told the Queens, N.Y., jury that the word has many meanings. The next day’s New York Times reported that his testimony “seemed to support” defense lawyers’ assertion that their client’s use of the word wasn’t racially offensive.

Clearly, Kennedy has developed thick skin over the years. But the vitriol that came his way in the wake of his court appearance inspired him to respond. The result is “Sellout: The Politics of Racial Betrayal” (Pantheon Books), in which he examines another word replete with racial meaning in black America. Writing the book was not an act of self-defense. It was an act of scholarship.

“I’ve had a long-standing interest in questions about group loyalty,” said Kennedy, surrounded by stacks of books in his Areeda Hall office. “Where does group loyalty come from? What should it entail? Racial patriotism is an interesting thing for me.”

In the book, Kennedy makes the point that black Americans are too quick to assert racial group loyalty by accusing each other of being sellouts. To be sure, he says, allegations of racial betrayal are warranted in some cases if an African-American clearly espouses the oppression of black people. But too often, he says, the truth is ambiguous.

Take Supreme Court Justice Clarence Thomas. In the book, Kennedy calls him “the most vilified black official in the history of the United States,” a man “whose name has become synonymous with selling out.”



was kept there in part through the efforts of Pauli Murray, a black woman lawyer and feminist activist, who wrote a memorandum in support of the amendment and distributed it to every member of Congress. After the bill became law, Congresswoman Martha Griffiths criticized the slowness of the federal response to gender discrimination, arguing that the government had an “unconscious desire to alienate women from the Negroes’ civil rights movement.” “Human rights,” she asserted, “cannot be divided into competitive pieces.” Such sentiments led directly to the formation of the National Organization for Women by an interracial group of feminists, including Murray and Betty Friedan, quickly displacing the NWP as the premier feminist organization. Like its 19th-century forerunner, the ’60s-era push for gender and racial equality in law drew its participants across the boundaries that we tend to impose on the past.

There are far more interesting questions to ask about the Clinton-Obama battle than the simple ones that frame themselves around the question of black men versus white women. Obama proved he could draw strong support not only from Southern states with large black populations, but also from Western states with overwhelmingly white ones. Similarly, most pundits conveniently ignore the fact that Clinton retained the support of the bulk of the African-American political leadership even after black voters began moving toward Obama. \*

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*This coming year, Professor Kenneth Mack '91 will teach courses in American legal history, the civil rights movement and critical race theory. He is completing a book, titled “Representing the Race: Creating the Civil Rights Lawyer, 1920-1955,” to be published by Harvard University Press in 2010.*



## ON THE BOOKSHELVES

Kennedy devotes the book's longest chapter to Thomas, and he details the scorn many black Americans hold for him as a turncoat who, after benefiting from affirmative action, now repudiates it. Kennedy, too, criticizes Thomas, but not for being a sellout. The accusation, he says, forestalls actual analysis of Thomas' arguments and obscures their weaknesses as well as their strengths.

Speaking up for Clarence Thomas has not been a popular position, and Kennedy has been criticized anew. "When I speak in bookstores, people say, 'Clarence Thomas is doing things that hurt black people.' My response is: I disagree with Clarence Thomas. He thinks affirmative action hurts black people, but he's not the only person who thinks that. I'm pro-affirmative action. But is there a debate to be had about affirmative action? Of course there is."

Even the example of the slave whistle-blower, a caricature of nearly universal scorn, isn't as clear-cut as we might be led to believe, Kennedy maintains: "What about the rebellion which the slave views as clearly doomed to failure and, being doomed to failure, will lead to greater misery for the enslaved population? If he blows the whistle, is he a sellout?"

Today, the primary targets are different. "There's a pall of suspicion around all successful blacks in white institutions," Kennedy said. "And all successful blacks are aware of it."

Kennedy devotes a portion of his preface to Democratic presidential candidate Sen. Barack Obama '09 and the efforts he's made to overcome that suspicion.

Accusations that black professionals have sold out won't be going away anytime soon, Kennedy believes. But he hopes that his book will have an influence.

"I have faith that people make better decisions when they have good information," he said. "I hope that my book will do that." \*

# Filling in the Gaps

From Einer Elhauge, *a new approach to interpreting UNCLEAR LEGISLATION*



By Elaine McArdle

**Most judges, faced** with the task of interpreting unclear statutes, want to do the right thing, says Harvard Law School Professor Einer Elhauge '86. Unfortunately, it isn't always easy.

The traditional methods that judges use—for example, relying on legislative history, or applying various canons of statutory construction—have significant flaws, Elhauge says, sometimes leading to results that the enacting legislature never intended. "It can be frustrating because it often seems like the existing material doesn't provide a good indication" of what to do, he says. "How do you even think about what the right thing is, other than simply advancing your own views about what the right policy is?"

In interpreting ambiguous legislation, Elhauge says, the best option is to rely on "statutory default rules," which are



designed to maximize what he calls “enactable political preferences”—ideally, preferences shared by enough members of the current legislature that they would be passed into law if they were up for a vote—reflecting the will of the contemporary body politic.

In his latest book, “Statutory Default Rules: How to Interpret Unclear Legislation” (Harvard University Press, 2008), Elhauge offers up a set of such rules. The book, published in February, drew immediate interest from leading scholars and even judges, including U.S. Supreme Court Justice Stephen G. Breyer ’64, who traveled to HLS on March 3 to join 13 other experts from HLS and other schools for a conference on Elhauge’s approach.

The elements of Elhauge’s theory are manifold, subtle and sometimes even counterintuitive, but their core value is unmistakable: maximizing current political satisfaction. To that end, he argues that in the search for interpretive guidance, judges confronting ambiguous statutes should look first and foremost for relevant preferences that may have been expressed by *current* legislators or administrative agencies—not those who were in power when the ambiguous statute was enacted. “It turns out,” Elhauge writes, that “maximizing political satisfaction often dictates adopting statutory default rules that do *not* reflect the enactors’ most likely meaning or preferences.” Courts should look for the enactors’ preferences when those of the current polity cannot be inferred, he says.

Lest anyone think that Elhauge’s suggested approach is untested, he is quick to point out that many courts use such default rules already, “either under a different name, or without any name but implicitly through a pattern of practice.”

“I come at this as an outsider, in a sense, because I don’t teach legislation,” Elhauge says. “I was driven in part because of the very unsatisfactory nature of current

statutory theory.”

In corporate law and contracts—subjects that Elhauge teaches—“default law reasoning is the dominant paradigm,” he says. “I noticed we had an oddity, that in these two fields, the dominant paradigm for interpreting ambiguous text was to use default rules, but in the area of statutory interpretation, that was not a dominant paradigm.”

When a contract fails to stipulate the time for payment for goods, Elhauge notes, judges are aided by a well-established default rule saying payment is due upon receipt of goods. He points to a number of similar rules judges can use in the many instances where statutes are unclear.

“There’s a nice, popular conception that judges are just umpires calling balls and strikes, and that they just have to mechanically apply the rules,” Elhauge says. “That’s a nice thing to sell, but it’s just not well-founded. There’s a lot of ambiguity that has to be resolved somewhere. Judges have to make judgment calls. My theory tries to acknowledge that, but also to be a theory that can constrain judges when they interpret, and constrain them in a good way to further the political preferences of all of us collectively. My theory is, we can acknowledge the fact that legal materials often don’t resolve the meaning of statutes but also let judges act as honest agents for us all.”

His book, he says, “provides a much more structured way of thinking about how to apply tools of statutory interpretation than we had before. It also provides a theoretical way of resolving all kinds of issues that have been viewed as simply incoherent in current statutory interpretation.”

Judges are the natural audience for the book, but Elhauge hopes it will also be useful to lawyers looking for underlying theories that might move courts in their direction. He believes it will also help law students and academics interested in political science and statutory interpretation. \*



## A Labor of Love on Love’s Labors

Forty years ago *CHARLES DONAHUE* found a *passion* that has lasted into middle age

By *Katie Bacon*

AS A 3L at Yale Law School in the mid-1960s, Charles Donahue studied a series of decisions by Pope Alexander III (1159-1181) that became the basis of marriage law in Western Europe for the next three centuries. At the time, he didn’t realize how they would come to rule his own life.

In March, Cambridge University Press published “Law, Marriage, and Society in the Later Middle Ages,” Donahue’s study of how Alexander’s rules filtered down into the ecclesiastical courts and societies of York, Ely, Paris, Cambrai and Brussels—the culmination of the intellectual journey that he began four decades ago.

After law school, Donahue spent a few years in practice, including a stint during the Vietnam War as a legal adviser in the Air Force. Realizing that his true interest was legal history, in 1968 he secured a teach-

## ON THE BOOKSHELVES

ing position at the University of Michigan's law school. In 1980 he joined the HLS faculty, in no small part because he recognized that the university's extensive library would be invaluable for his research on medieval marriage law.

Donahue dug through court records in Europe, and particularly in York, England, where the survival of depositions allowed him to peer into the lives of "ordinary Yorkshire men and women of the 14th and 15th centuries talking (and arguing) about what happened between John and Joan," he says. Donahue has been discussing these cases in some of his Harvard courses for the past 20 years. "It's a wonderful topic to teach," he says,

*"Men and women have been falling in love and getting in messes for centuries."*

"because it's really timeless. Men and women have been falling in love and getting in messes for centuries."

Even if marriage is timeless, the field of marriage studies has changed a great deal since Donahue dove in. In the 1960s, the standard text for historians of marriage was a book that had been published in 1904. "Since that time there's been an absolute explosion of people

writing social history of medieval marriage and the family," he says. And Donahue, of course, has changed as well. "Romeo and Juliet," the subject of his bachelor's essay at Harvard, was once his favorite Shakespeare play. Not anymore. The legal records he's been

studying include "many Romeo and Juliet stories," but after all of these years, he's "not quite as romantic."

Now that his book is in print, Donahue feels both relief and sadness. Putting the finishing touches on a 696-page volume with hundreds of additional pages of digital footnotes was a long slog. "There is nothing quite so compulsive as a pretty compulsive guy worrying about whether the copyeditor put the comma in the right place," he says. And he's eager to move on to his next project—the 14th-century volume of "The Oxford History of the Laws of England." But he's not yet ready to leave Alexander's rules behind. "There's a book about how the law got to be the way it was," he says. "If I live that long, I hope to be able to publish that book." \*

### *Even then, in-laws were a problem ...*



According to Charles Donahue, although marriage law in the Middle Ages was complicated, the basic rules—encapsulated in the decisions of Pope Alexander III—were strikingly simple: The bride and groom had to consent freely, could not already be married to living spouses and could not be closely related to each other. What the rules didn't require was even more striking: church solemnization, the presence of witnesses or the consent of anyone besides the bride and groom.

Donahue's study of medieval marriage litigation shows

that *simple* does not necessarily mean trouble free: Many a case hinged on the difficulty of proving an informal marriage. And as time went on, legislation was passed that was inconsistent with the basic rules—often to protect property and prevent Romeo-and-Juliet-style unsanctioned unions.

Donahue found the rules' sway varied over time and also from region to region. The decision to marry in England in the later Middle Ages, for example, was more often under the control of the spouses, while marital unions in northern France and

the southern Netherlands were more likely controlled by the parties' families and social superiors.

A legal and social history, Donahue's book reveals not just evolving laws, but examples of late medieval men and women manipulating each other and the courts.

But the biggest manipulation of all may have been Alexander's. As Donahue writes, enjoying the irony: "[T]he modern idea of marriage based on romantic love received a powerful legal stimulus from a celibate pope of the 12th century."

—E.N.



# Sharia as Backlash

Noah Feldman explains the rise of *RELIGIOUS LAW*

By Seth Stern '01

PROFESSOR NOAH FELDMAN has done plenty of thinking about the intersection of religion and law, particularly in the Arab world. In his latest book, he seeks to explain the rapid growth of Islamist political parties calling for the establishment of Sharia as the governing law.

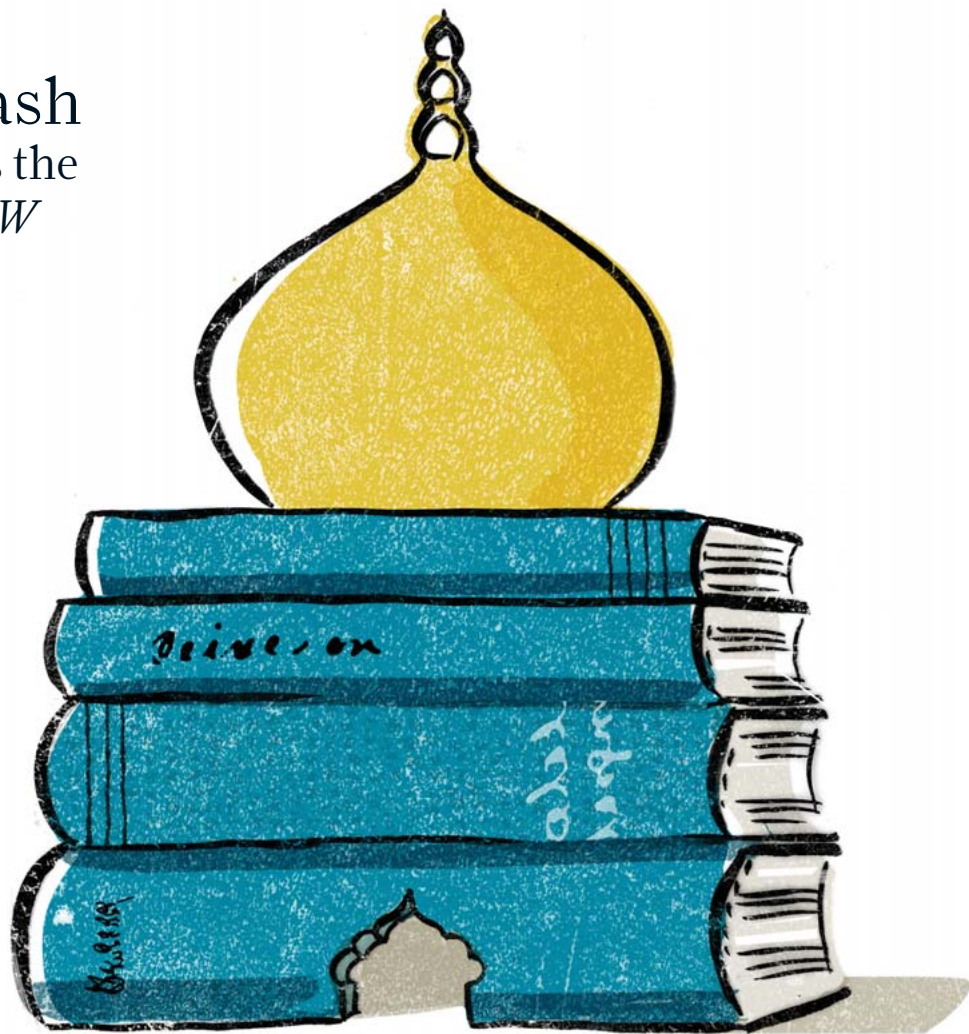
The popularity of Islamist parties, Feldman writes, is a backlash against autocratic rule that has dominated much of the Arab world ever since the disappearance of the one institution that previously counterbalanced executive authority: the scholarly class.

The origins of Feldman's book—"The Fall and Rise of the Islamic State" (Princeton University Press)—go back to 2003, when he was in Iraq as an adviser to the Coalition Provisional Authority.

"I was overwhelmed by the sense that after the fall of Saddam and the Ba'ath Party, there was little in the way of credible institutional authority that remained in much of the country," he says.

But Feldman observed that among the Shi'is, scholars had some authority. That led him to think more deeply about the historical role of scholars in the days before modern Middle Eastern autocracy.

Feldman retraces the history of the scholarly class, which once served as the guardian of the law. Rulers uncertain about the lines of succession sought the stamp of legitimacy that scholars could provide. In turn, the rulers gave scholars wide berth to develop the common law of Sharia. Scholarly control of the law encouraged stability and provided a powerful check



on rulers who were compelled to stay within the bounds of Sharia.

But that model faltered, Feldman writes, with the decline of the Ottoman Empire in the 19th century. Written legal codes replaced the common law of Sharia, and scholars were further supplanted when a new constitution invested the lawmaking function in a legislature. When the Ottoman sultan later abolished both the constitution and the

legislature, the result was the loss of any sort of counterbalance to executive dominance, clearing the way for autocratic and absolute power.

Current calls for Islamic states, Feldman says, represent an understandable backlash against autocratic rule. Citizens, he writes, are

eager "for a legal state that would be justified by law and governed through it."

But what kinds of institutions might emerge to develop and apply Islamic law? Feldman believes there is little chance that a reconstituted scholarly class could serve as the necessary counterweight to autocratic executive rule. Instead, he surmises, legislatures could draw upon Sharia when passing laws that would, in theory, "comprise the true spirit and content of the divine will made into contemporary law."

A hybrid system—constitutional democracies with Sharia-based legal institutions (including Islamic judicial review)—could be either the most promising development in Islamic law since the Ottoman Empire's collapse or "a disaster waiting to happen," Feldman writes. >>

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*Tracing the  
origins of  
modern-day  
calls for  
Sharia*



If those are the two possible outcomes, Feldman isn't optimistic. "The combination of an elected legislature, a powerful judiciary, and a secret recipe of Islamic values is the worst sort of naive fantasy of political-legal reformation," he writes. He fears that newly democratically elected legislatures in Arab and Muslim countries lack the "incentives, the experience, or the confidence to become something greater than the sham legislatures that prevail in many places in the Arab and Muslim worlds."

Similarly, there's no guarantee that other branches, the police or the executive, would obey

*Can democracy and Sharia co-exist under one roof? Feldman isn't optimistic.*

commands of a new court. "It takes generations for newly designed institutions to catch on and begin

to perform their functions." Furthermore, "the stars must be aligned perfectly so that qualified, intelligent, farsighted statesmen come to occupy key positions. The odds that all these conditions will converge are very small—so small as to be negligible."

Feldman says he's excited by the early reaction to the book, particularly from readers who are open to the idea that the scholars were historically able to influence the executive.

Says Princeton University's Muhammad Qasim Zaman: "Feldman's work provides historical depth that has often been lacking in studies of law and constitutionalism in modern Muslim societies."

Feldman, ever mindful of the scholarly class in Islamic cultures, is especially eager to see the book translated into Arabic. \*

In "Finding Jefferson: A Lost Letter, a Remarkable Discovery, and the First Amendment in an Age of Terrorism" (Wiley, 2007), **Professor Alan Dershowitz** contemplates modern-day First Amendment dilemmas—such as government censorship of imams whose preaching might incite terrorism—through the lens of Jefferson's stated beliefs about religious and political speech.

In "Is There a Right to Remain Silent?: Coercive Interrogation and the Fifth Amendment After 9/11" (Oxford University Press, 2008), **Dershowitz** argues for a reinterpretation of the Fifth Amendment that takes into account new measures used by government officials to prevent terrorism.

In "Living the Policy Process" (Oxford University Press, 2008), **Professor Philip B. Heymann '60** outlines policy-makers' struggle to influence government decisions. Heymann offers an inside look into the policy process in the Reagan, first Bush and Clinton administrations, describing the constantly evolving conditions that government officials face as they attempt to shape the policy agenda.

"Fiscal Challenges: An Interdisciplinary Approach to Budget Policy" (Cambridge University Press, 2007) is edited by **Professor Howell Jackson '82**, with Elizabeth Garrett and Elizabeth Graddy, and with a contribution from **Professor Adrian Vermeule '93**. The collection analyzes recent developments in budget policy at the state level and in the European Union, and also includes in-depth explorations of congressional budget procedures, as well as the economics of federal deficits and debt.

In "Just Schools: Pursuing Equality in Societies of Difference" (Russell Sage Foundation, 2008), legal scholars, educators and social scientists examine different methods of fostering equality. Edited by **Professor Martha Minow**, Richard A. Shweder and Hazel Rose Markus, the book offers essays combining empirical research with ethnographic accounts. Minow's essay explores the impact of school choice reforms on equal educational opportunities.

"Access Denied: The Practice and Policy of Global Internet Filtering" (MIT Press, 2008), edited by

**Professor John Palfrey '01**, **Visiting Professor Jonathan Zittrain '95**, **Ronald Deibert** and **Rafal Rohozinski**, looks at the countries, corporations and intelligence agencies that are filtering and blocking Internet content.

The two-volume "Handbook of Law and Economics" (North Holland, 2007), edited by **Professor Steven Shavell** and **A. Mitchell Polinsky**, covers topics such as corporate governance, bankruptcy law, antitrust, contract law and property law. It features contributions from numerous specialists—including **Professors Kathryn Spier** and **Louis Kaplow '81** as well as **Shavell**.

In "I Dissent: Great Opposing Opinions in Landmark Supreme Court Cases" (Beacon Press, 2008), **Professor Mark Tushnet** looks at arguments that didn't carry the day in 16 landmark cases—from *Dred Scott* to *Lawrence v. Texas*. Putting the opinions in social and political context, Tushnet explores how American constitutional history might be different had the "nays" prevailed.



ZITTRAIN

TRIBE

HEYMANN

PALFREY

MACK

GOLDSMITH

STUNTZ

## HEARSAY

### FACULTY short takes

#### The Laws in Wartime

PROFESSOR JACK GOLDSMITH

*Slate Magazine, April 2*

“We are surprisingly close to putting policy issues in the war on terrorism on a sound legal footing appropriate for the long term. The most important issue for the next administration to resolve is the system for incapacitating terrorists. Beyond that, what the next president most needs to fix are appearances and processes in dealing with the public, Congress, and the world.”

#### Fighting the Online Drug Corner

PROFESSOR PHILIP B. HEYMANN '60 WITH MATHEA FALCO, PRESIDENT OF DRUG STRATEGIES

*The Washington Post, March 15*

“The corporations whose services facilitate online drug sales to our children should have taken action years ago. It is not enough for Congress to try once more to target foreign dealers who are beyond the reach of our laws. The way to curtail online sales of dangerous drugs is to enlist American credit card companies, search engines and Internet service providers in the fight.”

#### Even at Harvard, Obama Had a Knack for Bonding with Diverse People

PROFESSOR KENNETH MACK '91

*Harrisburg Patriot-News, Feb. 17*

“From the beginning, Barack struck me as a person who confounded labels of every sort. He was only three years older than me and many of the other students, but he easily seemed a decade older. Most of us knew that he had been a community organizer in Chicago. Many people expected him to be interested mainly in urban politics, but the first impression he made was that of a worldly-wise person who could talk as easily about national security and international relations as he could about tax relief and education policy.”

#### The Inconvenient Truths of 2008

PROFESSOR WILLIAM J. STUNTZ

*The Weekly Standard, Feb. 18*

“[I]f the next president wins by promising limitless spending with limited taxes or a costless retreat in Iraq, voters should not blame the winning candidate. In politics as in markets, customers rule; we usually get the leaders we want. The trick is to want the right leaders. We might start by asking who tells us the truth—even, or especially, when it hurts.”

#### Sanity and the Second Amendment

PROFESSOR LAURENCE TRIBE '66

*The Wall Street Journal, March 4*

“Under any plausible standard of review, a legislature’s choice to limit the citizenry to rifles, shotguns and other weapons less likely to augment urban violence need not, and should not, be viewed as an unconstitutional abridgment of the right of the people to keep or bear arms.”

#### Choices for Turkey in a Digital Age

VISITING PROFESSOR JONATHAN ZITTRAIN '95 AND PROFESSOR JOHN PALFREY '01

*Turkish Daily News, March 5*

“If Turkey decides to clamp down on Internet activity, it will be lending aid to those who seek to see the Internet chopped into a series of local networks—the China Wide Web, the Iran Wide Web, and so forth—rather than continuing to build a truly World Wide Web. For Turkey, and for the global community, the Internet is worth saving.”

## Expert-ease

Training litigators to *get the most* from  
*NUMBER CRUNCHERS*



Assistant Professor Jim Greiner, center, with Trevor Austin '08, seated, Eliza Crane '08 and sociology graduate student Daniel Schrage







Ariella Ombolt '08



TOP: Cassandra Wolos, graduate student in statistics, left, with Dalie Jimenez '09 and student court reporter Stephanie Musser. BOTTOM: Zhan Li, statistics grad student, faces Adam Hosmer-Henner '08, left, and Matthew Kelly '09.

By Elaine McArdle  
 EARLY ON A Thursday evening in March, 2L Gwen Hochman, a student in the upper-level course Expert Witnesses and Litigation, is poring over a series of questions she'll be asking in just a few minutes. Dressed in a pin-striped pantsuit and looking every bit a real lawyer, Hochman is about to take her first deposition, an exercise for which she's been preparing for weeks.

"I think it'll be fun, but I'm really exhausted right now," she says.

The court reporter, a student from the New England Court Reporting Institute, arrives and sets up her equipment as Hochman and her expert witness—Omar Wasow, a graduate student in the African-American studies program at Harvard—settle into chairs across a table from their opponents,



Gwen Hochman '09, right, with Wolos

2L Dalie Jimenez and her witness, Cassandra Wolos, a graduate student in statistics.

Hochman's weariness disappears as soon as she launches into the mock deposition. She moves quickly from setting the rules into complicated queries about statistical data related to voting patterns. Sometimes she pauses to gather her thoughts or rephrase. But both she and Wolos keep their cool.

Jim Greiner, an HLS assistant professor of law, watches carefully without interrupting. He created this unique course as a joint endeavor between HLS and the Harvard statistics department, where Greiner, who holds a Ph.D. in statistics, is an affiliate. The 13 law students will be taking and defending two depositions each, one involving a political redistricting hypothetical and the other involving an employment discrimination case. The eight statistics students, who play the roles of expert witnesses, learn to explain complicated concepts in simple terms and defend their findings against sharp challenge in an adversarial setting. The court reporting students, meanwhile, practice recording and transcribing a highly complex deposition with specialized language.

For the HLS contingent, Greiner says, this is about learning how to work effectively with clients or lawyers who have specialized knowledge of an unfamiliar field. "Modern complex litigation often comes down to a battle of the experts," he explains. And statistical expertise, he believes, may be particularly powerful. "Scientific knowledge—of any kind—comes these days from the analysis of data," he says, "so if law students learn something about statistics, they will have a leg up in terms of tackling any set of technical issues."

Greiner begins the semester with a primer on relevant law and quantitative methods. He later brings in litigators and expert witnesses who've participated in similar cases and who

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*"Modern complex litigation often comes down to a battle of the experts."*

discuss ethical dilemmas they've faced while testifying.

But throughout the course, "the fundamental premise is that there are things we can't teach in terms of telling people how to do them," he says. "We just have to let them do them."

Following that principle, the students take (or defend) depositions in two cases so they can learn from the mistakes they made the first time around. "I tell the class on the first day, 'You're not going to communicate enough

with your expert to start with, and you won't believe that until you get to about seven or eight days before the brief is due, and you sit down to try and write it, and all of a sudden you realize you have all these questions that are unanswered.' They all look back at me stone-faced and—I can see it in their eyes—they're thinking, Not me, because I'm driven and this professor is just trying to encourage us to work. And I know what's coming: When it comes to the post-deposition class, they tell me, 'I wish I'd started earlier. I wish I'd worked with my expert more.' And they do, in the next simulation." \*



*Jim Greiner (standing) with 3Ls Ariella Omholt (back to camera), Trevor Austin and Eliza Crane*



**SELECTED:** Robert A.M. Stern Architects, to develop a plan for the development of the northwest corner of the campus.



**NEW:** 15-person 1L student-faculty reading groups to encourage intellectual exchange, engage in “fun seriousness,” says Kagan.

**REDESIGNED:** The First-year Legal Research and Writing Program—with double the number of instructors and more intensive training in writing skills.



**MILESTONE:** The graduation of the first J.D. class with a mandatory pro bono requirement—40 hours of law-related, uncompensated work.

**2005-06 >>**

**HIRED:** Jody Freeman LL.M. '91 S.J.D. '95, expert on environmental and administrative law; new Environmental Law Program is established.



FREEMAN

**HIRED:** Daryl Levinson, expert on constitutional law.



LEVINSON

**HIRED:** George Triantis, expert on corporate transactions, contracts, bankruptcy and finance.



TRIANDIS

**HIRED:** Mark Tushnet, expert on constitutional law and U.S. legal history.



TUSHNET

**HIRED:** Adrian Vermeule '93, expert on constitutional law, administrative law, legislation and national security law.



VERMEULE

**HIRED:** Assistant Professors Rachel Brewster, international law scholar specializing in trade issues; Jeannie Suk '02, scholar in criminal and family law.



BREWSTER

SUK

**COMPLETED:** The design of the Northwest Corner project.



NORTHWEST CORNER

**MILESTONE:** The HLS faculty unanimously adopts reforms of the first-year curriculum—the most comprehensive changes since HLS initiated the standard law school curriculum more than 100 years ago. International law and statutory and regulatory law are added, with new focus on complex problem solving.

**HIRED:** Robert H. Sitkoff, trusts and estates scholar.



SITKOFF

**HIRED:** Kathryn Spier, expert on law and economics.



SPIER

**HIRED:** Assistant Professors Gabriella Blum LL.M. '01 S.J.D. '03, expert on conflict management, counterterrorism operations, negotiation and public international law; D. James Greiner, expert on civil procedure and quantitative methods.



BLUM



GREINER

**MILESTONE:** The new first-year curriculum is introduced to the class of 2010.



**NEW:** Clinical programs on negotiation and mediation, Supreme Court practice and war crimes prosecution.

**HIRED:** Assistant Professors I. Glenn Cohen '03 and Benjamin Roin '05, who will both focus on bioethics and biotechnology, and Benjamin Sachs, who will focus on labor and workplace law.



COHEN

ROIN

**APPOINTED:** Ashish Nanda, expert on law firms and other professional service organizations, as professor of practice.



SACHS



NANDA

**APPOINTED:** John Palfrey '01, as vice dean, library and information resources, and a tenured member of the law school, faculty.



PALFREY

**APPOINTED:** Clinical Professors Wendy Jacobs '81, director, Environmental Law and Policy Clinic; Phil Malone, director, Berkman Center for Internet & Society.



JACOBS

MALONE

**HIRED:** Cyberlaw and intellectual property expert Jonathan Zittrain '95, one of the founders of the Berkman Center for Internet & Society.



ZITTRAIN

**COMING SOON:** The completion of the most successful law school fund-raising campaign in history!







SPECIAL SECTION: **Environmental Law**

“Only within the moment of time represented by the present century has one species—man—acquired significant power to alter the nature of his world.”

*Rachel  
Carson,  
“Silent  
Spring,”  
1962*

BY JERI ZEDER

STARTUP  
FOR  
AN

# Ailing Planet



Rising sea levels, melting ice caps, increasing temperatures, struggling ecosystems, frequent and destructive storms—these are the early warning signs of global climate change. No one can predict all their implications, but experts say what is foreseeable could be devastating: diminishing fresh water supplies, destruction of coastal societies, droughts and floods, mass extinctions

**A NEW  
PROGRAM AIMS  
TO CHANGE  
THE WAY  
WE THINK  
ABOUT  
ENVIRONMENTAL  
LAW**





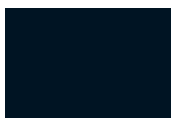




and rampant disease.

To avoid the worst impacts, scientists say, the global community must drastically reduce greenhouse gas emissions—a task that will require a massive effort by individuals, businesses, NGOs and governments to develop and use regulatory, market and technological innovations.

How can lawyers help?



IN MARCH 2006, a group of leading scholars, politicians and policy-makers gathered quietly at Harvard Law School to answer that question during a day of frank, off-the-record workshops, away from the media and other distractions that might have hindered the free exchange of ideas. The participants included U.S. Sen. Jeff Bingaman (D-N.M.), chairman of the Senate Energy & Natural Resources Committee, and 17 other political, academic and industry leaders representing diverse perspectives. HLS students were invited, and about a hundred of them engaged with the panelists, brainstorming about how law can best address the problem of climate change.

“That was a big event, in terms of announcing, ‘HLS is here and wants to make a difference,’” says Professor Jody Freeman LL.M. ’91 S.J.D. ’95, a leading scholar of environmental and administrative law, who had just been hired from UCLA with a mandate to build a major center for environmental law at Harvard Law School. For Freeman, the conference on climate change marked the unofficial debut of the school’s new Environmental Law Program.

The conference couldn’t have been more timely, according to Jonathan Black, Bingaman’s lead staff member. For many attendees, it served as a rehearsal for a hearing convened a month later by Bingaman’s committee, and was particularly helpful in framing issues related to cap and trade systems—programs that create financial incentives for reducing greenhouse gas emissions. According to Black, the Washington conference, in turn, helped inform the Bingaman-Specter Low Carbon Economy Act of 2007, which was introduced as Senate Bill 1766 in July 2007.

#### **A BROAD AND GROWING CURRICULUM**

Since that first conference, the program has come a long way. It boasts a broad and growing curriculum; a new law and policy clinic; a mentoring program for emerging environmental law scholars; and discussion forums for national

and international policy-makers, advocates, scholars, practitioners and investors.

“The timing is fortuitous,” says Antonio Rossmann ’71, an environmental law teacher at Boalt Hall and attorney with Rossmann & Moore in San Francisco. “Harvard will redefine environmental law education and set the national standard.”

That’s precisely what HLS Dean Elena Kagan ’86 had in mind when she made environmental law a priority upon becoming dean. “I wanted us to focus on these critical issues in really creative ways,” says Kagan. “Environmental problems will require solutions across borders and disciplines, both regulatory and market-based, and Jody Freeman, a superb scholar and teacher and a natural institution builder, is the perfect person to lead our efforts.”

Freeman brings a vision that’s intended to differentiate Harvard’s program from others, and to bring fresh ideas and solutions to the field. An instinctive convener and collaborator, she canvassed other leading law professors—including Georgetown’s Richard Lazarus ’79, Duke’s James Salzman ’89 and Robert Verchick ’89 of Loyola—and numerous prominent practitioners and policy-makers. The result: a program that is changing the way lawyers think about environmental law.

#### **“A DIFFERENT ROLE FOR LAWYERS”**

Because environmental issues cut across every area of human endeavor, Freeman says, the program must train not only students who are planning environmental careers but also those who will practice in other areas of law. Litigation—the cornerstone of environmental law practice in the 1970s and 1980s—will always have its place, she says, but it’s now just one of many tools for addressing environmental issues. “Law students might wind up in business; they might wind up practicing law; they might wind up in politics. But they need to be exposed to a range of environmental issues, even if they don’t view themselves as ‘green’ or ex-



pect to work as environmental lawyers, because no matter what they do in the public or private sector, they'll have an opportunity to impact the environment."

When environmental law emerged as a discipline in the late 1960s, the priorities were all about cleaning up the air, water and land. The tools were legislation, regulation, enforcement and litigation. Today, climate change represents a new frontier, Freeman says, where we must rethink the world's energy systems, invest in technology and engage with the developing world. Increasingly, environmental questions will be answered by what Freeman calls a "transactional market model"—at least as often as by the old litigation model.

"We are in an era when people are using markets as an approach to regulation, alongside and sometimes instead of command-and-control regulation, where government sets standards and requires firms to meet them," Freeman says. "We've been building up to this point for a long time, but we're now full-fledged in an era when regulators are going to be using instruments like markets more often, meaning the enterprise of system design on the front end, and enforcement on the back end, are both different. It calls for a different role for lawyers."

To prepare students for that role, the law school now offers an expanding number of environmental law courses—a "suite" ranging from introductory basics to advanced and even cutting-edge legal work.

#### KEY PLAYERS AND PRACTITIONERS

Freeman teaches administrative law, environmental law, legislation and regulation, and natural resources law. Several other faculty members, including Assistant Professor Matthew Stephenson '03 and Tyler Giannini, the clinical director of the Human Rights Program, teach related courses. And, when he arrives from the University of Chicago in the fall, the newly hired Cass Sunstein '78, who has a strong interest in envi-

ronmental risk and regulation, will join them (see sidebar, p. 27).

The program also relies on a cadre of visiting practitioners renowned in the field. One of this year's visitors, Roger Ballentine '88, was a key White House adviser on climate change during the Clinton administration, and is widely recognized as a leading expert on the subject. In his seminar this past winter, students benefited from extensive interaction with guest experts, including U.S. Sen. and former Democratic presidential nominee John Kerry, who lectured and fielded questions for nearly two hours. Kerry, says Ballentine, was one of the earliest national leaders on the issue of climate change and is an expert in his own right.

#### A NEW CLINIC

Another major goal was accomplished in 2007 with the launch of an ambitious new clinical program (see related story, p. 28). Under the direction of Clinical Professor Wendy B. Jacobs '81 (see sidebar, p. 33), students now have a broad array of opportunities to work on complex environmental law projects and cases. Some are off campus with government agencies and nonprofit organizations. Others are on campus, under Jacobs' supervision—working on what she describes as "cutting-edge, real-time projects and cases." A sampling of the projects includes greenhouse gas litigation; fighting false and misleading "green" product claims; a proposal for a permitting regime for ocean energy projects; and development of a liability framework for carbon capture and sequestration here and in China.

The clinic's popularity is testimony to Jacobs' ingenuity—she's been known to dream up clinical opportunities from brief news flashes on NPR, and to encourage students to form interdisciplinary collaborations with programs throughout Harvard. "I've been match-making like a yenta," Jacobs says.

In a similar vein, Freeman has launched the biannual Junior Scholarship Workshop, in partnership with the environmental law programs at



PHIL EARNSWORTH

Sen. John Kerry (D-Mass.) came to HLS in January to talk to students in Visiting Professor Roger Ballentine's class on the law of climate change. "We only have about a 10-year window left to try to get this right," Kerry said.

Berkeley and UCLA, to enable young scholars to submit their research and writing for critiques by seasoned academic mentors. The Environmental Law Program has also been a boon to HLS's Environmental Law Society and the Environmental Law Review. Students have turned to Freeman and Jacobs for strategic advice and ideas, says the review's managing editor, Matt Krauss '09. Funding from the program has enabled the Environmental Law Society to hold more events, invite more speakers and send more students to high-level environmental conferences across the country, says Eric Ritter '09, the society's president. In January 2008, the Environmental Law Society and the National Security Law Society co-sponsored a talk at HLS by former CIA Director R. James Woolsey on the relationship between national security and climate. Says Freeman: "I know I've got a successful event when the groups that think they're right-leaning and the groups that think they're left-leaning co-sponsor it with equal enthusiasm."

#### STARTUP VENTURE

Looking ahead, Freeman and Jacobs say there's much more that they want to do. "We need people who believe in this program model," says Freeman, "one that focuses on a wide range of regulatory tools, cares about business and seeks to engage students who are not already self-identified environmentalists. We need people who believe that Harvard Law School can have more of an impact than any other law school, who will be willing to finance it as it gets off the ground." The program is a startup, she says, and it needs venture capital. With Kagan's enthusiastic backing, she has logged thousands of miles flying around the country to drum up support.

What would the school do with the money? Hire more faculty members to further strengthen teaching and scholarship. Expand the clinical program by adding staff attorneys. Dedicate

a full-time policy person to convene high-level events and engage with policy-makers in Washington, D.C., and the states. (The ELP now relies on an environmental law fellow—a paid student position—to help plan events and coordinate speakers. So far, Miriam Seifter '07 and Meghan Morris '08 have done so ably, Freeman says, but the impact of the position could be leveraged.) More money for additional staff would also make it easier to achieve another goal: injecting environmental law into the entire law school curriculum.

"We need people to help us draft curriculum ideas and think about little modules—a set of examples that you could integrate into other courses," says Freeman. "What if we developed a set of materials for the bankruptcy courses about the relationship between environmental problems and bankruptcy? What if we designed a set of materials for the securities course that could expose students to environmental liability issues?" she asks, adding that lawyers will increasingly be expected to advise their business clients about legally mandated environmental disclosures.

As the program grows, Harvard Law School is putting the full force of its influence and talent behind solving the problem of climate change: In April 2008, the school held its second major conference on environmental law in two years, "Carbon Offsets: Opportunities and Challenges for State Carbon Trading Schemes." In addition to scholars, the 18 panelists included representatives of state agencies, environmental organizations, industry and the banking sector.

For Freeman, bringing all of these interests to the table is essential. It reflects the kind of program HLS is building: cooperative, interdisciplinary and innovative. And it mirrors what's necessary to thwart disaster and protect life on Earth. \*

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*Jeri Zeder is a freelance writer living in Lexington, Mass.*







Professor Jody Freeman LL.M. '91 S.J.D. '95 joined the faculty in 2005. She recently told the *Bulletin* why climbing Mount Kilimanjaro didn't turn her into an environmentalist—and what did.

**HLB: What led you to this field?**

JF: I'm a skier and a hiker. I'm from Vancouver; we spend all our time outside. But it wasn't primarily that. I came to environmental issues more intellectually, I confess, as someone who is interested in how systems work, how regulation works. I like design. The question is: How do we create governance institutions to deal with high-stakes problems in a context of tremendous interest group conflict? I'm a lawyer who thinks like an institutional architect.

**What do you enjoy about what you're doing?**

It's hard to describe these serious environmental issues

as fun, because it can sound perverse—I mean, sea levels are rising, hurricanes are intensifying, national security is being compromised by climate change, and it's all sort of bad news. But in fact these issues are exhilarating to me because there is such opportunity for innovation and creativity, both by government and nongovernment actors. There is so much good academic scholarship to write, and so much to do to train students for the future. Strangely, my optimism just deepens at the darkest, bleakest moments. When Hurricane Katrina happened, like many people who care about climate change, I actually thought, Finally, a catastrophic event that will make people realize that something serious and strange is going on in the natural world! If anything will bring this home and force government to act, it's going to be the terrible impact of Katrina.

**With the Environmental Law Program, you've accomplished a tremendous amount in a very short time.**

Life is short. Once, my family sat around and talked about what we'd each be if we could be summed up by book titles. And my book title was *Everything and Right Now*. With these issues in particular—environmental impacts and especially climate change—you can't sit around and wonder what you should do in the next 10 or 20 years. It's too urgent for that kind of luxury. This is not to say I'm a doomsayer. I'm not. But if we don't figure out how to make some transitions to a smarter, high-tech and more energy-efficient way of doing things, and if we don't

# EVERYTHING ... and Right Now

**THE FOUNDING  
DIRECTOR OF  
HARVARD'S NEW  
ENVIRONMENTAL  
LAW PROGRAM  
WASTES NO TIME—  
AND SAYS THERE'S  
NO TIME TO WASTE.**

# The Baykeeper's Legacy

## A LONGTIME ENVIRONMENTALIST WANTS LAW TO CATCH UP TO SCIENCE

do it fast—in the next two, three, four, five years—we could be facing some very bad consequences. So I have a kind of impatience that's helpful.

*Did something happen in your life that makes you feel life is short?*

I've had some wonderful adventures, like climbing Kilimanjaro and scuba diving in some of the greatest spots in the world. You really do marvel at the wonder of it all when you're standing there at 19,000 feet, or when you're staring at an ocean of life 80 feet below sea level. And now it's all at risk—the reefs are bleaching, Kilimanjaro's snow is melting, and the polar ice cap is retreating. It gives me real pause, and at the same time I find it motivating. I want to write scholarship that is both intellectually interesting and able to have an impact, and I want to train students to tackle the future's problems.

*You received awards for teaching when you were at UCLA. Do you have a vision of teaching that you bring into the classroom?*

I'm a high-energy person in the classroom. I try to bring the students into my excitement and interest. The challenge is to teach analytic tools and legal skills in a way that connects with students and makes them feel part of a shared experience. It's a relational thing. When it works, it's to their credit as much as mine. There's no way to be a good teacher by yourself. It doesn't exist. \*

—interview by Jeri Zeder

WHEN DAN A. EMMETT attended Harvard Law School in the early 1960s, there was no such thing as an environmental movement, let alone an environmental law class or clinic. But five years after his 1964 graduation, an ecological disaster awakened Emmett and many of his fellow Californians to the cause of environmental protection.

An oil platform off the coast of Santa Barbara ruptured, sending 3 million gallons of crude oil onto the city's beaches and surrounding channels and killing tens of thousands of birds, seals and dolphins. Emmett, who witnessed the disaster from a shared beach house, recalls: "There was a foot of oil along the coast. It galvanized people to get organized."

Emmett has made his career in real estate management and development. He co-founded the Santa Monica-based firm Douglas Emmett and Co. in 1971, and he is now chairman of its successor public company, Douglas Emmett Inc. An avid outdoorsman—he climbed Mount Everest in 1976 and was headed on a helicopter skiing trip to the Cariboo Mountains in British Columbia this spring—Emmett has held environmental concerns close to his heart since the Santa Barbara spill. He helped found the Santa Monica Baykeepers, to restore and protect the Santa Monica Bay, and his real estate company has pioneered energy and water conservation in commercial buildings. Now, a \$5 million grant from Emmett has aided in the creation of the law school's Environmental Law and Policy Clinic, which will soon bear his name.

"The political machinery and the juggernaut that is doing the damage to the environment are unstoppable unless you have very good environmen-



On Mt. Everest in 1976: (from right) Dan Emmett '64, Frank Morgan '63 and Phil Trimble '63

tal laws," says Emmett. "The Clean Air Act and the Clean Water Act are very good, but lawyers have to understand how to use them. And in the climate change catastrophe, science is way ahead of the law in regulation and policy, so we have to train young lawyers to work on these issues."

Emmett has seen some of his favorite places on earth degraded—from Santa Monica Bay to the hills of Northern California, where he grew up. He has also been saddened by the pollution around Mount Everest, which he came close to summiting along with climbing buddies Phil Trimble '63 and Frank Morgan '63 in 1976. For that expedition, the group hiked for three weeks in Tibet to reach base camp. Last year, Emmett drove along newly constructed roads to that same base camp, which was teeming with 30 climbing groups and littered with gear. Though he gave up high-altitude climbing when his children were young, at 68, Emmett is still an avid biker, kayaker and skier. Protecting the outdoors is his passion.

"The law and policy clinic has great potential," says Emmett. "The student interest is there, and with the team of Dean Kagan, Jody Freeman and Wendy Jacobs, there is a chance to make a difference." —M.B.D.



# Assumed Risks and Other Dangers

BY ROBB LONDON '86

Consider the two most challenging environmental problems of our time—the depletion of the earth’s protective ozone layer, and global climate change. The first one, writes Cass Sunstein ’78, “has been essentially solved, whereas very little progress has been made on the second.”

For Sunstein, an acclaimed scholar who will join the Harvard Law School faculty in the fall, explaining that difference involves law and economics, behavioral science, psychology and even philosophy. Lately, he has been focusing on how leaders and citizens should assess dangers—ranging from climate change to terrorism—and react in ways that best protect the well-being of the human race.

Willful inaction in the face of possible harm is obviously perilous, Sunstein writes in a recent book, “Worst-Case Scenarios” (Harvard University Press, 2007), but reckless overreaction can sometimes be even more dangerous, especially if it leads to unintended consequences and the squandering of resources that might have been deployed to prevent other catastrophes. When we make assumptions about risk—and especially when we then choose to assume particular risks—we should do so with as much information as possible.

That means thoroughly identifying and quantifying the foreseeable consequences of alternative courses of action. It means wading into the waters of valuation and discounting, including the awkward pricing of human life. It means calculating the probabilities of particular scenarios and then running the numbers through the mill of cost-benefit analysis. Sunstein says that these tools, despite their shortcomings, are indispensable.

So far, he suggests, we have hardly overreacted to our most ominous environmental threats. If anything, we have not reacted enough. But in the ozone case, he says, we got it right. In 1987, not long after the discovery that chlorofluorocarbons were destroying the ozone, 183 nations (including the U.S.) ratified the Montreal Protocol for the phaseout of CFCs, which have now been reduced by 95 percent. By 2060, the ozone layer is expected to return to its natural state. The

**CASS SUNSTEIN  
IS HEADED FOR  
HARVARD, WITH  
SOME PRESCRIPTIONS  
FOR DEALING WITH  
CLIMATE CHANGE**



Montreal Protocol, says Sunstein, “is the most stunning success story in the history of international cooperation.”

Compare that to the 1997 Kyoto accord on climate change, which, despite being ratified by more than 130 nations, has languished. “It has been firmly rejected by the United States,” Sunstein notes. “It does not impose

restrictions on emissions from the developing world, though China is now the world’s largest greenhouse gas emitter.”

The fates of both treaties, Sunstein argues, have been determined largely by decisions of the United States based on domestic cost-benefit analysis. For the U.S., the “monetized benefits” of the Montreal Protocol were rightly perceived as dwarfing the monetized costs. But the potential harms of climate change are still too abstract for most Americans to fear, and the costs of reducing carbon emissions are widely perceived as excessive. “The task for the future,” he writes, “is to devise an international agreement that resembles the Montreal Protocol in one critical respect: Its signatories, above all the United States and China, [must] have reason to believe they will gain more than they will lose.”

The clear implication is that if the cost-benefit analysis of climate change has thus far been myopic, it is because we haven’t yet undertaken the kind of risk assessments Sunstein advocates. Moreover, as he argues, those assessments should involve more than just numerical values. They must also involve moral values—including a “principle of intergenerational neutrality” that ensures that “the members of any particular generation should not be favored over the members of any other” in shouldering the costs of a fix.

For a generation already accustomed to passing off its debts on its grandchildren, that may come as a novel idea. \*

BY MICHELLE BATES DEAKIN



GETTY IMAGES

# Jacobs' Ladder

*A NEW CLINIC  
LETS STUDENTS  
STEP UP TO  
ENVIRONMENTAL  
CHALLENGES—  
AND ONTO THE  
FIRST RUNGS OF  
THEIR CAREERS*

IN OCTOBER 2007, Kansas Secretary of Health and Environment Roderick L. Bremby denied an application for two new coal-fired power plants, basing the decision explicitly on concerns about carbon dioxide emissions and global warming. It was the first time that a high-level government official in the U.S. has denied such a permit on those grounds.

When Wendy B. Jacobs '81, director of the HLS Environmental Law and Policy Clinic, heard about Bremby's decision, she knew what would come next: lawsuits. It was just the kind of novel opportunity she was seeking for her students. So she phoned Bremby's office and said she had an offer he couldn't refuse: "We at the Harvard Law School Environmental Law and Policy Clinic want to help

defend you." Bremby accepted, and was soon receiving advice and briefs from Jacobs and the Harvard Law students working in the clinic.

Jacobs came to the law school last summer, charged with creating a hands-on legal clinic in which students could put their academic knowledge of environmental law to practical use. She has drawn on her 27 years of environmental work and connections to create a wide-ranging set of opportunities for the more than 20 students who have joined the clinic in its inaugural year. In addition to the Kansas litigation, students have worked on a broad variety of projects. They've submitted comments to the Federal Trade Commission, urging it to toughen its guidelines on what manufacturers can say about the envi-





**THE GREEN TEAM**

*Four HLS students helped a Kansas official fend off a challenge to his denial of an application to build two coal-fired power plants. From left: Eric Ritter '09, Alison Healey '08, Neil Gormley '09 and Jimmy Richardson '09*

#### TAILOR-MADE

3L Jim Krenn's clinical placement drew on his twin interests in finance and the environment.



ronmental friendliness of their products. They've weighed in with the U.S. Environmental Protection Agency, explaining why its jurisdiction to regulate air pollution extends to emissions by foreign ocean-going vessels that dock in U.S. ports. They've created a set of consumer-friendly brochures to facilitate the purchasing of renewable energy. One student has assisted a national investor advisory group in promoting better corporate environmental policies. Others have worked with the Massachusetts Department of Environmental Protection, the Conservation Law Foundation or the Environmental Law Institute.

"There's an old model of environmental program that was created in the '80s, where students would go sue polluters and primarily learn about litigation. Our vision is very different," says Jacobs. "It's about training students to do a whole range of things now that we have a very different set of environmental problems—especially problems around climate change and global warming."

#### THE KANSAS CASE

When she wasn't attending class or studying cases this spring, Alison C. Healey '08 was writing memos for Secre-

tary Bremby. She and other ELPC students met weekly with Jacobs to share what they had learned reviewing the administrative record and the voluminous comments on Bremby's denial of the permit application.

Last November, shortly after Bremby killed the plans for the coal-fired plants, he and his department were sued in Kansas State Court by Sunflower Electric Power Corp., Tri-State Generation and Transmission Association, the Board of Commissioners of Finney County, Kans., and the Garden City Area Chamber of Commerce. The suit claims that, in denying the application, Bremby acted unlawfully by altering public policy in the absence of state or federal laws governing carbon dioxide emissions. Bremby answered that it was within his capacity as secretary of health and environment to deny the permit application. (In an unusual move, the Kansas Supreme Court took the case sua sponte and, after briefing, retained jurisdiction but remanded for further administrative proceedings—a victory for Bremby.)

Along with Jacobs and attorneys for the Kansas Department of Health and Environment, the students drafted two briefs in the case. They also made careful study of the interplay between applicable state and federal regulations. "I didn't realize how intricate and detailed environmental work was," says Healey. "We're working with real clients on issues that have implications for the future. It's my generation's responsibility to be raising awareness about environmental issues and developing a plan of action."

Healey was also struck by the onslaught of shifting deadlines that govern law practice. "It's been eye-opening," she says. "In law school, we live in a bubble. This case has set deadlines and issues that change from week to week."

As in real practice, that sometimes means dropping everything else to do something for your client. That's what three students working on the Kansas litigation did when they learned that Bremby had been summoned to testify in front of the U.S. House Select Committee on Energy Independence and Global Warming. Kansas Team Leader Jimmy Richardson '09, along with classmates Neil Gormley and Eric Ritter, learned on a Monday that Bremby would be testifying three days later. So they jumped on a plane to Washington to help prepare Bremby for his appearance.

For Richardson, who had spoken with Bremby on the phone, the D.C. trip was the first chance to talk with his client face to face. "It was an amazing honor to meet this gentleman, who really is something of an environmental hero," Richardson says.

With the hands-on experience he has gained in the case, Richardson is ready for his summer job doing environmental work in the Massachusetts Attorney General's Office. After graduation, he plans to pursue a public interest job in environmental enforcement.



### THE CERES PROJECT

Jim Krenn '08 majored in finance at the University of Notre Dame, and while at HLS, he has been actively involved with Harvard University's Green Living Program, which encourages students university-wide to conserve, recycle and live sustainably. For him, the ELPC was a way to blend his twin interests in finance and the environment.

Jacobs strives to tailor clinical opportunities to individual students. Given Krenn's interests, she found an opportunity for him to intern with Ceres during the fall of his 3L year. Based in Boston, Ceres is a national coalition of investors, environmental organizations and other public interest groups working with companies and other institutions to address sustainability challenges such as climate change. Its mission is to integrate sustainability into capital markets.

Krenn's work with the coalition focused on developing a petition to the U.S. Securities and Exchange Commission, encouraging it to ask for more disclosure by companies about their environmental impacts. "Environmental reporting by companies is either not there or very inconsistent," says Krenn. "There's little ability for investors to compare different companies and how they are managing risk. The petition was geared toward increasing transparency."

Krenn dug through 10-Ks and other financial reports to analyze corporate disclosure practices. He also prepared a

memo describing current climate change litigation throughout the U.S. He found that there has been an uptick in the number and scope of lawsuits asking for injunctive relief related to climate change, although few of them have been successful. He believes that will change, however, in the same way tobacco and asbestos lawsuits eventually made headway.

"Traditional law school classes are very heavily based on reading cases," says Krenn, who will be an associate at the San Diego office of Morrison & Foerster in the fall. "To be able to take a more practical, hands-on approach adds a further dimension to working with the theory."

### CONSUMER GUIDES AND SHIPS IN PORT

Benjamin Thibault '09 isn't interested in litigation. What drew him to the Environmental Law and Policy Clinic was the policy aspect.

Thibault describes himself as "a headstrong environmentalist." His e-mails end with a message to readers in two languages: "Before printing, think about the Environment. *Avant d'imprimer, il faut penser l'environnement.*" He is working for Greenpeace in Amsterdam this summer (and is one of five students receiving summer funding from the Environmental Law Program's newly established Covey Fellowships).



**"A HEADSTRONG ENVIRONMENTALIST"**  
*Benjamin Thibault '09 is drawn to environmental policy rather than litigation.*

In his clinical project, Thibault is team leader of an effort to create user-friendly consumer guides to purchasing renewable energy in the six New England states plus New York and New Jersey. The guides will help consumers understand the various options available for purchasing and/or subsidizing the development of clean energy. They will also explain state rules about how consumers can choose one form of energy—such as geothermal—over another—such as wind or solar. And they will include guidance on tax credits and installation of systems that generate power. Guides for all eight states were expected to be completed by the end of the semester.

“People don’t have time to figure out if they can buy green energy directly or buy renewable energy credits,” says Thibault. “Our goal is to help them figure out their options in layman’s terms and reduce their transaction costs.”

Before working on the energy guides, Thibault joined other students in the clinic to draft a comment-letter to the EPA, on behalf of the Environmental Defense Fund, on how the EPA should regulate emissions from vessels in ports. Ships spew ozone and noxious chemicals from burning marine diesel. The pollution affects the often economically disadvantaged and minority communities that live nearby. And, Thibault explains, many commercial vessels belong to countries, such as Liberia and Panama, which have lax regulations. The clinical students argued that the EPA has the authority to regulate vessels that sail under the flags of foreign countries, even though it has never done so before.

It was a valuable experience for Thibault, a Canadian who would like to eventually pursue environmental policy work in Canada. “It was good to get our arguments out there,” he says. “It was good to point out to the EPA how egregious it is to not act.” \*

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*Michelle Bates Deakin is a freelance writer living in Arlington, Mass.*





# “Nontraditional, multifaceted and creative”

**AFTER PUBLIC SERVICE AND PRIVATE PRACTICE, WENDY B. JACOBS '81 BRINGS WORLDS OF EXPERIENCE TO A NEW CLINIC**

Love Canal changed Wendy Jacobs' life.

In 1979, when newspapers began chronicling the rampant illness and birth defects among residents of the Niagara Falls neighborhood built on 21,000 tons of chemical waste, Jacobs—then a student at Harvard Law School—became apoplectic. “I knew I wanted to force the bad actors to pay for the damage and injuries they caused.”

It was a radical shift for Jacobs, who had come to HLS to study international law. Instead, her career has been in environmental law, starting in the earliest days of toxic tort cases and shaping the laws designed to prohibit and clean up hazardous waste and chemical contamination. Having worked in both the public and private sectors, Jacobs returned to HLS last year to launch the Environmental Law and Policy Clinic.

After graduating from HLS in

1981, Jacobs signed on with the Department of Justice in Washington, D.C., in the Land and Natural Resources

Division. The experience was formative—“Boy, did I love it,” she says. “I was fortunate to be able to argue in courtrooms all across the country, something that none of my friends in the private sector did. I was also able to work on policies affecting the implementation of environmental laws throughout the United States.” For this reason, Jacobs now encourages her students to seek out similar opportunities in the public sector.

Jacobs later headed into the private sector, working first for a large law firm in Seattle and later at another in Boston where she was a partner for 18 years. She counseled municipalities, schools and corporate entities about environmental compliance and helped them develop their envi-

ronmental management and self-audit programs. She advised them about the environmental risks attendant to the purchase and sale of real estate, the acquisition and divestiture of corporate units, and the distribution of products overseas, where some of the environmental laws are more stringent than U.S. law. And she worked extensively with a host of state and local governments in their development of rules and permits affecting her clients.

Now, at HLS, Jacobs is drawing on the full range of her experience to create far-reaching opportunities for students in the Environmental Law and Policy Clinic. While other law schools have created environmental clinics that focus on a single issue, such as clean water

or endangered species, Jacobs wants Harvard's clinic to have a broader focus—from enforcement of existing laws to working on consumer issues to finding innovative ways to help companies reduce their impact on the environment. Her goal is for the clinic to be “nontraditional, multifaceted and creative,” and she is committed to training law students to be attuned to environmental issues, no matter what kind of law they go on to practice.

“Students know what the laws are, but they don't know how agencies or corporations work,” she says. “My goal is to bridge the gap between academics and real practice. I want my students to learn how to use the law to protect and improve the environment.” \*

—M.B.D.

**CLINICAL PROFESSOR WENDY B. JACOBS '81:**  
*Committed to training ALL law students to be attuned to environmental issues*

*FOR THE SAKE OF THE PLANET, A LAWYER WINS  
THE RIGHT TO SUE ON BEHALF OF FUTURE GENERATIONS.  
by Emily Newburger*







**Visionary of the Visayan Sea**





**TAKING THE INVENTORY** of ecological devastation, Antonio Oposa Jr. has seen fish and coral vanish from some Philippine ecosystems.

Early one April morning in 2006, in the heart of the Philippine archipelago, a boat approached a small island on the Visayan Sea. Law enforcement agents disembarked, presented search warrants and seized bags of explosive powder and blasting caps used in dynamite fishing—an illegal practice which has destroyed 99 percent of the area’s coral reefs and decimated the fish. They arrested two fishermen from the island, where subsistence fishing is one of the few ways to put food on the table.

Two men who came ashore with the agents addressed the crowd: Elpidio de la Victoria, head of the local Bantay Dagat (or sea patrol), and lawyer Antonio Oposa LL.M. '97. For several years they had been fighting to stop illegal fishing through a network of volunteers called the Visayan Sea Squadron. That day it was a hard sell, but Oposa spoke to the islanders about how blasting was ultimately destroying their livelihood.

Two days later de la Victoria was shot and killed outside his home.



## “Every generation has a responsibility to the next to preserve that rhythm and harmony”

Oposa had reason to fear for his own life. But he was not unaccustomed to taking risks for the environment. In 1990, he filed a lawsuit that was as audacious and perhaps as risky as any predawn raid—typical of a man whose career has been marked by daring, idealism and heart. Some believe the suit, known as *Minors Oposa v. Factoran*, could eventually lead to a sea change in environmental law around the world.

### “IT’S NOT OUR WORLD TO ABUSE”

Raised on the island of Cebu in the Visayas, Oposa says he started life as “a rich kid” full of energy and mischief but with little direction. He attended law school at the University of the Philippines but hated law firm practice. It was his wife who urged him to find a specialty.

He knew he loved nature—especially the ocean. His grandfather who raised him was a harbor pilot in Cebu and owned a stretch of white sand on neighboring Bantayan Island, where Oposa had spent some of his happiest moments. But at that time, “there was no such animal as environmental law in the Philippines,” he says, and the fish weren’t going to pay his fees.

He consulted former professors at the University of the Philippines, including Myrna Feliciano LL.M. ’80, who would later become one of the first to teach environmental law in the country. (Oposa says she has helped him at every step of his career.) Feliciano, who had studied land-use planning with Charles Haar ’48 when she was earning her master’s at HLS, gave Oposa readings that opened up new worlds. He began to agitate, writing letters and holding meetings in Cebu. She helped him get a scholarship to spend a summer at an institute in Oslo, where he was exposed to an active environmental movement and brought home the nascent idea that environmental policy should protect the earth for generations to come. In Cebu, people treated him like a hippie with a ponytail, he says, but in Norway, “I saw that the things I was thinking about were also being thought about by other people.” Soon afterward he uprooted his family and moved to Manila, where environmental activism was beginning to percolate.

Around that time he learned that only 4 percent of the Philippines’ virgin forest remained and the

“Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for succeeding generations, file a class suit. Their personality to sue in behalf of succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the ‘rhythm and harmony of nature.’ Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligations to ensure the protection of that right for the generations to come.”

—From the opinion of Associate Justice Hilario G. Davide Jr., writing for the Republic of the Philippines Supreme Court, *en banc*, July 30, 1993, in *Minors Oposa v. Factoran*

government had granted logging concessions for five times more forested area than still existed. The consequences were already apparent: floods, displacement of indigenous people, loss of habitats to animals and plants. He became obsessed with the idea that his country’s patrimony was being squandered through chicanery to enrich the few. He had young children—what sort of world would he be leaving them?

He sued, demanding the cancellation of all existing logging concessions and an injunction against new ones. He named his three children as plaintiffs, along with 41 others and “generations unborn.” He knew that if he made the powerful logging companies the defendants, they would flood him with motions that would drain the resources of a lone attorney. (He also knew that they could hire someone to kill him off.) Instead he sued the head of the newly formed Department of the Environment, Fulgencio

**OPOSA KNEW THE LOGGING INDUSTRY COULD HAVE JUST HIRED SOMEBODY TO KILL HIM OFF.**

Factoran LL.M. '69, who he believed was sympathetic to his cause. Three years earlier a new constitution had been enacted, which included a "right to a balanced and healthful ecology." Oposa was eager to test the meaning of these words.

"Unfortunately or fortunately," he says, the trial court dismissed the case. So without any money, without any support from other lawyers ("When I lost, even my shadow left me"), he appealed. "I went all the way to the Supreme Court on a question of law and philosophy."

The solicitor general questioned Oposa's right to sue on behalf of generations unborn. But by then, Oposa had come across the work of Edith Brown Weiss '66, a Georgetown law professor who developed the concept of "intergenerational equity" and explored the moral, philosophical and legal implications of the idea that the rights

and interests of future generations should be taken into account in decisions today. He sent her treatise to the court.

It ruled for Oposa on every issue.

International environmental lawyers quickly picked up on the ruling. Weiss recalls hearing about it shortly after it came down. "I was extremely pleased," she says. "The landmark decision demonstrated that the interests of future generations could be protected in court."

David Hunter '86, who teaches international environmental law at American University Washington College of Law, says, "The case is widely cited as one of the few—maybe the only case—that has used the principle of intergenerational equity, an important principle on theoretical and policy levels for international environmental lawyers."

The response in the Philippines was slower. The case was sent back to the lower courts, where Oposa did not pursue it. He didn't have the resources, and before the Supreme Court ruling, the government had issued an order prohibiting new logging in the remaining virgin forest.

In the end, Oposa believes, what the case did was proffer a reminder. "That's probably what makes it so popular around the world," he says. "A crazy son of a gun brought it all the way to the Supreme Court to tell a single sentence: We have a responsibility to future generations. This is not our world to abuse," he says. "We just borrow it from our children."

**WINNING CONVERTS**

While his case was still pending, Oposa entered into a consultancy for the World Bank focused on illegal logging. He was hired to lead a training program for lawyers and judges, but he believed he could do so much more with the money. After creating a task force of government and law enforcement agencies, he organized a series of raids: "shock and awe at its best," he says. During one strike, the team targeted a hotbed of illegal logging in the Sierra Madre Mountains. They landed by helicopter, arrested the operators, dismantled the mills. After another raid, the captain of an outrigger carrying virgin timber was arrested. Oposa and a local prosecutor held a probable cause hearing, and the captain was in jail two hours later. The frustration is audible when Oposa recalls how the task force ended: "We were *that* close to breaking the back of illegal logging," he says, when his contact in government was replaced "and the whole effort collapsed."

He was able to reflect on that experience and more during the year he spent at HLS earning his LL.M. He wrote his final paper on citizens' suits, stemming from his experience with *Minors Oposa*. When he returned to the Philippines, the paper was incorporated into the citizen suit provision of his nation's Clean Air Act, which was then being drafted.

It was shortly after his return from Cambridge that he decided to give up his law practice—"the craziest thing that you can think of when you have the Harvard LL.M. at the end of your name," he says. But for Oposa it made perfect sense. From then on, he decided, his clients would be the land and the sea. He sold some property, started a nonprofit to support his advocacy—The Law of Nature Foundation—and began to write. He wanted to put his years of legal research and experience with the rough-and-tumble world of enforcement into words to help others to take up the cause. Two books came out of it: "A Legal Arsenal for the Philippine Environment" and "The Laws of Nature and Other Stories."

While he was working on the books, he holed up in a family beach house on Bantayan Island—about a half-day's journey by plane, car and ferry from Manila. The surrounding waters have been recognized as a biodiversity hotspot, with more than 500 varieties of coral and some 12,000 species of fish. But over the past 50 years dynamite and cyanide have taken their toll, as has overfishing. The fine nets used by some



# Healing a World of Hurt

From Asia to Africa, some experts focus on the environment

**PROFESSOR WILLIAM ALFORD '77**, a scholar in Chinese law and legal history and director of the HLS East Asian Legal Studies Program, is author of several articles on environmental law in China. They stemmed from a Harvard University-wide project which brought together scientists, legal scholars, economists, public health professionals and social scientists. Currently he is collaborating on a paper with **SHEN YUANYUAN LL.M. '89**, a researcher at the Fairbank Center at Harvard, who will be a lecturer at HLS next year. They are looking at how ordinary people in China use tools such as litigation, mediation, administrative measures and protest to address environmental problems.

**ED NORTON '71** is the former senior adviser to the Nature Conservancy in China and Southeast Asia in their efforts to help establish and strengthen a system of nature preserves in China's Yunnan Province. The area is home to the red panda and the highly endangered Yunnan golden monkey, as well as nearly half of the plants used in traditional Chinese medicine. In addition, the project has encouraged the development of ecotourism in the region. Norton previously worked with the Wilderness Society and the National Trust for Historic Preservation, and he is a co-founder of the Grand Canyon Trust.

**RUGEMELEZA NSHALA LL.M. '97** co-founded and led the Lawyers' Environmental Action Team in Tanzania for nearly 10 years. Based in Dar es Salaam, the organization provides legal assistance on biodiversity and environmental law to institutions in Tanzania and is the first public interest environmental

law organization in the country. Nshala also served as counsel before Tanzania's High Court on behalf of those affected by the dumping of hazardous waste. While a visiting fellow at the HLS Human Rights Program in 2003, he researched violations of human rights in Tanzania's mining sector.

**ZHANG HONGJUN LL.M. '00** is a former director in the Legislative Office of China's National People's Congress and a former program officer with China's State Environmental Protection Administration. He is now a partner in the business law section at Holland & Knight, where he works with firm attorneys on the China Team. Since 1993, he has been involved in the drafting and implementation of a variety of Chinese laws, covering chemical management, land use, water resources and manufacturing processes. Zhang was the only lawyer invited by President Clinton to attend the Environmental Round Table in Guilin, Guangxi Province, in 1998, and he is a member of the Energy Foundation board of directors.

**ZHOU YANGFANG LL.M. '06** was a staff member at the Natural Resources Defense Council in Beijing, where she worked in coordination with local NGOs on a variety of projects promoting environmental enforcement through public participation. While at the NRDC, she also ran an environmental law outreach project that served five rural Chinese provinces. Currently she is completing a Ph.D. at Wuhan University Law School, Hubei, China. The topic of her dissertation is the amendment of China's Environmental Protection Law.

commercial fishermen trap juvenile fish and other marine life—along with the target catch—and are weighed down by metal blocks that crush the coral.

On Bantayan, Oposa started the Visayan Sea Squadron—with de la Victoria and a host of others, including politicians, teachers, attorneys, scuba divers, law enforcement agents and hundreds of local fishermen. They spoke to subsistence fishermen and their families on the effects of blasting. They launched community-run sea patrols, led raids on producers of explosives and on commercial fishermen. One raid—aboard a Navy gunboat—ended in the arrest and jailing of three of a nearby city's most powerful commercial fishing

boat operators, after Oposa and his team served outstanding warrants that the local police were not executing.

Soon Oposa's beach house became headquarters for operations. Believing that people are most likely to protect what they understand and love, he began hosting sessions for local children, teachers and community organizers on marine ecology, solid waste management and environmental ethics. When four fishermen were arrested for blast fishing, Oposa cut them a deal: Rather than serving time, the men served as fish wardens. They are now part of the team, he says, and "among the fiercest advocates for marine conservation."

#### FUELING A MOVEMENT

After de la Victoria's murder, Oposa was grateful for the outpouring of support from the international community, including a letter sent by Professor William Alford '77 and other HLS faculty to the president of the Philippines asking for heightened protection. But he felt a renewed sense of urgency. So when his friend Nicholas Robinson, co-director of Pace Law School's Center for Environmental Legal Studies, gave Oposa \$5,000 to use for his security, Oposa had other ideas: It became seed money to build a structure that could better house the activism and education efforts on Bantayan Island: School of the SEAs (Sea and Earth Advocates). Completed last year, the building is made of nipa and bamboo in a traditional Filipino design and powered by renewable energy.

## IN THE PHILIPPINES, GUNBOAT DIPLOMACY HAS A NEW MEANING.

Oposa has also developed a marine sanctuary, a small one, he says—less than 40 acres—but he is proud to see

the fish jumping again. This spring, he launched an organic farm and market, where families of local fishermen can sell legally caught fish.

Since the murder, enforcement operations have continued, but Oposa's friends have convinced him to stay off the gunboats. When the squadron made a raid in February—seizing blasting powder from the home of a public official under investigation for links to organized crime—Oposa took their advice. (Before de la Victoria's death, they both had received threats. A local police officer has been arrested for pulling the trigger, but it's widely believed he was hired to do the job and no progress has been reported on the investigation.) When asked if he still feels at risk, Oposa says it's probably never going to stop, because what he does threatens too many people. He often pays for the gas in the gunboats and meals for the raiders.

Fueling boats, he says, "costs a bundle." Oposa and his family live mostly from the revenue from real estate investments from his days of law practice, so he is able to support the Bantayan endeavors through consulting fees—and gifts from a few environmentally minded friends. He has not sought international funding. "It's a matter of principle," he says. "Because we destroyed it, let us fix it ourselves." If someone offers help, Oposa is more than grateful. "But first," he asks, "come to the island and see what we are doing."

In 2006, Oposa and his associates undertook the first in a planned series of underwater surveys. He was among the scuba divers who examined the reefs (finding not even 400 square meters intact) and counted target fish species, such as grouper, which had all but disappeared from unprotected sites. The results bolster their arguments for a moratorium on commercial fishing in local waters.

At 53, Oposa is still an optimist—dazzled by the beauty of the country he happened to be born in—and a man of action, committed to helping others to see the benefits of protecting it. He's had some effect on the next Oposa generation. His oldest son (first plaintiff in the suit "and most famous Oposa," his father jokes) will start next year at the University of the Philippines College of Law; his second son has participated in enforcement raids in the Visayas since he was 14. And all his children, he says, are "at least environmentally sensitive," including his 9-year-old son and his daughter, who brings her own plastic bags to grocery stores and gets funny looks that make her father proud.

Someday soon, Oposa plans to travel to college campuses and environmental law societies around the world, starting in the U.S., to reach more of the next generation. "It's really the continuation of the Minors case," he says. Next year, he and others (including Robinson of Pace Law School) are planning a global legal action on climate change, inviting lawyers all over the world to file lawsuits on the same day—"to stir the pot."

In the meantime, he's focused on his watery backyard. In May, the director of the Bureau of Fisheries was scheduled to give Oposa his own gunboat: "Too good to turn down," he says—but hard to keep up. He's already arranged for it to be maintained in a neighboring town, whose mayor, Alfredo Marañon, inspired the Visayan Sea Squadron and has been a supporter ever since.

The boat will be used for enforcement, but Oposa's plans are much bigger. "We have the people, the divers, the social organizers, the educators," he says. "What I want to do is go from town to town, from village to village along the coast and help them organize marine-protected areas. Johnny Appleseed planted seeds of apple. We are trying to plant seeds for marine-protected areas."

"I have these dreams," says Oposa. "And somehow or other when I am persistent in my dream, things fall in place." \*



# Lawyers for the Dammed

For students and faculty in an HLS clinic, human rights and environmental law flow together

## ON THE SE SAN

*In the village of Ta Lao, Matt Bugher '09 learns how to husk rice.*

In 1993, Vietnam began building a dam on its portion of the Se San River. It was intended to provide hydroelectric power for its citizens, but had downstream effects in villages along the Se San in northeastern Cambodia that the original environmental impact assessment did not anticipate. In 2005, Tyler Giannini, the clinical director of the law school's Human Rights Program, and students from the International Human Rights Clinic traveled to riverside villages in Cambodia to investigate the dam's effects. They found that water surges had drowned people and animals, depleted fish populations, damaged property, and rendered fishing and panning for gold dangerous.

Last October, Matt Bugher '09 and Andrew McIntyre LL.M. '08, students in the clinic, accompanied Giannini on a return trip to Cambodia. They met with Cambodian officials and community organizations, encouraging public participation to address lingering concerns about the dam and proposing that outside mediators be brought in to foster communication between the government and civic groups.

While environmental lawyers have

brought court cases in similar situations, the clinic has relied on grassroots organizing more than on litigation. "If there is to be a law reform effort," McIntyre said, "it should come from the Cambodian civil society organizations and NGOs." McIntyre reviewed draft environmental impact assessment regulations in light of international principles, and Cambodian community groups used his research to comment on the proposed regulations. With McIntyre, Bugher worked to show that the villagers' displacement was a form of involuntary relocation, a position that he believes will have "persuasive power" with the government in ongoing negotiations with the villagers.

— Lia Oppedisano



PHOTOGRAPH BY ANDREW MCINTYRE



## DINNER IN SAM

**KHA** Tyler Giannini (far left) and Bugher are guests at a meal in the Cambodian village, where they've interviewed residents and documented the effects of flooding and erosion.

# Mercury Rising

TO SAVE A  
CULTURE  
OF COLD,  
LAWYERS  
TURN UP  
THE HEAT



**BY BILL IBELLE**

CLIMATE CHANGE may still be a distant threat for many Americans, but here in Alaska, the effects are inescapable.

Houses, roads and airports buckle because the permafrost is no longer permanent. Native villages are swept out to sea because the ocean ice, which has protected them from violent storms since humans first crossed the Bering Strait, has receded offshore. And polar bears—the most visible symbols of our nation’s arctic environment—are drowning.



**WHEN** it comes to the environment, Alaska is “the canary in the coal mine,” says Deborah Williams ’87, photographed in April near Anchorage.



**PORTAGE GLACIER,**  
*a popular tourist  
attraction that once  
dominated this bay  
near Anchorage, has  
receded and is no  
longer visible from the  
visitors center.*







**WHEN TREES DIE,**  
*hillsides crumble,*  
*like this one north of*  
*Anchorage.*





**LUKE COLE '89** (left), with clients, on Kivalina, which is being flooded as the protective barrier of sea ice melts. Cole and Heather Kendall-Miller '91 are representing residents of the island in a landmark suit against 24 power companies.

In fact, since 1979, 20 percent of the Arctic sea ice has melted—an area twice the size of Texas.

That's why a dedicated contingent of Harvard-trained lawyers has made Alaska its frontline, contending that, if left unchecked, the environmental disasters in the nation's 49th state will soon wreak havoc on the lower 48.

"We are the canary in the coal mine," said Deborah Williams '78. "Everything that's happening in Alaska right now has local, national and international implications."

On the most local level, Heather Kendall-Miller '91 and Luke Cole '89 have filed a landmark suit against 24 energy companies on behalf of the Native Alaskan village of Kivalina, which lies 80 miles north of the Arctic Circle on the Chukchi Sea. In *Kivalina v. Exxon*, filed in the U.S. District Court for the Northern District of California, they claim the defendants produce greenhouse gases that have melted the protective barrier of sea ice that shields the village from fierce autumn storms. They seek damages for the estimated \$400 million it will cost to relocate the village.

Meanwhile, Williams is leading the charge on the political and educational fronts. As founder and president of Alaska Conservation Solutions, she has made it her mission to convince senators, governors and federal regulators to rein in the

emission of greenhouse gases. As part of her lobbying efforts, she brings key decision-makers to Alaska to see what atmospheric warming can do.

"Seeing is believing," she said. "We are helping leaders in other parts of the country make the connection between what is happening in Alaska and what will happen in their state."

Williams points out the towering peaks that rise from the ocean three miles across Turnagain Arm just south of Anchorage. A swath of dead spruce trees forms a brown belt around the base of one of the mountains.

"Spruce bark beetle," she said. With just a 4-degree rise in the average temperature over the last two decades, she explains, the beetles are thriving and the trees dying en masse.

That strip of brown is just the northern edge of a massive blight that has swept through the Kenai Peninsula, a breathtaking tourist Mecca of glaciers, fjords and mountain meadows.

"Four million acres of white spruce have been wiped out so far," said Williams. That's an area nearly twice the size of Yellowstone Park.

And the damage is no longer confined to Alaska. As Williams tells her visitors, similar pests such as the pine bark beetle are now destroying forests in Montana, Idaho, California and Arizona.

Williams takes people to see the site of Portage Glacier about an hour's drive from Anchorage—or the former site, that is.

In 1985, the state built a multimillion-dollar visitors center to view the glacier, but all that can be seen from the center now is a lake. The glacier itself has retreated behind a mountain ridge two miles away.

"Every square inch of white we lose amplifies the speed of global warming because when solar radiation hits white, it's reflected, but when it hits blue or brown, it is absorbed," said Williams. "We are losing one of the most endangered critical habitats in the world. Everyone understands the seriousness of destroying the rain forests. But the Arctic is just as functionally important to the global environment as the rain forest."

On the litigation front, Kendall-Miller has joined the battle against climate change because of its impact on Native Alaskans, whom she represents as a senior attorney for the Native American Rights Fund. She argues, quite passionately, that rising temperatures are wiping out a subsistence culture that has existed for 4,000 years—and that





**A 4,000-YEAR-OLD**  
culture is being  
wiped out by rising  
temperatures, says  
Kendall-Miller.

the loss of that unique way of life would leave us all impoverished.

She says that for many Americans, the term *subsistence* may be a synonym for *marginal* or *primitive*. But to the Athabaskan, Aleut, Tlingit, Yup'ik and Inupiaq peoples, it is shorthand for a complex set of beliefs that are inextricably linked to the land and water around them.

"They have a distinct worldview—a unique relationship with each other, the natural world and the spiritual world," she said. "The biggest challenge for me, as their lawyer and advocate, is to express to the general public the integrity of that difference."

## The Snowy Trek

Heather Kendall-Miller '91 took a winding road to Harvard Law School—and there were grizzlies and caribou along the way.

Kendall-Miller's mother, a full-blooded Athabaskan, met her father when he returned to Alaska after being stationed in the Aleutian Islands during World War II. But she died when her daughter was 2, cutting her off from her native roots.

Raised in Fairbanks, Kendall-Miller dropped out of high school and went to work on the Alaska Pipeline, homesteading in a remote valley in the mountains north of the Yukon River. At 17, she married, and she and her husband built a cabin on the land, heated it with water they piped in from a hot spring a quarter mile away.

"I look back fondly on those years," Kendall-Miller recalls. "We were dropped off in the middle of nowhere and built our cabin in a beautiful valley in the Ray Mountains. It was a wonderful, magical place surrounded by grizzlies and caribou and moose. We had to fly in by float plane, air-drop our supplies over the cabin, and then land on a lake seven miles away and hike back to the cabin."

Kendall-Miller became pregnant when she was 21 and lived in the cabin for another two years until her marriage collapsed. A single mother working construction on the Alaska Pipeline, she realized that her daughter needed a more stable life.

So at age 25, she enrolled at the University of Alaska in Fairbanks, where she developed an interest in Native American rights. She graduated magna cum laude and, based on the recommendation of a professor, applied to Harvard Law School.

"I knew all along that I wanted to come back to practice in Alaska," she says. "It was exciting to be around all these incredibly smart people who were so purposeful. I knew Harvard would give me the credentials I needed to focus my career the way I wanted to and help Native Alaskans when I got back."

—B.I.

To do that, Kendall-Miller gathered testimony from Native Alaskans. In a series of hearings around the state, they described how climate change has driven caribou from traditional hunting grounds; melted the ice required for the survival of seals, walrus and polar bears; and caused a dramatic increase in diseased salmon as rising river temperatures threaten the spawning grounds for one of the most productive fisheries on the planet.

"It's scary," said Oscar Kawagley, a Yup'ik Indian from Bethel, Alaska. "Cold is what makes my language, my culture, my identity. What am I going to do without cold?"

In spite of their passion and legal expertise, Kendall-Miller and Cole (who is the director of the Center on Race, Poverty & the Environment in San Francisco) lacked the resources needed to take on 24 of the largest energy companies in the world.

So they pulled together a team of six top litigation firms from around the country. Taking a page from the tobacco litigation playbook, they sued the energy companies on a public nuisance theory. They also alleged conspiracy, arguing that, like the tobacco industry, the energy companies worked in concert to promote false science that cast doubt on the reality of global warming.

Although the plaintiffs have some significant hurdles, their success would have an "enormous impact," according to Roger Ballentine '88, president of Green Strategies in Washington, D.C., and a visiting professor at HLS.

"A suit like this faces a number of challenges," said Ballentine. There is the question of whether a federal common-law claim is available in a global-warming suit and whether courts will continue to deny jurisdiction on the grounds that Congress, not the courts, is the proper forum for resolving these issues.

"Causation could also be a significant problem," Ballentine added. "But if they were to succeed in making a link between greenhouse gas emissions and the damages the plaintiffs have suffered, it would open the floodgates for climate-change suits." \*

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*Bill Ibelle is features editor at Lawyers USA. His story "Litigating the new frontier: Practical lawyering in cyberspace" appeared in the Spring 2007 Bulletin.*





**RAVAGED BY BEETLES**

*With just a 4-degree rise in temperature, the spruce bark beetles are thriving and the trees are dying in droves, says Williams.*





# What will it take?



←|RUCKELSHAUS

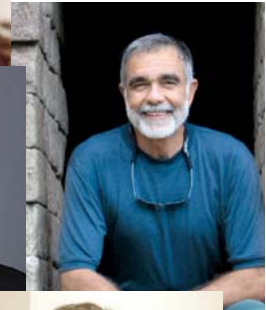


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←|BRYK





# THE BULLETIN ASKS LEADERS IN ENVIRONMENTAL LAW AND POLICY WHAT IT WILL TAKE TO SLOW GLOBAL WARMING.

**"MOSTLY** it will take governments putting in place regimes that will apply throughout the world giving specific targets to reduce CO<sub>2</sub> emissions, or we're just fooling ourselves to think we're going to get anywhere. This will have to be done rather aggressively to prevent things from getting worse since there's so much CO<sub>2</sub> already in the atmosphere. We've done a lot of random acts of kindness around the world to address global warming but haven't taken any significant steps in law that will give us any real assurance that progress is going to come. And we're not going to make progress for several decades, no matter what we do now. We're continuing to put levels of CO<sub>2</sub> in the atmosphere which are just going to make the situation worse for probably more than a century. Not only are we not holding our own—it's still getting worse. We have to begin because it just gets harder the longer we wait."

*William D. Ruckelshaus '60 served as the first administrator of the Environmental Protection Agency, from 1970 to 1973, and held that post again under President Reagan from 1983 to 1985. He has also served as the chairman of the Salmon Recovery Funding Board for Washington state and as a member of the U.S. Commission on Ocean Policy. He is currently a principal in Madrona Investment Group in Seattle, Wash.*

**"WE NEED** an informed president with the will to lead and a Congress ready to legislate cap and trade legislation to control carbon emissions. Fortunately, if belatedly, there is now a chance that we will soon have both. The Congress has now begun to move legislation. And all three candidates—Senators McCain, Clinton and Obama—have proposed strong cap and trade legislation. Our next president

must also end years of obstructionism and take the lead in the upcoming negotiations for a post-Kyoto international agreement. 2009 will be a year for decision and American leadership."

*Bruce Babbitt '65 was governor of Arizona from 1978 to 1987 and secretary of the Interior during President Clinton's two terms in office. He has served as president of the League of Conservation Voters and is currently the chairman of the board of the World Wildlife Fund. He is the author of "Cities in the Wilderness: A New Vision of Land Use in America" (Island Press, 2005).*

**"THE SIMPLEST** way to make big progress is also the most difficult: adopting a carbon tax. The idea is to tax everything that produces carbon emissions, whether it's coal-fired power plants, automobiles or gasoline. It would be difficult but you would try to calibrate the tax system so that everything you do in terms of the amount of carbon it emits is built into the price of the product. That would minimize government's role. Economists like that but politicians don't. I'm a little skeptical that will happen. It's too bad that conservatives have made taxes such a bad word that even sensible taxes are difficult. There are a lot of other ways that you can make fairly dramatic improvements by requiring a little bit of change for consumers. Perhaps the simplest example is fluorescent light bulbs. Lifestyle changes are in the offing. Are they going to be sudden, wrenching and dramatic? Probably not."

*John Leshy '69 is a professor at the University of California Hastings College of the Law. Leshy worked for the Natural Resources Defense Council, and served as associate solicitor for energy and resources during the Carter administration and solicitor for the Department of the Interior*

*under President Clinton. He is the co-author of leading casebooks on federal land and resources law and water law.*

**"STATES,** together and on their own, can reduce CO<sub>2</sub> emissions by requiring cap and trade policies and setting a goal of obtaining a certain percentage of their energy from renewable sources. These are examples of the states leading the federal government. But ideally you still need a president who takes this on fully. States, with their tight budgets, can't make the investments by ourselves in plants and get to scale on distribution. Everybody has a role to play in a new renewable energy economy, including universities and state governments. But with respect to shared infrastructure, whether it's pipes underground or wires overhead, it has to be in partnership with the federal government. Last year, the federal government invested \$28 billion in medical research and \$3 billion in energy research, which is down by half from the 1970s. That's absurd. We need a Manhattan Project for renewable energy production if we're going to reduce our greenhouse gas emissions. The federal government has got to lead the nation and the world."

*Jennifer M. Granholm '87 is the governor of Michigan. Prior to her election in 2003, Granholm served as a federal prosecutor, Wayne County corporation counsel and Michigan's attorney general.*

**"THE NEXT** president must take bold action at home and abroad to shift the U.S. and global economies from a high-carbon to a low-carbon base. While action at home is a critical first step, this is a global problem requiring a global solution. The existing U.N. negotiating process is slow and

cumbersome, unlikely, alone, to yield the results we need. The next president should pursue a layered diplomacy—seeking consensus on ambitious commitments and policies among a group of core countries, both developed and developing (I have elsewhere called for creation of an ‘E8’); developing a special bilateral strategy for engaging China; and negotiating an overarching agreement at the U.N. level.”

**Todd D. Stern '77** coordinated the Clinton administration’s initiative on global climate change and served as a senior negotiator at the 1997 Kyoto climate change talks. He was a senior White House adviser from 1993 to 1999 and served as counselor to the secretary of the Treasury from 1999 to 2001. He is now a partner at Wilmer-Hale in Washington, D.C., and a senior fellow at the Center for American Progress.

**“WE NEED TO** create an agency or lawmaking process of some kind which is insulated from the natural pressure to undo whatever we do. The reason is fairly simple. We’re talking about putting significant restrictions on people and activities at one place and one time for the benefit of people at a very different place and very different time. It’s very hard to get people to change their behavior, to change their consumption patterns, when the fact is, it won’t make one whit of difference in their lives. This is a time lag we’ve never faced before. Another distributional problem is that parts of the globe that are the greatest source of the problem are parts of the globe that will suffer the least in the short term and may actually feel some short-term benefit to those first 2 degrees in temperature increase. It may actually increase agricultural productivity in parts of Russia, for example. So even if we manage to pass something soon, it’s going to be very important to make it something that can’t get easily undone. The model might be the Federal Reserve Board, which was deliberately

removed from the normal political process.”

**Richard Lazarus '79** is a professor at Georgetown University Law Center, where he teaches environmental law. Lazarus served in the Justice Department’s Environment and Natural Resources Division from 1979 to 1983 and as assistant to the solicitor general between 1986 and 1989. He has represented the United States, state and local governments, and environmental groups in 39 cases before the Supreme Court. He is the author of “The Making of Environmental Law” (University of Chicago, 2004), and he co-edited “Environmental Law Stories” (Aspen Press, 2005).

**“CLIMATE** change cuts across so many parts of the economy, many areas of law are going to have to respond. An obvious one is corporate law: To what extent should future threats to a company’s bottom line be something the board is talking about? Are board members acting on behalf of shareholders if they don’t think about climate change? There are also big issues involving tort law. There have been a handful of tort cases. The best known is the state of California’s suit against the major car manufacturers. It was a public nuisance case arguing that the makers should have known when they produced these cars that [environmental harm] was a likely outcome. All have failed so far, but there are a lot of smart lawyers who see this as the next big thing. The tort system could play a huge role if some of these lawyers start winning cases. If companies perceive potentially huge tort liabilities as a real threat, the boardroom discussion will change. We’re not there yet, but it’s not hard to imagine approaching that stage.”

**James Salzman '89** is a professor of law and environmental policy at Duke University. He has worked in the Environment Directorate of the Organisation for Economic Co-operation and Development and

## “WE NEED A MANHATTAN PROJECT FOR RENEWABLE ENERGY.”

GOV. JENNIFER GRANHOLM '87





as the European environmental manager for Johnson Wax. He is the co-author of a leading casebook on international environmental law and the practice and policy of environmental law.

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**“LAWYERS** are having the biggest impact right now in shaping the rules that will in a very fundamental way change how we consume energy and other aspects of our lives. Clients understand that something very fundamental is happening both in terms of change in climate and responses, in terms of policy, social and marketplace responses. If you are a corporate lawyer, there are all kinds of questions about how this impacts corporate governance and liabilities. If you’re a litigator, litigation will increasingly be spurred by climate change, especially proactive, policy-driven litigation as an alternative to the political process in order to achieve results. In the financial world, climate change is going to have a significant impact on capital markets, new commodities markets, emission trading markets. There’s an important role for lawyers to develop and execute these new marketplaces, so lawyers on Wall Street will be impacted. The breadth is really stunning, and the role of lawyers is going to be critical.”

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**Roger S. Ballentine ’88** is president of Green Strategies Inc., a Washington, D.C., consulting firm that assists clients with energy and environmental public policy issues and investment guidance on clean technologies. He served as chairman of the White House Climate Change Task Force and as deputy assistant to the president for environmental initiatives as well as special assistant to the president for legislative affairs under President Clinton. He is a visiting professor at Harvard Law School, teaching energy and climate change policy.

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**“IF YOU** care about endangered wildlife and plant species, you are

going to have to figure out the effect of the climate change that’s already going to occur and how to protect habitat and species under stress. We will need to gain access to more land, particularly in the Southwest, in order to stop the death of some species. As it gets hotter and drier, species are going to need to move north some and will not have the same migration corridors. But the U.S. Fish and Wildlife Service has only \$900,000 to spend on easements of land for protection of fish and wildlife for the whole country. That’s just not going to do it. We’re going to have to spend some money on that.”

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**Molly McUsic ’89** is a senior fellow at the Wyss Foundation, which supports land conservation activities in the western United States. She served as counselor to the secretary of the Interior from 1996 to 2000 and as a professor of law at the University of North Carolina, where she specialized in natural resources and property law.

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**“THE PROFIT** motive and business opportunities will provide a huge stimulus to change. McKinsey did a comprehensive study that looked at a lot of different solutions, and they showed we can achieve emissions reductions at little or no net cost to the economy. The question of how much will we have to spend misses the main point that underneath it, there are a lot of things we can do that are net positive, that are huge business opportunities to remake the global industrial economy. There are two graphs I love. One shows what happened in California after the state put in place different energy policies after the oil shocks of the 1970s. California was able to achieve something so different—50 percent less electricity usage than the rest of the country. The second graph shows what happened when standards for efficiency of refrigerators were increased. It didn’t mean costs went up or size went down. What happened was that technology improved and

consumers and users actually got a much better product at much lower cost overall.”

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**Joy Covey ’89** is the former chief financial officer and strategist of Amazon.com. She currently is president of the Beagle Foundation, a private environmental group, and is a member of the board of the Natural Resources Defense Council. In 2003, the foundation created environmental law fellowships with the NRDC to provide HLS alumni with two years of training in environmental law. In addition, Covey has funded summer fellowships for HLS students doing environmental work.

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**“A MANDATORY** pollution cap—with the goal of ratcheting down to 80 percent of current emissions by 2050—is the essential but not sufficient element because a cap alone isn’t going to drive investment in all the low-cost solutions. There are profitable things that we should be doing that we’re not doing. The obvious example is the landlord-tenant problem. The landlord buys the fridge. He doesn’t care what the tenant’s energy bill is. There are all kinds of disconnects like that. We need policies that drive investment in those things that already make economic sense—like energy efficiency and the next generation of fuels and power supply sources that are much lower producers of carbon emissions than what we currently have. The little bit of bio-fuel we have right now is corn ethanol, but there’s no business plan that makes it competitive with gasoline yet because it’s very energy-intensive to create and you’re only using the kernels. But the next generation, where you use the entire plant, can be competitive. Getting there will require investment in research and development.”

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**Dale Bryk ’93** is a senior attorney with the Natural Resources Defense Council, where she oversees work on state climate policy. She is also a clinical visiting lecturer at Yale Law School, where she directs a clinical course on environmental protection. \*

## Aiming for 55

**NATIONWIDE, ONLY 24** percent of all judgeships are held by women. In federal courts, women make up barely 20 percent of the bench. Massachusetts Appeals Court Judge **FERNANDE “NAN” DUFFLY ’78** wants to see these numbers rise and is passionate about making it happen.

“For the two decades of women coming out of top law schools and excelling in the profession, you’d expect to see them in greater numbers” in the judiciary, says Duffly, who became a Probate Court judge in Massachusetts in 1992 before being named to the Appeals Court in 2000.

One problem, she says, is that large law firms—an important pipeline for the judiciary—have few women partners: just 17 percent nationwide, according to the latest statistics. Yet, unlike many around her, Duffly is optimistic about closing the gap.

“Everybody you talk to says, ‘We cannot change this,’ or, ‘We’re doing what we can,’” says Duffly, who before becoming a judge was a partner at Boston’s Warner & Stackpole (now Kirkpatrick & Lockhart Preston Gates Ellis), which she joined because of the firm’s commitment to pro bono and its rela-



THE  
HONORABLE  
*Fernande  
Duffly ’78, in  
Boston*

tively high number of women lawyers.

Duffly is certain that change is possible, and she’s seeking it through several avenues.

She has launched a task force on the retention and promotion of women in the legal profession at the National Association of Women Judges, where this year she is serving as president, the first Asian-American to lead the organization (she was born in Indonesia). She helped create a similar task force in the Boston area, where she’s working with women lawyers and judges to discuss changing law firm culture to help women advance.

In September, at Celebration 55: The Women’s Leadership Summit, which marks the 55th year since the first women graduated from HLS, Duffly will be among a number of speakers addressing these and other issues.

“People ask, ‘What do judges have to do with women in law firms?’ For one thing, judges as a group have terrific convening power, as does Harvard,” she says. “We can shed light on issues, and people tend to pay attention.”

—ELAINE MCARDLE





**INTANDEM** *Two brothers advocate for the sovereignty of their people*

## For the Next Generations

**LAST SUMMER, IN** South Dakota, when **STEVE EMERY '89** was made chief of the Prairie Dwelling Lakota, he was given the name *Naca Wamni Omni* (Chief Whirlwind). The name was meant to reflect his power with words, and the honor was the culmination of a career spent advocating for the sovereignty of his people—a mission he has shared with his brother, **MARK VAN NORMAN '86**.

For Emery and Van Norman, returning to the reservation was always in their career plans. Emery recalled his grandfather saying: “*Takoja* (Grandson), there are many people on the reservation that need help. Before you return home, learn a skill that will let you provide assistance to your relatives.”

The brothers have never forgotten those words, nor the fact that eight of the 10 poorest counties in the U.S. are Indian reservations—five of them Sioux in South Dakota. Both brothers chose to pursue law degrees.

“The force of American law was used to help deprive my people of their language, culture and religion,” says Emery. “There ought to be some opportunity within the American legal system for those things to be protected for our young children whose parents want them to be brought up in the

traditional ways.”

The brothers’ interest in American Indian legal issues began while Van Norman was in law school. With the help of a fellowship, he spent a summer with the Oglala Sioux Tribe in Pine Ridge, S.D., and his brother joined him. Emery began his studies at HLS just after Van Norman graduated. Upon Emery’s graduation, both brothers took jobs as tribal attorneys for the Cheyenne River Sioux Tribe in Eagle Butte, S.D.

For about six years, they fulfilled their grandfather’s vision of serving their tribe together—Van Norman as tribal attorney general and Emery as assistant attorney general. Joined by Timothy Joranko ’86, a classmate and friend of Van Norman’s, they worked on litigation and legislation to protect their tribe’s sovereignty.

The three litigated several cases that had a major impact on their people, including *South Dakota v. Bourland*, which they brought before the U.S. Supreme Court with the help of Professor Laurence Tribe ’66. At stake were the hunting and fishing rights of land deeded to the Cheyenne River

Sioux in the 1868 Fort Laramie Treaty. In 1944, the land had been taken by the Army Corps of Engineers for flood control. The Supreme Court ruled against the tribe, but Emery and a group of tribal members were able to work

### Through law, Steve Emery and Mark Van Norman honor an ancestor’s wish.

with Congress to have hunting and fishing jurisdiction restored.

When the tribal council declared a war on alcoholism, the brothers helped their community fight for the right to regulate the sale of alcohol on the reservation. They also challenged South Dakota’s practice of applying certain taxes to tribal residents—despite the states’ lack of jurisdiction over tribal lands—and forced the state to return nearly \$30 million.

In 1995, Van Norman joined the Department of Tribal Justice, a new division of the U.S. Department of Justice. At the same time, Emery became chief justice of the Oglala Sioux Nation. Though Van Norman was in Washington, D.C., and Emery was still in South Dakota, the two maintained a close professional connection, frequently working together on cases affecting the Sioux tribes.

Now, the two have a looser professional connection. In his current position as executive director of the National Indian Gaming Association, Van Norman works with policy-makers and tribes on gaming issues and community development. As tribal chief, Emery is an important cultural and spiritual leader in South Dakota. Saving the Lakota language is one of his personal missions.

But their bond remains tight. And they have inspired several family members to follow in their footsteps: Their youngest brother, Tom Van Norman, is serving his fourth term in the South Dakota House of Representatives, and their cousin, Heather Dawn Thompson ’00, is the director of governmental affairs for the National Congress of American Indians.

For Emery and Van Norman, family history is an important reason for their advocacy. Emery explains: “We believe that each generation has a continuing responsibility for the next seven generations. And, we have this tradition in our family of teaching and carrying on these traditions.”

—EMILY DUPRAZ



**BROTHERS IN ARMS**  
Steve Emery '89 (left) and  
Mark Van Norman '86

ADRIENNE SWALLOW





## Wanderlust for the Rule of Law

**IN RURAL LIBERIA**, locals have a method for determining if someone is guilty of witchcraft. They administer poison to the suspect. If he survives, he's innocent.

That's the sort of anachronism that vexes **DEBORAH ISSER '96**, a senior program officer at the U.S. Institute of Peace, where she has spent the past four years working to bring the rule of law to the justice systems of post-conflict and war-torn countries. Although Liberia has adopted modern laws and institutions, the formal system is all but dysfunctional in rural areas, says Isser, who is working with an anthropologist to do field research on dispute resolution in that nation.

"Liberia is like a lot of post-conflict countries, where there's a real question of what is actually happening and how that compares to what the law says should happen," she says. "As Liberia tries to figure out the role for the customary law, both in terms of the system and particular practices, we're trying to make sure this policy is made on the basis of empirical research."

Isser has been interested in foreign countries since she was a child. At age 10, she moved with her family to Israel for a year. For the little girl from the suburbs of Albany, N.Y., Jerusalem was exotic and fascinating, and she was determined to get back overseas as soon as she could.

She did so—to China—after graduating from Columbia University, fluent in Mandarin and armed with a degree in East Asian studies. After teaching in rural China, she matriculated at HLS, where she was involved in the Human Rights Program, which enabled her to spend a winter term in Cambodia conducting field research on land rights. And, when it was time to line up a judicial clerkship after law school, once again she looked abroad. She clerked for the Supreme Court of Israel.

Back in the U.S., practicing at Morrison & Foerster in New York, Isser co-founded the International Legal Assistance Network, which connected human rights advocates in foreign countries with American law firms offering pro bono services.

In 2000, she left the firm for a job with the U.S. Mission to the U.N. as a special

adviser. She joined a small team working on Ambassador Richard Holbrooke's initiative to settle the U.S. arrears to the U.N. She also worked on U.N. peacekeeping reform, for which she was awarded the Department of State's Distinguished Honor Award. When her U.N. supervisor was appointed deputy high representative to Bosnia, he asked Isser to join him as his chief of staff. She spent the next two years as senior policy adviser to the Office of the High Representative, the chief civilian peace implementation agency, where she worked to root out corruption and dismantle criminal groups.

"It was exciting," she says. "A lot of it was working on trying to break the connection between nationalist parties, criminal enter-

prise and fugitive war criminals. I worked on strengthening the justice system, and also on unifying the customs and tax authorities, taking them out of the grip of ethnic-based entities and into the state. I spent a lot of time in long negotiations in smoke-filled rooms," adds Isser, who was pregnant with her first child at the time.

Now living in Washington, D.C., with her two young children and her husband, a French national who works for the World Bank, Isser is already contemplating her next move abroad.

"I still think back to the year I spent in Israel when I was 10, and I think it would be really great to expose our kids to different cultures."

—ELAINE MCARDLE

**Deborah Isser '96 has spent a lot of time negotiating in smoky rooms to bring law to countries in disarray.**







**IN TANDEM** *For two lawyers in New Orleans, an immersion in politics*

## Turf Wars and Muddy Waters

**WHEN BECCA O'BRIEN '05** and **OMMEED SATHE '06** returned to HLS last October to talk about building partnerships in post-Katrina New Orleans, they gave a painstaking account of what should, but doesn't, work.

In a presentation to students in Professor Robert Bordone's negotiation seminar, O'Brien and Sathe discussed their recent attempt to resolve a conflict between their respective agencies. They explained that as lawyers and former negotiation students, they believed the best way to fix a tense relationship was to isolate the sources of conflict and hash out a precise agreement.

But in the end, their proposal was "dead

on arrival," says Sathe.

It was a lesson he and O'Brien learned in the crucible of New Orleans' recovery: Personalities and politics don't always mesh with the precision of legal thinking.

"The word *politics* is starting to have so much more texture to it," says O'Brien, who has been the executive counsel to Mayor Ray Nagin since November 2006. "I used to think that it just meant elephants and donkeys hashing it out. Here, politics is relationships, politics is family, politics is identity."

Sathe, who at the encouragement of

O'Brien came to the city in June 2007 to work as director of land acquisition and real estate strategy for the New Orleans Redevelopment Authority, unknowingly walked into what he characterizes as a "cold war"

**In New Orleans, says Becca O'Brien, "politics is family, politics is identity."**

between his office and City Hall.

While political conflict often implies substantive disagreement, Sathe says that in this case the conflict had more to do with which agency owned what part of the recovery. It was a discord exacerbated by pride, reputation, ambition and other human factors.

The two now laugh at their hubris. "We put together a great proposal to fix the relationship," says Sathe. "A brilliant legal document."

"But that was absolutely not the point," says O'Brien.

Ultimately, they say, it took the efforts of a veteran administrator to meet with individuals and sort through the various personal issues hindering reconciliation.

In the meantime, the work of the city's recovery continues, and despite the 70-hour workweeks and challenges of negotiating learning curves they previously didn't know even existed, the two friends say they are grateful to be part of it.

"I can't say enough about the experience in local government," says Sathe, who previously worked as a real estate and land-use attorney with a large New York firm. "You are where everything finally gets implemented and the decisions you make have such tangible and immediate consequences."

O'Brien, who had served for a year as director of policy and research for the Office of the Federal Coordinator for Gulf Coast Rebuilding, says during that time she began to notice the local level was "where some of the problem-solving was drifting toward and where the interesting issues were being worked out."

As a senior policy adviser for the mayor, O'Brien says she has the luxury of looking at long-term strategic issues and tends to gravitate toward facilitating those that need interdepartmental cooperation. Among



**RECONSTRUCTIONISTS:** *Becca O'Brien '05 and Omneed Sathe '06, in the Big Easy*

*Photograph by* RICK OLIVIER



other things, she's been involved in creating integrated operating and capital budgets, writing requests for state and federal support of the city's capital program, and crafting policy positions to enhance local housing options.

Sathe manages a staff of six at the New Orleans Redevelopment Authority and expects that number to double soon. NORA has a state mandate to acquire blighted property and redevelop it. In his time at the agency, he has instituted a pilot program to auction off blighted property to entities capable of developing safe and affordable housing, initiated a land-acquisition program to support the development of a new medical district, and developed ways for home buyers to take advantage of New Market Tax Credits and regional post-hurricane tax incentives.

In drafting the city's position concerning a request to allow federal money from FEMA to be used for permanent housing in the city, O'Brien turned to Sathe.

"I have zero experience in housing programs," says O'Brien. "I asked Ommeed what the world would look like if these funds were actually available."

Using the same deliberative process that met with something less than success on their first collaboration, the two drafted a memorandum that was eventually approved by the mayor and incorporated into a proposal he took to Capitol Hill, where, they say, it's been favorably received.

Every victory is earned in the renewal of this city, and the challenges are immense, O'Brien and Sathe say. These days, they wear their loyalty to their adopted home and colleagues on their sleeves.

"I am privileged to be allowed into the most fraught, challenging, taxing, wearing, inspirationally committed group of people in the most amazing situation that any of us will probably see in our generation," says O'Brien.

"We are 27 months out from the worst natural disaster in American history, and we have returned 70 percent of our population and restored all basic city services," says Sathe, who chafes at media stories about the slow pace of recovery. "Somebody needs to make a case that that is an incredible performance." —NICK MARINELLO (REPORTING FROM NEW ORLEANS)

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## Writing a Check for HLS in Switzerland Is Suddenly Less Taxing



**IN THE FALL**, former Swiss Ambassador to the U.N. **JENÖ STAEHELIN LL.M. '65** and **Peter Max Gutzwiller LL.M. '68**, both of Lenz & Staehelin in Zurich, presented **Dean Elena Kagan '86** with the charter of the new Harvard Law School Foundation Switzerland. The initiative, organized by Gutzwiller and Staehelin, makes it possible

for Swiss alumni who donate to HLS to receive a tax benefit under Swiss law.

Gutzwiller says he acted out of gratitude for what HLS has given him personally and academically and in his career as an international lawyer. "Most recently," he says, "an additional motive has been added: the law school's new drive to

broaden the curriculum by an urgently needed compulsory international law dimension."

The foundation will solicit funds from graduates in Switzerland to subsidize grants and scholarships. Staehelin and Gutzwiller hope it will make it easier for aspiring Swiss law students and legal academics to study at HLS.



## Can Human-Rights Law Feed Haiti?

**THE GRAFFITI STARTED** appearing in mid-February: “Aba Lavichè!” spray-painted in red or black on the walls surrounding the pretty gingerbread houses in my neighborhood, on abandoned buildings downtown and all along the main residential thoroughfare. *Aba* means “down with” in Haitian Creole—I’d seen it before, usually preceding the name of some senator or political figure alleged to be a *dilè dwog* (drug dealer) or *volè* (thief).

But who was Lavichè?

I asked our NGO’s driver, Manès, who was accustomed to my obsession with graffiti in Port-au-Prince, as we bounced along downtown’s potholed streets in the organization’s wreck of a car. Manès is a news junkie, possessed with an exquisite command of the facts—or at least an overarching theory—and as my Creole

had improved, he’d been my first stop for information

and man-on-the-street spin. But Manès only laughed at me. “Lavichè pa moun, cheri,” he said: Lavichè isn’t a person. Suddenly I understood. *Lavi chè* was Creole for *la vie chère*—the high cost of living. I should have realized. Rising prices for gas, basic foodstuffs and school fees had been the talk since I’d arrived last August to work for a small NGO that does human-rights law.

In April, demonstrations brought hyperkinetic Port-au-Prince to a standstill. Protesters tried to storm the National Palace, threw rocks at cars, and ransacked gas stations, restaurants and, improbably, money-transfer agencies. At least six people died, including a U.N. peacekeeper. Many Port-au-Prince residents, even those struggling to cope with rising food prices, refused to participate; the demonstrations had neither the people power nor the disciplined nonviolence of previous mass movements, and some Haitian observers suggested that the protests had been orchestrated by elites trying to overthrow the government. (Indeed, Prime Minister Jacques-Édouard Alexis was forced to resign.) Still, even those who sat out the demonstrations sympathized, and the outpouring reflected what I’d been hearing from Haitians all year: They are being priced out of the market for survival.

The protests pointed up a difficult ques-

### Haitians cherish their rights, but the daily struggle is for survival.

tion that our organization, like many human-rights law shops in poor countries, faces every day: Of what use is the law in advocating for the rights of the impoverished? It’s not only that the judiciary here is dysfunctional—beset by corruption, incompetence, unconstitutional judicial appointments and a lack of resources. It’s that, in general, the law offers little relief to the poor. To be sure, national and international legal systems can establish and protect civil and political rights—the rights to organize, to express beliefs, to vote, to participate in political life. But economic and social rights—like the rights to food, primary education and health—remain the neglected stepchildren of the human rights movement. Much international jurisprudence tells us these rights are not justiciable, and the very phrase “economic and social rights” raises hackles (and heckles) even in some quarters of the international human-rights community.

In part, that’s because courts are reluctant to weigh in on policy matters. But it’s also because legal systems were designed by the powerful to protect themselves and their own. Redistributive aims are not a priority.

To be sure, Haitians cherish their civil and political rights. Theirs is the only nation born of a successful slave revolt, the world’s first black republic and the Western Hemisphere’s second independent state.



LAVI CHÈ, PORT-AU-PRINCE, May 2008

Inheritors of that legacy cast out the brutal 29-year-long dictatorship of the Duvaliers in 1986. From 2004 to 2006, they fought in courts, in the media and through organizing against an unelected interim government that illegally imprisoned and killed Haitians affiliated with Lavalas, the party of the ousted president, Jean-Bertrand Aristide. And many Haitians are well-versed in the due process violations wrought on our clients—in particular, two Lavalas leaders who were imprisoned on trumped-up charges during the interim regime. They’re out of jail now, but the charges against them are still in force, functioning as a kind of warning not to return to politics.

But as hard as Haitians fight for their political and civil rights, the daily struggle is for survival. The protests amply demonstrated that. Our organization is working to reframe education and health as rights issues—matters of justice, not handouts or luck—and, we hope, to convince a court to judicialize them. Our plans sometimes seem quixotic, and in my most skeptical moments, I suspect that my most meaningful work against “*Lavi chè*” is paying a decent salary to the woman who cleans my apartment. Still, I am certain it is worth trying.

Pooja Bhatia '06, an attorney at the *Bureau des Avocats Internationaux* in Port-au-Prince since August 2007, is the first HLS Human Rights Program Satter Fellow.





# Spring! (and in the rain)

## *Downpours couldn't dampen reunion spirits*

PHOTOGRAPHS BY KATHLEEN DOOHER



**1.** Kristina Hoy Swanson '98, her daughter Gracie Swanson and Erika Royal Barnes '98 **2.** Karl Berolzheimer '58, Edward Levin '58, Charles Stern '58 and his wife, Janet Stern, Robert Shoemaker '58, Charles Laff '58 **3.** 1998 classmates Dean Leckie, Patrick O'Loughlin, Jared Richardson **4.** 1983 classmates (top row, from left) Wade Woodson, Harriett Olson, Michael Meloy; (bottom row) Rosanna Marquez, Brenda Grandstrand Woodson, Richard Silver **5.** Steven Hansen '98 and his wife, Lisa Hansen **6.** 1973 classmates Steven Schwartz, Lawrence Silverstein, Rosalind Avnet Lazarus **7.** Paul Zerby '58 and his wife, Elizabeth Zerby, Gordon Busdicker '58 **8.** 1958 classmates William Mallin, Jim Hostetler, Arnold Greenberg, Charles Schoeneman, Joe Bachelder, Paul Rheingold **9.** 1983 classmates Ann Marie Wilkins, Alan Grayson, John Carr **10.** 1973 classmates Kenneth Moore, Karen Nelson Moore, Brackett Denniston **11.** 1968 classmates Alan Schwartz, Herschel Bloom, David Reber, Elliott Topkins, Bob Pomeroy, Herb Johnson **12.** 1968 classmates Stephen Carr, Jack Lasak **13.** 1998 classmates Michael Rosenbaum, Shawna Wilson, John Carr, Karen Haron, Garry Jenkins **14.** 1968 classmates David Reber, John Timbers **15.** David Brown '98 with his son Carter and classmates Eric Stock, Rachel Brand, Stephanie Gendell







LOOKING FORWARD

## Calendar

**JULY 30, 2008**

*HLSA of D.C. Reception for Alumni and Summer Associates*  
The Willard Office Building  
1455 Pennsylvania Ave.  
Washington, D.C.  
617-384-9523

**JULY 31, 2008**

*HLSA of New York City Summer Reception with Dean Elena Kagan '86*  
Sotheby's  
1334 York Ave. at 72nd St.  
New York City  
617-384-9523



**SEPT. 18-21, 2008**

*Celebration 55: The Women's Leadership Summit*  
Harvard Law School  
617-495-4698

**OCT. 23-26, 2008**

*Fall Reunions Weekend*  
Classes of 1948, 1953, 1963, 1978, 1988, 1993, 2003 & Emeritus Club  
Harvard Law School  
617-495-3173

**NOV. 18, 2008**

*HLS Leadership Conference*  
New York City  
617-495-8160

**MARCH 12-15, 2009**

*Alumni of the Americas*  
Miami  
617-495-4698

**APRIL 23-26, 2009**

*Spring Reunions Weekend*  
Classes of 1959, 1969, 1974, 1984, 1999  
Harvard Law School  
617-495-3173

**OCT. 22-25, 2009**

*Fall Reunions Weekend*  
Classes of 1949, 1954, 1964, 1979, 1989, 1994, 2004 & Emeritus Club  
Harvard Law School  
617-495-3173

For the latest on Harvard Law School Association events, go to [www.law.harvard.edu/alumni/association/calendar.htm](http://www.law.harvard.edu/alumni/association/calendar.htm).

# What is leadership? How do we nurture it? How should we use it?

These questions and others will take center stage at **CELEBRATION FIFTY-FIVE: THE WOMEN'S LEADERSHIP SUMMIT**, celebrating 55 years of women at HLS.



**CELEBRATION FIFTY-FIVE**  
THE WOMEN'S LEADERSHIP SUMMIT  
HARVARD LAW SCHOOL

SEPTEMBER 18-21, 2008

For more information, go to [www.law.harvard.edu/alumni/celebration55](http://www.law.harvard.edu/alumni/celebration55), call 617-384-9523 or e-mail [C55@law.harvard.edu](mailto:C55@law.harvard.edu).



# In Memoriam

## OBITUARY INFORMATION

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

**1930-1939** **A. EVANS KEPHART '30** of Spearfish, S.D., died Jan. 6, 2008. A four-term Pennsylvania state senator, he helped secure the water rights for the city of Philadelphia. He also practiced law at Montgomery McCracken and later formed his own partnership with Minnesota Gov. Harold Stassen. A year and a half out of law school, as assistant city solicitor for Philadelphia, he filed a brief before the Pennsylvania Supreme Court appealing the city's then limited right to take water from the neighboring Schuylkill River for municipal purposes. Kephart won the appeal, and the city's legal water rights became 100 percent of the minimum flow of the river. Kephart was elected to the Senate in the 1930s and worked on a variety of legislation, including approving the creation of the Pennsylvania Turnpike. In 1968, he was appointed the first state court administrator for the commonwealth, establishing standards for the judiciary.

**JOHN G. TUCKER '30** of Beaumont, Texas, died Jan. 14, 2008, at the age of 100. He was a principal of the Beaumont firm Orgain, Bell and Tucker and argued cases before all levels of the Texas state and federal court systems, including the Texas Supreme Court and the U.S. Supreme Court. He was a fellow of the International Academy of Trial Lawyers and the American College of Trial Lawyers. He received a number of awards, including the Jefferson County Bar Association Blackstone Award in 1987. In 2007, the Beaumont Foundation of America named him a "Southeast Texas Legend" and established a \$100,000 scholarship in his name.

**GABRIEL N. ALEXANDER '30-'31** of Sarasota, Fla., died Sept. 14, 2007. Formerly of Huntington Woods, Mich., he was a solo practitioner specializing in labor arbitration and was an adjunct professor at Wayne University Law School. He was chairman of the labor relations law section of the State Bar of Michigan and a commodore of the Detroit River Yachting Association.

**A. CLINTON KELLOGG '31** of Walpole, Mass., died Aug. 11, 2006. A solo practitioner specializing in real estate and probate law, he was counsel for the town of Sharon for 20 years and assistant clerk of the courts for Norfolk County for 35 years. He also served as director and chairman of Sharon Co-op Bank for nearly 40 years.

**JACOB D. HYMAN '34** of Edgewater, Fla., died April 8, 2007. A labor arbitrator and longtime faculty member of the University at Buffalo Law School, he joined the law

faculty in 1946 and served as dean from 1953 to 1964. He first retired in 1981 but continued teaching part time until his second retirement, in 2000, at the age of 90. He began his legal career at Blumberg and Parker and, in 1939, joined the legal staff of the Wage and Hour Division of the U.S. Department of Labor. Three years later, he worked for John Kenneth Galbraith in the Office of Price Administration, and he eventually became associate general counsel in charge of litigation in the special federal court that reviewed price-control orders.

**SYDNEY A. LURIA '34** of New York City died Dec. 31, 2007. He was a senior member of Carb, Luria, Cook & Kufeld and served as counsel to Cushman and Wakefield and to L. Luria and Sons. A member of the board of governors of the Real Estate Board of New York from 1974 to 1985, he also served the New York board as vice president and counsel and was named honorary lifetime legal counsel in 2006. He was a member of the Human Rights Commission of the city of New Rochelle and president of the Guidance Center. He was chairman of the Givat Haviva Educational Foundation and PEF Israel Endowment Funds. During WWII, he served in the U.S. Army Air Forces as a combat intelligence officer.

**JOHN F. BACON '34-'35** of Hopewell Township, N.J., died Dec. 21, 2007. A longtime Bridgeton attorney, he was the oldest practicing attorney in Cumberland County when he retired at the age of 90. He focused his practice on wills, trusts and estates, and real estate. He was also a solicitor for the Bridgeton Board of Education and Cumberland National Bank/United Jersey Bank in Bridgeton and a director of the Bethlehem Corp. An Eagle Scout, he served as an advisory board member of the Southern New Jersey Boy Scout Council and was a sponsor of the annual Boy Scout Boy Power Dinner. During WWII, he served in the Intelligence Division of the U.S. Armed Forces.

**JAMES H. BOOSER '35** of Middletown, Pa., died Nov. 13, 2007. He was of counsel to McNees Wallace & Nurick in Harrisburg and a Middletown borough solicitor for 12 years. In 1974, he retired from the law firm but maintained a practice in municipal and estate law. A lifelong member of the First Church of God, he served as parliamentarian and general counsel to the General Conference of the Church of God and was on the administrative council for more than 50 years. He was also involved in many com-

munity and church projects, including the Interfaith Apartments and their adult day care center and thrift shop. Swarthmore College recently presented him with the Arabella Carter Community Service Award.

**ARNOLD M. GOLDSTEIN '35** of Scarsdale, N.Y., died Dec. 15, 2007. For more than 60 years, he practiced law at Conrad and Smith in New York City, where he specialized in real estate and estates law.

**SAMUEL BRODSKY '36** of New York City died Jan. 8, 2008. A tax and corporate lawyer, he served as chairman of the tax section of the New York State Bar Association. He was also a lecturer on taxation at New York University School of Law. He began his career as clerk to Federal Circuit Court Judge Julian Mack and then as assistant U.S. attorney for the Southern District of New York. During WWII, he was a lieutenant in the U.S. Navy.

**HENRY STERN '36** of Hartsdale, N.Y., died Jan. 29, 2008. He was the founder and president of Henry Stern & Co., an export management company, in Elmsford. A member of the National Panel of Arbitrators, he also was a charter member of Hartsdale Rotary and was involved with Big Brothers of Westchester.

**EUGENE C. GERHART '37** of Binghamton, N.Y., died Oct. 27, 2007. A longtime Binghamton attorney, he was a solo practitioner and a partner with two other attorneys before becoming a founding partner of Coughlin & Gerhart. From 1949 to 1983, he was general counsel of Columbia Mutual Life Insurance Co., where he also served as acting president and chairman of the board. He lectured in business law at the Triple Cities and Harpur Colleges, forerunners of the State University of New York Binghamton. A biographer of the late U.S. Supreme Court Justice Robert H. Jackson, he first met Jackson at a 1946 ABA convention, where Jackson was a keynote speaker and the then 34-year-old Gerhart was presenting a prize-winning essay. Through an ensuing correspondence, Gerhart collaborated with Jackson and wrote a biography of the justice and a study of his legal opinions. An author of eight books, Gerhart was an editor of the New York State Bar Association Journal and was on the board of editors for the ABA Journal. In 1934, he was a secretary to Judge Manley O. Hudson at the League of Nations in Geneva. During WWII, he was a lieutenant in the U.S. Navy in the Judge Advocate General's Corps.

**HENRY T. HOLSAPPLE '37** of Winston-Salem, N.C., died Jan. 25, 2008. He was vice president of the Trust Department at Wachovia Bank in Winston-Salem. He practiced law in New York City and served as a trust officer at First National City Bank before moving to North Carolina. Pursuing his longtime interest in genealogy, he published "A Genealogy of the Holsapple Family of Columbia County, New York, 1725-1994." During WWII, he was commanding officer of USS LST-560 in the South Pacific, where he participated in landing operations in the Philippines and Brunei Bay, Borneo. He also served in the U.S. Naval Reserve, attaining the rank of commander.

**WILLIAM R. LESSIG JR. '37** of Wyomissing, Pa., died Dec. 19, 2007. He was a senior partner at Stevens & Lee in Reading, Pa., specializing in probate and estate law. A director of the Berks County Association for the Blind, he worked to promote the interests of the blind and visually impaired in Berks County. He was also a Mason and past master of Lodge 62.

**ARTHUR RICHENTHAL '37** of New York City died Oct. 11, 2007. A solo practitioner specializing in litigation, he represented New York City's largest organization of landlords as counsel to the Rent Stabilization Association during the 1970s and '80s. In 1975, he was representing the Flushing National Bank in Queens when the state legislature enacted a moratorium on the payment of more than \$1 billion in short-term city bonds. He sued to prevent the moratorium, and in a 5-1 decision in 1976, the Court of Appeals ruled that the moratorium violated provisions of the state constitution that affirm that municipal securities are backed by pledges of a city's full faith and credit.

**WILLIAM S. ZEMAN '37-'38** of West Hartford, Conn., died Dec. 27, 2007. He practiced labor law and represented a wide range of unions in both the public and private sectors until his retirement in 2001. From 1941 to 1945, he worked for the United Electrical Workers Union as general counsel and manager of Amalgamated Local 281. He received the Whitney North Seymour Arbitration Medal from the American Arbitration Association in 1984 and the Medal of Excellence from the University of Connecticut School of Law in 1988. He was a member of the Connecticut State Guard and served on the mayor of Hartford's War Bond Committee.

**BARRING COUGHLIN '38** of Cleveland died Jan. 2, 2008. An attorney with Thompson Hine, he joined the firm in 1939 as its 22nd lawyer. He practiced law in Cleveland, specializing in tax and acquisition matters, and was editor of the Cleveland Bar Journal. He represented the late Cyrus Eaton, a financier and philanthropist, and served on the board of the Cyrus Eaton Foundation

until this year. During WWII, he was an intelligence officer in the U.S. Coast Guard aboard the USS Campbell and made 13 trips to North Africa.

**LUCIUS NIMS '38-'39** of Pensacola, Fla., died Sept. 6, 2007. Formerly of Greenfield, Mass., he served as executive vice president of Lunt Silversmiths and president of Lamson & Goodnow. He joined the Millers Falls Co. as treasurer in 1945. When the company merged with Ingersoll Rand in 1971, he headed two divisions. After retiring from Lunt in 1981, he remained as a director until 2002. He was on the Greenfield School Committee and was a director of the Franklin Savings Institution. He served in the U.S. Navy during WWII.

**RANDOLPH M. JACKSON LL.M. '39** of Granbury, Texas, died Jan. 9, 2008. A legal assistance officer to the Pentagon, he also served 35 years with the Federal Business Association. He was active in the Heritage League in Hillsboro, Texas.

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**1940-1949 EUGENE J. BENEDEUCE '40** of Naples, Fla., died March 28, 2007.

**WILLIAM A. MURRAY '40** of Milford, Mass., died June 12, 2006. A Milford attorney, he founded his firm in 1942 and continued to practice with his sons until 2002, dealing primarily with auto tort jury cases. He was a part-time title examiner for two Milford banks and general counsel for what became Bonanza Bus Lines and Milford Shoe Co. He was also a member of the Milford Conservation Commission and chairman of the Milford Zoning Board of Appeals. During WWII, he was a member of the Massachusetts State Guard.

**BERNARD A. HELFAT '41** of Douglaston, N.Y., died Oct. 20, 2007. An attorney for more than 60 years, he focused his practice on design and copyright in the textile and apparel field. He represented the plaintiff in the landmark case *Peter Pan Fabrics v. Martin Weiner, Inc.*, which had a great impact on design protection in the textile industry. He was president of the Bayside Democratic Club, and in 1960, he ran for Congress. He also held executive positions at Douglas Manor Association and Temple Emanuel of Great Neck. During WWII, he served on the War Department General Staff in Washington, D.C., and attained the rank of captain. Recalled during the Korean War, he served in the National Security Agency and received the Bronze Star.

**JOHN S. PULLEN '41** of Ellsworth, Maine, died May 21, 2006. He was an attorney in Maine until 1980. He served in the U.S. Army from 1942 to 1946 and again in 1951.

**RICHARD C. REED '41** of Chester, Conn., died Jan. 27, 2008. Formerly of Brockton, Mass., he specialized in probate law and was a partner at Keith, Reed, Wheatley & Fren-

ette in Brockton. He was board chairman of Brockton Hospital and the Old Colony Y and a board member of the former People's Savings Bank. During WWII, he served in the U.S. Coast Guard.

**ROBERT J. BANKS JR. '42** of Danville, Ill., died Dec. 20, 2007. A longtime attorney at Sebat, Swanson, Banks, Garman & Townsley, he was named a partner in 1949. He was president of the Vermilion County Bar Association and was active in statewide committees of the Illinois Bar Association. He was secretary of the Danville City Zoning Committee and a clerk and auditor of Blount Township for eight years. As president of the Danville Jaycees, he helped organize the building of the first public swimming area on Lake Vermilion. During WWII, he served with the U.S. Army's Corps of Engineers.

**ROBERT L. BLACK JR. '42** of Cincinnati died Feb. 7, 2008. A judge of the Ohio First District Court of Appeals, he served on the court from 1977 to 1989. Previously, he was a judge of the Hamilton County Court of Common Pleas. From 1967 to 1972, he was chairman of the Cincinnati Human Relations Commission.

**DAVID J. CONROY '42** of Asheville, N.C., died Oct. 26, 2007. He was secretary and general counsel for the International Salt Co. of Clarks Summit, Pa. When the company merged with American Enka of Asheville, Conroy became corporate secretary. He retired in 1983. Active in the community, he was director of Asheville's chamber of commerce, symphony, art museum and country day school. He was also campaign director, and later board chairman, of the United Way. During WWII, he served in the U.S. Naval Air Corps as a pilot in the Aleutian Islands and later was transferred to a squadron that flew torpedo bombers from escort carriers. He was flying over Iwo Jima on Feb. 23, 1945, when he witnessed the U.S. flag being planted on Mount Suribachi. Conroy broke radio silence, notifying the photographer who then took the famous picture of the second flagraising. He was awarded the Distinguished Flying Cross and three Air Medals.

**DAVID FLOWER JR. '42** of Wayland, Mass., died Feb. 28, 2008. He was director of tax affairs for the Raytheon Corp. for 40 years. After retiring in 1986, he remained as a consultant until 1991. He was also a tax instructor at Northeastern University for many years and sponsored Bentley College's tax program. A member of the Research Institute of America, he was chairman of the Machinery and Allied Products Institute, the National Association of Manufacturers and the Associated Industries of Massachusetts.

**IRVING J. HELMAN '42** of Chestnut Hill,



## A Scholar of Great Social Account

**PROFESSOR EMERITUS HAROLD J. BERMAN**, an expert on comparative, international and Russian law as well as legal history and philosophy and the intersection of law and religion, died Nov. 13. He was 89.

Known for his energetic and outgoing personality, Berman recently celebrated his 60th anniversary as a law professor. He joined the Harvard Law School faculty in 1949 and held the Story Professorship of Law and later the Ames Professorship of Law. A prolific scholar, Berman wrote 25 books and more than 400 scholarly articles, including his magnum opus, "Law and Revolution: The Formation of the Western Legal Tradition."

"Harold was a scholar of boundless and lofty ambition," said HLS Professor Emeritus Henry Steiner '55. "His projects reached deeply not only into comparative analysis and history, but also religion and jurisprudence. This is a record that any distinguished scholar would take pride in."

Born in 1918 in Hartford, Conn., Berman received a bachelor's from Dartmouth College in 1938 and a master's in history from Yale University in 1942. After a year at Yale Law School, he was drafted by the Army and served as a cryptographer in Europe, earning a Bronze Star. He returned to New Haven and finished his degree in 1947.

Berman's interest in the Soviet legal system began during his law school years, when he studied Russian and taught himself Soviet law. He argued his first case in Moscow in 1958, representing the estate of Arthur Conan Doyle, creator of Sherlock Holmes. Seeking to obtain royalties from the Soviet state on the millions of Conan Doyle books sold in the Soviet Union, Berman won the case in a Moscow city court. He later lost on appeal to a higher Russian Federation court.

Berman was a frequent visitor to Russia



MARTHA STEWART

PROFESSOR HAROLD BERMAN taught law students for six decades.

as a guest scholar and lecturer. As a result of his firsthand knowledge of the Soviet Union—rare for an American in the Cold War era—he became a leading consultant to Russian officials in the mid-1980s during glasnost and perestroika.

HLS Professor Emeritus Detlev Vagts '51 was part of a group of academics Berman brought together to teach what they referred to as "capitalist law" in the Soviet Union during that time. Vagts recalled the challenges of their task:

"The young Muscovites had been trained to think of the act of two persons getting together to buy goods low and sell them high as a conspiracy to profiteer—which would get you five years of re-education in Siberia. Now they had to adjust to the idea that it was a legitimate partnership," he said. "The first Russian law on corporations was drafted by lawyers who could not bear to use the term 'capital' for the account in the

lower right corner of the balance sheet; they called it 'the social account' instead."

In 1985, faced with the prospect of mandatory retirement, Berman left HLS for Emory Law School. At Emory, he held the Robert W. Woodruff Professorship of Law—the highest honor Emory bestows on a faculty member—for more than 20 years. He was the principal founder of the American Law Center in Moscow, a joint venture of Emory and the Law Academy of the Russian Ministry of Justice. He was also co-chairman of Emory's World Law Institute, an organization that sponsors educational programs around the world.

Reflecting another of his long-term interests, Berman helped to develop Emory's Center for the Study of Law and Religion. In 2003, he published "Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition."

—EMILY DUPRAZ

Mass., and Palm Beach, Fla., died Dec. 9, 2007. For 60 years, he practiced corporate and business law at Nutter McClennen & Fish in Boston. He began his legal career in the general counsel's office of the War Production Board in Washington, D.C. In 1946 he was named general counsel of the Office of Price Administration. The following year he was appointed the law clerk to Justice Felix Frankfurter of the U.S. Supreme Court. He served on the boards of many corporations and was chairman of the Boston Bar Association's Corporate Law Committee and president of the Newton Council of Parent-Teacher Associations. During WWII, he served in the U.S. Army in the European theater and was wounded in the Battle of the Bulge. He was awarded the Purple Heart.

**CHESTER E. FINN '43** of Hilton Head, S.C., died Oct. 17, 2007. Formerly of Dayton, Ohio, he was a senior partner of Estabrook Finn & McKee and Porter Wright Morris & Arthur. During WWII, he served in the U.S. Navy in the South Pacific and attained the rank of lieutenant commander.

**WILLIAM S. GREEN '43** of Manchester, N.H., died Oct. 22, 2007. He was a lawyer at Sheehan, Phinney, Bass & Green in Manchester. Early in his career, he was assistant attorney general of New Hampshire and was the state's first deputy attorney general when the position was created in 1950. He served on the New Hampshire Legislative Council as a member of several commissions and was a trustee of Elliott Hospital in Manchester for 35 years. In 1960, he was named Citizen of the Year by the Manchester Chamber of Commerce. During WWII, he served in the U.S. Marine Corps in the Pacific theater. He participated in the invasion of the Marshall Islands and served at the Palmyra Island Naval Air Station and attained the rank of major.

**CHARLES B. KING '43** of Arlington, Mass., died Feb. 7, 2008. An attorney for the law office King & Gilpatric in Boston, he had a general civil practice focused on estate planning, probate and corporate taxation law. During WWII, he served in the U.S. Army.

**MAX B. LEWIS '43** of Salt Lake City died April 10, 2006. For 58 years, he specialized in taxation and estate and financial planning, and he was a speaker and author. A benefactor of the University of Utah, he created the Max B. and Virginia E. Lewis and Karen L. Freed Endowed Loan Fund in the School of Medicine. He also served as chairman of the university's National Advisory Council and was selected as a distinguished alumnus. During WWII, he served in the U.S. Army Air Forces as a claims judge advocate and, later, as a judge advocate general. He attained the rank of lieutenant colonel.

**EDWARD J. SAMP JR. '43** of Cambridge,

Mass., died Nov. 23, 2007. He practiced law at Haussermann, Davison and Shattuck. He later established his own firm, where he practiced estate and property law until his retirement in 1994. In 1959, he was appointed a Republican member of the Cambridge Election Commission, a position he held for more than 35 years, serving as chairman from 1980 until his retirement. He was a longtime volunteer for the Cambridge Baseball League, and in 1991, the city named a baseball field in his honor. He was a lieutenant commander in the U.S. Navy during WWII. A gunnery officer aboard the USS Laffey when the destroyer came under German artillery fire at Normandy, he helped dislodge a live shell that had embedded in the ship. During the battle of Okinawa, he was severely injured when his ship was attacked by a barrage of kamikaze planes. He was awarded the Purple Heart.

**RICHARD B. STONER '44** of Columbus, Ind., died Jan. 19, 2008. He worked for Cummins Engine Co. for 50 years, spending his last 20 as vice chairman of the board of directors and then vice chairman emeritus. He also served as director and president of Cummins Engine Foundation and Irwin-Sweeney-Miller Foundation. He was head of the Indiana State Policy Commission on Post High School Education. He also served as trustee of Indiana University for 20 years and as president of the board. From 1966 to 1988, he was Democratic National Committeeman for Indiana, and he attended every Democratic National Convention from 1956 through 1988 as a delegate. A founding member, elder and trustee of North Christian Church in Columbus, he was also vice president for National Council of Churches U.S.A. During WWII, he was a captain in the U.S. Army.

**MARTIN POLIN '45** of San Luis Obispo, Calif., died Aug. 17, 2007.

**JAMES L. OAKES '47** of Brattleboro, Vt., died Oct. 13, 2007. He was a judge of the 2nd U.S. Circuit Court of Appeals. In 1970, he was appointed to the U.S. District Court by President Nixon, and a year later, he was elevated to the 2nd Circuit Court of Appeals. He served as chief judge from 1989 to 1992 and retired in 2007. Before his judgeships, he spent two decades practicing law and working in the state government in Vermont. He was a state senator for Windham County from 1961 to 1965 and a state attorney general from 1967 to 1969. He was an adjunct law professor at Duke University and Iowa University. He received many awards, including the Learned Hand Award for Excellence in Jurisprudence and the Louis Dembitz Brandeis Medal for Distinguished Legal Service. In 1983, he was recognized for his leadership by the Environmental Law Institute.

**SAUL A. SILVERMAN '47** of Haverhill, Mass., died Dec. 10, 2007. A psychologist and practicing therapist for more than 40 years, he founded Silverman & Associates in Marriage and Family Counseling in 1961. He had offices in New Hampshire, Massachusetts and Rhode Island. From 1947 to 1957, he was an attorney in Boston, Lawrence and Haverhill.

**KENNETH WANG LL.M. '47** of Cove Neck, N.Y., died Dec. 14, 2007. He was a senior partner at Wang and Wang in Taipei, Taiwan, and a professor at St. John's University School of Law in New York City. He joined the St. John's faculty in 1952, retired in 1984 and then formed his law firm in Taiwan. In 1964, he participated in President Lyndon Johnson's White House Conference on International Law and International Cooperation. He taught for a year at his alma mater, Soochow University Law School, then known as Dongwu Law, and was a law practitioner in Shanghai until 1945, when he was named a judge of the Shanghai Court of Appeals. He also was president of Aurora College for Women, the first college for women in China. In 2003, Soochow University honored him by naming its new law school the Kenneth Wang School of Law.

**MICHAEL J. DELEO '47-'48** of Everett, Mass., died Dec. 10, 2007. The founder and president of M.J. DeLeo Insurance Agency in Everett, he also served as vice president of the board of management of Whidden Memorial Hospital and as president and director of the Everett Chamber of Commerce. During WWII, he served in the 11th Armored Infantry Division in the European theater. He received the Purple Heart, three Campaign Stars and the Combat Infantryman's Badge.

**CHARLES N. BERRY JR. '48** of Oklahoma City died Oct. 26, 2007. A longtime Oklahoma City attorney, he began practicing law in the city in 1948, and in 1985, he established Berry and Spooner, where he worked until the spring of 2007. He was president of the Fairlawn Cemetery Association. During WWII, he served in the U.S. Navy and was assigned to the White House Map Room. He later served aboard the USS Iowa in the Atlantic and the Pacific.

**HANS G. HACHMANN '48** of Forest Hills, N.Y., died Oct. 22, 2007. A New York City attorney for many years, he engaged in a general practice with some emphasis on international and estate matters. He was also president of the Max Kade Foundation in New York City, which promotes the study of German and German-American history.

**JOHN W. JOHNSTON '48** of Charlotte, N.C., died Dec. 30, 2007. A senior partner at what is now Helms Mulliss & Wicker in Charlotte, he worked for the firm for 34 years. He was involved in securities and



merger work for a number of Charlotte banks and businesses. He was co-chairman of the Myers Park Baptist Church education committee and was a board member of the Mint Museum of Art. During WWII, he served in the U.S. Army Air Forces and spent three years in India as an aircraft maintenance officer. He retired with the rank of major.

**DONALD S. MACLEOD '48** of East Amherst, N.Y., died Aug. 10, 2006. A certified public accountant, he practiced law in Chicago and held senior executive positions at Rockwell International in Pittsburgh for many years. In 1980, he returned to western New York and was president and CEO of Upson Co. in Lockport. He helped take the paper mill out of Chapter 11 bankruptcy and negotiated its purchase by Domtar Industries in 1984. He later served as a management consultant, with Domtar as his principal client. During WWII, he served in the U.S. Navy as a captain of a sub-chaser in the Pacific.

**MURDAUGH S. MADDEN '48** of Washington, D.C., died Jan. 13, 2008. Senior counsel of the Humane Society of the United States, he served as the society's general counsel from 1971 to 1990. He helped frame the original constitution of the World Society for the Protection of Animals and played a role in the Humane Society's investigation into the bleaching of birds on the film set of "Jonathan Livingston Seagull." Prior to joining the Humane Society, he spent two decades in private practice and handled nearly 100 cases involving charges of disloyalty or removal from government service for alleged communist sympathies. He was an officer of many legal and animal protection associations. He served with the U.S. Army Air Forces in Europe during WWII.

**JAMES M. MONTGOMERY '48** of Amityville, N.Y., died Nov. 22, 2007. A village justice of Amityville, he also served as Amityville village prosecutor from 1981 to 1985. Following his graduation from HLS, he worked as a criminal defense attorney.

**EDWARD OLSON JR. '48** of Berlin, Conn., died Oct. 23, 2007. He was a solo practitioner with a general practice in Berlin. He served in the 8th Air Force in England.

**WILMOT T. "BUD" POPE '48** of Brookline and Manchester-by-the-Sea, Mass., died Jan. 22, 2008. For 43 years, he practiced at Choate Hall & Stewart, retiring as a managing partner. He led the firm's bank merger practice, representing New England Merchants National Bank and Bank of New England. He represented Bank of New England in the first interstate bank merger in the United States, shepherding the transaction through the Federal Reserve Board and eventually the U.S. Supreme Court. He also wrote the Massachusetts Bank Holding

Company Act. During WWII, he served as a naval officer in the Pacific.

**WILLIAM K. STEVENS '48** of Lakeside, Mich., and Naples, Fla., died Oct. 28, 2007. Formerly of Chicago, he was an estate specialist and worked for many years as vice president of the trust department at First National Bank of Chicago. Author of "Illinois Estate Administration," in 1975, he joined the Chicago office of McDermott Will & Emery, where he worked for 10 years before becoming a partner at Myers, Krause & Stevens in Naples, Fla. He was the brother of U.S. Supreme Court Justice John Paul Stevens. During WWII, he was a Navy pilot.

**E. LEROY "ROY" TOLLES '48** of San Marino and Montecito, Calif., died Jan. 28, 2008. He was a co-founder of Munger, Tolles & Olson in Los Angeles and specialized in tax law and mining law. From its founding in 1962, the firm has grown to approximately 200 lawyers. He was also an investor and partner at Wheeler, Munger & Co., an investment firm. During WWII, he served as a pilot in the U.S. Marines in the South Pacific.

**MAXWELL E. GREENBERG '49** of Los Angeles died Oct. 16, 2007. He was a general practitioner in Southern California, where he headed a small law firm with a business and litigation practice for almost 30 years. He later was a senior partner at a Century City firm. He taught law as an adjunct professor at the UCLA School of Law, and in 1954, he founded the California Bar Review Course, which he taught for 20 years. He was vice president of the Jewish Federation Council of Greater Los Angeles and the Los Angeles Police Commission, and from 1978 to 1982, he served as national chairman of the Anti-Defamation League of B'nai B'rith. In 1969, he participated on "The Advocates," a debate show on public television. He served in the U.S. Army.

**SHERMAN V. LOHN LL.M. '49** of Missoula, Mont., died Dec. 10, 2007. For more than 50 years, he practiced law in Missoula, joining what later became Garlington, Lohn & Robinson in 1949. He was state delegate to the ABA House of Delegates and a director of the American Judicature Society. For the 9th Circuit, he was a lawyer representative for the Judicial Conference, a member of the senior advisory board for the Court of Appeals and a director of the historical society. Longtime counsel for the University of Montana Foundation, he also helped teach a third-year course at the university's law school for many years. He served in the U.S. Army during WWII.

**RICHARD C. SORLIEN '49** of Villanova, Pa., died Jan. 7, 2008. An attorney and amateur tennis champion, he specialized in tax and commercial law at Pepper, Hamilton and Scheetz in Philadelphia, and he was

president of the Philadelphia and Suburban Lawn Tennis Association and the Middle States Lawn Tennis Association and served on the U.S. Tennis Association's committee of management. He was a partner at Pepper Hamilton for 33 years and of counsel for six years. A tennis player since the age of 7, he debuted in 1948 at the Newport Casino Invitational, competed in most major grass-court events for the next 20 years and was a three-time finalist in the Wimbledon Veterans' Doubles in the 45-and-older category. He won 10 U.S. titles in senior divisions and continued to compete until he was 82. The Sorlien Cup, awarded to the winner of an annual open-age competition between the International Lawn Tennis Clubs of Canada and the U.S., was named in his honor. During WWII, he served in the U.S. Army Air Forces.

**RICHARD F. STAPLES '49** of Providence, R.I., died Jan. 25, 2008. He practiced law at Tillinghast, Collins & Graham and, later, Hinckley, Allen & Snyder, both in Providence. He served on the state Board of Education and on the state Board of Regents. A trustee of Citizens Savings Bank, he was also a board member of Citizens Financial Group, president of the Rhode Island Historical Society and a member of the Commission on Judicial Tenure and Ethics. During WWII, he served as a lieutenant in the U.S. Army, retiring with the rank of captain.

**CHARLES H. TOBIAS JR. '49** of Cincinnati died Oct. 18, 2007. He was a mediator for the U.S. Circuit Court of Appeals and was associated with Clark & Eyrich in Cincinnati. He specialized in general commercial law and was a partner at Steer, Strauss, White & Tobias, where he worked for more than 40 years. From 1974 to 1977, he was vice mayor of the city of Wyoming, Ohio. He was on the board of governors of Hebrew Union College-Jewish Institute of Religion and president of the Metropolitan Area Religious Coalition of Cincinnati. During WWII, he was a lieutenant in the U.S. Naval Reserve in the Pacific. He was the brother of Paul Tobias '58.

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**1950-1959** **ROBERT G. BARCLAY '50** of Brick, N.J., died on Nov. 22, 2007. He was a vice president of the trust department at Chase Manhattan Bank. During WWII, he served in the 94th Infantry Division Association and earned two Bronze Stars.

**DONALD E. BROWN LL.M. '50** of Grosse Pointe Woods, Mich., died Feb. 13, 2007.

**JAMES C. GIBBENS '50** of Oklahoma City died Dec. 19, 2007. He was a senior partner at Crowe & Dunlevy, where he worked for more than 50 years. He began his law practice in Tulsa before joining Crowe & Dunlevy. He served in the U.S. Army in Germany and Okinawa, Japan.

**JOHN P. FORTE '51** of Boxborough, Mass., died Feb. 9, 2008. Formerly of Bedford, he was a Massachusetts judge for 26 years. In 1968, he was appointed a justice of the Concord District Court, and from 1977 to 1994, he served on the Superior Court. Earlier in his career, he was assistant district attorney for Middlesex County. He also was an adjunct professor at New England School of Law. He held several town offices in Bedford, including town moderator, and for more than 50 years, he served as the town's Santa Claus. He was a pilot in the U.S. Navy for four years during WWII and for two years during the Korean War.

**WALTER S. "SAM" FURLOW JR. '51** of Washington, D.C., died Jan. 14, 2008. He was a Washington lawyer and professor at Catholic University of America Columbus School of Law. In 1955, he joined Lambert, Hart and Northrop, where he practiced general law before specializing in estate planning and management. Before law school, he worked for the State Department's Diplomatic Courier Service, traveling throughout the Americas and the Middle East. He later served as assistant general counsel in the Navy Department. In 1975, he began teaching at Columbus School of Law and taught a full course load for more than a decade while maintaining a private practice in estate law.

**ARTHUR LOWY '51** of Alexandria, Va., died Jan. 1, 2008. Formerly of Great Falls, he lived and worked in the Washington, D.C., area for nearly 50 years. A trial attorney, he represented several of the U.S. hostages held in Iran in the late 1970s and thousands of the victims of the Union Carbide poison-gas leak in India in the 1980s. He opened his own trial practice in 1973 and retired in 2005. In 1968, he began working for the General Accounting Office, and he later worked for New Jersey Sen. Harrison Williams on the Subcommittee on Labor. From the early 1950s until 1968, he worked for the CIA, including service during the Korean War.

**LAWRENCE A. SULLIVAN '51** of Sherman Oaks, Calif., died Oct. 7, 2007. An authority on antitrust law, he taught at the University of California Berkeley and Southwestern Law School. Appointed by President Carter to the National Commission for the Review of Antitrust Laws and Procedures, he also served as a consultant on antitrust issues to the U.S. Department of Justice and the U.S. Department of Energy, the Senate and House subcommittees on antitrust, the Federal Trade Commission, the California Attorney General's Office, and the governments of Australia and Brazil. He began his teaching career at the University of California before joining Foley, Hoag & Eliot in Boston. Returning to Berkeley in 1967, he was eventually acting dean of the law school, director of the Earl Warren Legal

Institute and the first Earl Warren Professor of Public Law. He wrote several books and dozens of articles on antitrust, and in May 2007, he won, with his co-author, Warren Grimes, the Fifth Annual Jerry S. Cohen Memorial Fund Writing Award for the book "The Law of Antitrust: An Integrated Handbook."

**ROBERT D. NOBLE '51-'53** of Quincy, Mass., died Dec. 23, 2007. For more than 45 years, he was a tax consultant. A musician, he played the trumpet for several organizations, including the Quincy Symphony and the Roma Band.

**PHILIP C. ELLIOTT '52** of Petoskey, Mich., died Oct. 31, 2007. For 25 years, he was a judge of the Genesee County Circuit Court. He was elected in 1966, after serving two years as a probate judge. He retired in 1991 and then, for 21 months, worked as deputy chief assistant prosecutor. He also served on the Michigan Criminal Jury Instructions Committee for many years. Early in his career, he practiced law in Flint. He served in the U.S. Navy and Army.

**ROSS A. LANGILL '52** of Waukesha, Wis., and Venice, Fla., died Jan. 29, 2008. He specialized in corporate and estate law as a solo practitioner in Waukesha and served as chairman of the Supreme Court of Wisconsin's Board of Attorneys Professional Responsibility, District 6. He was also a president of the Waukesha County Bar Association, board president of the Waukesha Symphony and one of the original incorporators of the city of Brookfield. During WWII, he served in the U.S. Army in India.

**RICHARD S. LOMBARD '52** of Tucson, Ariz., died Oct. 18, 2007. He was general counsel and vice president of Exxon Corp. An associate at Haight, Gardner, Poor and Havens from 1952 to 1955, he began working as an attorney for Exxon's predecessor, the Standard Oil Company of New Jersey, in 1955. He spent 10 years in the Venezuelan subsidiary's law department and eight years in Exxon divisions in New York and Texas before becoming general counsel in 1973. He coordinated Exxon's legal response to the Middle East oil crisis in the '70s and the Exxon Valdez oil spill in Alaska. From 1993 to 1996, he was of counsel to Baker and Botts in Dallas, and later he served as an arbitrator in domestic and international business disputes. He wrote a book, "American Venezuelan Private International Law: A Bilateral Study," published in 1965. Lombard served in the U.S. Army Air Corps.

**MALCOLM MCLANE '52** of Hanover, N.H., died Feb. 2, 2008. A trusts and estates attorney for 50 years, he was president of the Concord, N.H., law firm Orr and Reno from 1981 to 1984. He served on the Concord City Council for 20 years and was mayor of the city from 1970 to 1976. In 1972, he ran for

governor. An avid skier and an inductee into the Ski Hall of Fame, he participated as an international alpine ski official at the 1960 Olympics and numerous World Cup competitions. He co-founded Wildcat Mountain Ski Area, later serving as its president. He was on the boards of Wildcat, the Appalachian Mountain Club, the Society for the Protection of New Hampshire Forests and NARAL/Pro-Choice New Hampshire. During World War II, he served in the U.S. Army Air Forces, flying 73 missions before he was shot down and taken prisoner during the Battle of the Bulge.

**HAROLD RICHTER '52** of Munster, Ind., died June 15, 2007. He focused his practice at Richter & Dennis in Chicago on family law and real property law.

**HERBERT B. RUSKIN '52** of White Plains, N.Y., died Nov. 17, 2007. A specialist in maritime law, he practiced law in Detroit and New York City before retiring in 2002.

**EVAN G. GALBRAITH '53** of New York City died Jan. 21, 2008. An investment banker who headed American financial institutions in Paris and London, he served under President Reagan as ambassador to France from 1981 to 1985 and, in 2001, as Secretary of Defense Rumsfeld's representative in Europe and defense adviser to the U.S. mission to NATO. He wrote two books, including "Ambassador to Paris: The Reagan Years," which had an introduction by his longtime friend William F. Buckley Jr., founder of the political magazine *National Review*. Galbraith served as chairman of *National Review's* board of directors and chairman of the board of the U.S. subsidiary of LVMH Moët Hennessy-Louis Vuitton, a luxury goods conglomerate. He was also a director of Morgan Stanley International. He served in the U.S. Navy from 1953 to 1957, working with the CIA in Germany.

**EUGENE G. GALLANT '53** of Providence, R.I., and West Palm Beach, Fla., died Jan. 21, 2008. A Rhode Island Superior Court judge for almost 20 years, he began his career as clerk and acting judge of the District Court in Pawtucket. He also maintained a private law practice during that time. During his tenure on the Superior Court, he presided over a constitutional challenge to the 1982 House reapportionment plan and over a gamut of criminal cases, including the trial of the New England mob boss Raymond Patriarca. In 1966, he was a candidate for the Democratic nomination for Congress. He was the first chairman of the Neighborhood Legal Services Committee and served on the board of McAuley House, which helps the homeless, in Providence. He joined the U.S. Army Air Forces as an aviation cadet in WWII. He later was an officer in the Rhode Island Air National Guard, retiring in 1980 with the rank of major general.



**RICHARD V. KROPP '53** of Asheville, N.C., died Nov. 29, 2007. Formerly of Aurora, Ill., he was vice president and trust officer of the Aurora National Bank. He previously held those positions at the Old Second National Bank of Aurora. Before moving to Illinois in 1969, he practiced law in Columbus, Ohio, and was a trust officer at the Ohio National Bank. He was president of the Greenbrier Military School Alumni Association and was a life member and secretary emeritus of the Hendersonville (N.C.) Shrine Club.

**DANIEL O. MAHONEY '53** of Mattapoisett, Mass., died Nov. 9, 2007. He was a senior litigation partner at Palmer & Dodge in Boston. A member of the Boston trial bar, he was a fellow of the American College of Trial Lawyers and served as president of the Massachusetts Bar Association. In the late 1970s, he was a member of the Ward Commission, which investigated corruption in the awarding of state and county building contracts in Massachusetts and brought about reforms, including the first-in-the-nation state inspector general's office. He was a member of Mattapoisett's zoning board of appeals and served two terms as a selectman for the town. He was also a director of Social Justice for Women and president of the boards of trustees of the Tower School in Marblehead and Concord Academy. During the Korean War, he served as a captain in the U.S. Army Judge Advocate General's Corps.

**ROBERT L. WISE '53** of Belmont, Mass., died Jan. 4, 2008.

**DANIEL M. O'SHEA '53-'54** of Southampton, N.Y., died Sept. 25, 2006.

**WILLIAM J. CHADWICK '54** of Melrose, Mass., died Dec. 1, 2007. He practiced law for many years in Boston before joining the Episcopal Theological School. A vaudeville performer, he was a member of the Hayshakers performing group. He traveled throughout the country playing the trumpet and acting as front man for various groups. He served in the U.S. Army in Texas.

**ANTHONY LUONGO '54** of Freehold, N.J., died Sept. 29, 2007. He was a trial attorney for 40 years and served as an assistant prosecutor in charge of the grand jury in Union County. For many years, he was a senior lawyer for the St. Paul Insurance Co. in New Jersey. During WWII, he served in the U.S. Army.

**DONALD A. MACHUM LL.M. '54** of Edmonton, Alberta, Canada, died Oct. 24, 2007. He held senior executive positions with Algoma Steel Corp. in Sault Ste. Marie, Ontario, and with Oxford Development Group in Edmonton.

**ROBERT A. CESARI '55** of Winchester, Mass., died Jan. 8, 2008. As an intellectual property lawyer and a founding partner of the Boston firm Cesari and McKenna, he helped to shape the landscape of the

technology industry in Massachusetts, representing many large technical companies, including Digital Equipment Corp., Analog Devices and Dynatech Corp., in their early years. His peers voted him one of the top civil litigators in Boston and one of the best intellectual property lawyers in the U.S. Earlier in his career, he practiced law at Blair and Buckles in Stamford, Conn., and later founded and became a partner at the firm's Boston branch. He was named president of the Boston Patent Law Association in 1972 and a director of the Boston Heart Foundation in 1980. During the Korean War, he served as a lieutenant in the U.S. Army.

**GARTH C. GRISSOM '57** of Denver died Dec. 27, 2007. An attorney for 50 years, he practiced law at Sherman and Howard in Denver. He was active in the Denver Bar Association and served a term as president. For 34 years, he was a member of the Denver Rotary Club, including a term as president. He served in the U.S. Army.

**PETER G. POWERS '57** of Washington, D.C., died Oct. 31, 2006. The Smithsonian Institution's first general counsel, he helped guide the expansion of the institution from 1964 to 1995. He was credited with playing an important role in the planning, construction and operation of Smithsonian museums, including the National Air and Space Museum and the Hirshhorn Museum and Sculpture Garden. He also helped establish Smithsonian Magazine, the Smithsonian Associates continuing education program and the Office of Product Development and Licensing. In 1995, he received the Smithsonian's Henry Medal for his contributions. He served in the U.S. Army.

**DAVID I. HOFFMAN '58** of Telluride, Colo., died March 21, 2007. He practiced real estate law in Telluride, where he had moved in 1981. Previously, he was an attorney in Chicago.

**JOSEPH T. SNEED III S.J.D. '58** of San Francisco died Feb. 9, 2008. For more than three decades, he served as a judge on the 9th U.S. Circuit Court of Appeals in San Francisco. He was deputy U.S. attorney general during the Watergate era, involved in the Justice Department's handling of the 71-day occupation of Wounded Knee by Oglala Sioux and American Indian Movement leaders in 1973. He was later a member of the judicial panel that appointed Kenneth Starr to look into President Clinton's financial dealings. A career academic, he taught law at Texas, Cornell and Stanford universities and was a dean at Duke University Law School from 1971 to 1973. He was nominated to the appellate court by President Nixon in 1973 and was granted senior status on the court in 1987. He served in the U.S. Army Air Forces during WWII.

**PETER J. BELTON '59** of San Francisco

died Oct. 18, 2007. He served as a California Supreme Court staff attorney for more than 38 years, the last 34 as the senior staff attorney for Justice Stanley Mosk. In 1998, he received the State Bar of California's Public Lawyer of the Year award. As a Harvard undergraduate, he contracted polio during a summer trip to Haiti and was in a wheelchair ever since. After graduating from HLS, he spent a year teaching law at UC Berkeley before joining the staff of California Supreme Court Justice B. Rey Schauer. During his career, he served 11 years on the San Francisco Handicapped Access Board, which reviews access for people with disabilities when building permits are granted.

**WILLIAM J. CONDREN '59** of Southampton, N.Y., and Palm Beach, Fla., died Oct. 29, 2007. A private investor with interests in real estate, oil and gas drilling, and aircraft leasing, he was also a horse owner and breeder. His horses included two Kentucky Derby winners and a Preakness Stakes winner. A trustee for the Thoroughbred Owners and Breeders Association, he was a co-founder and director of the National Thoroughbred Association and a director of the Grayson-Jockey Club Research Foundation. He practiced law from 1959 to 1966 in Manhattan before beginning a career in investment banking. An innovator in equipment leases and real estate tax shelters, he pioneered the use of leveraged lease financing for railroad equipment and aircraft. In 1969, he formed Condren Walker and Co. and financed public utility generating equipment, offshore oil drilling rigs, oil tankers and other marine equipment. In addition, he was involved in subsidized housing projects in New York, Florida and Massachusetts, which provided more than 8,000 units of residential housing.

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**1960-1969** **DAVID P. CURRIE '60** of Chicago died Oct. 15, 2007. A professor at the University of Chicago Law School for 45 years, he was a constitutional scholar and the author of 19 books and hundreds of articles. He wrote or co-wrote three major casebooks on federal courts, environmental law and conflict of laws. He was the first chairman of the Illinois Pollution Control Board, and he wrote the 1970 Illinois Environmental Protection Act. The author of "The Constitution of the United States: A Primer for the People," he was a fellow of the American Academy of Arts & Sciences and taught at a number of European universities. He was a member of Chicago's Gilbert and Sullivan Opera Co. for more than 40 years.

**CARLOS FLIGLER LL.M. '60** of New York City died Jan. 20, 2008. He financed multinational corporate transactions with his firm, Delta Capital Corp. During his career, he worked for Sullivan & Cromwell, the

World Bank in Washington, D.C., and JP Morgan in New York City.

**RUSSELL G. GUTTING '61** of Pensacola, Fla., died Oct. 18, 2007.

**MARK J. LEVINSON LL.M. '61** of Needham, Mass., died Jan. 11, 2006. He was a partner at Burns & Levinson in Boston. He was also president of the International Institute of Boston and the Greater Boston chapter of the American Jewish Committee.

**THEODORE S. LYNN '61** of New York City died Oct. 17, 2007. He was a partner at Stroock & Stroock & Lavan.

**EDWARD J. MURPHY '61** of Macon, Ga., died Oct. 19, 2007. For 27 years, he was a military lawyer in the U.S. Air Force. His assignments included tours in Hawaii, Germany, the Philippines and Vietnam. He was posted for three years with the State Department as legal adviser to the American ambassador in Canberra, Australia. He was awarded the Legion of Merit with two oak leaf clusters. After retiring in 1989, he was a faculty member at Georgia College & State University in Milledgeville, where he taught courses on constitutional law and the U.S. Supreme Court for 14 years.

**LOUIS C. STAMBERG '61** of Washington, D.C., died Oct. 9, 2007. He worked for the U.S. Agency for International Development for 34 years, serving as a program officer for the India, Thailand, Afghanistan, Gabon, Chad, Central African Republic and Congo-Brazzaville desks. In the mid-1960s, he spent more than two years at the USAID mission in New Delhi. He was a director of Private Agencies Collaborating Together, an international nongovernmental organization that works to reduce poverty and ensure social, economic and environmental justice.

**RICHARD E. RECKSON LL.M. '62** of Yamhill, Ore., died Dec. 1, 2006.

**LAWRENCE A. CARTON III '63** of Middletown, N.J., died June 1, 2007. A lifelong resident of Middletown, he was a partner at Roberts, Pillsbury and Carton before forming his own firm in 1974. He served as a municipal court judge in New Shrewsbury and Old Bridge and was a planning board attorney in Middletown. He was a member of a number of civic and professional organizations and served as president of the Monmouth County Mental Health Association and founding trustee of the Alcoholism Council of Central Jersey.

**DANA M. FRIEDMAN '63** of Whitingham, Vt., and Camp Hill, Pa., died Dec. 27, 2007. He was an attorney at Alcoa. A Sewickley, Pa., resident for many years, he served on the borough's historic review board.

**PETER A.A. BERLE '64** of Stockbridge, Mass., died Nov. 1, 2007. A lawmaker and conservationist, he was a New York state assemblyman, commissioner of the State Department of Environmental Conserva-

tion and president of the National Audubon Society. He founded Berle, Butzel & Kass, one of the nation's first firms devoted to environmental law. As a member of the state assembly, he played an important role in the passage of some of New York's early environmental laws. As commissioner of the DEC, he was involved in the first regulatory actions at the Love Canal chemical dump at Niagara Falls. In 1977, he oversaw the state's purchase of more than 9,000 acres in the Adirondack Park, including 11 of the Adirondacks' highest peaks. In 1989, he was named chairman of the Commission on the Adirondacks in the 21st Century. He was a secretary, chairman and longtime member of the Century Foundation board of trustees. He served in the U.S. Air Force as a parachutist and an intelligence officer and attained the rank of first lieutenant.

**JOHN C. FLEMING JR. '66** of New York City died Dec. 10, 2007. A New York City attorney, he worked in the law department of American Home Products Corp. and later was a solo practitioner.

**FREDERICK O. KIEL '66** of Cincinnati died Aug. 4, 2007. A Cincinnati attorney for 40 years, he was also law director of Anderson Township, Ohio.

**REYNALDO P. GLOVER '68** of New York City died Nov. 27, 2007. He was a trustee of Fisk University and had served as board chairman since February 2004. He was involved in the cash-strapped school's controversial attempt to sell artwork donated to the school by Georgia O'Keeffe. He began his legal career as national executive director of the Law Student Civil Rights Research Council in New York. He later went into private practice in Chicago and was chairman of the board of trustees of the City Colleges of Chicago from 1988 to 1991.

**1970-1979 WILLIAM A. STRAUSS '73** of McLean, Va., died Dec. 18, 2007. A former Senate subcommittee staffer, he became a satirist and wrote musical parodies. He helped found Capitol Steps in the 1980s. The troupe is now a \$3 million-a-year industry with more than 40 employees. He began his career in Washington in 1973 as a policy aide for what is now the Department of Health and Human Services. He later moved to the Presidential Clemency Board, directing a research team reporting on the impact of the Vietnam War on the draft-eligible generation. From 1977 to 1979, he worked at the Department of Energy, and a year later, he was named chief counsel and staff director of the Subcommittee of Energy, Nuclear Proliferation and Government Processes. Strauss co-wrote six books about American generations. The second of two earlier books co-written with another author, "Reconciliation After Vietnam," was said to have

influenced President Carter's decision to issue a blanket pardon to draft resisters. He also co-wrote two books of satire and wrote three musicals. In 1999, he formed the Critics and Awards Program, which arranges for students in 60 Washington, D.C.-area high schools to attend and review their respective shows.

**RICHARD K. JEYDEL '75** of Westfield, N.J., died Dec. 20, 2007. He was general counsel for Kanematsu USA in New York City. An arbitrator and mediator, he served on the executive committee of the American Arbitration Association. He was also on the editorial board of the New Jersey Lawyer. He served in the U.S. Army Judge Advocate General's Corps.

**RICHARD S. MAXWELL '76** of Paris died Dec. 4, 2007.

**PHILIP F. MCCLELLAND '76** of Carlisle, Pa., died Dec. 29, 2007. He was a senior assistant consumer advocate and worked for the Pennsylvania Office of Consumer Advocate for 27 years. A member of the telecommunications team, he represented the interests of consumers in utility matters. He testified before the U.S. Senate and advised the commonwealth's General Assembly on telecommunications law and policy. Early in his career, he briefly was in private practice and also worked as an attorney for Central Pennsylvania Legal Services, where he won work release for female prisoners.

**MARGARET S. CHILDERS '78** of Montgomery, Ala., died Jan. 26, 2008. An expert in judicial ethics, she was executive director of the Alabama Judicial Inquiry Commission. She directed Alabama's probe of state Chief Justice Roy Moore, who disobeyed a federal court order to remove a Ten Commandments monument that he had installed in the lobby of the state judicial building. In November 2003, the Alabama Court of the Judiciary agreed with the commission and removed Moore from office. Early in her career, Childers helped open the local office of the Legal Services Corporation of America in Montgomery in 1978. In 1985, she joined the Alabama Attorney General's Office as an appellate lawyer, and she also served as counsel for the Judicial Inquiry Commission before becoming its executive director in 1998.

**FRANCIS R. STARK LL.M. '79** of Montreal, Quebec, Canada, died Nov. 20, 2007. He was chief legal counsel of CN Investment Division. For two years, he taught law pro bono at the Cambodian Bar.

**1990-1999 JOHN P. GIEZENTANNER '94** of Newport Coast, Calif., died Sept. 11, 2007. A partner at Knobbe Martens Olson & Bear, he joined the firm in 1994 and was named partner in 1999.



## Finance Through the Aperture of Law

**Did you plan on practicing law after you graduated?**  
I began with a bias in favor of practicing law because that's what I came from. My father was a very prominent criminal defense lawyer and my mother a very accomplished legal aid lawyer. But my interests have always included business, international affairs, and financial markets. I loved the seminars that Dean Clark taught on Theory of the Corporation, and Hal Scott on Banking Regulation. Those really opened pathways of understanding about how corporate and financial markets are organized.

**How has Harvard Law School influenced your career?**  
From the start of my career as a banker, I was building on the first principles I learned at HLS concerning corporate, securities, tax and banking matters; contracts; negotiation; international transactions; and general business judgment. I was inspired by the scope of great minds on the law school faculty. When two of our first-year section professors, Ben Kaplan and Clyde Ferguson, both brilliant and beloved teachers, sadly took ill, the faculty members who came in to substitute were

similarly first-rate teachers, similarly intellectual giants: Phil Areeda and Abram Chayes. I remember feeling a sense of awe about the faculty, a sense that has never left me in the quarter century since.

**As an investment banker, what sort of deals do you do?**

Our firm represents Fortune 500 and middle-market companies in corporate merger and acquisition



restructuring, and other financial transactions. That means working on complex financial transactions, but also negotiating on behalf of clients, which is a core discipline of deal making and investment banking. Another great influence was Professor Roger Fisher, for whom I worked after taking his seminar on Negotiation.

**Outside of your business life, what inspires you?**

I'm very much a family person. That's an important foundation in my life, as is giving back. For almost 15 years now I've served on the board of the International Center of Photography, which is a major center for teaching and exhibition of photojournalism and other works of photography. I am also the former vice chairman of Arts Connection, which teaches art and music in the New York City public schools. I've served the annual fund of my

undergraduate college, Brown, and have maintained my ties to HLS through alumni leadership programs, co-chairing my 20th reunion gift committee and so forth. I have an enormous sense of pride in having come from Harvard Law School.

**If a law school student were to ask you for advice, what might you say?**

The law school experience and the careers it inspires are rich and varied. I would advise students today to appreciate the incredibly broad and rich set of issues and ideas that law school covers, and the opportunities that it can launch. That's a fancy way of advising students not to follow what they think is a herd mentality to where law school is "supposed" to lead. It can lead to lots of interesting things, and it is an incredibly rich curriculum and launching pad.

H. Marshall Sonenshine '85 is chairman and managing partner of Sonenshine Partners, a New York-based investment banking firm, which has completed billions of dollars in M&A and restructuring deals in a broad range of industries worldwide. Previously, Sonenshine was a partner in Wolfensohn & Co., the merger and acquisition boutique acquired by Bankers Trust and later Deutsche Bank. Before joining Wolfensohn, he worked at Salomon Brothers, where he handled corporate finance and M&A assignments.

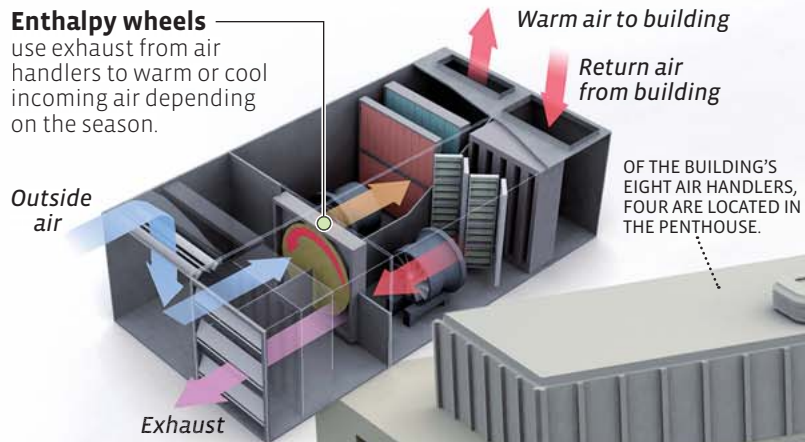
**GALLERY**

**LEGALLY GREEN**

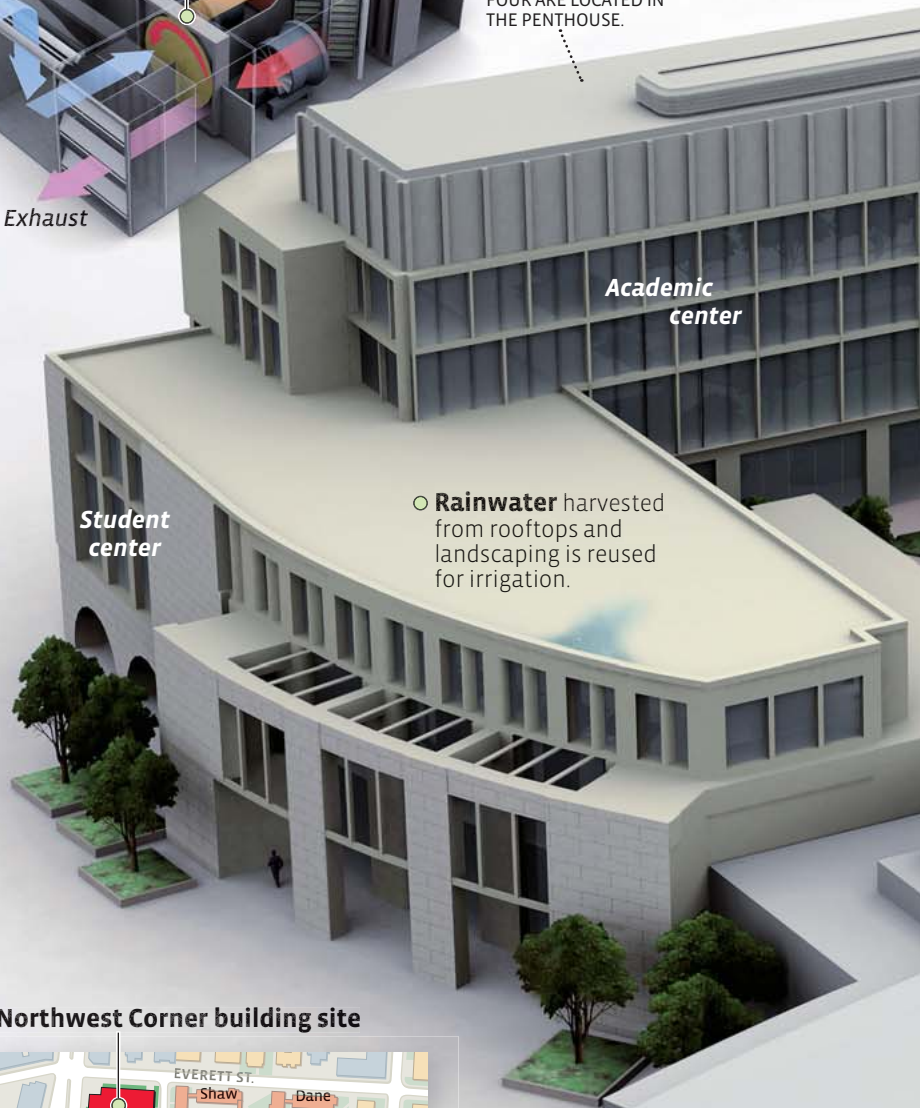
Come 2011, Harvard Law students will be breathing air processed through enthalpy wheels, reading under lights monitored by occupancy sensors and doing what comes naturally before waterless urinals. These and other green innovations—more than \$1 million worth—are planned for the Northwest Corner development, the law school’s new facility being constructed at Everett Street and Mass. Ave. At 250,000 square feet, the building will be about twice as big as Langdell Hall. The goal is to achieve Gold LEED certification standards for environmentally responsible construction. The resulting reduction in wasted resources should recoup at least some of the costs over time. Take a look.

—JERI ZEDER

*COMING SOON, A BIG BUILDING WITH A SMALL CARBON FOOTPRINT*



OF THE BUILDING'S EIGHT AIR HANDLERS, FOUR ARE LOCATED IN THE PENTHOUSE.



○ **Rainwater** harvested from rooftops and landscaping is reused for irrigation.

**Northwest Corner building site**





**Windows**

- > High-performance glazing provides insulation.
- > Office windows open to provide natural ventilation.

**Bathrooms** equipped with water-saving fixtures

**Extra insulation** in roofs and walls

**Lighting**

- > Efficient fixtures used throughout building
- > Sensors dim lights when there is enough daylight and turn them off when the room is empty.

*Courtyard*

*Clinical center*

*Harkness Commons (existing)*

**Displacement ventilation** reduces energy needed to heat or cool lecture halls. How it works:



**1** **Conditioned air enters** through diffusers in seating risers. The air is heated or cooled to a lesser degree and blown into the room at a lower velocity than with traditional forced air systems.

**2** **Air flows up** when it meets heat sources, such as people or office equipment, and warms or cools them as it moves past.

**3** **Air is vented** through the ceiling, carrying with it any airborne contaminants picked up along the way.

## INTERMISSION

**The past five years** have brought remarkable growth and change to Harvard Law School. Here, the Bulletin takes a time-out for a brief recap (see fold-out) and puts **five questions** to **Dean Elena Kagan '86**.



KATHLEEN DOHER

### 1. When you became dean, what goals did you set, and what's your assessment of how things are going?

My overarching goal has been to ensure that HLS students have the best possible experience and receive the best possible education during their time with us, and I think we've made great progress toward that end. Unprecedented faculty hiring, a landmark construction project and historic curriculum reforms—all of these efforts have been undertaken with this goal in mind. On the faculty front, our many new appointments have paved the way for smaller classes, in which students feel more directly engaged, and have vastly expanded opportunities for student-faculty collaboration. The 250,000-square-foot Northwest Corner complex, now under construction, will transform our campus, with a magnificent student center (connecting to the renovated Hark) and beautiful new spaces for clinical programs and classes. Our curriculum reforms place us squarely in the vanguard of 21st-century legal education, with 1Ls now taking courses in international and comparative law and in legislation and regulation—and soon a course in team-based complex problem-solving—and with upper-level students benefiting from a new emphasis on both hands-on clinical experiences and interdisciplinary connections with other parts of the university. So all in all, I'd say we're doing well.

### 2. On the faculty-hiring front, what have been the priorities?

We've tried both to expand the overall size of the faculty (and bring down the student-faculty ratio) and to ensure that in each important area of law—new or old—we have the nation's finest scholars and teachers. I'm delighted to say, we're succeeding on both fronts. We recently capped an extraordinary round of hiring with the recruitment of Cass Sunstein—the most prolific, wide-ranging and influential legal scholar of our time, with expertise in areas ranging from constitutional law to behavioral economics and law. We've appointed 39 new faculty members over the past five years, building on areas of traditional strength, such as constitutional law and legal history, while also expanding our presence in rapidly evolving fields such as cyberlaw, environmental law and international law. To a remarkable extent, these new faculty are not only the leading researchers in their fields, but also phenomenal teachers. HLS now has both the largest and the strongest faculty in its history. I can't imagine a more exciting time to be a student here.

### 3. Encouraging lawyers and law students to get involved in public service is one of your missions. How is HLS going about this?

My goal is to make certain that every HLS graduate has the opportunity to do the sort of work he or she finds most meaningful—regardless of how much it pays. In the past, some of our graduates have felt the need to put off public service work until after they'd paid down law school loans, but my hope is that a growing number of them will now feel comfortable moving into public service jobs right after law school. That's because this year we launched a new Public Service Initiative, which reduces the cost of law school by one-third for students committed to public service careers—we just don't charge them third-year tuition. We're also continuing to expand our loan repayment program (already the most generous in legal education), provide summer funding to any student pursuing public interest work and offer an unsurpassed range of clinical options that allow students to hone their legal skills while also making the world a better place. Of course, all of these forms of encouragement cost money. I can think of no better reason for our ambitious fund-raising campaign, and I am extremely grateful for the support of all who have contributed.

### 4. There's a fairly widespread perception that Harvard has all the money it needs. What do you say in response to that?

I know everyone hears about Harvard's \$35 billion endowment, but the law school's share of that is less than 5 percent. Our endowment per student is lower than that at almost any other school in the university—and critically, is lower than those of our principal competitors (Yale and Stanford law schools). The key point is that the endowment (along with tuition) covers the costs of what we are doing now—and is in very large measure restricted to certain specific activities. To do new things in the future—to change, improve and innovate—without unduly taxing our students, we need continued support from our alumni body. Increasing the level of that support has also been one of my principal goals. Given how much it will cost to do the things we want to do—to expand our faculty, to continue to modernize and enhance our curriculum, to improve our facilities (including, critically, our residential buildings) and to support public service activities by our students—I am convinced that the time I spend fund-raising is as important to the school and its students as the time I spend on any other single activity.

### 5. When prospective students ask you why they should choose HLS over other top-tier law schools, what do you tell them?

I tell them what I believe—that this is the most exciting law school in the world. HLS is the “big city” of law schools, unmatched in its energy, activity and diversity. There just isn't any other place that provides the range of opportunities and resources we do, whether we're talking about courses and seminars, clinics, student journals and organizations, or research programs. And there's no other law school that has such an extraordinary group of people. HLS is a place where sparks fly and where countless instances of what I call intellectual serendipity occur every day. If you value passionate engagement, if you thrive on intellectual challenge and spirited debate, and if you're committed to making the world a better place (whatever that means to you personally), it's the best place I know to study law. \*



## IN JUST FIVE YEARS...

Harvard Law School has benefited from a major reform of the curriculum, the design and groundbreaking for a stunning new building complex, an impressive expansion of the faculty, major initiatives to support public service, the launch of important new research programs and centers, the creation of exchange programs with foreign universities, and student-friendly refurbishments of the Harkness Commons, Pound Hall and the Hemenway Gym. Oh, and did we mention the free coffee and the skating rink? Fasten your seat belts and take a look back ...

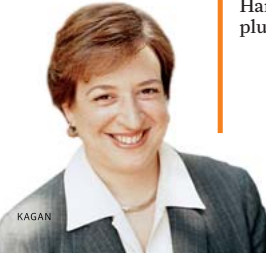
### 2002-03 >>

**LAUNCHED:** June 14, 2003. A \$400 million campaign, "Setting the Standard"—the most ambitious campaign in the history of legal education.



CLARK, KAGAN

**ELENA KAGAN '86** is named the 11th dean of HLS, succeeding Robert C. Clark '72.



KAGAN

### 2003-04 >>

**NEW:** A renovation of Pound Hall classrooms and meeting places, and a gathering-friendly courtyard outside Harkness Commons—plus free coffee.



**NEW:** A joint-degree program with the University of Cambridge law faculty in Cambridge, England.

**NEW:** For the first time since the 1970s, a skating rink on Jarvis Field.

**NEW:** A curriculum review committee, chaired by Martha Minow, to examine the entire academic program.



MINOW

**LAUNCHED:** The Center on Lawyers and the Professional Services Industry, the first of its kind in the nation to examine the industry of law practice, under the direction of Professor David Wilkins '80.



WILKINS

### 2004-05 >>

**HIRED:** Jack Goldsmith, expert on international law, previously of the Justice Department's Office of Legal Counsel.



GOLDSMITH

**HIRED:** John Manning '85, expert on administrative law, statutory interpretation and separation of powers law.



MANNING

**RENOVATED:** Harkness Commons, hub for meetings, gatherings and social events—now with outdoor seating areas.



HARKNESS COMMONS

**HIRED:** Assistant Professors Adriaan Lanni, legal historian; Jed Shugerman, expert on legal history and the American judicial system; Matthew Stephenson '03, scholar on administrative and environmental law.



LANNI



SHUGERMAN



STEPHENSON

**LAUNCHED:** The Supreme Court Advocacy Project—a moot court program for lawyers preparing for U.S. Supreme Court arguments.

**INITIATIVE:** HLS takes in 25 Tulane and Loyola University law students displaced by Hurricane Katrina. HLS students assist in disaster relief efforts in New Orleans.



HURRICANE KATRINA

**LAUNCHED:** The Charles Hamilton Houston Institute for Race and Justice, under the direction of Professor Charles Ogletree '78.



OGETREE

**RENOVATED:** Hemenway Gym reopens as a state-of-the-art fitness center.



HEMENWAY GYM

**NEW:** The Child Advocacy Program begins offering classroom and clinical courses under the direction of Professor Elizabeth Bartholet '65.



BARTHOLET

**LAUNCHED:** The Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, under the direction of Professor Einer Elhauge '86.



**APPOINTED:** Clinical Professors Deborah Anker LL.M. '84, director, Harvard Immigration and Refugee Clinical Program; Robert Bordone '97, director, Harvard Negotiation and Mediation Clinical Program; James Cavallo, director, Human Rights Program; John Palfrey '01, director, Berkman Center for Internet & Society.



ANKER



BORDONE



CAVALLARO



PALFREY

**MILESTONE:** The faculty approves five new second- and third-year programs of study as part of the comprehensive revision of the curriculum: Law and Government; Law and Business; Law, Science and Technology; Law and the International Sphere; Law and Social Change.

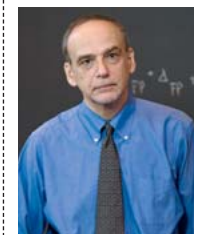
### 2006-07 >>

**HIRED:** Bruce Mann, legal historian.



MANN

**HIRED:** Gerald Neuman '80, expert on immigration and constitutional law.



NEUMAN

**EXPANDED:** The Human Rights Program supports 30 summer interns for work around the globe and launches a Buenos Aires summer program combining a seminar with human rights work. (A program in Chiang Mai, Thailand, is added in 2007-08.)

International Human Rights Clinic enrollment triples in four years; 100 students are involved

and an additional 60 to 70 1Ls volunteer on clinical projects through the student group HLS Advocates for Human Rights. The clinic sends 60 students to 23 countries.



**LAUNCHED:** New academic workshops and summer and post-graduate fellowships to support students and alumni interested in teaching law.

**MILESTONE:** The number of clinical placements held by students surges from 474 in 2002-03 to 873 in 2006-07.



**MILESTONE:** The Wasserstein family gives \$25 million to HLS for an academic center in the Northwest Corner development.



**MILESTONE:** Three Victorian houses are moved down Massachusetts Avenue, to make room for the Northwest Corner development.



MOVING DAY

**NOTABLE:** A survey of 3Ls on the HLS experience shows a dramatic increase in student satisfaction over a three-year period.

**APPOINTED:** Clinical Professors David Grossman '88, director, Harvard Legal Aid Bureau; Brian K. Price, director, WilmerHale Legal Services Center; Ronald Sullivan '94, director, Criminal Justice Institute; Alex Whiting, to lead clinical offerings on domestic and international prosecution.



GROSSMAN



PRICE



SULLIVAN



WHITING

### 2007-08 >>

**HIRED:** Yochai Benkler '94, expert on information law and policy, communications law and intellectual property.



BENKLER

**HIRED:** Noah Feldman, expert on constitutional law and religion.



FELDMAN

**HIRED:** William Rubenstein '86, expert on civil procedure, class actions and antidiscrimination law.



RUBENSTEIN

**EXPANDED:** Partnerships with foreign schools now include faculty and student exchange agreements with eight institutions in seven countries. Number of students studying abroad rises from previous years.

**MILESTONE:** Construction of the Northwest Corner development begins—a 250,000-square-foot structure for classes, clinical education, student organizations and socializing. "It will transform both our campus and the student experience," says Kagan.

**LAUNCHED:** The Cravath International Fellowship, to provide funding for students to pursue academic projects with an international, transnational or comparative law focus.

**NEW:** A financial aid program for J.D./Ph.D. students to enhance collaboration with the Faculty of Arts and Sciences in preparing graduates to pursue academic jobs.

**EXPANDED:** Funding for clinical work or independent research abroad. Eighty-nine students receive money for January term study.



**NOTABLE:** The number of students receiving Summer Public Interest Funding jumps from 275 (in 2002) to 373 (in 2007), and the average annual award rises from \$4,167 to \$5,195.



**NOTABLE:** The number of graduates in the Low Income Protection Plan leaps from 216 (in 2002) to 343 (in 2007), with the average award rising from \$6,731 to \$7,361.

**NOTABLE:** The percentage of J.D. students receiving grant assistance jumps from 36 percent (in 2002) to 43 percent (in 2007), and the average award goes from \$13,213 to \$17,074.



**HIRED:** Anne Alstott, expert on tax law and social welfare.



ALSTOTT

**HIRED:** Michael J. Klarman, expert on constitutional law, history and race.



KLARMAN

**HIRED:** Cass R. Sunstein '78, expert on constitutional law and theory, administrative law and policy, and behavioral economics and law; he will head the new Program on Risk Regulation.



SUNSTEIN

**MILESTONE:** The first-ever Public Interest Reunion at HLS draws more than 600 alumni.



PUBLIC INTEREST REUNION

**MILESTONE:** HLS announces that it will pay the third year of tuition for all students who commit to work in public service for five years after graduation.





“The reefs are bleaching, Kilimanjaro’s snow is melting, and the polar ice cap is retreating. ... I want to train students to tackle the future’s problems.”

*Professor  
Jody Freeman  
LL.M. '91 S.J.D. '95*



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