

Summer 2009

# Harvard Law *bulletin*

# TRANSPARENCY AND ACCOUNTABILITY: Cautionary tales, and visions of reform

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*Elizabeth Warren*  
unwraps TARP, and  
raps the consumer  
credit industry

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*Robert Zoellick*  
makes sure poorer  
nations aren't left  
further behind

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*President Obama's  
new lawyers*  
aim to restore  
faith in Justice

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*HLS experts* offer  
prescriptions for  
avoiding another  
financial meltdown

## Rising to New Challenges

FOR THE PAST five and a half years, Elena Kagan '86 used this space to update you on exciting happenings at Harvard Law School, including the expansion of the faculty, the revision of our curriculum, the growth of our clinical programs, and an important emphasis on public service in the lives of our students and our graduates. As I'm sure you know, however, Elena left us in March to become the nation's solicitor general, an assignment for which she is superbly qualified and deserves our wholehearted support and congratulations.

Since then, I have had the privilege of stepping in as the acting dean, and I will serve in that role until Harvard President Drew Faust appoints a new dean (expected sometime this summer).

For much of the past several months, the law school, like the rest of the wider university of which we are a part, has been coming to terms with the impact of the economic climate—specifically, the effects of a sharp drop in the value of our endowments.

In recent years, HLS has depended on distributions from the endowment for about 40 percent of its annual operating budget. Our planning—when the endowment was growing at an impressive rate—was based on projections of continued robust growth. We were able to expand the school and its operations greatly, and we expected that we would be able to continue investing heavily in strategic areas.

But with the fall in the markets, we've had to absorb a new reality. In the coming fiscal year, we will receive about 8 percent less from the endowment than we received this past year, and the projections are that we will see an even larger reduction the year after that.

This presents us with new challenges. The fundamental question we face is: How can we best accomplish the core mission of the school and continue to invest wisely in certain areas, with less money than we've been spending?

With that question foremost in mind, I have worked closely with many members of the law school community, taking a hard look at the entire institution. There are tough choices to be made, and we have begun to make them. But I firmly believe we will emerge from the economic turbulence on strong footing, without compromising the quality of the education and opportunities we provide to our students.

In that regard, I am happy to report that new and exciting initiatives are still under way, and the momentum of Elena Kagan's deanship continues. We are making new appointments—for example, Jesse Fried '92, a renowned scholar of corporate governance, will be joining us from Berkeley in the fall, and others will follow—and we will be launching our new and innovative course on complex problem-solving as part of our first-year curricular reforms.

We are especially committed to maintaining the availability of financial aid, and I urge you—the alumni who have supported the school so generously—to consider helping again now, when our students face a world of daunting financial challenges the likes of which haven't been seen in decades.

The global economic crisis is, at its heart, about failures of accountability—markets and institutions that were given too much room to roam without enough oversight. I'm proud that the scholars, students and alumni of Harvard Law School have been making critically important contributions to the building of new mechanisms of accountability. Some of their stories await you in the pages of this magazine.

I am fully confident that their efforts will succeed. And I am equally confident that the Harvard Law School community, including our loyal and dedicated alumni, will work together to meet the challenges ahead.

Best wishes,



ACTING DEAN HOWELL JACKSON '82



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## LETTERS

*“I realized that I needed more tools to bring about the scope of change I saw necessary.”*

—BARACK OBAMA, HARVARD LAW BULLETIN, VOL. 40, NO. 2, WINTER 1989

### TROUBLING TITLE

YOUR ARTICLE ON President-elect Obama [“A Commander in Chief”] was quite interesting but I found the title troubling. Surely our leaders, whether of the nation or of the law review, are not primarily military figures. Whoever chose the title seems unaware that, as was observed by Justice Robert Jackson but ignored by the Bush administration, the president is “the commander in chief of the Army and Navy and not the commander in chief of the American people.”

HERMAN SCHWARTZ '56  
*Chevy Chase, Md.*

### IRONY OVERLOOKED

I WAS SOMEWHAT surprised that your piece on President-elect Obama '91 did not recognize the sad irony in the fact that the first HLS graduate to become president was Rutherford B. Hayes (class of 1845). Bravely fighting to preserve the Union and end the vast moral evil of slavery, Hayes and many thousands like him such as Justice Holmes (class of 1866) made an Obama presidency possible. Indeed, Hayes was the only president who served on the Union side during the Civil War to have been wounded in combat—four times in his case. Yet Hayes would go



on to become president through the infamous compromise of 1876 that took Union troops out of the South, thus effectively ending Reconstruction and deferring civil rights for the freedmen and their descendants until the next century.

THOMAS E. MOSELEY '72  
*Newark, N.J.*

### THE REVIEW AND THE WHITE HOUSE, IN REVIEW

YOUR COVER STORY on Barack Obama in the recent Bulletin reminded me of the other connections between

presidents of the Harvard Law Review and presidents of the United States. Obviously, Obama will be the first to have held both offices. However, one president of the United States had a son who was president of the Harvard Law Review (William Howard Taft and Robert A. Taft), one nominee for president had a son who was president of the Review (Charles Evans Hughes and Charles Evans Hughes Jr.) and one former president of the Review made a serious run for the presidency (Robert A. Taft again, who would have been the Republican nominee in 1952 if Eisenhower had not become a Republican).

Turning from the presidency to the Supreme Court, Charles Evans Hughes succeeded William Howard Taft as chief justice, and Charles Evans Hughes Jr. succeeded Robert A. Taft as president of the Review.

LEONARD EGAN '65  
*Washington, D.C.*

### DISSENTING OPINION

YOUR FAWNING FRONT-PAGE article on Barack Obama crossed the line to sycophancy. Not all HLS alums think his election was a good thing.

RICHARD SYBERT '76  
*Rancho Santa Fe, Calif.*



### TONY AWARD!

FILIPINO LAWYER AND environmental activist Antonio Oposa LL.M. '97 risked his life and his reputation to win the right to sue on behalf of future generations. This spring, the Bulletin article by Emily Newburger about Oposa's struggles won a bronze in the Best Articles of the Year Category in the Council for Advancement and Support of Education 2009 Circle of Excellence Competition. And the Bulletin won a second award from CASE in the Special Interest Magazines category. To read “Visionary of the Visayan Sea,” go to [www.law.harvard.edu/news/bulletin/2008/summer/feature\\_3.php](http://www.law.harvard.edu/news/bulletin/2008/summer/feature_3.php).



### EARLY RECOGNITION

I RECEIVED THE Fall 2008 Bulletin with the picture of President-elect Obama on the cover. The story by Seth Stern was excellent. The face page of the story states, “In law school, Barack Obama ’91 already looked—and led—like a future president.” In fact, the Bulletin recognized President-elect Obama’s potential even before he finished his first semester.

In the Winter 1989 Bulletin there is an article on pages 16-17 titled “Infinite Variety—The Class of 1991.” In it eight new members of the class were profiled, one of whom was Barack Obama.

KENNETH S. WOLF ’68  
*Los Angeles*

**EDITOR’S NOTE:** *Thanks to Kenneth Wolf for bringing this article to our attention. As it turns out, before Barack Obama was quoted in the Bulletin in 1989, and long before the president appeared on the Bulletin’s front cover this fall, the first lady got there first.*

*An article on teaching and practicing professional responsibility in the Spring 1988 Bulletin included a reflection from Michelle Robinson ’88, then a member of the Legal Aid Bureau, on her way to a job at Sidley & Austin. An excerpt follows:*

I have a case now where a woman is trying to get more visitation rights with her 12-year-old son.

She signed over custody to the father after she tried to commit suicide a couple of years ago. There is tremendous tension between the two parents, and I must ask whether what either parent wants is in the best interest of their son.

Suppose I didn’t believe she should have more time with him? I do believe she is now able to take more responsibility for his supervision, but if I didn’t, I would counsel her, challenge her to examine her motives for wanting him, and hope that through discourse she would come to the opinion herself that she wasn’t ready for more responsibility.

To me, ethics is common sense. If you think things through, you’ll come up with the right answer.

The clinical experience, without a doubt, has altered my perception of ethical issues. Supervisors at the Legal Aid Bureau are always available. It’s not going to be like that in a firm. Who’s got time to sit around and talk about moral issues?

The school should give more support for clinical work. Placement opportunities in private firms are easy to come by; clinical experience should be made just as available.



THE SPRING 1988 BULLETIN featured Professor David Shapiro '57 with students, including then 3L Michelle Robinson (far right corner).



IN 1988, Chris Rosado '88 and the future first lady outside the Legal Aid Bureau

# The Science Chase

*Students explore how law can keep up with BIOMEDICAL ADVANCES*

By Elaine McArdle

WHAT IF THE government forced all citizens to get genetic testing to find out if they were carriers of a deadly disease such as Tay-Sachs? “Any constitutional problem with that?” I. Glenn Cohen ’03 asks the 25 students in his popular course, Genetics and Reproductive Technology: Legal and Ethical Issues, as he paces before the blackboard in a Hauser classroom.

“It seems obviously unconstitutional,” answers Aaron Karp ’09.

“I wouldn’t start a Supreme Court argument like that,” advises Cohen, as the class erupts in good-natured laughter. “What cases would you rely on?”

“Griswold,” Karp answers. “The privacy case.”

“You think it flows ineluctably from that case,” Cohen states.

“Yes,” Karp responds. “That and all the others we’ve been talking about for the last few weeks.”

Cohen smiles wryly. “Your honor, I hereby incorporate the last 10 cases we’ve studied,” he teases.

The tone may be light and the discussion lively. But the subject matter in Cohen’s class is serious—sometimes deadly serious. It addresses such emotionally charged issues as wrongful birth, wrongful life, cloning, fertility tourism, abortion, “savior

siblings,” and other matters on the frontier of reproductive technology and genetics, including the creation of DNA databanks for forensic use and the ownership of genetic information. Cohen, an assistant professor of law and a former fellow at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at HLS, is an expert in bioethics and health law. He’s also energetic, approachable, and eager to get students to think through these thorny issues. He wants them to view his class as “an intellectual playground,” where they learn to make strong arguments

on behalf of conclusions they find repugnant and to attack ideas they hold dear.

Caitlin Vogus ’10 says she’s troubled by the idea of government-mandated testing. “It puts a lot of pressure on people who have that information to go through with an abortion if they have Tay-Sachs,” she says. “You say you’re free to ignore it, but how free are you, really?”

“Is the state responsible for that pressure?” Cohen asks. “The state is saying, ‘I’m just giving you the information! Let the lynch mob outside lean on you.’”

Yvette Chua LL.M. ’09 disagrees.

.....  
*What if the government forced all citizens to get genetic testing?*



GLENN COHEN WANTS *students to view his reproductive technologies class as “an intellectual playground.”*



“Why would the state mandate testing if it didn’t have the underlying goal to create pressure to encourage abortion?” she argues. “So that’s why it’s unconstitutional.”

Cohen pushes back. “The government is just forcing you to get information that may have bearing on whether you transmit a disease to another person,” he says. “Isn’t that similar to the situation where a person has a contagious disease, and the government quarantines them?”

The hour and a half flies by, with the discussion skillfully guided by Cohen and each student speaking at least once. Today’s class focuses on issues related to genetic screening for certain diseases, including what to do with that information once it’s obtained. Should there be a right to an early-stage abortion no matter what the reason? What if parents choose to terminate a pregnancy because the fetus carries indicators associated with being gay? Unintelligent? Deaf? A poor athlete? If the ability to select individual traits of children might result in a lack of genetic diversity, does the state have a right to prevent genetic testing? Or can it permit testing solely for diseases, such as Tay-Sachs?

“Let’s say the state mandated genetic testing on everyone,” suggests one student. “I wonder if, later in life, the state might say, ‘We’ll no longer pay disability benefits because we warned you in advance and you still chose to have the kid.’”

After class, students linger to talk with Cohen. One of them, Jeannie Austin, is getting a master’s degree in global health law at Georgetown and is a visiting student at HLS this year. She says she feels very lucky to be in the course.

“Science is so far ahead of the law in this area,” she reflects, “that we need to make arguments on an ethical basis as well as legal, to help the courts make better-informed decisions about the issues they’re confronting because the laws in many cases are being used in areas for which they were not intended.” \*

Photograph by KATHLEEN DOOHER

## Texas Two-step

In a death penalty clinic,  
*TAKING ONE STEP FORWARD*  
*felt like two steps back*

By Elaine McArdle

**When Ariel Rothstein ’10 and Andrew Freedman ’10**

spotted the whirling blue lights of a patrol car behind them as they drove through rural Texas in January, they assumed they had been driving too fast.

When the Polk County deputy sheriff pulled them over, they had been headed back to the office of the Texas Defender Service in Houston, where they were externs as part of the HLS Death Penalty Clinic. They had just left the home of a prison guard who’d refused to speak

ARIEL ROTHSTEIN AND  
Andrew Freedman were  
nearly arrested trying to  
help their client.





to them in connection with a clemency petition for their client, Willie Pondexter, who was weeks away from an execution date.

As it turned out, this was no routine traffic stop. The deputy confiscated the licenses of both students and ordered them to follow him to the sheriff's office to make formal statements about why they had contacted the guard.

Freedman called their lawyer-supervisor at Texas Defenders from his cell phone, and she arrived at the station shortly after they did, thwarting efforts to interrogate them. Deputies issued them warning tickets for criminal trespass, told them not to return to Polk County without permission and said that if they ever returned to the guard's property, "there was a 99 percent chance they would lock us up," as Rothstein stated in an affidavit.

Rothstein says the incident was "a shock." She and Freedman had been working to win clemency for Pondexter, convicted in 1993 for the brutal murder of an 85-year-old woman, a crime which he admitted he took part in. But in his years in prison he had been described as a model inmate. The students had gone to see the guard in an attempt to get a statement supporting the clemency petition. The guard's mother had let them onto the property, the students say. "We wouldn't have been there if we didn't think [the guard] would be supportive of what we were trying to do," says Rothstein. "We only went to places we thought or Willie thought would be beneficial, so [the guard's hostility] was unexpected."

As for the sheriff's actions, says Freedman, "I was surprised that this is what they considered to be the justice system at work. We're doling out our ultimate punishment here, and it's being done in an environment that's the least consistent with the blind and neutral administration of justice that we expect."



**WILLIE PONDEXTER, CONVICTED** in 1993 for the murder of an 85-year-old woman, was put to death on March 3 by lethal injection.

The students' ordeal was reported by Texas newspapers and other media. David Dow, litigation director at Texas Defenders, said the incident was unprecedented. "It would be a traumatic experience for anybody," Dow told the Associated Press. "We didn't prepare them for that because that honestly never happened to any of our interns before. We prepare them for a lot of things, but that was not on the list."

Pondexter's lawyers immediately filed a civil rights lawsuit against the sheriff's department and the Texas Department of Criminal Justice, alleging interference with their efforts to gather evidence for the clemency petition. Nearly a dozen guards had told Pondexter's lawyers they opposed his execution but were afraid to state so on the record, the suit alleged.

The complaint also claimed that after Pondexter filed his clemency petition, corrections officers began harassing him: "Knowing Mr. Pondexter to be especially concerned about hygiene, [they] removed his sheets, wiped them across the floor and walls, and replaced them on his bed, a practice they had never engaged in during Mr. Pondexter's 14 years of residence on death row."

The U.S. 5th Circuit Court of Appeals dismissed the lawsuit without ruling on the merits, and

Pondexter's clemency petition was also rejected. The day before he was to be executed, Pondexter's lawyers appealed the 5th Circuit's dismissal to the U.S. Supreme Court, but the high court didn't respond before Pondexter was put to death by lethal injection on March 3. Back at HLS, Rothstein and Freedman were sitting in their Death Penalty Law class taught by Visiting Associate

Professor Daniel Williams '86 when they learned their client had been executed.

"I was devastated," says Rothstein. "I legitimately thought that this was a case where justice should have done something different." And, she adds, the case "re-established my commitment to do this kind of work in the future and represent people who, like Mr. Pondexter, don't have all the chances in the world."

In the classroom that night they heard a talk by a wrongfully convicted man who had been just seven hours away from execution when his conviction was set aside.

Both students continued their clinical work for Texas Defenders long-distance during the spring semester, working on habeas petitions for condemned clients. The Death Penalty Clinic, one of 31 in-house clinics at HLS, offers students the opportunity to take an academic course on death penalty law while representing death-row clients through legal organizations around the U.S. About 50 students have participated in the clinic since it was launched in 2006.

"There are a lot of noble people in the profession working for clients that they might not respect or care for in all the ways you care for other clients, but they have found an issue they think shouldn't be avoided," says Freedman. "These [clients] are some of the most destitute people in the world, and they're dealing with a justice system that truly has thrown them away." \*

*Rothstein and Freedman were sitting in their Death Penalty Law class when they learned their client had been executed.*



# Marriage Equality: Are Lawsuits the Best Way?

*AS THE GROUND SHIFTS,  
an expert evaluates the role of litigation*

Last November, California voters passed Proposition 8, a referendum overturning a ruling by their state Supreme Court legalizing same-sex marriage. Opponents promptly filed a legal challenge in the same court. On May 26, the court upheld Prop 8.

Michael Klarman, a civil rights historian, had done some thinking and writing about the drawbacks of using lawsuits to pursue marriage equality. But this spring, as Iowa's Supreme Court legalized same-sex marriage and the Vermont and Maine legislatures did the same, he re-examined the idea that legal victories are outweighed by the backlashes they provoke.

I WORRY SOMETIMES that during the Warren Court era, progressives grew too enamored of the idea of courts leading social reform movements. My concern is that court decisions that deviate too far from popular opinion can produce political backlashes that, at least in the short term, retard the causes they purport to advance, and make life difficult for progressive politicians. Let me offer a few examples from the book on which I am working.

In the short term, *Brown v. Board of Education* (1954) retarded racial progress in the South and radicalized Southern racial politics, advancing the careers of extreme segregationists such as Bull Connor and George Wallace. *Miranda v. Arizona* (1966), in the face of rapidly rising crime rates, facilitated Richard Nixon's victory in the 1968 presidential election on a law-and-order platform. *Furman v. Georgia*



MICHAEL KLARMAN'S RECENT books include "*Brown v. Board of Education and the Civil Rights Movement*" and "*Unfinished Business: Racial Equality in American History*."

(1972), by threatening to abolish the death penalty, produced a resurgence in support for capital punishment, as 35 states enacted new death penalty legislation within the next four years. *Roe v. Wade* (1973) generated a politically potent right-to-life movement that helped elect Ronald Reagan president in 1980 and has profoundly influenced national politics ever since.

In November 2003, the Massachusetts Supreme Judicial Court ruled in *Goodridge v. Department of Public Health* that the state constitution forbade excluding gay couples from marriage. I believe that, at least in the short term, that decision harmed the cause of same-sex marriage and the electoral prospects of progressive politicians. Before *Goodridge*, only three states had constitutional provisions barring same-sex marriage; today, 30 states do. Senate Majority Leader Tom Daschle almost certainly lost his seat in 2004—the only Senate majority leader in 50 years to do so—because of the gay marriage issue. He lost by roughly 2 percentage points to an evangelical Christian who made the issue a prominent one in his campaign; the same-sex marriage ban on the ballot in North Dakota won by roughly 50 percentage points.

It is even possible—though not certain—that *Goodridge*

helped re-elect President George W. Bush. Without the electoral votes of Ohio, Bush would have lost. He won Ohio by about 2 percent; the same-sex marriage ban on the ballot won by roughly 24 percent. If enough religious conservatives were motivated to turn out because of the ballot initiative, or if enough swing voters shifted their allegiance to the Republican Party because of the gay marriage issue, the Massachusetts court may have helped re-elect the president. Bush's two Supreme Court appointees—John Roberts [79] and Sam Alito—do not seem likely candidates to support same-sex marriage any time soon.

Five years later, California voters, by 52 to 48 percent, overturned their state high court's ruling that had protected same-sex marriage under the state constitution. Had I been voting in California, I would have opposed Proposition 8. I do not believe that its rejection would have created anything like the backlash that *Goodridge* incited five years ago. For one thing, most states that would be inclined to enact constitutional bans on same-sex marriage had already done so. In addition, the powerful demographic trend in favor of gay marriage has continued to exert its influence in the intervening five years. Whereas the American public opposed gay marriage by a margin of nearly 30 percentage

## Spanish 'Ayes'

*Spain said 'yes' to gay marriage. Two American law students went there to see what we can learn from it.*

In 2007, when Erika Rickard was a 2L at Harvard Law, same-sex marriage had been legal in Massachusetts for more than three years. By that time, some of the clients she was assisting through the Gay, Lesbian, Bisexual and Transgender Law Clinic were seeking to dissolve their unions. The law was so new, she found little precedent.

Rickard knew that in 2005, Spain had passed a national bill legalizing same-sex marriage (joining the Netherlands, Belgium

and Canada). But Spain and Canada had not only made such marriage possible, they had eliminated all legal distinctions between same-sex and heterosexual unions. Rickard decided she wanted to see for herself what Spanish law translated to for couples and their children, and what lessons she could bring back to the U.S.

This year, thanks to a Harvard University Sheldon Fellowship, Rickard has been interviewing lawyers, scholars, activists and families in Madrid,



ERIKA RICKARD (RIGHT) and Sarah Downer (center) conduct an interview in Madrid.

Barcelona and smaller communities. Her partner, Sarah Downer '10, is assisting with some of the research.

As of 2007, at least 9,000 same-sex couples had married in Spain. (Records from rural areas are incomplete—so some say the number could be as high as 15,000.) The few government officials

who have refused to enforce the law seem to be the exception, says Rickard—despite early threats from opponents.

Yet both students have found gaps in protection for same-sex couples. Downer, who had participated in the HLS clinic focused on domestic violence, says the relevant law

in Spain does not make any provision for handling “intimate partner violence” between anyone other than a man and a woman (where the woman is the victim). She found that neither gay men nor lesbians can make use of the domestic violence shelters in Spain. “Judges in Spain have said that same-

points in 2004, according to Pew Center polling, that margin has now decreased to just 11 points. Finally, with the economy in greater turmoil than at any time since the Great Depression, most Americans seem to have more important things to worry about than how gay marriage in California would affect their lives.

Still, I viewed the efforts to overturn Proposition 8 in court as misguided. The legal grounds being asserted—for example, that the proposition was a “revision” rather than an “amendment” of the state constitution, and thus required two-thirds approval in both houses of the legislature before appearing on the ballot—would have struck most people as technical and unconvincing. We have plenty of experience with what happens when voters are told they can’t have the candidate they just elected or that the referendum they just enacted is somehow invalid: They tend to get ticked off and reaffirm their preferences at the polls, sometimes even more forcefully. I especially worried about the political backlash such a ruling might have caused in more conservative parts of the country.

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*Goodridge caused a short-term backlash against gay marriage, but it also likely led to the recent acceleration of support.*

That was my thinking in March. In May, after the legislative victories in New England and the Iowa Supreme Court’s decision, I still believe Goodridge caused a short-term backlash. But I now think that it very likely contributed, in the mid-term, to a dramatic acceleration in the move to gay marriage. Statistician Nate Silver has recently projected that within another three or four years, majorities of the population in half the states will support same-sex marriage. Steve Schmidt, John McCain’s senior campaign strategist in 2008, has said the Republican Party should embrace same-sex marriage, and even the Republican governor of Utah has endorsed civil unions. The pace of change in the last two months has been absolutely extraordinary; I’ve never seen anything like it in my lifetime. It’s hard to believe that we would be where we are today had it not been for the Massachusetts court decision in Goodridge. Still, without Goodridge, we might not have 30 states constitutionally banning same-sex marriage, and George W. Bush might not have been re-elected president in 2004. The effects of court decisions can be unpredictable and even paradoxical. \*

sex violence is violence between ‘equals’ and therefore too complicated to assign wrongdoing to either party,” observes Downer. Rickard notes that some dual-nationality couples have had trouble getting the necessary paperwork from the noncitizen’s embassy. “Apparently an official in the Italian Embassy fainted upon hearing that the man she was assisting was going to marry another man,” she says. More broadly, since the passage of the law, there has been significant debate on how to treat same-sex marriage between Spanish citizens and immigrants when an immigrant’s country

does not recognize the validity of the Spanish law. Rickard sees similarities between the development of the same-sex marriage movement in Spain and the U.S.—but also differences. Even after the death of the dictator Gen. Francisco Franco in 1975, homosexuality remained illegal for several years. And even with the growth of activism during the AIDS epidemic, people were still arrested for homosexual activity through the late ’80s, says Rickard. But rapidly there was an adoption by the Left of a full gay rights agenda—including relationship recognition and anti-discrim-

ination laws—to a degree that it hasn’t happened in the U.S. Although the Catholic Church opposed same-sex marriage, as does the opposition party, Rickard speculates that perhaps because of the church’s association with Franco’s policies, “a lot of people are wary of [it] dictating politics, especially regarding civil liberties.” Rickard also stresses that when it comes to other legal protections for the LGBT community, Spain is far ahead of the United States. By 2003, when the U.S. Supreme Court struck down sodomy laws, Spain already had national anti-discrimination

statutes in the criminal code and in measures that protected against employment discrimination. In 2007, Spain passed a Law of Gender Identity, which allows citizens and residents to change their gender on official documentation without going through surgery. In the U.S., legal protections for members of the LGBT community differ widely from state to state and in some are nonexistent. Yet despite the laws, the students found, it’s common for people in Spain to feel very uncomfortable coming out at work, “even if they are a couple with children and live their personal

lives as gay people,” says Downer. The focus now, says Rickard, is on visibility and education. “Here [in Spain] it’s legal issues pushing the social agenda.” She plans to publish a paper based on her year’s research and is discussing collaboration with other scholars in Spain as well as Ecuador and Germany. As for living as a couple in a country where gay marriage is the law of the land, both women agree it’s been exciting. But, adds Downer, “also a little bit sad, to have to ask yourself what makes it so different in the U.S., where we’ll eventually live.” —Emily Newburger



# Herd Mentality

To track Internet censorship, a new tool relies on  
*THE POWER OF NUMBERS*

IN MARCH, COINCIDING with the one-year anniversary of a crackdown on protests in Tibetan regions in China, people across the PRC found they couldn't access YouTube—which had

hosted videos of the protests the year before.

But Herdict, a new Web tool developed by the Berkman Center for Internet & Society at HLS, allowed Internet users all over China to

report the site they couldn't reach and see that nearly 150 others in the country were having the same experience.

Herdict's creator, Professor Jonathan Zittrain '95, is excited by these numbers:

The more people who use what he calls the "civic technology," which aggregates reports from volunteers and displays the results in real time, the better it works and the happier he is.

A leading scholar on the subject of the Internet, Zittrain has been a contributor to the OpenNet Initiative, a Berkman Center collaboration with other research institutions, which since 2002 has been tracking Internet filtering around the world. Herdict, he says, will be a rich source of leads for OpenNet and for others who want to use the data (such as the blogger who used Herdict's reports in March to capture the timing of the China incident). More broadly, he hopes it will "contribute to our understanding of how information flows on the Internet." An Arabic version was launched in April and a Chinese version is in the works.

The "crowdsourcing" technology casts a very broad net when it comes to collecting information, and does so "in the spirit in which the Internet is built," Zittrain says. He adds that he is trying not to assume a whole lot about what results will be most useful. Whereas OpenNet has focused mainly on Web sites that are blocked—often by governments—"what is most briskly reported on Her-



dict,” he says, “may turn out to be content that is taken down by the original poster, either under pressure or for other reasons.”

“I think it’s a good time to expand the definition [of Net censorship],” says Zittrain, “because the two poles are starting to blend.” He cites instances in which YouTube has made unavailable to people in Thailand videos that insult the Thai king. “It’s not like Thai routers are being configured not to take any YouTube,” he says. “But certainly it’s a form of inaccessibility that is every bit as interesting as if Thailand had gone to the effort of filtering it itself.”

Herdict’s name plays on the idea of the “verdict of the herd,” and in addition to studying information flows, Zittrain is interested in looking at the power of collective efforts: “how much people can be inspired to pitch in on a project, and how with lots of people pitching in just a little, you end up getting a lot of work done.”

He cites other such experiments: from SETI@home—where a screensaver makes users’ computers part of a network in search of evidence of extraterrestrial life—to Wikipedia.

“It’s vital to understand how networks affect people,” he says. “There’s a lot of people who study how computers and networking melt your brain,” he laughs. “I’m interested in how computers and networking can get new forms of work and insight that just previously never would have been possible.” \*

➔ **Herdict:** [Herdict.org/web/](http://Herdict.org/web/)



MARK RAMSEYER (LEFT) and Steve Shavell aim to publish the best legal scholarship from a variety of disciplines.

## Peer Review

### *A NEW JOURNAL* aims to fill a gap in legal scholarship

In the summer of 2007, HLS Professors Mark Ramseyer ’82 and Steven Shavell approached editors at Harvard University Press with the idea of starting a unique online venture: a broad-focused, faculty-edited journal with an open-access format, to provide first-rate legal scholarship to the widest possible audience.

In February the *Journal of Legal Analysis* was launched. Created in partnership with Harvard University Press and the John M. Olin Center for Law, Economics, and Business, it’s available free online at <https://jla.hup.harvard.edu>. All posted articles will also be published once a year in bound volumes made available for purchase.

“Steve and I came up with this idea in casual conversation one day,” says Ramseyer, who serves as the journal’s editor-in-chief. Both professors had experience editing professional legal journals—Ramseyer, *The Journal of Legal Studies* at Chicago, and Shavell, the *American Law and Economics Review*. Says Ramseyer: “We wanted to see a faculty-edited, peer-reviewed journal that was not field-specific. This seemed like a good time to try.”

Ramseyer says the journal fills a gap left by student-edited law reviews, and he hopes it will make peer editing more universal for legal scholarship. Shavell, who serves as a

co-editor, adds: “Peer-reviewed journals are the norm in all disciplines except for law.”

The editors aim to publish the best legal scholarship from a variety of disciplinary perspectives and styles, covering the span of the legal academy. The inaugural issue includes submissions as diverse as “Are Judges Overpaid? A Skeptical Response to the Judicial Salary Debate” by Stephen J. Choi ’94, G. Mitu Gulati ’94 and Eric A. Posner ’91; “Estimating the Effect of Damages Caps in Medical Malpractice Cases” by David A. Hyman, Bernard Black, Charles Silver and William M. Sage; and “Many-Minds Arguments in Legal Theory” by HLS Professor Adrian Vermeule ’93.

In addition to Shavell, who is director of the Olin Center at HLS, the co-editors are Richard Craswell of Stanford Law School; Mathew McCubbins of the University of California at San Diego; and Daniel Rubinfeld of the University of California, Berkeley. Scholars from various fields have signed on to be members of the 20-member editorial board, including HLS Professors Louis Kaplow ’81, Kathryn Spier, Cass Sunstein ’78 and Vermeule.

The journal is financially supported by Terence Considine ’71 and the Considine Family Foundation. \*

➔ **Online** at <https://jla.hup.harvard.edu>

**SHORT TAKES**  
*from faculty articles and op-eds***Internet Arms Race**  
*Professor John Palfrey '01*  
MIT TECHNOLOGY REVIEW  
MAY/JUNE 2009

“In less democratic societies, sophisticated use of the Internet is limited to the few and the elite. Too often, using these tools puts activists at risk of greater control by the state, through surveillance, censorship, and imprisonment. Political leaders in dozens of states around the world are using digital tools to extend the reach of their power through propaganda, fear, and self-censorship. Resistance is limited to an impassioned, but widely dispersed, community of Internet activists. Bottom-up resistance plainly works at the margins: the tech-savvy can elude most censorship and surveillance most of the time. ... But so too can the smartest of tyrants keep the bulk of their citizens under greater, not lesser, control.

“Digital technologies do not have a nature. They are what we make them. For those who care about human rights and the spread of democracy, alarm bells should be going off right now. The Internet may not be the universally positive influence we’ve been hoping for.”

**Stress-Testing Washington’s Chrysler Bankruptcy Plan**  
*Professor Mark J. Roe '75*  
FORBES  
MAY 13, 2009

“Not everything that’s good for a Chrysler rescue is good for the U.S. The interests of the administration and the economy are not the same as those of Chrysler and the UAW’s; the latter two want any deal done that preserves their interests. If the deal bars any outsiders from making a real competing bid on the assets, all the better. The Treasury though, having decided to rescue Chrysler and the UAW, should have wanted a deal done that does little to disrupt capital markets’ confidence in their contracts.

“But that’s not what we got in the first week of the Chrysler bankruptcy. It’s getting done in a way that unnecessarily disrupts financial markets’ confidence in lending to troubled firms, including via the TARP’s proposed public-private partnership, by roughing up bankruptcy’s normal lender protections. But it didn’t have to do this. Chrysler had reason to play it as hard-edged as possible; the United States Treasury did not.”

**Focus on the Child’s Human Rights**  
*Professor Elizabeth Bartholet '65*THE NEW YORK TIMES BLOG “ROOM FOR DEBATE”  
MAY 10, 2009

“The biggest problem in international adoption is that many who call themselves advocates for children’s human rights press for legal restrictions that limit the ability to provide homes to children in need. Thus Save the Children calls for denying Madonna’s second adoption based on interpreting a residence requirement so as to prevent virtually all international adoption. Some 67 children’s rights organizations went into court to oppose her first adoption. UNICEF calls regularly for restrictions limiting international adoption to at best last-resort status. Romania was forced by similar pressures to outlaw such adoption as a condition of joining the European Union. ...

“International adoption provides good homes for the children lucky enough to be placed, and brings significant new resources into countries to improve orphanage conditions and help build welfare programs for the future. Celebrities like Madonna and Angelina Jolie have provided many millions of dollars for such efforts. While few individual adopters have their resources, many develop comparable interest as a result of their own adoptions in contributing what they can to help those children left behind.”

**Rights Case Gone Wrong**  
*Professor Jack Goldsmith with Duke Law School Professor Curtis Bradley '88*THE WASHINGTON POST  
APRIL 19, 2009

“As American taxpayers shell out hundreds of billions of dollars to bail out U.S. companies, a federal court in New York recently paved the way for significantly increasing some of these firms’ financial burdens. Relying on the Alien Tort Statute of 1789, the court ruled this month that certain companies that did business with apartheid South Africa—including distressed firms such as General Motors and Ford—can be held liable for South Africa’s human rights violations during that period. ...

“[T]hese lawsuits threaten to deepen the economic distress of U.S. and foreign firms by imposing an enormous tax on investment in developing countries at a time the world desperately needs such investment. Judicially made corporate human rights litigation is a luxury we can no longer afford.”

EDITOR’S NOTE: To read about the involvement of the HLS International Human Rights Clinic in the suit, go to [http://www.law.harvard.edu/news/2009/04/23\\_apartheid.html](http://www.law.harvard.edu/news/2009/04/23_apartheid.html).



## A Prison of Words

*Professor Noah Feldman*

THE NEW YORK TIMES

MARCH 18, 2009



“[T]he Obama approach is potentially broad enough to continue detaining everyone whom the Bush administration put in Guantánamo in the first place. The legal theories are subtler, and the reliance on international law may prove more attractive to our allies. But President Obama is stuck with the detainees Mr. Bush left him. ...

“The true test of whether Mr. Obama has improved on the Bush era lies in how his administration justifies its decisions on the 241 remaining Guantánamo detainees, whose cases will now be evaluated internally and reviewed by the courts. If the new legal arguments actually affect who goes free and who stays in custody, then they will amount to meaningful change. Without real-world effects, though, even the most elegant new legal arguments are nothing but words.”

## Correspondence: A New Era of Corruption?

*Professor Yochai Benkler '94*

THE NEW REPUBLIC (ONLINE)

MARCH 4, 2009



“Critics of online media raise concerns about the ease with which gossip and unsubstantiated claims can be propagated on the Net. However, on the Net we have all learned to read with a grain of salt between our teeth, like Russians drinking tea through a sugar cube. The traditional media, to the contrary, commanded respect and imposed authority. It was precisely this respect and authority that made The New York Times’ reporting on weapons of mass destruction in Iraq so instrumental in legitimating the lies that the Bush administration used to lead this country to war. ... On some of the greatest challenges of our time, newspapers have failed us. The question then, on the background of this mixed record is whether the system that will replace the mass mediated public sphere can do at least as well.”

## The Bailout Is Robbing the Banks

*Professor John C. Coates with Harvard Business School Professor David S. Scharfstein*

THE NEW YORK TIMES

FEB. 17, 2009



“For reasons that remain unclear, the Troubled Asset Relief Program has channeled aid to bank holding companies rather than banks. ... It’s easy to see why

holding companies would withhold capital from their troubled banks. If a bank is insolvent—as many are now believed to be—and the government has to take it over, the holding company loses any capital it gave to the bank. Rather than take that risk, the holding company can opt to spend its money elsewhere, perhaps on trading of its own.

“But this is not a good use of scarce capital. We might end up with too much of this proprietary trading and too little lending. It also means that when it comes time to recapitalize banks there is a bigger hole to fill, and when banks fail there is less capital available to meet the government’s obligations to insured depositors and other creditors. Keeping money at the holding company may benefit its shareholders, but it is costly for taxpayers.”

## We Need a Truth Commission to Uncover Bush-era Wrongdoing

*Clinical Professor James Cavallaro*

THE CHRISTIAN SCIENCE MONITOR

FEB. 20, 2009



“Does the United States need a truth commission to uncover wrongdoing committed by the Bush administration in the war on terror? Yes, says Sen. Patrick Leahy (D) of Vermont. Earlier this month, he proposed a process to do just that. ...

“If we are to control our own destiny, we must reclaim our past. A truth commission, along the lines suggested by Leahy, would be a good means of beginning that process. The alternative—to turn the page without knowing what is on it—could doom us to a haphazard and unpredictable future in which individual consciences and other nations’ courts control our destiny.”

## History’s Verdict

*Professor Charles Fried*

THE NEW YORK TIMES

JAN. 10, 2009



“[T]he election was a definitive repudiation of the Bush administration and its principal characters. There are those for whom this will not be enough to vindicate the values of decency and humanity that the Bush administration flouted as it defended us against further terrorist attacks. There are those who will press for criminal prosecutions, but this should be resisted.

“It is a hallmark of a sane and moderate society that when it changes leaders and regimes, those left behind should be abandoned to the judgment of history. It is in savage societies that the defeat of a ruling faction entails its humiliation, exile and murder.”



## An Uncommon Critique of the Common Law

Vermeule proposes *ALTERING the American lawmaking process*

By Dick Dahl

**Professor Adrian Vermeule's** newest book is likely to raise a few judicial eyebrows. "Law and the Limits of Reason," published by Oxford University Press, is a broad-based criticism of the dominant role played by courts in the American lawmaking process.

To Vermeule '93, the notion that judges are better-trained and better-equipped to achieve socially desirable results through development of common law is simply wrong. He argues that legislators, less insulated from the public and more diverse in makeup, do a better job of it.

"There's a basic trade-off between bias and information in the comparison of legislators and judges," he said in an interview. "The judicial process is arranged to ensure that judges are evenhanded. They hear from both parties through highly structured procedures. But there's a price to be paid for that evenhandedness, which is that judges have less information. What legislators get that judges don't get is that they

talk to lots of people. They have to run for re-election; they hear from constituents. They're not sitting in a place that's constrained by a relatively narrow form of professionalism."

Vermeule responds to arguments that legislators might be more prone to political influence by countering that political biases in legislatures tend to cancel each other out. He also says that criticism of legislative lawmaking on

the basis of potential political influence ignores the shortcomings of the common-law alternative.

By its reliance on precedent, Vermeule says, common law is slow to change. But he suggests that it's also the product of an insular world occupied by judges and lawyers who lay claim to a high ground—in the book he calls it a "nirvana fallacy"—that is not justified. While sound reason is a



## RECENT FACULTY BOOKS

scarce commodity, Vermeule writes, “[t]here is no logical connection between the limits of reason, on the one hand, and the superiority of common law or judge-made constitutional law, on the other.”

And besides, he adds, the need for common law isn’t what it used to be.

“Anglo-American jurisdictions call themselves common-law countries, but that’s a misnomer,” he says. “They’re not anymore. In every Anglo-American jurisdiction, the common law has become very heavily statutorified, if that’s a word. The rate of change in the policy environment has accelerated to such a degree that the common law just can’t keep up.”

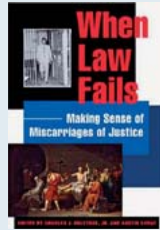
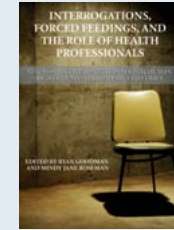
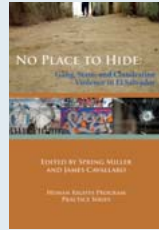
The answer, he says, is to alter the lawmaking modus operandi. Appellate courts, he argues, should contain lay justices. And Congress should be given the power to codify the Constitution, enacting what he calls “liquidating statutes.” These laws would “define constitutional meaning where the Constitution is ambiguous, or establish constitutional ground rules,” thus reducing the role of the U.S. Supreme Court.

Vermeule admits that the book may raise some hackles, but he wants to launch what he considers a necessary debate.

He says he’d been thinking about writing the book—his fourth—for some time. It grew from his frustration with the influence of 18th-century political theorist Edmund Burke and 20th-century economist and political philosopher F.A. von Hayek, who were strong proponents of the common law.

Vermeule’s own hero is Jeremy Bentham, the 19th-century British philosopher, who strongly criticized English common law.

“He would say that English lawyers make the common law more complicated and mysterious than it needs to be because that maximizes their fees and their power. But in this book, I resolutely stay away from criticizing the motives of people who disagree with me. I think that’s entirely unproductive.” \*



“No Place to Hide: Gang, State, and Clandestine Violence in El Salvador” (Harvard University Press, 2009), by **Clinical Professor James Cavallaro** and **Spring Miller ’07**, analyzes the evolution of violent street gangs and the Salvadoran state’s responses to gang-related and other forms of violence. The findings are based on primary research conducted in El Salvador between 2006 and 2008.

“Government by Contract: Outsourcing and American Democracy” (Harvard University Press, 2009), edited by **Professors Jody Freeman LL.M. ’91 S.J.D. ’95** and **Martha Minow**, brings together articles addressing the expansion of government outsourcing in fields that include military intelligence, environmental monitoring, prison management and interrogation of terrorism suspects. The book explores the

legal, economic, and political concerns that outsourcing raises, and examines what role costs, quality and democratic oversight should play in contracting out government work.

“Prosecuting Apartheid-Era Crimes? A South African Dialogue on Justice” (Harvard University Press, 2009), by **Lecturer on Law Tyler Giannini** and **Clinical Instructor Susan Farbstein ’04**, with **Samantha Bent ’08** and **Miles Jackson LL.M. ’07**, examines recently intensified questions about prosecuting crimes committed during apartheid in South Africa. It includes reflections from former Truth and Reconciliation Commission members, advocates, survivors of apartheid and a variety of government officials.

**Professor Ryan Goodman** and **Lecturer on Law Mindy Jane Roseman** edited “Interrogations, Forced

Feedings, and the Role of Health Professionals: New Perspectives on International Human Rights, Humanitarian Law, and Ethics” (Harvard University Press, 2009). The collection brings together the writings of a wide range of practitioners and scholars on the involvement of health professionals in human rights and humanitarian law violations.

“When Law Fails: Making Sense of Miscarriages of Justice,” edited by **Professor Charles Ogletree Jr. ’78** and **Austin Sarat** (New York University Press, 2009), presents 10 original articles in which wrongful convictions are described not as random mistakes but rather as inevitable outcomes in a flawed system plagued by faulty eyewitness identifications, false confessions, biased juries and racial discrimination.







A GLOBAL ECONOMY wrecked by unchecked greed. A massive bailout that still has us trying to follow the money. A war that challenges us to stay true to our values.

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“Sunlight,” wrote Brandeis, “is said to be the best of disinfectants.”

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To citizens of the nation, and of the world.





# Top Cop

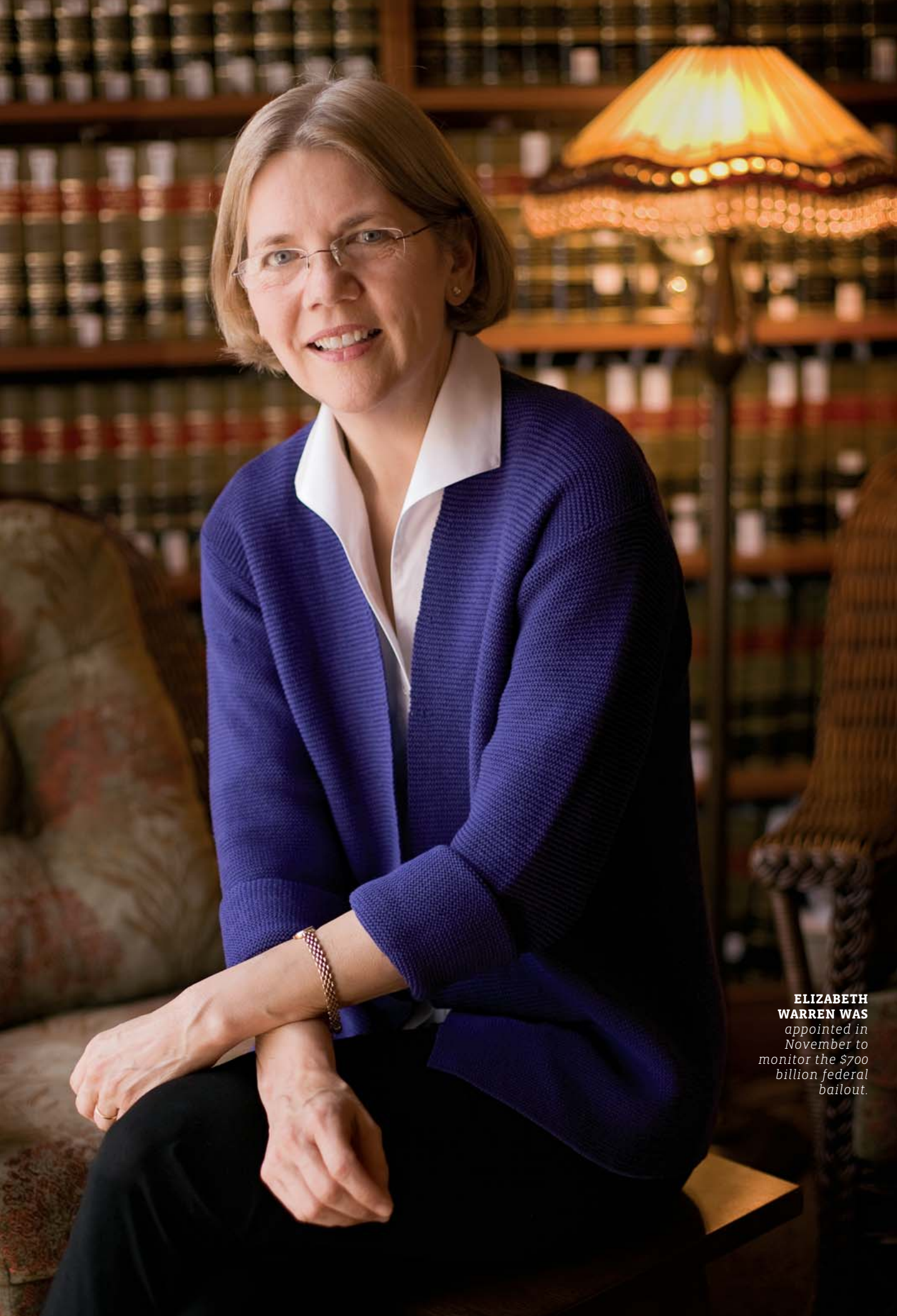
IT'S A MONDAY morning in early March, and Professor Elizabeth Warren's latest interview on NPR is no sooner over than the phone in her Hauser office begins ringing. Fans call with messages of gratitude, and she is deluged by e-mails.

It's like this all the time, ever since Warren—the credit-card Cassandra and champion of average American families, who for years warned that an economic collapse was imminent—was appointed in November to monitor the \$700 billion federal bailout known as TARP (the Troubled Asset Relief Program). As chairwoman of the Congressional Oversight Panel, Warren lost no time expressing outrage that billions had already been handed out with no restrictions on the financial institutions receiving them. She took her plain-spoken message to newspapers, TV, radio and her own blog, tire-

BY ELAINE McARDLE

*IF LEADERS  
HAD  
LISTENED TO  
ELIZABETH  
WARREN  
YEARS  
AGO, SHE  
WOULDN'T  
HAVE THE  
JOB SHE HAS  
NOW*





**ELIZABETH WARREN WAS** appointed in November to monitor the \$700 billion federal bailout.

lessly explaining to taxpayers how their money was being used—and misused—in the massive effort to rescue failing financial institutions and, by extension, the nation's economy. Her calm but righteous indignation struck a chord with much of the nation. Facebook has a Warren fan site, and she can't walk across the HLS campus or through downtown Washington, D.C., without someone stopping her to thank her. It's like a great outpouring of relief that, finally, someone sensible is at the helm, making sure the supposed fix for the current disaster doesn't make things worse.

"I get heartfelt thanks from all kinds of people," says Warren, who these days is bouncing between the nation's capital and Cambridge, where she continues to teach her yearlong seminar, Empirical Analysis of Law. "Today I heard from a waitress in Georgia who has lost her job and is trying to figure out how her local bank can change the terms on her credit card, and I heard from a physicist at a major research university who wants to explain a better theory of financial stress tests."

Since the five-member oversight panel has no veto power on how the TARP money is spent, Warren is primarily a watchdog trying to make sure decision-makers and the public pay attention. "Part of my job is to make sense of all that I hear, and to retell it in a forceful way so that the decision-makers at Treasury can hear it." She pauses and adds, "At least that's how I see it."

She'll use her bully pulpit in any way she can. Tomorrow, she's heading back to Washington to stand alongside Sens. Dick Durbin, D-Ill., and Charles E. Schumer '74, D-N.Y., as they announce proposed legislation to create a Financial Product Safety Commission to ensure that financial products sold to consumers are fair and transparent. The commission, modeled after the Consumer Product Safety Commission, was Warren's idea; just as unsafe toys and toasters are illegal, she believes unsafe financial products should be, too, because they're not only dangerous to the individual buyers, they can also create a massive domino effect that leads to widespread economic chaos. "If there had been a Financial Product Safety Commission in place 10 years ago, the current financial crisis would have been averted," she says. (As the Bulletin went to press, the Obama administration was said to be studying proposals for such a commission.)

How bad are things? "We're in a lot of trouble, and I'm worried. I'm very worried," says Warren. "We haven't found the bottom yet; we haven't got-

ten honest about the numbers. And until we do, we can't start rebuilding. We're continuing to put money into financial institutions without a clear strategy for how this will solve our problem." Half the TARP money is already gone "without much to show for it," she says, with a sigh, and she wants to make sure the rest isn't doled out the same way.

"I'm trying so hard to get ahead of the curve on this," she says. "When we did the valuation report, the one that came out [in February], it showed that \$78 billion disappeared on the day the transaction took effect, and of course, tens of billions have disappeared since then in market value. ... We did [the report] quickly—we were out with it within a month of the time the money had gone out the door—but it was gone. What I'm desperately trying to do now is get ahead of the next release of funds, to talk about the structure of the deal and to press Treasury harder to explain its overall strategy."

Of course, not everyone is a fan. Warren's detractors say she's soft on irresponsible consumers who have no one but themselves to blame for their debt. Even her own brothers in Oklahoma, to whom she remains very close, challenge some of her suggestions. She uses them as her sounding board as she tries out how best to get across her message that financial rules must be rewritten to be fairer to consumers. And the situation could not be more urgent, she believes.

"What we collectively decide about how to bail out our economy, how to pull our economy out of a ditch and what rules we put in place to make sure this problem does not happen again, will shape our country for the next 50 years," she says. "This is it. It's going to happen in the next six months. So the decisions we make here are decisions about our collective futures for the rest of my life, the rest of my children's lives and into the lives of my grandchildren." She leans forward, as if propelled by the energy of her convictions. "It is critical," she says, somberly, "that the American people, and not just their financial institutions, be represented at the negotiating table."

She sits back up, suddenly, and smiles. "So! This COP [Congressional Oversight Panel] provides an opportunity to talk with both the administration making these decisions and the public. There are very few precedents for this kind of thing in history. It's a wonderful thing." The sunshine of public attention hasn't often shone on the complex workings of the government's financial oversight boards, she notes. "The Treasury Department exists and functions largely inde-

**"THERE'S NOTHING ELSE I WANT OUT OF THIS EXCEPT TO GET IT RIGHT."**





AP/HARRY HAMBURG

pendent of public input.” She laughs, and adds, “Ordinarily, its Web site doesn’t get many hits. By and large, the work of Treasury has been the work of specialists. But today they are playing with the future of the world. And Americans across this country recognize that. They want to be heard.”

As Warren speaks, in a vaguely Southern accent, she smiles, laughs, put her hands up on top of her head to ponder, listens carefully when someone else talks. She’s warm and approachable, like a friendly and wise neighbor whose advice you respect. Her two best-selling books, co-written with her daughter Amelia Warren Tyagi, are aimed at helping American families stay afloat financially and are written in sentences that she describes as “Oklahoma flat”; fancy language is often the refuge of poor ideas, she believes. The decency she exudes—the sense, to the average American, that she’s one of *us*—isn’t feigned.

“I’m still very connected to my family, to the world I grew up in,” says Warren. “I understand what it means to be afraid that you can’t pay a doctor’s bill.” Her voice drops. “Or to have to make the choice between buying a band uniform for a seventh-grader and making the insurance payment on time. That will never leave me. It was how I lived until I was well into my adult years. And I understand the basic, hardworking good-

ness of people whose ambitions are to do right by their kids and make it through retirement without being a burden to others.”

The country’s eyes are upon her, and everyone is counting on her. And she knows it.

“Here’s what haunts my dreams,” she says, looking outside her office window. “I wake up, at 5 in the morning, fearing that it’s a year from now, and things have not gone well, and I missed something. Maybe I failed to identify the critical link that we should have looked at, or failed to say something urgently enough to someone in power, or failed to explain with enough clarity that the American people could understand why they needed to support something or needed to attack it. I worry that a year from now I will understand how I fell short. And all I can do now is my best, but I don’t know if I’ll get it right. I will try.

“It is a huge responsibility; I am deeply sobered by the responsibility,” she continues. “There’s nothing else I want out of this except to get it right. I’m not looking for another job, not looking for a promotion, not looking to run for office, not looking for some kind of personal glory for this. I just want to help us get it right. In the face of high risk, many people become cautious. Others say, it’s all on the line, so give it everything you’ve got. I’m hard-wired to be in the latter group.” \*

**“PEOPLE WANT TO see that taxpayer funds aren’t being used to shield financial institutions,” Warren told Treasury Secretary Geithner when he appeared before her panel in April.**





**JOSH RUBY '10**  
*(left)* and **NICK**  
**SMYTH '09**  
*interned with the*  
*congressional*  
*panel that is*  
*overseeing the*  
*federal bailout.*

FOR SOME HLS  
STUDENTS, A CHANCE  
TO BE WHERE THE  
ACTION IS

<< MR. SMYTH AND MR. RUBY

# >> Goto Washington

For Nick Smyth '09, working this past semester in Washington, D.C., for the office that oversees the federal bailout was a chance to contribute to a high-stakes mission: "It's such a huge problem and it's affecting so many people. I can't think of anything more exciting to be working on right now." Josh Ruby '10 recognized "a potentially transformative moment in Washington, something that only comes along once in a generation," and he wanted to see that moment "up close, and, perhaps in [his] wildest dreams, play a small, extra-type role."

As part of the new HLS Semester in Washington program, the two got their chance, holding internships on the Congressional Oversight Panel led by Professor Elizabeth Warren. "Nick and I work for the staff doing whatever needs doing, mostly research and prepwork for reports and hearings," said Ruby in April. They had a hand in writing several of the panel's reports, including "Assessing Treasury's Strategy: Six Months of TARP," released in April, and helped organize the Feb. 27 hearing focused on coping with foreclosure in

Maryland's Prince George's County, which has the highest rate in the state. "We were trying to find homeowners who could testify and tell their story," Smyth said. They located witnesses who had received loan modifications and were success stories after going through "a horrible year or two."

One couple's house was auctioned off, and only a legal mistake in the sale kept them from losing their home. Another couple, up against high mortgage payments and a bank unwilling to talk, engaged a financial services company to help them restructure their mortgage. As security, the company required them to sign over their deed and send their mortgage payments directly to the company. Months later, when the husband was hospitalized for heart surgery, Smyth recalled, "he got a call in the hospital from his wife, and she said, 'The sheriff is here. He says that we're getting evicted.'" The financial company had simply pocketed the couple's mortgage payments, the bank had foreclosed and the house had been sold at auction.

In the end, the

couple got help from their congresswoman, who contacted the National Community Reinvestment Coalition, a HUD-approved mortgage-counseling agency, on their behalf. A counselor worked out agreements with the buyers to sell the couple back their home and with the bank to modify their mortgage. The husband told Smyth, "I think [the company that was holding our deed] thought I was going to die. They were hoping I was just going to die, and then my wife wouldn't know what had happened, because I'd handled all the finances, and she would have just been out on her own, a recent widow." Smyth sees the couple as ordinary homeowners caught between a scammer and an uncooperative bank in financially complicated times: "These people are not Harvard lawyers; they're not set up to fight for themselves."

The work of the panel is so complex that it can be difficult to communicate, requiring "a demanding, brain-stretching understanding of a wide range of technical topics," according to Ruby. Although he had tried to describe it to her, he said his mother

did not understand what he was doing for about the first six weeks. "Finally, she asked me: 'Josh, I know you're working on something with TARP. Did you see this Elizabeth Warren woman on the television?' She explained it so well! I just think she's fabulous." When he told her he worked for Warren, his mother revealed that the professor has "quite a following among the retired community of Tucson, Arizona."

On their workload, Smyth said, "In theory you're only supposed to work 25 hours a week, but that gets pushed where you're in really busy offices, as we are." Realistically, they often worked at least 40 hours a week, in addition to three nights of classes. But he was quick to add, "I love it—I love the work. I would do it all the time if I could." On the singularity of their internship, Ruby added: "The paths we take now will shape how the public and private sectors interact with one another for decades to come. In short, that makes TARP and its environs where much of the action takes place right now."

—Lia Oppedisano

# Meltdown

GENERAL  
ACCOUNTABILITY  
PRINCIPLES, FROM  
SOME LEADING  
EXPERTS

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As the global economy continues to reel, the key question is how to prevent a crash from happening again. Accountability is key, experts agree, and HLS faculty have been quoted daily in newspapers and online over the past few months on how to keep the economy out of trouble in the future.

**What reforms are needed to ensure that this doesn't happen again?** The Bulletin asked that question of HLS faculty deeply involved in understanding and solving the crisis.



**PROFESSOR LUCIAN BEBCHUK LL.M. '80 S.J.D. '84,**  
*director, HLS Program on Corporate Governance:*

TWO AREAS THAT call for reforms are executive compensation and shareholder rights. In our 2004 book, "Pay without Performance: The Unfulfilled Promise of Executive Compensation," Jesse Fried and I analyzed how executive compensation practices distort the incentives of executives. Recent events have highlighted how costly such distortions can be. Compensation arrangements should be structured carefully to provide executives with strong incentives to maximize long-term shareholder value and avoid the taking of excessive risks.

In addition, we should seek to make boards more accountable to shareholders. To this end, directors should be not only independent of management but also dependent on shareholders. To this end, shareholder rights should be strengthened: Corporate arrangements should facilitate shareholders' ability to replace directors and to shape the governance arrangements regulating their firms.

NOTE: *Jesse Fried '92 will join the HLS faculty in the fall as a professor of law, coming from the University of California, Berkeley, School of Law.*



**PROFESSOR HOWELL JACKSON '82,** *acting dean of HLS:*

WE NEED REGULATORY reform to modernize the oversight of the financial industry to reflect the reality that financial risk is generated in many different parts of the economy now. The regulatory structure needs to be consolidated and given expanded jurisdiction to monitor those risks and intervene effectively when problems arise. That means discarding the traditional sectors of banking, securities and insurance; giving broad oversight powers to a consolidated agency; and reserving the Federal Reserve Board's jurisdiction to policies that focus on systemic risk. And consumer financial protection has got to be the subject of a specific organization rather than having that responsibility divided up into many different parts of the federal supervisory apparatus. This is a substantial challenge that may take several years to fully implement, but now is the time we need to start down that path to develop a framework that will result in a modern regulatory structure. I do think it can be done.



**PROFESSOR HAL S. SCOTT,** *director, HLS Program on International Financial Systems:*

THERE IS CLEARLY a need going forward to get more accountability in the system. This requires dealing with the immense moral hazard we have created by bailing out shareholders and debt holders in a wide





BEBCHUK: Shining a light on executive compensation



JACKSON: Looking into the financial industry



SCOTT: Increasing market discipline



MINOW: Monitoring risks taken by financial institutions



FRIED: Walking the tightrope of contractual obligations

number of institutions, to avoid systemic risk. Over 300 institutions have received TARP funds, so this problem is not limited to the biggest or more important institutions. Once large institutions get help, small banks and their representatives demand equal treatment. We need to reduce the possibilities of systemic risk by a variety of measures, such as tougher and better capital standards (including more market discipline based on better disclosure), and a requirement that derivatives be centrally cleared and in some instances listed on an exchange. We also need a receivership process to handle nonbanks and all financial service holding companies.

**PROFESSOR MARTHA MINOW**, co-editor of the recent book *“Government by Contract: Outsourcing and American Democracy”*:

GOVERNMENT AGENCIES HAVE lacked personnel and expert capacity to keep up with the wizardry of financial markets, and conflicts of interests have hobbled oversight by credit-rating agencies, government agencies and Congress. So at a minimum, governments must demand the information needed to monitor the total risks undertaken at any financial institution; and government agencies must obtain capacities to regulate the entire range of investment activities. Rating agencies shouldn’t get compensated by the firms whose products they rate nor should they advise firms how to create the very same products that the agencies rate. And even the stimulus package must include sufficient resources to enable effective government oversight of funds spent.

**PROFESSOR CHARLES FRIED**, who teaches contracts and constitutional law, on the A.I.G. bonus scandal:

FAITHFUL PERFORMANCE OF contractual obligations is certainly a keystone of a well-functioning system of business and credit—especially where the alternative to performance, paying damages, is no alternative at all since the performance and the damages are the same. But that surely does not mean the money should have been paid out no matter what. Could the well-known doctrine of change in underlying assumptions have been invoked to abrogate the obligation? Since the alternative to the government bailout would have been bankruptcy with a resulting abrogation of these bonus promises along with other contractual obligations, was management remiss in not pressing for a renegotiation, and were any of the recipients themselves involved in a self-dealing way in deciding not to renegotiate? And most pertinently, as these bonuses appear to have been related to performance of services, is it clear that the recipients faithfully performed the services for which they were being compensated? These and other such questions cannot be answered without seeing the actual contracts that are being invoked. And even then, there are questions about whether the performance of these individuals matched the performance set out in the contracts. As we all own 80 percent of the company, we ought to be able to see the text of these contracts. They should be posted on our company’s — that is, A.I.G.’s — Web site. Then we can discuss whether the recipients of that money really earned it. *[This text first appeared on The New York Times Blog, March 17, 2009.]*

BY BILL IBELLE

# The Whistleblower's Lawyer

GAYTRI KACHROO S.J.D. '02 was preparing to fly to India for business when she got a call that thrust her into the midst of one of the largest financial stories of our time. The caller was her client Harry Markopolos, an independent fraud investigator who, in the ensuing 24 hours, would go from being an unknown Chicken Little to a national hero.

Markopolos had spent almost 10 years trying to convince federal regulators that the Wall Street wonder Bernard Madoff was running the largest Ponzi scheme in U.S. history—a \$65 billion investment fraud that would spell financial ruin for thousands of individuals, charitable organizations and investment groups.

When he called Kachroo on the night of Dec. 11, Markopolos told her that Madoff had just confessed and that *The Wall Street Journal* would be breaking the story in the morning edition. He wanted her to advise and represent him.

It was quite a request, given that until that moment, Kachroo knew next to nothing about her client's investigation of the Madoff affair and had no experience with the press. A transactional lawyer who now specializes in emerging markets in India and Southeast Asia, she had been representing Markopolos since he began his fraud investigation business in 2004, and she had developed a strong bond with him based on

their shared belief that you don't have to compromise your ideals to succeed.

When the story broke on Dec. 12, her client was flooded with requests from media around the world.

"I was a little overwhelmed initially," said Kachroo, a partner at McCarter & English in Boston. "We were deluged with calls from CBS, ABC, NBC, CNN, *The Wall Street Journal*, and I was on the phone daily from Pune [India] with congressional counsel and SEC Inspector General David Kotz. I had to get up to speed in a hurry."

Kachroo knew that all of their preparation in the coming weeks was leading up to the moment when Markopolos would testify before Congress. She worked with him on what names he could include without exposing himself to liability and pressed him on what he knew for certain from his own evidence as opposed to what he assumed based on information from others.

"I was asking Harry constantly what he really knew, not just what he thought, and I asked him to base his opinions solely on that," Kachroo said. "This provided testimony that was palpably Harry's own and something the public could identify with."

The media were smitten by the image of Markopolos as a modern-day Cassandra, hounding federal regulators for nearly a decade to consider his evidence that Madoff was a fraud. Despite numerous letters from Marko-

polos culminating in a detailed 21-page memo in 2005, the U.S. Securities and Exchange Commission had ignored his warnings. Consequently, a scam that totaled about \$7 billion when Markopolos first uncovered it in 1999 was allowed to grow to more than nine times that size.

According to Kachroo, the Madoff debacle is not an isolated occurrence, but a symptom of overwhelming flaws that plague our regulatory system.

"This is not a story about one rogue investor," she said. "It's a symbol for the systematic failure that we are experiencing in our financial systems. It's about how we need to change the rules and the roles people play so this never happens again."

On Feb. 4, Kachroo sat at her client's side through four hours of congressional testimony in which he presented the House Financial Services subcommittee with his evidence against Madoff, his blistering criticism of the SEC and a series of specific suggestions on how to reform the nation's financial regulatory system.

"Government has coddled, accepted and ignored white-collar crime for too long," he told Congress. "It is time the nation woke up and realized that it's not the armed robbers or drug dealers who cause the most economic harm; it's the white-collar criminals living in the most expensive homes who have the most impressive resumes who harm us

# GAYTRI KACHROO DIDN'T LOSE MONEY TO BERNIE MADOFF, BUT THE SCANDAL CHANGED HER LIFE



## **GAYTRI KACHROO**

(left) with her client, Harry Markopolos, who presented Congress with evidence against Bernard Madoff and with a blistering critique of the nation's regulatory system

the most. They steal our pensions, bankrupt our companies and destroy thousands of jobs, ruining countless lives.”

Since her client's testimony, the international financial crisis has occupied more of Kachroo's professional focus.

She and Markopolos met with the new chairwoman of the SEC, Mary Shapiro, in mid-March to discuss her client's recommendations for reforming the beleaguered regulatory agency.

The previous month, Kachroo was named vice chairwoman of the newly formed Global Law Firm Alliance, a coalition of 45 firms from 25 nations dedicated to assisting the estimated 3

million victims of the Madoff scam. Because of the complexities involved in adjudicating a worldwide financial fraud, the alliance has proposed the creation of an International Financial Court. Kachroo coordinated meetings with members of Congress and the White House and oversaw the draft proposal and its incorporation into the agendas for the European Union Summit in April and a G-20 meeting in June.

She has also been asked to represent, before Congress and the Securities Investor Protection Corp., a large national coalition of investors in Ponzi schemes, including Madoff's and several others. \*



# Not on His Watch

BY JULIA COLLINS



IN 25 YEARS of public service, Robert B. Zoellick '81 has been on duty during transformative times, including German unification and the end of the Cold War, the collapse of the Soviet Union, the debt crises in Latin America and China of the '80s and '90s, the aftermath of Sept. 11, and the Southeast Asia tsunami of 2004. Now, as the 11th president of the World Bank Group, Zoellick is front and center, dealing with another epochal event: the global economic crisis.

When Zoellick was appointed by President George W. Bush in 2007, the bank was in turmoil following the resignation of his controversial predecessor, Paul Wolfowitz, and in need of refocusing to strengthen its global relevance and meet new challenges—among them, keeping rising nations such as Brazil and China engaged in its initiatives, and addressing pushback from impoverished countries dealing with unintended consequences of foreign aid, such as corruption.

World leaders welcomed Zoellick's appointment. So did U.S. political figures. "Bob Zoellick is someone who has a passion for development," observed Henry Paulson, then U.S. Treasury secretary. "He has trust, respect and support from all regions of

IN THE GLOBAL  
FINANCIAL  
CRISIS, WILL  
**ROBERT  
ZOELICK**  
HOLD RICH  
NATIONS  
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TO THE  
DEVELOPING  
WORLD? BANK  
ON IT.



the world.” Commenting on his longtime protégé, former Secretary of State James A. Baker III went straight to the point: “Zoellick is a man who gets things done.”

The World Bank, which has 185 nation shareholders, provides technical assistance and more than \$11 billion annually in zero- and low-interest loans, credits, and grants to developing countries for projects in health and education, infrastructure, financial and private-sector development, agriculture, and environmental and natural resource management. Founded in 1944 to facilitate post-World War II reconstruction and development, the bank has expanded its mission to focus on poverty reduction and sustainable development in the world’s poorest countries. Other priorities: assisting post-conflict countries, tailoring services and financing to priorities of middle-income states, and addressing cross-border regional and global issues including climate change and infectious diseases.

One of Zoellick’s first challenges heading the bank was dealing with problems relating to malnutrition—through maternal/child health and school feeding programs, for example—as well as a food crisis in 2008 as prices shot up worldwide. Mass starvation remains a threat in the worsening global recession. Zoellick fears its rippling effects will devastate the fragile safety-net programs of the world’s poorest countries, with political implications for some. “There’s tremendous pressure in the developing world to cut back on basic social programs, which makes life harder, and undermines investment in their own people,” he said. In particular, “if kids get poor nutrition, it handicaps their ability to learn and be productive all their lives.”

Zoellick is famously adept at targeting issues, then translating ideas into strategy and solutions. In his own words, he likes “to ‘close,’ whether transactions, agreements, treaties or projects.” To keep pace with global change, he wants his team to develop a “fingertip feel” for issues, and be “faster and flexible in trying to respond. We’ve got to be client-focused,” serving not merely “as financial analysts but helping people within client nations to solve problems.” This involves building on past experiences. He cited the example of China, which during its financial crisis of 1997-1998 invested in infrastructure to create jobs but also to ensure future growth: “These are lessons to be used to help other countries now.”

Within days of fellow alumnus Barack Obama’s inauguration, Zoellick called on the new president to lead in fighting global poverty. He urged Obama to commit 0.7 percent of the \$825 billion stimulus package to the “Vulnerability Fund” Zoellick has established to aid the world’s poorest populations, who can’t afford bailouts and are shut out of the credit markets. (The U.N.’s target for foreign aid is 0.7 percent of an economy.) With even the wealthiest nations hard-pressed by domestic economic woes, “we have to be pragmatic, to help them sell [their forms of assistance] to their publics,” ex-

plained Zoellick. Japan, for example, “is providing \$2 billion to recapitalize banks because trade finance is important to them,” whereas, in addition to trade, the United States and Britain are interested in safety-net support.

In the midst of billion-dollar bailouts, “we don’t want to lose sight of the role of smaller private enterprises” as dynamic job creators, Zoellick added. The World Bank is seeking ways to help the microfinance industry, which provides banking services to unemployed or low-income individuals or groups otherwise shut out of the financial system. Another initiative is a “one percent fund” calling for sovereign world funds to channel 1 percent of their resources to enterprises in impoverished sub-Saharan countries—“to diversify while doing good.”

Zoellick’s internationalist perspective harks back to his childhood in rural Naperville, Ill., when he developed a passion for history. As a third-grader, he sped through the Bobbs-Merrill “Childhood of Famous Americans” series at his public library, moved on to another history series, then another. His father’s military mementos from serving in the U.S. Army in World War II in Korea, and the Civil War centennial that began when he was 8, contributed to a fascination with military history that has drawn Zoellick to old battlefields, where he likes to think about “strategies and tactics in the midst of confusion,” to contemplate the great, distant clashes that “brought out the best and worst of humankind.”

“History opened the world to me: different periods, peoples, geography, political and economic systems. It is also a window on human character,” he said. “That deeper understanding has helped me around the world; it’s been well-received.”

As an undergraduate at Swarthmore, Zoellick built on his knowledge of U.S. and European history with courses on Africa and Latin America. At Harvard he pursued a joint HLS/Kennedy School of Government degree—“I think in interdisciplinary terms”—with a yearlong interruption to work in Hong Kong.

After graduation, Zoellick clerked for Patricia M. Wald in the U.S. Court of Appeals for the District of Columbia and then joined the law firm of Joseph A. Califano Jr. ’55. In 1985 Zoellick joined the Reagan administration and was promoted several times by Treasury Secretary Baker, under whom he served until 1993, first as deputy assistant secretary for financial institutions policy and later at the State Department as undersecretary of state for economic and agricultural affairs and as counselor of the department. He was also briefly the deputy chief of staff at the White House and assistant to President George H.W. Bush.

During these years, Zoellick was entrusted with high-level policy work and diplomacy that immersed him in international debt crises, the S&L debacle and the Cold War’s surprisingly peaceful end. As the lead U.S. official in the

**0.7 PERCENT OF THE  
STIMULUS PACKAGE  
SHOULD GO TO THE  
POOREST COUNTRIES,  
ZOELICK URGED.**



1989-1990 Two Plus Four process of German unification, dealing with NATO and the concerns of Russia, he learned “to see problems in their multiple dimensions,” he said. “The perfect textbook solution is worthless unless you can implement it.” From his powerful mentor Baker, Zoellick assimilated “a sense of being very attuned to power and trying to use it to get things done. It’s essential to build cooperative solutions: No country can do these things by itself.”

Leaving government service in 1993, he spent four years as executive vice president of Fannie Mae. He also had a pivotal role in the historic fallout of the 2000 presidential election, when he was enlisted by Baker to help lead George W. Bush’s team in the 36-day battle over the Florida recount.

In 2001 Zoellick became U.S. trade representative for President Bush’s administration. After the Sept. 11 attacks, he wrote in *The Washington Post*: “The terrorists deliberately chose the World Trade towers as their target. While their blow toppled the towers, it cannot and will not shake the foundation of world trade and freedom. Our response has to counter fear and panic, and counter it with free trade.”

From 2001 to 2005 he made good on his conviction, defining an activist, results-oriented approach that linked free trade to development and foreign policy. He helped launch global trade negotiations at the World Trade Organization meeting in Doha, Qatar, in 2001, with follow-up meetings at Cancun, Geneva and Hong Kong. Zoellick worked with ministers from nearly 150 economies and negotiated FTAs with some 15 countries. He also oversaw China’s and Taiwan’s accessions to the WTO. The Doha talks have since run aground, but Zoellick has remained a free trade proponent. But “trade liberalization will only take you so far,” he noted, and under his leadership the bank emphasizes aid for trade’s development side, including building ports and improving logistics.

In 2005 Zoellick was named deputy secretary of state. He led efforts to mediate the violent conflict in Sudan, visiting four times in seven months. The wristband he wore to a Darfur refugee camp, inscribed “Not on our watch,” captured international attention. Professor William Alford ’77, who has spoken at length with him on his visits to HLS, including a dialogue they shared before an audience of graduate students last year, said, “I am very taken with the way that Bob Zoellick blends analytical brilliance, adroit political skills and a deep passion about issues that really matter. You could see this in his efforts to stop the slaughter in Darfur.”

Zoellick also launched major policy initiatives with China and coined the phrase “responsible stakeholder” to characterize the role the emerging superpower ought to assume in international affairs. A 2006 photograph of him cradling Jing Jing, a female panda cub, sparked intense analysis in China. Given that the panda is seen as a symbol of U.S.-China political cooperation, Zoellick’s staff pondered beforehand how the Jing Jing-Zoellick photo-op might be construed. Zoellick

had a personal reason for going ahead with it, however: His wife, Sherry Ferguson, a novelist as well as an amateur ornithologist and animal lover, wanted a picture of him with the cub.

After his resignation from State in 2006, Zoellick went back to the private sector, becoming vice chairman of international operations at the investment firm Goldman Sachs, and chairman of the bank’s international advisers. But soon the call came to head up the World Bank, where he has taken on wave upon wave of fast-breaking challenges.

This spring, media worldwide quoted Zoellick’s comments that 2009 will be “a very dangerous year”—that the global economy is shrinking for the first time since 1945 (by 1 to 2 percent) and trade has suffered its greatest drop in 80 years. “These are dangerous numbers,” he said. He co-wrote a *Washington Post* piece calling for the United States and China to team up as the “G-2” and “become the engine” for the Group of 20’s efforts to fix the global economy. He also gave a speech warning G-20 leaders their stimulus programs would be no more than a “sugar high” unless supported by decisive steps to get the credit system working again.

Leading up to the G-20’s April meeting in London, Zoellick met with Prime Ministers Gordon Brown and Kevin Rudd, with the G-20 finance ministers in Rome and with Chancellor Angela Merkel in Germany. His goal was to use the London Summit to

lay the groundwork for the G-8’s summer meeting, including partnering with the G-20 to develop multibillion-dollar funds to rebuild trade liquidity in developing countries, and to help stabilize the reeling banking system of Central and Eastern Europe.

The London Summit concluded with G-20 leaders including Obama committing to a \$1.1 trillion package to tackle the global crisis. Many priorities Zoellick has championed were funded, including \$250 billion to boost global trade, beefing up the International Monetary Fund’s budget to \$750 billion and providing \$100 billion to the poorest countries.

On the heels of that meeting, Zoellick was already focusing on his next travels, to East Asia. One of the histories he was taking along was Mike Rapport’s “1848: Year of Revolution.” He’d also packed his running shoes. For many years he was a cross-country and marathon runner (his best time is 2:32). While he no longer races, Zoellick particularly likes to run when he travels. “It’s the one time I break free of officialdom and meetings,” he noted. Those early-morning runs let him more fully “see and sense” his foreign locale.

After 25 years, Zoellick is at home in every time zone. His connections and collaborations span the globe. Throughout his career, the World Bank president says his approach has been to “be straight, honest, direct. When people think of negotiations, they tend to see them as one-offs. I don’t. If we work together, we share the credit, and we build the basis to solve other problems in the future.” \*


**HE LIKES TO VISIT OLD BATTLEFIELDS AND THINK OF “STRATEGIES AND TACTICS IN THE MIDST OF CONFUSION.”**

# Executive

BY SETH STERN '01

# Counsel

*MEET THE  
PRESIDENT'S  
NEW LAWYERS—  
AND **THEIR** NEW  
LAWYERS*



No one was a more tireless lawyer for the president during the Clinton administration than Elena Kagan '86. One night, when she worked in the office of the White House Counsel, she stayed on the phone until 2 a.m. trying to persuade Walter Dellinger—then the head of the Department of Justice's Office of Legal Counsel, and later the acting solicitor general of the United States—to change his mind about a legal issue. Dellinger—who was a visiting professor at Harvard Law School this year—recalls that when he told Kagan that he wasn't persuaded,

# A 'FEDERAL TRIANGLE' OF EXECUTIVE-BRANCH LAWYERS

## OFFICE OF COUNSEL TO THE PRESIDENT (White House Counsel)

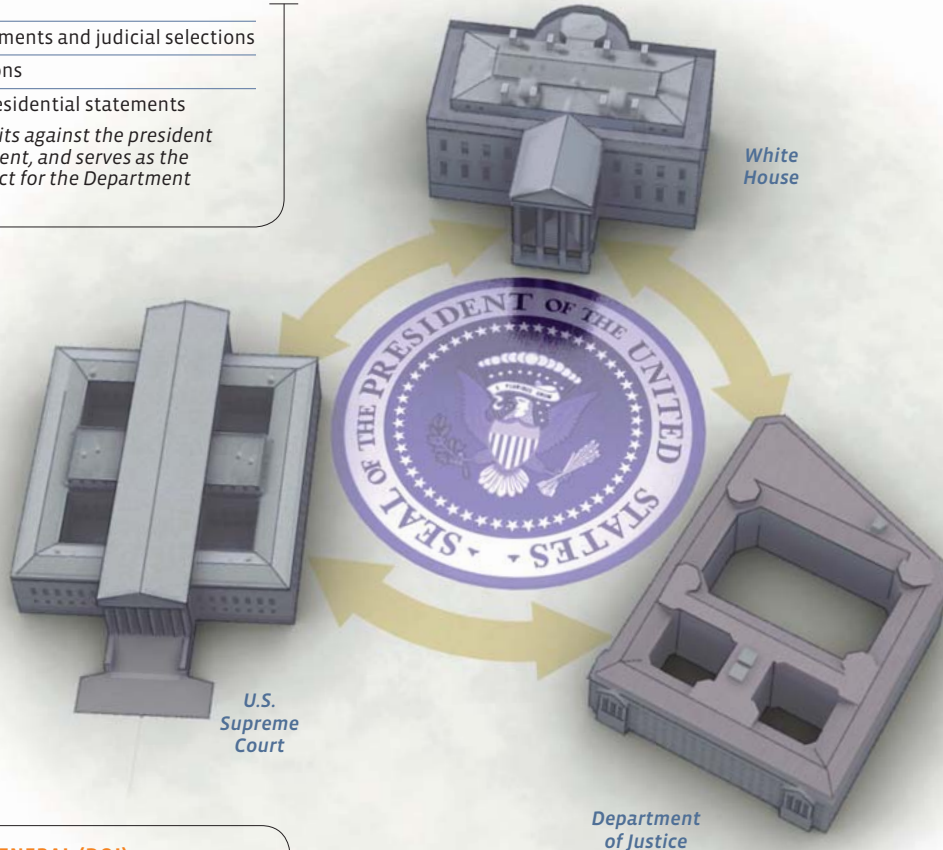
Advises on:

- >all legal aspects of policy questions
- >legal issues arising from the president's decision to sign or veto legislation
- >ethical questions, financial disclosures, and conflicts of interest during employment and post employment
- >the line between official and political activities
- >executive appointments and judicial selections
- >presidential pardons
- >legislation and presidential statements

*Also handles lawsuits against the president in his role as president, and serves as the White House contact for the Department of Justice*



**Daniel J. Meltzer '75**  
PRINCIPAL DEPUTY  
WHITE HOUSE COUNSEL



## U.S. SOLICITOR GENERAL (DOJ)

- >Conducts government litigation in the U.S. Supreme Court
- >Determines the cases in which Supreme Court review will be sought by the government and the positions the government will take
- >Reviews all cases decided adversely to the government in the lower courts to determine whether they should be appealed and, if so, what position should be taken
- >Determines whether the government will participate as amicus curiae, or intervene, in cases in any appellate court



**Elena Kagan '86**  
SOLICITOR GENERAL  
OF THE UNITED STATES

## OFFICE OF LEGAL COUNSEL (DOJ)

- >Provides written opinions and oral advice in response to requests from the counsel to the president (White House) and all executive-branch agencies, especially on constitutional questions
- >Reviews pending legislation for constitutionality
- >Reviews all executive orders
- >Serves as "general counsel" for the Department of Justice



**David Barron '94**  
PRINCIPAL DEPUTY  
ASSISTANT ATTORNEY  
GENERAL



**PRE-EXISTING RELATIONSHIPS BETWEEN  
HLS FACULTY WHO ARE NOW SERVING THE  
PRESIDENT COULD PROVE INVALUABLE  
AS THEY ENTER TRICKY TERRAIN WHERE  
OTHERS HAVE STUMBLLED.**

she replied: “I thought that would be your conclusion, but the president deserved the best shot.”

The anecdote lays bare the kind of advocacy that can occur between executive-branch lawyers—including the White House counsel, the attorneys in the Office of Legal Counsel in DOJ and the solicitor general—to prevail in shaping an administration’s positions on important legal issues. Although the lawyers who hold these offices serve very different functions, there are times when all of them weigh in on the formulation of the administration’s positions on questions of statutory and constitutional interpretation. How disagreements are resolved can make or break the executive’s effectiveness in dealing with critical questions of legal policy—as was seen in the last administration when fissures between executive-branch lawyers erupted over the legality of antiterrorism measures.

Last year, Dellinger and Kagan recounted that long-ago phone call while sitting together on a panel at the American Constitution Society’s annual convention in Washington, D.C., when Kagan was dean of Harvard Law School. Now, Kagan has returned to the executive branch, this time as solicitor general herself. And the next time she finds herself on a late-night phone call with a White House lawyer, it might be her HLS colleague Daniel J. Meltzer ’75 on the other end of the line. President Barack Obama ’91 tapped Meltzer to be the second in command of the White House counsel’s office. And occupying the number two spot in the Office of Legal Counsel is another faculty colleague, David Barron ’94.

Their pre-existing relationships could now prove extremely valuable as they venture into the tricky terrain in which their predecessors sometimes found themselves at odds over legal opinions or recommended courses of action. “It is a striking constellation of professors from the law school going into these key slots in the administration,” said Lincoln Caplan ’76, whose 1987 book, “The Tenth Justice,” detailed the history of the solicitor general’s office. “They begin

with goodwill, a close working knowledge of each other and the intellectual capacity to make the argument about why something should be the prerogative” of their office.

P

RESIDENT FRANKLIN D. Roosevelt is as responsible as anyone for there being competing centers of legal advice within the executive branch. It was Roosevelt who issued the executive order creating the predecessor of today’s Office of Legal Counsel. As the Justice Department grew, attorneys general began delegating their legal advisory function to the OLC.

Roosevelt also appointed Samuel Rosenman, his friend and longtime adviser, as the first “counsel to the president.” Rosenman, like most of the men who initially followed him in the job, stuck mostly to writing speeches and offering political counsel rather than serving as a formal legal adviser.

But like most White House offices, the Counsel’s size and responsibilities grew with time as presidents sought greater control over legal policy. That trend only accelerated during the Watergate scandal and the years that followed.

Today, the White House counsel’s lawyers do everything from overseeing presidential nominations and appointments and teaching White House staff about ethics rules to responding to congressional investigations and advising on presidential power.

President Obama has stocked his White House counsel’s office with an unusually large number of lawyers—many of them Harvard-trained. In addition to Meltzer, there are three other deputies, each charged with specific policy areas. The deputy counsel for ethics and government reform is Norman L. Eisen ’91. Among the 18 or so other lawyers in the office are two other alumni: Danielle Gray ’03 and Blake Roberts ’06.

The size of the office has prompted questions about whether the new administration plans a broader role for the White House counsel. Meltzer said rumors of empire building are “greatly exag-

gerated” and suggested that the role of the office will not be substantially different from what it has been in previous administrations. A big part of that role, he said, is vetting prospective appointees to ensure that they comply with the administration’s ethical standards. Another major part of the job now involves answering legal questions surrounding counterterrorism, he added.

For the most part, the White House counsel has had a symbiotic relationship with the Justice Department’s Office of Legal Counsel—never more so than at the start of new administrations. New White House lawyers literally find themselves starting from scratch, as Meltzer learned his first day there in January. “There are no files, no manual, no records, no people with institutional memory,” he said.

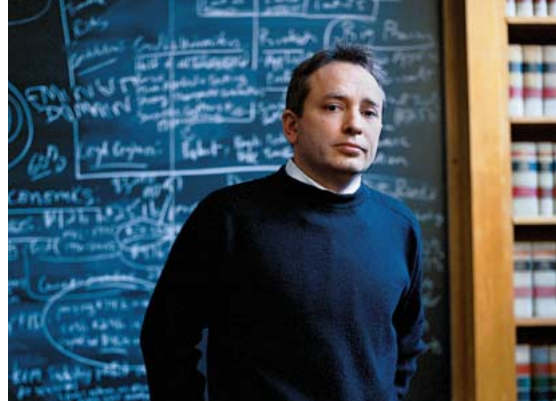
Jennifer Brosnahan McIntyre ’98, an associate White House counsel under President George W. Bush, said her office often sought legal advice from OLC, where some of the lawyers stay through the changeover in administrations. “We were new to many issues we encountered, while OLC had subject-matter experts and institutional knowledge that we could draw upon.”

Nelson Lund, who served in both the OLC and the Office of the White House Counsel under

President George H.W. Bush, described the relationship this way: “Think of the president as the CEO, and the White House counsel as his in-house counsel. The Office of Legal Counsel is the outside counsel they call upon for help with legal questions.” Just as a law firm hired by a company is expected to exercise independent judgment, so too should OLC, Lund said.

In fact, OLC lawyers have historically prided themselves on their independence. Not that they view themselves as existing independent of the executive branch or the president’s ultimate authority. Rather, they see their function as providing detached and apolitical legal advice, said HLS Professor Jack Goldsmith, who headed the OLC for 10 months during the second Bush administration. In his book “The Terror Presidency,” he wrote: “Legal advice to the President from the Department of Justice is neither like advice from a private attorney nor like a politically neutral ruling from a court. It is something inevitably, and uncomfortably, in between.”

Ideally, lawyers at the OLC feel free to inform the administration if its plans don’t comport with the law. “They will respect you more in the morning if you tell them no,” Dellinger told the Ameri-



RICHARD SCHULTZ

**DAVID BARRON** is on leave from the HLS faculty to occupy the number two slot in the Office of Legal Counsel.

## Conferring on the Importance of Independence

In May, at a conference on judicial independence held in Washington, D.C., U.S. Solicitor General Elena Kagan chatted with retired Supreme Court Justice Sandra Day O’Connor during a break. In a keynote address, Kagan described her role as part of the administration but stressed that she is also answerable to Congress—whose legislation she is called upon to defend in the Supreme Court—and to the Court itself.



GETTY IMAGES

**ACCORDING TO JACK GOLDSMITH,  
ADVICE TO THE PRESIDENT FROM THE  
DOJ ISN'T LIKE ADVICE FROM A PRIVATE  
ATTORNEY OR LIKE A COURT RULING BUT  
"UNCOMFORTABLY IN BETWEEN."**

can Constitution Society last year. That isn't necessarily the end of the conversation, though, said Randolph Moss, who headed the OLC during the Clinton administration. After saying no, OLC lawyers must be willing to work with the White House to achieve its goals in a manner consistent with the law.

But that healthy interplay broke down during the last administration when it came to some of the most sensitive questions related to the war on terror.

In "The Terror Presidency," Goldsmith detailed how, before he took over the top job, some OLC lawyers had sacrificed the quality of legal reasoning in order to reach results desired by the White House. If there's a single symbol of the consequences, it is an August 2002 OLC memo—written before Goldsmith took the helm—on enhanced interrogation techniques and the legal definition of torture. (Goldsmith directed that the memo be withdrawn.)

Partly in reaction to that memo, in December 2004, 19 former OLC attorneys issued a set of 10 principles which, they suggested, should guide the office. Rather than "simply provide an advocate's best defense of contemplated action," the authors recommended, "OLC should provide an accurate and honest appraisal of applicable law even if that advice will constrain the administration's pursuit of desired policies."

The principles' signatories included Barron, who had worked at OLC as an attorney adviser between 1996 and 1999.

Recently, President Obama ordered the public release of Bush-era OLC memos on interrogation techniques. The decision indicated the new administration's determination to restore accountability through more transparency. It also signaled the administration's view of what can go wrong when OLC lawyers abandon their ethos of independence.

Like the OLC, the solicitor general's office—the executive branch's principal advocate in front of the Supreme Court—has historically had its own ethos of independence, one

that is most famously summed up by Francis Biddle LL.B. 1911, who, after holding the job, declared, "The solicitor general has no master to serve except his country."

But HLS Professor Charles Fried, who was solicitor general under President Reagan, said that despite this ethos, "there's no question the attorney general is the solicitor general's boss." Usually, he said, the attorney general will "find it best to rely on the solicitor general's judgment, and to cede to that judgment, but he absolutely does not have to."

The challenge for all solicitors general is complying with the wishes of the administration in which they serve while maintaining their credibility before the Supreme Court, said Jamie Gorelick '75, who served as deputy attorney general under President Clinton.

Kagan took note of that challenge in May when she gave the keynote address at a Georgetown University Law Center conference. According to *The Washington Post*, she said the solicitor general is obviously part of the executive branch, and the president has an appropriate role in the office's decision-making. But she added that she also has an obligation to defend the work of Congress, even if the administration disagrees with it, as well as to be "scrupulous in every representation to the Court."

"It's not that there are no masters, but that there are many," Kagan said. "And the job of the solicitor general is to balance those masters and to accommodate them all, each in their proper places, wisely and well and in so doing to represent the people of the United States."

Moss worked regularly with Kagan when she served in the White House, and predicts she will have no trouble maintaining the right balance between those various roles. "The fact that Elena has been in the White House and seen it from that side will put her in a good position for dealing with the White House," he said.

ORELICK SAID HER position as deputy attorney general made her the traffic cop between the

G



Justice Department lawyers and White House counsel. The forum was usually a weekly meeting between senior officials. (In the new administration, the “DAG” post is held by David W. Ogden ’81, who, like Gorelick, was until recently a partner at WilmerHale.) Such meetings provided an opportunity for White House and DOJ lawyers (including OLC lawyers and the solicitor general) to discuss and argue policy—much the way Kagan lobbied Dellinger in that late-night phone call when she worked in the White House and he was at OLC.

“It’s a veritable seminar weekly between the White House and Justice Department,” Gorelick said. “Just think of all the brain power.” During the Reagan years, recalled Fried, there was a similar senior staff meeting “with the attorney general, DAG and the AAGs [assistant attorneys general] which the solicitor general attended, and all sorts of things were discussed,” but it was held daily, not weekly.

In addition to working out the rules of the road for shaping policy, every new administration must also define how the Justice Department and White House counsel’s office will interact in other situations. An important early step is the formulation of a memorandum of understanding that guides who can contact whom, particularly regarding criminal investigations. Most administrations usually try to limit who at the White House can contact the Justice Department, in order to avoid the appearance of political interference, Gorelick said. (A number of observers in Congress have pointed to the firing of nine U.S. attorneys during the last administration—allegedly for political reasons—as an example of why such rules are needed, and must be followed.)

In March, Meltzer said the new administration’s version of that agreement was being finalized and that “our office and the attorney general and deputy attorney general see eye to eye about the importance of this policy.”

“When there are matters of great consequence

about which the law is anything but clear, the White House may have an entirely appropriate role in the formulation of the

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position of the United States that the department will advocate,” said Meltzer. “But it is vital to avoid the possibility or even the appearance of inappropriate interference by White House officials in matters before the department.”

NO MATTER WHAT’S written down or on the agenda of weekly meetings, much remains undefined by any structure, formal or informal, and is “ad hoc,” said Rachel Brand ’98, who served as an associate White House counsel under President George W. Bush and later in

a senior position in the Justice Department.

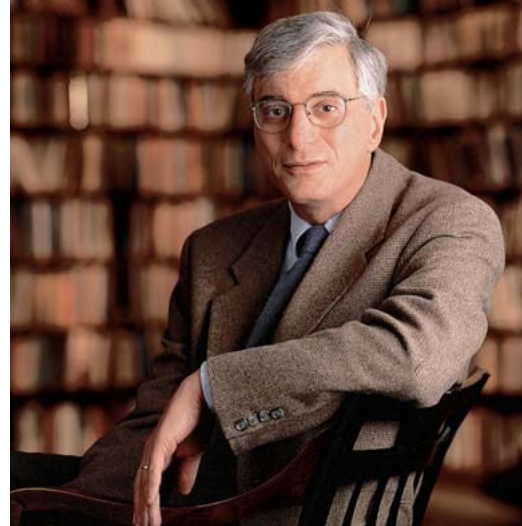
Similarly, Goldsmith added: “A lot of these relationships are built on trust or lack of trust. If people know each other as colleagues from a prior life, they’re more likely to get along in this capacity.”

Meltzer said he’s been on the phone with Barron almost every day since the new administration took office. He had his first telephone call with Kagan in her official capacity as solicitor general one day after she was confirmed in March and met with her in person a week later.

Meltzer was also in the audience at her February confirmation hearing along with Fried, Goldsmith and other faculty members, whom Kagan identified for the committee as her “little bit of family from Cambridge.”

Said Meltzer later: “Anyone in the counsel’s office would be thrilled to have them as colleagues, but it is an added benefit for me that both are close friends.” \*

FOR A WEBCAST of the confirmation hearing on Elena Kagan’s nomination as U.S. solicitor general, go to <http://judiciary.senate.gov/webcast/judiciary02102009-1000.ram>.



GEORGE SIMIAN

**DANIEL MELTZER**, second in command at the White House counsel’s office, has taught at HLS since 1982.



## Waking to the Threat Matrix

**FOR THE LAST** four years, Juan Zarate '97 has not gotten very much sleep. As the deputy assistant to the president and deputy national security adviser for combating terrorism, Zarate spent countless hours poring over the National Counterterrorism Center's threat matrix.

The information in those documents—dozens of potential plots, organized according to imminent danger—would be enough to cause most people to panic. Yet, Zarate, who reviewed updates first thing in the morning and right before going to sleep each night, dealt with it all with a sense of calm.

From the White House, Zarate led the U.S. government's counterterrorism community, ensuring that suspected threats were addressed and longer-term strategies were developed and implemented. "One part of my job," he explained coolly, "was to make sure that the national security adviser and the president were aware of the serious tactical and strategic threats that were evolving and what we were doing about them."

In June 2005, Zarate became the fifth White House terrorism czar since President Bush took office in January 2001—a sign that the storms of this job were not easily weathered. Yet, he not only "rode it out" until Jan. 20 of this year; he flourished in what he calls the "job of a lifetime."

Zarate got his first taste of terrorism cases shortly after law school, when, through the Justice Department's honors program, he worked in the Terrorism and Violent Crimes section, assisting Patrick Fitzgerald '85 and the team investigating the 1998 U.S. Embassy bombings in Tanzania and Kenya as well as assisting in the investigation of the 2000 bombing of the USS Cole—attacks perpetrated by al-Qaida.

In 2001, when the Bush administration was just taking office, Zarate was offered a job in the Treasury Department, managing the international dimensions of its enforcement work. Three weeks into it, the Sept. 11 attacks happened. Suddenly Treasury was given a mandate to drive a campaign against financing of terrorism, focused on al-Qaida. Zarate became an important part of the leadership team.

By 2003, with the creation of the Department of Homeland Security, "much of the

classic Treasury enforcement functions were gutted," Zarate said. In charge of the remaining parts of the department's domestic and international enforcement and regulatory work after the reorganization—such as economic sanctions and asset forfeiture programs—he was "left to recraft what the mission looked like."

Zarate and his team's work led to the creation of Treasury's Office of Terrorism and Financial Intelligence, "fashioning," he said, "a new way of thinking about how to use financial power" to influence issues of national security.

After almost four years at Treasury, Zarate was asked to become the deputy to then National Security Adviser Stephen Hadley. This time, he had a much larger portfolio, coordinating the government's counterterrorism strategy and efforts against other transnational threats, such as maritime security, piracy, hostage-takings, organized crime and gangs. He continued to serve as the White House's threat adviser.

"The most troubling part of the job, actually, is what you *don't* know," Zarate said. "Often you see in the threat advisories, 'The U.S. government does not have specific information about a particular attack or a site.'"

To try to fill in the gaps in intelligence and to get ahead of the enemy, Zarate said he spent a lot of his time reading between the strategic and tactical lines—trying to fit together a series of factors and conditions that might at first seem unrelated.

Even though this sounds like an international search for the proverbial needle in the haystack, Zarate said that there is a much

greater understanding of terrorism than there was immediately after Sept. 11, and that there

are factors, such as certain geographic conditions or information related to personalities within terrorist organizations, that lead to the identification of a threat.

Inside the White House, Zarate worked to change the government's approach to fighting terrorism. The new strategy, as detailed in a 2006 report, took into direct account, he said, that we are engaged in "an ideological battle against a global movement," but



JUAN ZARATE worked to change the White House approach to fighting terror.

attempted to shift how that battle is waged. "That entailed starting to do everything possible to empower credible voices in Muslim communities around the world, to help network them, and to support countermovements to violent extremism."

This "reshaping" of strategy has given the new administration a "leg up" on counterterrorism efforts, said Zarate, who resigned his post in January and is now a senior adviser at the Center for Strategic and International Studies and serves as senior national security consultant and analyst for CBS News. "The new president has a huge opportunity to reframe ... the question of whether or not Muslims around the world ... perceive the U.S. to be at war with Islam."

Despite all he accomplished in the policy arena, Zarate said one of his happiest moments came on July 2, 2008, when three American hostages, along with 12 others including Colombian politician Ingrid Betancourt, were rescued from the jungle, where they had been held by the Revolutionary Armed Forces of Colombia for more than five years. Zarate, who served as the White House coordinator for U.S. support to the rescue, said, "I was literally crying because I was so happy."

—EMILY DUPRAZ



## A Plane Crashes—and a Compensation System Takes Flight

**“LATE JUSTICE IS** not Justice, but manifest injustice,” wrote Ruy Barbosa de Oliveira (1849-1923), perhaps the most prominent jurist and statesman in the history of Brazil. I was struck by these words during my first year of law school in São Paulo. They haunted me during my years of litigation practice, and were ever-present in 2007, in the aftermath of the largest aircraft accident in the history of Latin America.

On July 17, 2007, TAM airlines Flight 3054 lost control and crashed into a building in the heart of São Paulo, killing 199 people. In an instant, hundreds of potential lawsuits were created.

In Brazil, the process of providing compensation and relief to the beneficiaries of victims of mass disasters typically resembles a long, painful crusade. Lawsuits for compensation of this kind last an average of 14 years. I knew there had to be a better way. And, in fact, I’d caught more than just a glimpse of it the year before, when I was a student at Harvard Law School.

Professor Robert Bordone [’97] and Professor Emeritus Frank E.A. Sander’s [’52] Dispute Systems Design class helped me to see that a hard-headed, yet creative approach to lawyering could help transform seemingly intractable problems, giving people better, more just outcomes in a shorter period, with more stakeholder participation.

When the TAM plane crashed, I had been working as chief of staff at the Secretariat of Economic Law of the Ministry of Justice for three months. I

was determined that DSD could be used to advance the inter-

### **Lawsuits for compensation of this kind average 14 years.**

ests of the families of those who lost their lives and to avoid the enormous costs that would have been borne by the already taxed Brazilian court system. I took it upon myself to propose an unprecedented compensation strategy for the beneficiaries of the victims. It took some persuading; the project involved many political risks. For one, the government would have to face the awkward discussion about the price we put on human life and the inadequacy of our compensation system. But the possible benefits outweighed the risks. I was given the go-ahead and began the next step, persuading stakeholders to design and participate in a



sophisticated alternative dispute resolution system for the resolution of claims.

There, too, I was met with substantial skepticism and resistance. The airline and insurance companies were unwilling to try a new approach on an accident of such magnitude. Some attacked me for being overly academic. Companies that had supported the idea at first then rejected it completely. Many family members continued to distrust the airline. After nine months of negotiation over the design of the system, the beneficiaries of 80 victims decided to pursue their claims in court, rather than through ADR.

But I persisted, and the “Câmara de Indenização 3054”—the first-ever Brazilian claims resolution facility—was opened on

April 24, 2008. It featured an assistance division, staffed by people hired and trained by me to assist the beneficiaries in filing their claims. Neutral representatives were present at every meeting the family members had with the companies. We also created an advisory arbitration committee, in which the public authorities would issue nonbinding opinions to help the parties resolve their disputes. This reduced the distrust and unrealistic expectations among the beneficiaries, while protecting them from eventual opportunistic offers from the airline and insurance companies. One year after we opened the facility, 200 people—the beneficiaries of

around 55 victims—were compensated. We also assisted the beneficiaries in litigation, leading 90 percent of them to settle.

The new system has received much attention and is widely viewed as a success. The legal counsels of the airline and the insurance company said they spent less on legal fees and more on compensating families than they would have under the old model, solving the problem as a whole with fewer costs. Family members reported that the system’s transparency and impartiality helped them get through their ordeals with more tranquillity.

CI 3054 is a milestone in the development of DSD, negotiation and ADR in Brazil. It offers a real-life example of how it is possible to fix complex problems by changing the way you think about and practice law. The case has inspired others in Brazil to consider the creation of other claim resolution facilities like CI 3054, not only for new mass tort dispute cases, but also for other cases where citizens struggle for compensation for 10 or even 20 years in the courts.

I am now participating in a government commission proposing an entire section on ADR in a legislative bill that aims to reform class-action procedures in Brazil. I hope my efforts—in this case and future ones—will help advance the best practices of ADR in Brazil and make sure that timely Justice, true Justice in the words of our statesman, is seen more often in the country. ✱

## A Year of Living Dangerously

**“FROM 2007 TO** 2008, the number of civilians killed in Afghanistan’s ongoing conflict rose 40 percent, according to U.N. figures.” So begins the report co-written by Erica Gaston ’07, with Rebecca Wright, during Gaston’s Henigson Fellowship year in Afghanistan, which started in January 2008. The report, published by the Campaign for Innocent Victims in Conflict, vividly depicts the scale of civilian suffering in the country: “For every civilian killed, as many or more are injured, or lose their homes or livelihoods. Affected families struggle to rebuild their lives for years and sometimes generations after an incident.”

During her fellowship year, Gaston traveled around the country, interviewing Afghans in their homes, “sharing some tea with them or some bread and listening,” gathering their stories of family members killed or wounded and tabulating the assistance made available to them by the warring parties. While Gaston and Wright’s research showed that “compensation and victim assistance are both possible and practical,” they also found that “a significant number of civilian survivors of combat operations receive no help from international forces, and those that do often find it is too little, too late.”

One boy Gaston interviewed for the CIVIC report had lost his legs in a cluster munitions explosion. He had not received any assistance, even though he was permanently disabled, and had been advised to talk to the Provincial Reconstruction Teams and other government officials for help. But, he said, “because I cannot walk, ... I cannot go like you and others to meet with people to tell them what happened to me.”

When the report was released in February, it received significant attention, and Gaston played “talking head for a week on BBC, Al Jazeera, CNN International, Voice of America and other media outlets, [and made] presentations at think tanks and on the Hill,” she recalled. In the last week of her fellowship, Gen. David Petraeus, head of U.S. Central Command, sent her a personal invitation to meet with him. She flew back again from Kabul to Washington, D.C., and found Petraeus “very receptive” to the report’s findings and recommendations.

### **For civilians, it was often too little, too late.**



ERICA GASTON traveled the country interviewing Afghans in their homes.

The report stated that “2008 proved to be one of the deadliest years for civilians since the conflict began,” and, especially in the fall, Gaston was affected by the increased violence. “There were a couple of incidents back to back,” she recalled, including the near-kidnapping of her former housemate. “There was this tension in the air. There was a lot of targeting.” Many people scaled back travel, and Gaston counted herself lucky that by then she had finished most of her research.

But Gaston spoke of her time in Afghanistan as a year of “trust-building”—trust in her ability to handle the security risks and to figure out whom she could rely on. Back in her family home in New Orleans for a visit, she joked that her mother, too, had been affected: “She’s built a little bit more of a tolerance for insecure zones than maybe she would like.”

In April, Gaston accepted a position with the Open Society Institute that will take her back to the region. Her new job will focus more on advocacy and networking with other NGOs—CIVIC among them—on civilian casualty issues in Pakistan and Afghanistan, including victim compensation. She said she will be “shuttling between D.C. and Kabul and Islamabad quite a bit,”



working both with policymakers and on the grassroots level.

Looking back on the results of her fellowship year, Gaston felt that she had been able to make some small changes, helping one family at a time, and give them voices on the international stage. She also expressed affection for the people she had met. “If I look back at the hundreds of pictures that I have, I can remember each family. I can remember what that living room looks like ... that was the one where I started to tear up, or that was the one where the host decided to feed me meat with his hands!” she said, laughing and sounding surprised at the memory.

—LIA OPPEDISANO



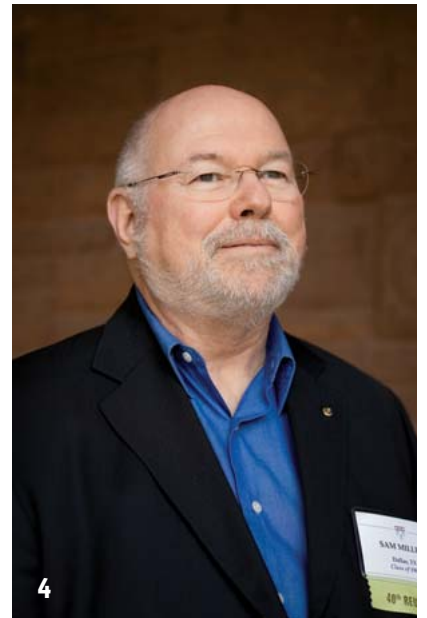


# Fancy meeting you here!

## *Spring Reunions: Finding old and new friends*

PHOTOGRAPHS BY KATHLEEN DOOHER

**1.** Edith Bertoletti LL.M. '99 and daughter Carolina **2.** 1999 classmates Simone Z. Boayue-Gumbs, Truc-Linh Nguyen, Arianne Callender **3.** 1969 classmates Sam Ericsson, Geoffrey Shepard **4.** Sam Miller '69 **5.** Pamela Phillips '84 **6.** 1974 classmates W.m. Ollie Ligon, Maurice White, Sheila Trice Bell **7.** Wesley Fastiff '59 **8.** 1999 classmates Zeeshan Zaidi, Caryn Groce **9.** 1984 classmates Ghislain Gouraige, Lisa Gillespie Jenkins, Robert Reed **10.** 1959 classmates David Maher, Bob Ely, Bill Lawlor, Joseph Steinberg **11.** 1969 classmates Joyce Wood, Edward Haber **12.** 1999 classmates Liz Sitnick Balfour, Eynav Sheinfeld Epstein, Avi Weitzman







# In Memoriam

## OBITUARY INFORMATION

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

**1920-1929 HARRY L. KOZOL '27-'29** of Boston died Aug. 27, 2008. A nationally known neurologist who helped establish the fields of forensic psychiatry and neuropsychiatry, he died at the age of 102. He built his reputation as one of the country's premier experts in brain disorders, and in 1965 the commonwealth of Massachusetts asked him to establish a first-of-its-kind treatment center for sex offenders. He wrote widely on medical testimony and legal issues involving mentally ill patients charged with crimes. In 1967 he evaluated Albert DeSalvo, who confessed to the Boston Strangler murders, and later he was hired by the Justice Department to examine the heiress Patty Hearst, who was kidnapped in 1974 and claimed to have been the victim of coercion when she participated in a bank robbery during her kidnapping. Dr. Kozol disagreed, saying Ms. Hearst acted on her own free will; the jury later agreed and convicted her of bank robbery. He spent decades diagnosing and treating brain injuries and brain tumors at Massachusetts General Hospital and Boston City Hospital. He also served as Eugene O'Neill's doctor in the last years of the playwright's life.

**1930-1939 HART D. LEAVITT '32-'33** of Andover, Mass., died Oct. 10, 2008. He was a member of the Phillips Academy English department in Andover from 1937 to 1975. He also taught at Harvard and Tufts, and was the author of three books, including "Stop, Look and Write." He played the tenor saxophone and the clarinet.

**GERALD BLUMBERG '34** of Yorktown Heights, N.Y., died Jan. 23, 2009. After law school, he briefly worked with the Depression-era New York State Mortgage Commission before launching an independent law office. In 1977, his son joined him in practice at Gerald & Lawrence Blumberg, which recently celebrated its 30th anniversary. He devoted more than 35 years of service to Israel's Weizmann Institute of Science.

**WINSTON B. MCCALL '35** of Birmingham, Ala., died Dec. 12, 2008. He practiced law with McCanliss and Early in New York City before moving to Birmingham to partner with Pritchard, McCall and Jones. He was lead counsel for Coach Paul "Bear" Bryant, who sued *The Saturday Evening Post* for libel. McCall wrote "One Lawyer's Case Load," a history of his important state and federal cases, some of which he appealed to the U.S. Supreme Court. A founding

member of St. Luke's Episcopal Church, he was also a founding member of the St. Andrew's Society of the Middle South, serving as president, and was honored with the St. Andrew's Heritage Award. He was governor general of the Alabama Society of Colonial Wars and a member of the Magna Charta Barons. During law school, he was a winner of the Ames Competition. He served in the U.S. Army for five years during WWII and retired from the Army Reserve with the rank of lieutenant colonel.

**ALVIN D. WIGDOR '35** of Ormond Beach, Fla., died Nov. 27, 2007. He was a partner at Michaels Michaels & Wigdor in New York City.

**PHILLIP A. KENNEDY '36** of Eugene, Ore., died June 23, 2008.

**JOSEPH IRION WORSHAM '36** of Dallas died Oct. 14, 2008. A Dallas attorney, he practiced with the firm Worsham, Burford, Ryburn and Hincks (now Hunton & Williams) and in 1952 was appointed by the Texas Supreme Court as a member of the Board of Law Examiners, where he served until 1968. He was a founding member, vestryman and senior warden of Trinity Episcopal Church, and he served as a deputy to the Episcopal General Convention. He also served as the chancellor of the Diocese of Dallas for many years and was honored with the Layman of the Year award in 1956. His civic contributions included the founding of St. Mark's School of Texas, where he was one of the original trustees, and service on the Town Council of Highland Park, with the Highland Park Community League and at St. Philips Community Center. He served in WWII as a naval intelligence officer based in Galveston, Texas.

**ABRAM T. COLLIER '37** of Peterborough, N.H., and Wellesley, Mass., died Nov. 20, 2008. CEO of New England Mutual Life Insurance Co. from 1966 to 1978, he began his career at John Hancock in 1937, eventually becoming vice chairman of its board. He also served on the boards of New England Telephone, Houghton Mifflin and New England Merchants National Bank and was the president of the Greater Boston Chamber of Commerce and a member of the Vault, which assisted Boston mayors. A 1951 graduate of Harvard Business School's Advanced Management Program, Collier wrote articles for the *Harvard Business Review*, including "Debate at Wickershaw Mills," which won the McKinsey Award. He also wrote several books, among them "Manage-

ment, Men, and Values," published in 1962. A trustee and chairman of the board of overseers of the Boston Symphony Orchestra, he was also a trustee of Wheaton College and the WGBH Educational Foundation. He received honorary degrees from Babson College, Northeastern University, Boston College and Wheaton College.

**JOHN A. MATTHEWS JR. '37** of Brielle and Chatham, N.J., died Sept. 28, 2008. A Newark attorney who specialized in family law, he entered into a partnership with his father in 1938 and practiced at the firm they founded for more than 40 years. He represented Catholic Charities of the Archdiocese of Newark; served as deputy surrogate, acting surrogate, assistant county counsel and counsel to the Welfare Board in Essex County; and also served several terms as president of the Holy Cross Club of New Jersey.

**MARVIN W. LEWIS '38** of Miami died Nov. 12, 2008. He was an attorney for 60 years, beginning his practice in New York. He later moved to Ohio and in 1954 settled in Miami. The last 40 years of his legal career, Lewis practiced with his son at the firm Shorenstein and Lewis, and in 2003 he was honored by the Florida Bar as a 50-year member. After law school, from 1939 to 1945, he served as a special agent with the FBI.

**PHIL E. GILBERT JR. '39** of New York City died Oct. 16, 2008. As an attorney and senior partner at Gilbert, Segall and Young, he represented clients such as General Electric and Firestone Tire and Rubber, and he served as lead outside counsel to Rolls-Royce for the better part of four decades. He successfully represented the chairman of International Telephone & Telegraph, Harold S. Geneen, in 1972, during Geneen's testimony before two U.S. Senate committees, among other investigative bodies, regarding his role in the ITT/Watergate matter. Gilbert ran for the U.S. House of Representatives in 1958 and 1960, losing both times to Republican incumbent Edwin Dooley. During his time at Harvard Law School, he won the Ames Competition in 1939. After law school he was commissioned a second lieutenant in the U.S. Army Reserve, and he was activated in 1941. Gilbert earned the rank of major in Gen. Patton's Third Army in its XII Corps Headquarters, where he coordinated tactical aerial reconnaissance and photography. He was honored with the Bronze Star and the French Croix de Guerre with Silver Star for saving hundreds of French lives.



**PHILIP GOODHEIM '39** of Boulder, Colo., and formerly of Gloversville, N.Y., and Hollywood, Fla., died Oct. 7, 2008. He practiced law in both New York and Florida from 1967 until his retirement in 2004, specializing in military and commercial law, government contracting, estate and trust law, and international commerce. He represented clients before the U.S. Treasury Department, the U.S. Court of Military Appeals and the U.S. Supreme Court. He was president of the Gloversville Rotary and a member of the Gloversville Board of Education, among other organizations. In 1941, Goodheim enlisted in the U.S. Army and served as a purchasing and contracting officer at Drew Field in Tampa, Fla., and after the war he served in the U.S. Air Force Reserve as a lieutenant colonel until 1975.

**FRANK W. HUSTACE JR. '39** of Honolulu died March 26, 2008. A longtime resident of Hawaii, he was in private practice there for 50 years. Known to waive legal fees for businessmen and acquaintances in modest financial circumstances, he was also said to have done estate planning in exchange for taro roots. He served in the cabinet of territorial governors Samuel Wilder King and William Quinn as manager of public lands. He resigned shortly after statehood in 1959, when Quinn was elected the first governor. He served as director of Victoria Ward Ltd., a family holding corporation, from 1949 until the company was sold in 2002. During WWII, he served as provost judge for the Big Island and with the U.S. Army Judge Advocate General's Office. He was a member of the Hawaiian Kennel Club, and his Labrador retriever, Koa, was the first obedience champion in the state. Hustace took cooking classes at the Cordon Bleu Institute in Paris and the King Arthur Flour bakery in Vermont to perfect homemade French bread.

**IRWIN S. RUBIN '39** of Souderton, Pa., died Aug. 25, 2008. He began his practice in Boston but after one year left to work for the federal government, serving as a tax attorney in Philadelphia, Washington, D.C., and the Philippines. In 1952, he returned to his hometown of Souderton, where he practiced with the firm he helped found, now known as Rubin, Glickman, Steinberg & Gifford, until his retirement in 1995. He was a longtime member and president of the Souderton-Telford Rotary Club and founded the club's World-Wide Book Foundation, which has donated more than 100,000 books to 19 countries and 15 American libraries. He also co-founded the Indian Valley Public Library, where he served as president and solicitor. He was the founder of the Souderton Area Scholarship Fund, president of the North Penn Lodge of B'nai B'rith and a board member of the Grand View Hospital Foun-

ation. During his later years, he enjoyed acting in and directing community theater.

**DWIGHT L. SCHWAB '39** of Vancouver, Wash., died Oct. 7, 2008. As trial lawyer, he practiced with the Portland, Ore., office of Hutchinson, Schwab & Burdick for 50 years. He served in WWII with the U.S. Marine Corps in many battles, including Guadalcanal and Okinawa, and was awarded the Bronze Star.

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**1940-1949 FAIRMAN C. COWAN '40** of Worcester, Mass., died Oct. 14, 2008. A longtime resident of Worcester, he worked at the Norton Co. as general counsel and later as vice president, secretary and clerk of the corporation, retiring in 1979. He served as director of Mechanics Bank and, following his retirement, became of counsel to the firm of Bowditch and Dewey until 1990. He helped develop the Plan E/city manager form of government, was appointed vice chairman of the initial Civic Center Commission by the Worcester city manager, and received several honors, including the Isaiah Thomas Award in 1995 and the "Good Guys" award from the Massachusetts Women's Political Caucus in 2005. The same year, a fund was established in his name at the Worcester Regional Research Bureau, which he co-founded. Gov. Michael Dukakis '60 appointed him to the State Job Training Coordinating Council, and he also served as a vice chairman on the board of trustees at Clark University. As a naval intelligence officer during WWII, he helped plan the Normandy invasion and served on the command ship USS Augusta on D-Day. He participated in the Allied occupation force in Bremen and Bremerhaven, Germany, and was involved in the liberation of the Bergen-Belsen concentration camp.

**SOLOMON FRISS '40** of Margate, N.J., died Jan. 22, 2009. A partner for 30 years in the Atlantic City law firm McGhan & Friss, he previously served as legal counsel for the Amalgamated Clothing Workers of America in Vineland, N.J., in the 1950s. He was a member of the Jewish War Veterans. Friss served in the U.S. Army during WWII as a cryptologist in the European theater, and he was awarded the Bronze Star for his participation in the Battle of the Bulge.

**ROBERT C. HAYMAN '40** of Boca Raton, Fla., died Nov. 15, 2007.

**JAMES W. BARCO '41** of New York City, and formerly of Charlottesville, Va., died Nov. 20, 2008. He had an active career representing the United States in the U.N. just before and then during the Eisenhower administration. He began his diplomatic career in 1946, joining the U.S. State Department and serving on the U.S. delegation to the U.N. Good Offices Commission for Indonesia. From 1948 to 1949, he was the acting

deputy U.S. representative to the U.N. Conciliation Commission for Palestine. From 1956 to 1961, he was deputy representative of the U.S. on the U.N. Security Council. In 1961, he became special assistant to the president of Time Inc. He was a founding partner in 1962 of the law firm Barco, Cook & Patton (now Patton Boggs). Later he served as vice chairman of the board of trustees of the American University in Cairo and with the Miller Center of Public Affairs at the University of Virginia. He served in the U.S. Navy from 1942 to 1946.

**DEXTER DELONY LL.M. '41** of Gainesville, Fla., died Oct. 16, 2008. He was a professor for more than 30 years at the University of Florida Levin College of Law. Before his retirement in 1983, he taught, among others, former Gov. Lawton Chiles and former Gov. Reubin Askew.

**GUIDO J. GORES '41** of Cincinnati died June 13, 2008. He was the chief investment officer and vice president of Fifth Third Bank. After law school, he was assigned to the cruiser USS Savannah, which was damaged in the Battle of Salerno and returned for repairs to Philadelphia, where he became the ship's commanding officer. After the war, he returned to Cincinnati to join Lincoln National Bank (now Fifth Third), where he worked until retirement. He was active in many local organizations, including the Cincinnati Tennis Club, University Club, Cincinnati Chamber Music Society and Seven Hills School.

**EMANUEL HABER '41** of Fresh Meadows, N.Y., died Sept. 26, 2008. A trial lawyer and partner in the firm of Weisman, Celler, Allen, Spett and Sheinberg, he served as a longtime judge of New York Civil and Housing Courts and was a six-term president of the Association of Housing Court Judges. He was a decorated WWII veteran who served in the U.S. Army Air Corps.

**THOMAS C. PERKINS '41** of Sacramento, Calif., died July 16, 2008. He was a Sacramento attorney and the last direct descendant of pioneers who settled in the area. The grandson of a Southern Pacific railroad employee, Perkins argued cases for working-class people. In one case decided by the U.S. Supreme Court, he successfully challenged a Southern Pacific policy that forced workers with grievances to accept arbitration instead of suing the company. After retirement, he managed his family's property in the area. He enjoyed horse racing, and owned and drove his own horses in harness races for many years, winning often at Cal Expo, Bay Meadows and Hollywood Park. He served in the U.S. Navy during WWII.

**JOHN A. PRIEST '41** of Shoreline, Wash., died Dec. 31, 2008. He worked as corporate counsel at Simpson Timber Co. in Seattle, and he also served as an equal opportunity



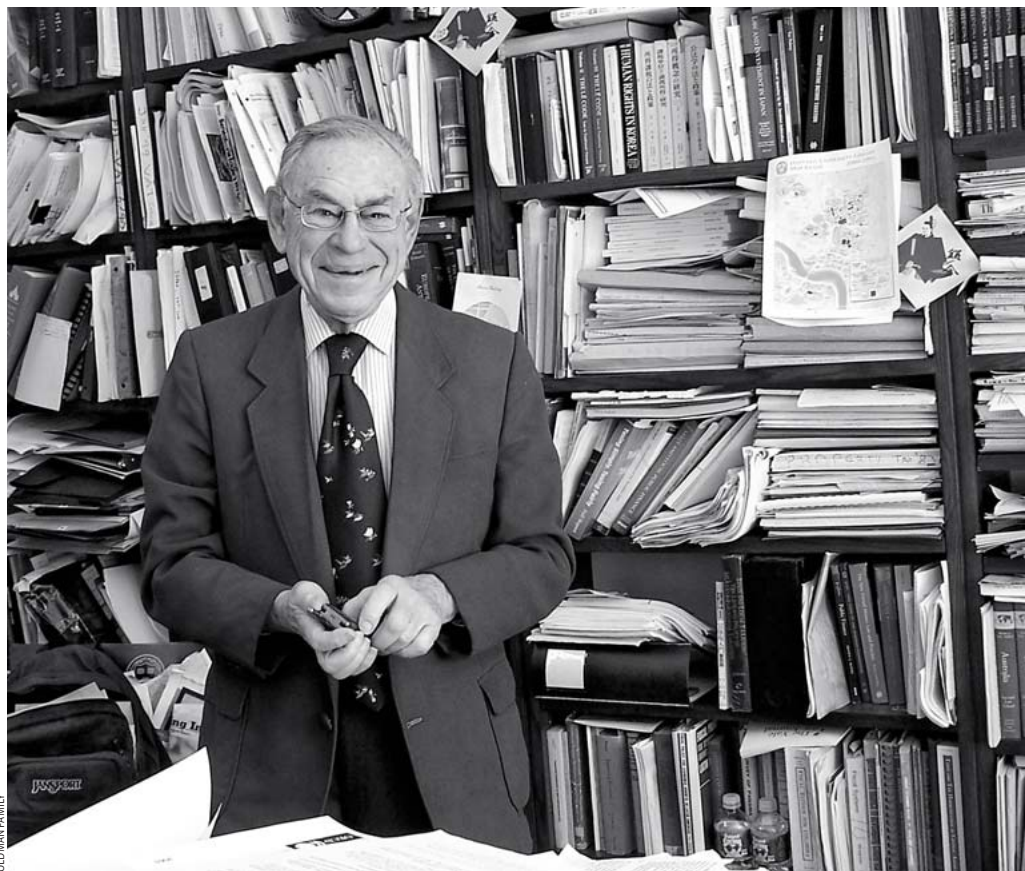
## A Scholar in International Tax, and a Prescient Realist

**OLIVER OLDMAN '53**, *Learned Hand Professor of Law, Emeritus*, died Dec. 5, 2008, at the age of 88. After graduating from Harvard College in 1942, he served in the U.S. Army during World War II and later attended Harvard Law School, joining the faculty in 1959. In addition to teaching generations of law students, he was director of the International Tax Program from 1964 to 1989 and the East Asian Legal Studies Program from 1983 to 1990. Even after retirement in 1993, he continued offering winter-term classes for more than a decade, and then every spring until 2007 (when he was 86) he led a reading group, of which he was especially proud. Until age 79 he was an avid tennis player. He also enjoyed nearly annual round-the-world travel to participate in conferences, visit former students and meet others who would end up becoming his students. The following tribute was written by HLS Professors William Alford '77 and Mark Ramseyer '82, who also wrote about their friend and colleague for the March 2009 Harvard Law Review, dedicated to Oldman.

A self-effacing man, Ollie kept many of his accomplishments to himself. Few knew, for example, that his first major international accomplishments—long before he entered the law—involved earning his trip across the Atlantic by playing clarinet on the Cunard Lines, and then, after World War II, returning the Eiffel Tower to France on behalf of the U.S. Army Signal Corps. Although Ollie would explain that “it was all downhill from there,” he enjoyed an illustrious career as one of the world’s leading scholars of tax administration and law, and as a beloved mentor and colleague.

Ollie’s award-winning scholarship centered on taxation and tax administration, with particular attention to state and local tax and the value-added tax. A prolific scholar, he wrote or edited five casebooks on those areas of tax law, including “Value Added Tax: A Comparative Approach with Material and Cases” (2001), “Taxation in Developing Countries” (4th edition, 1990) and “Readings on Taxation in Developing Countries” (3rd edition, 1975).

From his earliest days on the Harvard faculty, he displayed both an impressive prescience for emerging trends in tax policy



OLDMAN FAMILY

and a realistic appreciation for the prerequisites to effective administrative change. Over the course of his long career, he would advise governments of many countries, including Chile, China, Colombia, El Salvador, Egypt, Jamaica, Japan, Korea, Nepal, Taiwan and Vietnam.

At Harvard Law’s International Tax Program, Ollie trained hundreds of tax officials from across the world, many of whom rose to be ministers, internal revenue commissioners, judges, and leading academics and practitioners. At the East Asian Legal Studies Program, he continued the study of Japanese, Chinese and South Korean law, expanding the program’s emphasis to other countries in what he termed “the Pacific Legal Community.”

Throughout, he was a steadfast, kind and generous teacher—so much so that, for 15 years after taking emeritus status, he continued to counsel students, graduates, and scholars, and to bless HLS with his wisdom.

In 1988, the Japanese government

awarded Ollie the Japanese equivalent of knighthood—the Order of the Rising Sun, Third Degree with Neck Ribbon—for his contributions to the education and training of its tax officials.

Over the course of his career, Ollie was honored by various professional associations with awards and senior organizational and editorial positions. In 2000, he received the National Tax Association’s Daniel M. Holland Medal.

Close friends of Hisashi and Yumiko Owada while Mr. Owada was a visiting professor at HLS, Ollie and his wife, Barbara, acted as parents-away-from-home for the Owadas’ daughter Masako when she studied at Harvard College a few years later. Masako would later marry the Japanese Crown Prince.

As then Harvard Law School Dean Elena Kagan '86 said in a message to the faculty upon the news of Ollie’s passing, “We can all feel grateful to have known this fine human being.” \*

compliance officer for Boeing. After law school, he worked for the Justice Department and later served as a lieutenant in the U.S. Navy during WWII.

**OLIVER C. SCHROEDER JR. '41** of Cleveland died Sept. 25, 2008. A professor of law at Case Western Reserve University, he taught there for 43 years, including five years as acting dean. In 1953 he co-founded and was director of the Law-Medicine Center at Case Western Reserve University School of Law and specialized in criminal law, constitutional law and law-medicine. He served 13 years on the Cleveland Heights City Council, including one term as mayor. He belonged to the Western Reserve Society of the Sons of the American Revolution, which gave him its highest award, the Archibald Willard Silver Trophy. He was also inducted into the Cleveland Medical Hall of Fame in 1999, as a health law educator. During WWII, he served as a radio intelligence translator and interpreter of Japanese, one of only 500 persons specifically recruited to do so. He was a captain and commanding officer in the Naval Reserve.

**MARSHALL M. HOLLEB '42** of Chicago died Dec. 7, 2008. He was a longtime Chicago attorney who is credited with saving the Chicago Theatre from demolition in the 1980s when he organized a group of investors to buy and restore the structure. He served as senior counsel of Wildman Harold and before that was a founding partner of Holleb & Coff and its predecessor firm, Holleb & Yates. A founding trustee and general counsel of the Museum of Contemporary Art, he was also a trustee of Hull House Association and the Arts Club of Chicago. He served in the U.S. Army during WWII in the Philippines and under Gen. Douglas MacArthur during the occupation of Japan, helping to prepare the prosecution of Gen. Tomoyuki Yamashita for war crimes.

**ALAN N. SCHNEIDER '42** of Miami died Nov. 4, 2008. He was the founder and president of Kings Way Mortgage Co., acquired by Pan American Bank in the early 1970s, where he served as executive vice president until retirement. Earlier, he was a city attorney and president of the American Library Association in his hometown of Louisville, Ky. During WWII, he was a lieutenant commander and served as attaché to the head of U.S. naval intelligence in London.

**JAMES D. MALCOLMSON '43** of San Francisco died Sept. 5, 2008. He was an attorney and real estate investor who began his career with Pillsbury, Madison & Sutro as an associate and later had a solo practice in real estate. During WWII, he served as a naval intelligence officer in England, as a decoder, and later at Dartmouth Naval College. After the invasion, he became the communications officer aboard the USS Colbert in the

Pacific, which was mined in the last days of the war.

**JOHN H. MONAHAN '43** of Newton, Mass., died June 28, 2008. He was an attorney for the U.S. Department of Defense focusing on contractor fraud and conflicts of interest. He served in the U.S. Army during WWII.

**ROBERT L. PARK '43** of Potomac Falls, Va., died Dec. 26, 2008. He worked at the Civil Aeronautics Board (now the Federal Aviation Administration) for 28 years as a legal officer. He was a prosecutor, an appellate lawyer and, for 12 years, an administrative law judge, presiding over cases dealing with airline mergers and the allocation of airline routes. Park was the agency's chief judge at the time of his retirement from the government in 1976. Subsequently, joining the Air Transport Association of America as its first travel agent commissioner, he established an office that adjudicated contractual disputes with airline travel agents and heard appeals concerning the accreditation of agents; he retired in 1987. He was a member of the International Aviation Club of Washington. He served in the U.S. Coast Guard during WWII as a communications officer on troop transport ships in the North Atlantic and the Mediterranean.

**SHERMAN M. TONKONOW '43** of Meriden, Conn., died Jan. 3, 2009. A longtime resident of Meriden, he was in private practice there from 1946 to 1999. He served as president of the Meriden-Wallingford Bar Association and was a member of Meriden's first Planning Commission. He was also president of the Meriden Easter Seals Rehabilitation Center and the Temple B'nai Abraham Men's Club. After law school, he took a position in Manhattan with Wendell Willkie, the Republican who challenged Franklin D. Roosevelt in the 1940 presidential election. During WWII, he served in the U.S. Army in the Philippines and New Guinea.

**JOHN L. VANAUSDALL '43** of Caruthersville, Mo., died June 5, 2007. A longtime resident of Caruthersville, he owned a Ford dealership and was chairman of the board for the First State Bank and Trust Co. Active in the community, he was a member of the Pemiscot County Historical Society and the Caruthersville Humane Society. He served on the Caruthersville Public Library Board and established the VanAusdall Family Education Scholarship Fund.

**T. HARRISON "HARRY" STANTON '44** of Jackson, Mich., died Oct. 5, 2008. After law school, he joined the law firm of Rosenberg and Painter (later Stanton, Bullen, Nelson, Moilanen and Klaasen), where he practiced until his retirement in 1992. He served on the boards of several corporations and nonprofits, including the Ella Sharp Museum and its travel committee, and was a member

of the ACLU. He supported the Southern Poverty Law Center and was a member of several Jackson-area ballroom dancing and square-dancing clubs. During WWII, he interrupted his studies at HLS to serve in the U.S. Army as a clerk for a cartography division that prepared aerial maps for the invasion of Japan. After V-J Day he was part of the army of occupation.

**PAUL J. WOODMAN '47** of Washington, D.C., died Aug. 7, 2008. He served as a member of the General Counsel's Office of the Department of Health, Education and Welfare (now Health and Human Services) from the 1960s until his retirement in 1978. He was also a hearing examiner for the Department of Education. Prior to his service in Washington, D.C., he worked for a law firm in Buffalo, N.Y. During his retirement, he studied French, Italian, Spanish and Portuguese.

**ROBERT J. ADDISON '48** of Denver died Jan. 18, 2009. He practiced law in Gary, Ind., from 1950 to 1973, retiring in 1987. He served as assistant city attorney for Hobart and deputy prosecutor for Lake County. He was a president of the Gary Bar Association. He served in the U.S. Army during WWII with the 339th Fighter Group stationed in England.

**DONALD C. ALEXANDER '48** of Washington, D.C., died Feb. 3, 2009. He ran the Internal Revenue Service from 1973 to 1977 and successfully fought off the Nixon administration's attempts to use tax audits and investigations to punish its political enemies. Shortly after becoming IRS commissioner, he ordered the disbanding of a unit of investigators who secretly combed through the tax returns of groups and individuals deemed suspect by the administration. He repeatedly urged Congress to stiffen taxpayer confidentiality laws, which it did in 1976. In the early 1970s, President Nixon's name came up for audit in the agency's randomized process. After Alexander proved that other presidents had been audited, the agency went ahead and ultimately determined that President Nixon owed more than \$400,000 in back taxes and penalties. Alexander was later a partner at Akin Gump Strauss Hauer & Feld, specializing in tax law. He served in the U.S. Army during WWII, and he was awarded the Silver and Bronze Stars.

**JOHN C. CAREY '48** of Austin, Texas, died Nov. 7, 2008. He practiced labor law, first for the National Labor Relations Board and then for Southern and South Central Bell Telephone in Georgia, South Carolina and Alabama. After retirement, he logged more than 16,000 kilometers walking with the American Volkssport Association. He served as an artillery officer in the South Pacific during WWII, fighting at Saipan, Ti-

nian, Okinawa and in the Philippines.

**EDMUND N. "NED" CARPENTER II '48** of Greenville, Del., and Palm Beach, Fla., died Dec. 19, 2008. He was the deputy attorney general of Delaware from 1953 to 1954 and special deputy attorney general from 1960 to 1962. He worked for the Delaware firm Richards, Layton & Finger as an associate and later as partner, director and president before his retirement in 1991. He was president of the Delaware State Bar Association from 1971 to 1972; was a founding board member of Stand Up for What's Right and Just, an organization that advocates for reform for the state's criminal justice system; and was appointed to head Gov. Pierre du Pont's judicial selection committee in the 1970s. He served in the U.S. Army during WWII, where he earned a Bronze Star and the Soldier's Medal after parachuting behind Japanese lines in China to rescue American prisoners. He also earned the Chinese Order of the Flying Cloud, four Battle Stars and the China-Burma-India Theatre Ribbon.

**ROBERT M. FORRISTER '48** of Estes Park, Colo., died Oct. 14, 2008. He served as a district judge for two terms (18 years), and before that he practiced law with Winter and Burgess. After retirement he moved to Fort Collins, Colo., and later to Estes Park. He served in the U.S. Marines in WWII.

**JAMES J. KALLED '48** of Ossipee, N.H., died Jan 11, 2009. After law school, he opened his own law firm in Wolfeboro, N.H., and in 1980 he moved his office to Ossipee. He was a member of the American College of Trial Lawyers and the American Academy of Matrimonial Lawyers. He was also a member of the Morning Star Lodge F&AM, the Wolfeboro Rotary, and the American Legion, and a life member of the NRA. He served in the U.S. Army Air Forces with the 19th Tactical Air Command during WWII. He participated in the invasion of Normandy at Omaha Beach and in the battles of the Rhineland and the Ardennes, among others, and was awarded five major battle stars and the Distinguished Service Medal.

**PETER J. KING JR. '48** of Colorado Springs, Colo., died Jan. 7, 2009. He was an executive for three decades with Colorado Interstate Gas Co. and president from 1977 to 1986. He was a trustee of the Myron Stratton Home, was a member of the Colorado Transportation Department Commission, and served on a number of local, state, and national business, social and charitable boards. He served in the U.S. Army during WWII and the Korean War.

**JULIUS A. LEETHAM '48** of Walnut Creek, Calif., and formerly of Pasadena and San Marino, died Aug. 16, 2008. A Superior Court judge for Los Angeles County appointed by Gov. Reagan, he served for nearly 20 years, including two as supervising judge

of the criminal courts. Active in the Republican Party, he served as chairman of the Republican Central Committee of Los Angeles County, and in 1966 he ran unsuccessfully for California attorney general in the Republican primary. He volunteered with the Boy Scouts of America. He served four years as an officer in the U.S. Army in the South Pacific and was an aide-de-camp to Maj. Gen. Rapp Brush.

**DAVID E. LONG '48** of Pleasantville, N.Y., died Oct. 11, 2008. He practiced corporate and real estate law at various corporations, including Lehn and Fink Products and the Teachers Insurance Annuity Association, where he worked until retirement.

**JOHN ALEXANDER MCMAHON '48** of Durham, N.C., died Oct. 30, 2008. He began his career as professor of public law and government at the University of North Carolina. In 1965, he became vice president of Hospital Savings Association, and in 1968, the first president of North Carolina Blue Cross and Blue Shield. He then moved to Chicago to serve as president of the American Hospital Association for 14 years before returning to Durham in 1986 to take a chairmanship and professorship at the Department of Health Administration in the Medical Center at Duke University. He was chairman of the board of trustees at Duke for 13 years and received its University Medal, and the American Hospital Association established a professorship in health policy and management there in his name. He received honorary degrees from Wake Forest University and Georgetown University. McMahon served in the U.S. Army during WWII in the South Pacific, and he was a member of the U.S. Air Force Reserve from 1946 to 1972, retiring with the rank of colonel.

**STANLEY SEVILLA '48** of Pacific Palisades, Calif., died Jan. 3, 2009. After law school, he moved to California and started a practice, Axelrad, Sevilla and Ross. His career spanned 40 years with a focus on business and real estate matters, and most recently he was a solo practitioner. He served on the board of directors at Caesar's World and the Casper Mills Scholarship Foundation, which provides scholarships for orphans. He was a founding member of the Marquez Knolls Neighborhood Association, once serving as president, and a member of the Pacific Palisades Optimist Club. An avid hiker, backpacker and camper, he hiked to the top of Mount Whitney several times. He served in the U.S. Army Air Forces as a captain from 1942 to 1946. Stationed in Puerto Rico, he briefed bomber crews on how to navigate their way from Puerto Rico to Europe.

**GEORGE C. SHIVELY '48** of Bronxville, N.Y., died Oct. 23, 2008. He was the mayor of Bronxville from 1967 to 1969 and a partner

with the New York City law firm Satterlee & Stephens until his retirement. He served in Eastern France with the 71st Infantry Regiment, 44th division, Corps of Engineers during WWII.

**ROBERT E. HARNEY '48-'51** of Southern Shores, N.C., died May 10, 2008. He retired from the federal government's Department of Health, Education and Welfare (now Health and Human Services) in Arlington, Va. Harney served for 14 years as president of the local AFL-CIO lodge, where he negotiated contracts to improve conditions for workers. He served in the U.S. Army during WWII in the Pacific theater.

**JULIUS PAUL '48-'49** of Fredonia, N.Y., died Sept. 26, 2008. A political science professor at SUNY Fredonia, he was known for his research in eugenics and, in particular, state-sanctioned sterilizations in the United States from 1959 to the early 1970s. He also taught at Ohio State University, Kenyon College, Southern Illinois University and Wayne State University. In the early 1950s, he was a civil rights activist who worked to desegregate restaurants in Columbus, Ohio, and he was an advocate for the mentally ill, serving on the board of visitors of the Gowanda Psychiatric Center. Active in the Fredonia community, he was a member of the Festival Chorus, the Catch Club and the Adams Art Gallery.

**ERNEST LEROY AUTREY '49** of Texarkana, Ark., died Feb. 3, 2009. He was a city attorney and a partner at Autrey & Stewart. He was also a labor arbitrator for the Federal Mediation and Conciliation Service and a commissioner of Uniform State Laws for the State of Arkansas. In addition to serving as chairman of the Advisory Board of the Salvation Army and president of the Texarkana Kiwanis Club, he was a board member of United Way, co-chairman of the Federal Practice Committee for the Western District of Arkansas, a member of the Southwestern Legal Foundation and the Defense Research Institute, and a member of First United Methodist Church, where he served as a chairman of the administrative board, trustee and teacher.

**LEON C. "LEE" BAKER '49** of Boca Raton, Fla., died Nov. 28, 2008. He was general counsel and executive vice president of Revlon and previously general counsel of Helene Curtis Industries in Chicago. Most recently, he practiced with Skadden Arps Slate Meagher & Flom in New York City, specializing in mergers and acquisitions. After law school, he joined Thayer and Gilbert, where he assisted clients targeted by Sen. Joseph McCarthy. He was active with numerous charities, including the Jewish Federation, Hadassah, Boca Raton Community Hospital and the Boca Raton Museum of Art. He delivered food to the needy for Jew-



ish Family Services, provided funds to bring Jewish emigrants from the Soviet Union and Argentina to Israel, established a tennis complex at Qiryat Shmona in Israel and helped establish the Israel National Blood Center. At HLS, a Victorian home purchased by the school in 1981 was renovated through his generosity and is now home to the Berkman Center for Internet & Society and the Harvard Legal Aid Bureau. He enlisted in the U.S. Marine Corps after Pearl Harbor, becoming a first lieutenant, and served in the Pacific theater. After the war, he was stationed in Hawaii, where he risked court-martial by insisting to his commanding general that black Marines not be excluded from educational courses.

**J. PAUL BRIGHT JR.** '49 of Portland, Ore., and formerly of Baltimore died Dec. 31, 2008. After law school, he joined Cross & Shriver, which became Ober, Kaler, Grimes & Shriver, specializing in probate and estate law; he retired in 1991. He was a member of the Baltimore City Bar Association and Maryland state chairman and a fellow of the American College of Trust and Estate Counsel. He served on the boards of the Prisoners Aid Association, McDonogh School, Bryn Mawr School and the Legal Aid Bureau. He was a communicant and vestryman at the Church of the Good Shepherd in Ruxton. He enlisted in the U.S. Army in 1943, serving as a cryptographer in Alaska and the Aleutian Islands.

**LAURENCE A. KUSEK** '49 of Pinehurst, N.C., and formerly of Park Ridge, Ill., died Dec. 30, 2008. He was an assistant attorney general for the state of Illinois and practiced law as a solo practitioner in the state for many years; later he became a member of the Michigan Bar and worked in Glenn, Mich., until his retirement. He served in the U.S. Army from 1943 to 1945.

**WILBUR S. LEGG** '49 of Sarasota, Fla., and formerly of Winnetka, Ill., died Nov. 5, 2008. He was president of the Village of Winnetka, chairman of the zoning board and member of the village council. After law school, he worked for the Illinois Commerce Commission as an attorney from 1950 to 1953. He then joined Lord, Bissell and Brook, where he retired as a partner in 1987. He was a director of Old Republic International for more than 40 years, and chairman of the congregation of the Winnetka Congregational Church, where he sang in the choir. He served as a lieutenant in the U.S. Navy during WWII.

**JOHN L. MIRABILE** '49 of Spring Valley, N.Y., died Sept. 11, 2008. After graduation from law school, he established a private practice in Spring Valley which spanned 54 years. He served as a lieutenant in the U.S. Navy during WWII.

**BILLY S. SPARKS** '49 of Overland Park,

Kan., died Nov. 24, 2008. After law school, he joined the firm Langworthy Matz and Linde in Kansas City, Mo., which later became Linde Thomson Langworthy Kohn & Van Dyke, and he remained there until his retirement in 1990. In 1956, he was a candidate for the state House of Representatives, and in 1962, a candidate for Congress, both in Kansas. He served as a delegate to the 1964 Democratic National Convention. Active in the Kansas school system, he was president of the District 110 School Board in Johnson County and later served as president of the School Board for Shawnee Mission School District 512. In 1975, he was appointed by Gov. Robert Bennett to the Kansas Civil Service Commission, and he served as chairman until 1990. A member of Countryside Christian Church for more than 50 years, he served as elder, trustee and deacon. He enlisted in the U.S. Army Air Corps at the start of WWII and became a commissioned lieutenant after studying meteorology at the Massachusetts Institute of Technology. He was stationed in India and Burma, where he flew supplies to Gen. Joseph Stilwell's command in China.

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**1950-1959 DANIEL J. BOYLE** '50 of Framingham, Mass., died Sept. 19, 2008. He was associate general counsel at Commercial Union Insurance Co. in Boston for 29 years, retiring in 1988.

**JAMES A. CRONIN JR.** '50 of Highlands Ranch, Colo., died Jan. 18, 2009. He was an administrative law judge for 38 years, retiring in 1994. He served in the U.S. Army during WWII.

**DANIEL NEAL HELLER** '50 of Miami Beach, Fla., died Aug. 3, 2008. Nationally acclaimed as "The Man Who Beat the IRS" for his famous case against rogue government agents, he headed his own firm, Heller & Kaplan, for many years before joining Tew Cardenas at age 80. As a defender of constitutional rights, he won the first "Government in the Sunshine" case in Florida. He was general counsel to the Miami News, national commander of the Jewish War Veterans, an observer at the Eichmann and Frankfurt war crimes trials, an official participant in the funeral of President John F. Kennedy and a 33rd degree Mason. He obtained the first public plea from Pope Paul VI to allow Russian Jews to emigrate. He provided legal services pro bono to Dr. Martin Luther King Jr.'s Southern Christian Leadership Conference. He was a president of the Florida Harvard Law School Association, co-chair of the Concert Association of Florida, a trustee of the Dade County Public Health Trust, a member of the Dade County Council of Arts & Sciences, a member of the Board of Advisors at Florida International University and a founder of Mt. Sinai Hos-

pital in Miami Beach. During WWII, he served in the U.S. Navy.

**FORREST S. HOLMES JR.** '50 of University Park, Md., and Roanoke, Va., died Nov. 7, 2007. He spent his career working for the Department of Defense in the Office of the General Counsel. He served in the U.S. Army during WWII as a first lieutenant and tank commander. He served a second tour of foreign service in Germany as a troop commander and also on the regimental special staff in the U.S. Constabulary.

**M. PETER MOSER** '50 of Baltimore died Oct. 17, 2008. He was a longtime Baltimore attorney who focused on business, estate and tax law. He practiced with Nyburg, Goldman & Walter beginning in 1955, and later as a partner at Frank, Bernstein, Conway & Goldman before joining Piper & Marbury in 1992. He began his career as an assistant state attorney in Baltimore, heading the homicide division for two years. He wrote many law review articles, including "Some Aspects of Powers of Appointment in Maryland," and he became well-known in legal circles for articles on legal ethics. He was president of the Baltimore City Bar Association beginning in 1971 and became president of the Maryland State Bar Association eight years later. He served as national treasurer of the ABA for four years and was an active member of its House of Delegates for 24 years. He served in the Judge Advocate General's Corps in the U.S. Army during the Korean War.

**ROY E. MURRAY JR.** '50 of Kalispell, Mont., and formerly of Bigfork, Mont., died Dec. 14, 2008. He was an assistant U.S. attorney under the Nixon administration and also succeeded his father as owner of Murray Motor Co. in Butte. A lifelong golfer, he was a member of the Butte Country Club. He served as a lieutenant in the U.S. Navy in the South Pacific during WWII.

**EDWIN J. O'MARA JR.** '50 of Old Greenwich, Conn., and Vero Beach, Fla., died Dec. 8, 2008. He was a partner with Ivey, Barnum & O'Mara, president of the Greenwich Bar Association and a member of the State of Connecticut Bar Examining Committee. Active in the community, he was chairman of the Town of Greenwich Housing Authority, served on the board of directors of the United Way of Greenwich for six years and was a trustee at Greenwich Hospital from 1983 to 1989. He was also a 40-year member of the Old Greenwich Lions Club, director and treasurer of the Willard Hoyt Memorial Foundation for 38 years, and director of the Greenwich Boys & Girls Club.

**JOE M. KYLE** '51 of Baltimore died Jan. 12, 2009. He practiced law in Montgomery County, serving as assistant county attorney and for a term on the Montgomery County Council. He was a two-term president of

## A Compassionate Scholar of Crime and Punishment



HLS SPECIAL COLLECTIONS

**PROFESSOR EMERITUS LLOYD E.** Ohlin, an expert in criminal justice who was well-known for his work related to juvenile delinquency, died at his home in Santa Barbara, Calif., on Dec. 6, 2008, at the age of 90.

Ohlin was a sociologist by training, and his work shed light on the conditions that gave rise to juvenile crime. Combating the widely held 1950s view that youthful irresponsibility led to the rise of street gangs and delinquency, Ohlin theorized that poverty and obstacles to upward mobility were the primary causes. He also examined the effectiveness of correctional institutions.

“The trouble comes with the break between aspirations and opportunities,” Ohlin said in the *New York Post* in 1961. “When we lead people to aspire to higher and higher standards and then fail to produce opportunities, they are left with a sense of having been denied and they often become delinquents.”

In 1967, Ohlin became a professor at Harvard Law School, where he taught criminal law and served as the research director of the Center for Criminal Justice. Prior to joining the HLS faculty, Ohlin directed the work of the Center for Education and Research in Corrections at the University of Chicago and taught as a professor of sociology at the Columbia University School of Social Work from 1956 to 1967.

“Lloyd Ohlin was one of the early participants in the interdisciplinary approach to legal education,” said former HLS Dean Elena Kagan ’86 at the time of his death. “During his time here, his students and colleagues gained invaluable insight into problems of crime and punishment, especially relating to juvenile offenders, thanks to his grounding in the fields of sociology and criminology.”

Ohlin took several leaves of absence from his academic positions in order to implement and shape programs that would fight

juvenile delinquency by combating poverty. He worked as a sociologist for the Illinois Parole and Pardon Board from 1947 to 1953, and he helped to plan Manhattan’s Mobilization for Youth, an antipoverty program that became a model for numerous similar federally funded efforts in the 1960s.

From 1961 to 1962, while on leave from Columbia, he helped to direct a new federal program for the President’s Committee on Juvenile Delinquency and Youth Crime. From 1965 to 1967, he served as associate director of the President’s Commission on Law Enforcement and Administration of Justice.

“He was interested in the harmful as well as the helpful effects of the criminal justice system,” HLS Professor Philip Heymann ’60 told *The Boston Globe* in December. “He was very much a professional, and he was immensely highly regarded.”

Born in Belmont, Mass., Ohlin earned his A.B. from Brown University in 1940 before going on to earn an M.A. from Indiana University in 1942 and a Ph.D. from the University of Chicago in 1954—both in sociology.

He served in the U.S. Army doing intelligence work during World War II and as an expert consultant on prison matters during the Korean War.

Ohlin was the author of numerous articles and many books, including “Sociology and the Field of Corrections” (1956), “Delinquency and Opportunity” (with Richard A. Cloward, 1960), “A Theory of Correctional Reform” (with Alden Miller and Robert Coates, 1977), “Delinquency and Community” (with Alden Miller, 1985) and “Human Development and Criminal Behavior” (with Michael Tonry and David P. Farrington, 1991).

President of the American Society of Criminology in 1986, a fellow in 1982 and recipient of the society’s Edwin Sutherland Award in 1967, he also received the Bruce Smith, Sr. Award from the Academy of Criminal Justice Sciences in 1992.

After his retirement from HLS in 1982, Ohlin divided his time between California and the coast of Maine, where he loved to sail. He continued work on several projects, including the final report of a study he headed on the Massachusetts juvenile justice system. He also consulted for the National Institute of Justice and other foundations. ✱

the Silver Spring Chamber of Commerce and volunteered in programs for youth and adults in court systems in the metropolitan area.

**CHARLES T. MATTHEWS '51** of Cold Spring Harbor, N.Y., died on Sept. 16, 2008. He was a Huntington town attorney and Suffolk County assistant district attorney. He also served as fire commissioner of the Cold Spring Harbor Fire Department. An avid sailor, he was commodore of the Seafarers Yacht Club and a member of the Storm Tri Sail Club, participating in the Newport, R.I., to Bermuda yacht race annually from 1968 to 1988. He was also a member of the Elks Club and president of the Huntington Kiwanis Club. He served in the U.S. Navy during WWII on the USS Monadnock and was a flotilla commander and rear commodore with the U.S. Coast Guard Auxiliary.

**JOHN J. MURPHY '51** of San Diego died May 2, 2007.

**LARRY J. RATZEL '51** of New Berlin, Wis., died Nov. 2, 2008. He was a longtime Wisconsin resident and attorney. He served the U.S. during WWII.

**DONALD O. SMITH '51** of Hingham, Mass., died Oct. 28, 2008. He practiced with Warner & Stackpole, specializing in estate planning and probate before becoming a solo practitioner. He was vice president and director of the New England Law Institute, director of the League School of Boston and the author of "How to Make Charitable Bequests." He served in the U.S. Army Air Forces during WWII.

**JERROLD M. SONET '51** of New York City died Jan. 28, 2009. After law school he returned to New York City and joined the law practice of Daniel Levy, which would become Levy, Sonet and Siegel. He was involved with the consolidation of the American Institute of Designers and the National Society of Interior Designers, which in 1975 became the American Society of Interior Designers, where he served as general counsel for many years.

**ROBERT H. WARE '51** of Fairfield, Conn., died Jan. 23, 2009. After law school, he joined Fish, Richardson and Neave, specializing in patent litigation for five years before he joined Blair and Buckles in Stamford. He later went into partnership with the firm Mattern, Ware and Davis (now Ware, Fresola, Van der Sluys and Adolphson), retiring in 2004. He was a committee member of Boy Scout Troop 90 and chairman of the Rotary Club youth exchange. A sailor for 25 years, he was commander of the Housatonic Power Squadron and taught seamanship, celestial navigation and other courses. He served in the U.S. Navy during WWII.

**DOMNERN GARDEN '52** of Bangkok died Jan. 19, 2009. A lawyer, translator and lexicographer, he was a co-author of the

Thai-English Dictionary and also translated the story collection by Khamsing Srinawak into English with the title "The Politician and Other Stories." After law school, he was admitted to the Thai Bar and was recruited to work at Jorgensen & Co., an intellectual property law firm. In the mid-1980s the firm became Domnern Somgiat & Boonma, where he remained for many years. He also taught law at Thammasat University.

**ROGER D. NEWELL '52** of Palo Alto, Calif., died Dec. 12, 2006.

**SHELDON NEWMAN '52** of Durham, N.C., and formerly of Saugus, Mass., died Sept. 24, 2008. He practiced law for more than 25 years, specializing in estate planning, probate law and family law. He was an avid skier and tennis player. He served in the U.S. Army during WWII with the 101st Airborne Division.

**PHILIP O'BRIEN JR. '52** of Holyoke, Mass., died Aug. 13, 2008. After graduation from law school, he entered into practice with his father and maintained an office in Holyoke until his death. One of his legal successes was O'Brien v. Dwight, in which he won arguments before the local Probate Court and then the Supreme Judicial Court in Boston. He worked to establish rights for beneficiaries of trusts where it appeared trust assets had been wrongfully transferred. He was active in civic service with the Holyoke Public Library Corp., serving as a member of the board from the 1970s and as president in the early 1990s. He was also president of the Colonial Ivy Association, a group of local college football fans. He served in WWII with the U.S. Army as a medical technician with the 17th and 82nd Airborne Divisions, and was engaged in active combat duty in Western and Central Europe. He was awarded decorations from the French government as well as campaign medals and a Victory Medal from the U.S.

**ANTTI J. SUVIRANTA LL.M. '52** of Helsinki, Finland, died March 30, 2008. In 1951, he was appointed the district judge's clerk and deputy for the district of Janakkala, Finland, and from 1956 to 1959 he worked as a civil servant at the Finnish Ministry of Finance. He pursued an academic path on the faculty of law at the University of Helsinki, becoming a professor of labor law in 1967, a position he held for 15 years. During this time, he published numerous books and articles, chiefly on labor law. He served as president of the Finnish Labor Court and then chief justice of the Supreme Administrative Court of Finland from 1982 until his retirement in 1993. In 1984, he was appointed a member of the Committee of Experts on the Application of Conventions and Recommendations. He served in the Finnish army during WWII and was awarded the Grand Cross of the Order of the Finnish White Rose in 1987

and the Grand Cross of the Royal Swedish Order of the North Star in 1988.

**IVAN V. KERNO '53** of New York City died Nov. 5, 2008. He was an international lawyer and oil executive who worked for Mobil Oil for much of his career. He began with the company in 1964 in New York City. From 1969 to 1973 he served as general counsel in Paris and managing director of Mobil North and West Africa Group, where he was responsible for marketing and refining-related activities in 17 French-speaking countries in Africa. He moved to Copenhagen for two years as managing director of Mobil Oil Denmark during the first oil crisis, followed by eight years as general counsel for Mobil Europe in London. He completed his career with Mobil in New York City, as assistant general counsel for the international division.

**MELVIN D. KRAFT '53** of Monterey, Mass., and Palm Beach, Fla., died Nov. 22, 2008. He began a boutique litigation firm in Manhattan in the mid-1960s. For more than two decades, he tried cases on behalf of numerous major corporations, including Mobil Oil, and was often called by major Wall Street firms to join their litigation teams. He was also a faculty chairman of the Practising Law Institute in New York City. He retired in 1988 and began working as a guest lecturer at MIT's Sloan School of Management. He was author of "His Sole Weapon," a novel that explores a lawyer's deep love for the law and its capacity for imposing order on chaos (see the Bulletin story at [www.law.harvard.edu/news/bulletin/2006/spring/cn\\_01.php](http://www.law.harvard.edu/news/bulletin/2006/spring/cn_01.php)). He served in the U.S. Army during WWII.

**CHARLES A. O'BRIEN '53** of Danville, Calif., died Sept. 3, 2008. He was the California chief deputy attorney general from 1962 to 1971. After law school, he moved to California to practice law with the San Francisco Foreign Policy Association and served as executive secretary to Gov. Edmund Brown from 1960 to 1961. After his service as chief deputy attorney general, he worked in private practice until his retirement in 2004. In the 1970s he helped found the Doctors Co., now the nation's largest physician-owned medical malpractice insurer. He bred award-winning Arabian horses. During WWII, he served in the U.S. Army, fighting in the Battle of the Bulge and helping to liberate Nazi concentration camps. He was honored with a Purple Heart.

**KERNAN F. GORMAN '54** of East Hampton, N.Y., and London died Aug. 11, 2008. A tax lawyer, he first joined the Wall Street firm Kelley Drye, and then he worked much of his career with Mobil Oil, where he was in charge of European taxes. He remained with Mobil Oil, traveling through the continent from Finland to Turkey, until his



retirement. He belonged to the Maidstone Club, the Union Club in New York and Brook's Club in London. He served with the U.S. Army Air Forces in 1944 as a tail-gunner in B-17 bombers and flew 24 missions over Germany. He was shot down twice but managed to escape to allied territory.

**LOUIS M. KAPLAN '54** of Washington, D.C., died Oct. 5, 2008. He was a lawyer who specialized in mental health law and who later had a second career as an artist. He began his career with the Civil Aeronautics Board in 1954, and two years later he became a motions law clerk at the U.S. Court of Appeals for the D.C. Circuit. He helped draw attention to petitions that impoverished defendants were required to file before they could appeal a case, and in 1962 the U.S. Supreme Court ruled that such petitions imposed an undue burden on the poor. He worked as an assistant U.S. attorney before helping found Carr, Bonner, O'Connell & Kaplan in the late 1960s, when he was also teaching mental health law at Georgetown University Law Center. In 1974, he joined the Psychiatric Institutes of America as executive vice president and general counsel, and he remained there until his retirement in 1982. He then focused on art, specifically oils, watercolors, acrylics and prints. He studied at the Corcoran College of Art and Design and in Florence, Italy, and Snowmass, Colo. He had many exhibitions in the Washington area and was preparing a career retrospective at the time of his death.

**HUGH W. BLANCHARD '55** of Glendale, Calif., died Nov. 23, 2008. He worked for the Department of Justice for more than 30 years. He was both an assistant U.S. attorney, serving as head of the claims and judgment section, and supervisor of the financial litigation unit in the U.S. Attorney's Office in Los Angeles. In 1970, he received the Sustained Superior Service Award from the Department of Justice. He was chairman of the legal committee of the National Speleological Society.

**GODFREY R. DE CASTRO '55** of St. Thomas, U.S. Virgin Islands, died Jan. 24, 2007. Former attorney general of the Virgin Islands, where he was born, de Castro held that position after he retired from practice in the U.S. as chief counsel for the New York City Housing Department. Before that, he worked with Thurgood Marshall, then chief counsel for the NAACP Legal Defense Fund. De Castro began his career in the U.S. working for the New York State Supreme Court. He served in the U.S. Army during WWII.

**NORMAN M. GOLDBERG '55** of Brookline, Mass., died Oct. 24, 2008. He was a partner at Lyne, Woodworth & Evarts, concentrating in commercial real estate and commercial leasing. He became a partner in 1975 and represented developers, banks and retail

store chains. He represented both landlords and tenants in connection with commercial leases and was involved in the leasing of office and bank spaces, shopping centers, and industrial real estate.

**NEIL G. HOWLAND '55** of Saugus, Mass., died Dec. 11, 2008. He practiced law in Saugus for many years.

**JOHN F. MCGILLICUDDY '55** of Harrison, N.Y., died Jan. 4, 2009. He assembled one of the first big bank mergers in the wave of consolidation that emerged from the economic slump of the early 1990s. He played a pivotal role in providing financial assistance to New York City during its fiscal crisis in the 1970s, and he later helped orchestrate the private-public lending partnership to bail out Chrysler in the 1980s. He advised President Ronald Reagan and President George H.W. Bush, three governors and two mayors on financial matters. He joined Manufacturers Trust Co. in 1958 and 13 years later was elected president. As chairman and chief executive of Manufacturers Hanover, he was a chief architect of banking consolidation, and in 1991, Manufacturers Hanover Corp. merged with the Chemical Banking Corp., the largest bank merger in the U.S. at that time. After the merger, he retired as the chairman and chief executive of Chemical Banking in 1993. He served on the board at the Boy Scouts of America, Kraft, United Airlines and U.S. Steel.

**ANDREW G. MEYER '55** of Sherborn, Mass., died Oct. 30, 2008. He was appointed by Gov. Michael Dukakis '60 to the Massachusetts District Court in the 1970s, and after two years, he was elevated to the Superior Court. He overturned a 24-year restriction on public showings of "Titicut Follies," Frederick Wiseman's landmark documentary about the conditions at Bridgewater State Hospital for the criminally insane. Because of privacy concerns, the film was banned for public viewing shortly after it was shown; it was the first film in U.S. history to be banned for reasons other than obscenity. Meyer retired from the court in 1993 and became an arbitrator and mediator. He visited jails and prisons regularly to observe, talk and offer encouragement. Meyer began his career as an attorney specializing in civil litigation. He served during WWII as a nose gunner and tail gunner in B-24s, flying 35 missions over Germany. He was recalled to active duty in the Korean War and served in the Naval Reserve, teaching instrument flying and history in Pensacola, Fla.

**LEONARD G. PASTOLOVE '55** of Port Washington, N.Y., and Boca Raton, Fla., died March 25, 2009. He was vice president and treasurer at Asco Corp. in New York City, manufacturers and installers of fire prevention equipment.

**MARSHALL SIMONDS '55** of Morrisville,

Vt., died Oct. 1, 2008. After law school, he joined the Boston firm Goodwin Procter and began a 45-year career there. He served as general counsel to the Massachusetts Crime Commission, which was created by the Massachusetts Legislature in the 1960s to investigate corruption in state and local government. He also served as special counsel to the Boston School Committee in the late 1970s, helping it respond to court orders in desegregation litigation. A lecturer on trial skills at HLS, he also moderated and presented televised case scenarios for WGBH in their program "Miller's Court." Simonds owned 13 field champion Labrador retrievers and was a delegate to the American Kennel Club president of the National Retriever Club, and a judge for more than 40 years in Labrador Retriever Field Trials. In 2001, he was elected to the Field Trial Hall of Fame, and he founded the AKC Health Foundation.

**LEROY S. MERRIFIELD S.J.D. '56** of Alexandria, Va., died Sept. 19, 2008. A professor at George Washington University for more than 40 years, he taught primarily labor relations law, collective bargaining and labor arbitration, and he served as acting dean for two years. He was also chairman of the U.S. branch of the International Society for Labor Law and Social Security from 1982 until 1988, a member of the Civil Rights Reviewing Authority for the U.S. Department of Health, Education and Welfare (now Health and Human Services), and an adviser to the Civil Service Commission, the Commission on Government Security and the Administrative Conference of the United States. As an arbitrator, he was a referee with the National Railroad Adjustment Board and a member of the Foreign Service Grievance Board. He was also a Fulbright fellow in Australia and a Ford Foundation fellow in Europe. Merrifield served as a lawyer with the Office of Price Administration and the Justice Department's antitrust division prior to his appointment at George Washington University. He was a founding member of Mount Vernon Unitarian Church, where he sang as a tenor in the choir. He served in the U.S. Navy in the Pacific during WWII.

**EARL J. VAN GERPEN '56** of Atlanta died March 3, 2008. He practiced law with Powell & Goldstein and later founded his own law firm, Van Gerpen & Associates.

**STEPHEN L. BERNSTEIN '58** of Woodmere, N.Y., died Jan. 3, 2007. He opened a private practice but ultimately spent the majority of his career as general counsel for private corporate firms, most recently the First Republic Corporation of America, from which he retired in 2002.

**WALTER J. HANDELMAN '58** of Scarsdale, N.Y., died Feb. 2, 2009. He was the mayor of Scarsdale for two years, from 1993 to 1995. After law school, he joined his father's

practice in Manhattan, but he moved the practice to White Plains in 1984. Active in the community, he was elected president of the neighborhood association and later became the president of the Town Club. He became a member of the first Board of Architectural Review after helping to write the architectural review ordinance that is used in Scarsdale today. Additionally, he served on the Library Board, the Board of Ethics, the Board of Zoning Appeals and the Village Board of Trustees. Handelman, who was highly interested in historic preservation, served as a trustee, director and committee chairman in the Preservation League of New York State, the Partners for Sacred Places, and the Jay Heritage Center, and as a trustee for a decade of the Scarsdale Foundation. For his commitment to public service, he was honored with the Scarsdale Bowl in 2006. He served in the U.S. Navy on the USS Curtiss in the Pacific for two years in the 1950s.

**HAROLD S. KANT '58** of Reno, Nev., died Oct. 19, 2008. He was principal attorney and corporate general counsel to the Grateful Dead and spent more than three decades helping protect the rock band's musical legacy. He began his association with the band in 1971 and remained general counsel until 2000, but he continued to represent Ice Nine, the band's music publishing company, until his death. After law school, he clerked for Judge William Orr of the U.S. 9th Circuit Court of Appeals in San Francisco before joining a Beverly Hills law firm in 1959. After a few years, he launched his own general business-law practice and eventually began representing movie and music industry clients. His clients included Sonny & Cher, Janis Joplin, Stevie Ray Vaughan, and Big Brother and the Holding Company. Starting in 1987, he focused his practice on the Grateful Dead.

**JOHN DANIEL NYHART '58** of Brookline, Mass., died Dec. 6, 2008. During his 41-year career at the Massachusetts Institute of Technology, he served as dean for student affairs and as a professor. He taught law and management at the Sloan School of Management, and his research interests in international law of the sea led to a joint appointment in the Department of Ocean Engineering. His research included overseas development banking and the use of computers to model outcomes for international dispute resolution processes. He served in the U.S. Navy.

**SAMUEL BOOKER CARTER '59** of Saluda, N.C., died Jan. 19, 2009. He practiced law in Virginia and Maryland, and was a corporate lawyer for National Service Industries in Atlanta. He was a member of the Kiwanis Club of Atlanta and the Old War Horse Lawyers Club. While he attended law school,

he was a member of the Chancery Club and the Southern Club and commodore of the Harvard Yachting Society.

**RAGAN A. HENRY '59** of Merion Station, Pa., died July 26, 2008.

**1960-1969 CALHOUN DICKINSON '60** of Seattle died Oct. 3, 2008. A longtime Seattle Parks Board commissioner and attorney, he helped develop some of the city's public spaces, including Discovery, Gas Works and Freeway parks. He worked for the firm Perkins Coie for more than 40 years, specializing in worker's compensation cases and representing companies such as Boeing. Upon his retirement from the firm, Gov. Gary Locke appointed him to the Washington State Board of Industrial Insurance Appeals, where he served until his death. He served on the Seattle Board of Park Commissioners for nine years (two as chairman) and also on Lakeside School's board of trustees for 21 years, including as president from 1975 to 1978. He served four years of active duty in the U.S. Navy, stationed in Guam and Japan, before attending law school.

**LEONARD M. GOLDBERG '60** of Livingston, N.J., died Jan. 6, 2009. In 1977, he founded the law firm Goldberg, Mufson and Spar in West Orange, where he was a partner. Chairman of the tax section of the New Jersey Bar Association, he was also a fellow of the American College of Trust and Estates. An annual federal tax symposium is named in his honor. He was a member of Congregation Agudath Israel in Caldwell, N.J., where he started the Hebrew Free Loan Society and was one of the founding members of the Partnership for Jewish Life and Learning.

**WILLIAM M. GOLDSTEIN '60** of Wayne, Pa., died Aug. 6, 2008. He was a tax attorney whose career spanned 48 years, in private practice and government service. Most recently he was a partner at Drinker Biddle & Reath in Philadelphia, where he practiced for 26 years. He began his career in 1960 as a member of Morgan Lewis & Bockius and went on to serve as deputy assistant secretary of the Treasury for tax policy for the Ford administration in the mid-1970s. He played an active role in the formulation of the Tax Reform Act of 1976 and served as head of the U.S. delegation that negotiated tax treaties with the Philippines and Brazil. In 1982, he joined Drinker Biddle, where he chaired the tax practice and became a managing partner.

**ROBERT A. GOODMAN '60** of Aberdeen, N.J., died Nov. 16, 2008. After law school, he launched a career as a labor lawyer representing labor unions in New York City, and then worked as an attorney for the National Labor Relations Board in Newark. He also worked for the New Jersey Attorney Gen-

eral's Office and as labor counsel to the ISP (GAF) Corp. In his later years, he worked as an arbitrator and mediator in labor and employment cases. He served in the U.S. Army as a lieutenant.

**KARL B. HILL '60** of Forsyth, Ga., died Oct. 24, 2008. He was a longtime president and chairman of Monroe County Bank in Georgia. Prior to his return to Georgia, in 1968, he worked for two years in the new U.S. Department of Housing and Urban Development. After law school, he worked as an editor for Beacon Press in Boston and practiced foreign management consulting with Associates for International Research in Cambridge, Mass. He was a speaker at several New York investment conferences in recent years. He served in the U.S. Army during the Korean War.

**DAVID D. ROSENSTEIN '60** of Highland Park, Ill., died Aug. 9, 2008. He was a co-founder of Rosenstein and Buess, which specializes in general business practice for closely held corporations and partnerships. He was also active in commercial real estate development in the Chicago area.

**DAVID R. SIMON '60** of Denver died Nov. 3, 2008. He was a law clerk for federal Judge Anthony T. Augelli in New Jersey and a staff attorney at the Federal Trade Commission before settling into a longtime law practice in New Jersey, focusing on complex commercial litigation.

**LOYD R. "REECE" TRIMMER '60** of Pittsboro, N.C., died Aug. 19, 2008. He was the first legal adviser to the Durham Police Department, a position he took in 1971. He spent a majority of his career at the North Carolina Justice Academy as a legal specialist and most recently served as legal adviser to the Cumberland County Sheriff's Office before his retirement in 2004.

**R. QUINCY WHITE '60** of New Buffalo, Mich., and formerly of Chicago died Oct. 10, 2008. A longtime resident of Chicago, he practiced law for 35 years, including with Leibman, Williams, Bennett, Baird & Minow, which merged with Sidley Austin, where he was a partner, heading the firm's intellectual property group. He retired in 1995. White was a member of the Chicago Council of Lawyers and served as honorary counsel general of the Islamic Republic of Pakistan for Illinois from 1978 to 2000. He received the Sitara-i-Quaid-i-Azam award in 1982. Active in his community, he was a vice president of the board of directors of the Juvenile Protective Association, served as secretary of the National Governing Board of the Ripon Society and served on the board of the Great Lakes Coalition. After retirement, he was a township trustee for New Buffalo and chairman of the Planning Commission. He served in the U.S. Air Force for two years in the 1950s.

**P. CAMERON DEVORE '61** of Lopez Island, Wash., died Nov. 2, 2008. He was an attorney who helped establish the field of media law and was one of the first to successfully argue that advertising was a form of speech protected by the Constitution. After law school, he moved to Seattle and joined Wright, Innis, Simon & Todd, a precursor to Davis Wright Tremaine, where he spent four decades specializing in First Amendment law. A nationally known expert on the subject, he was the co-author of "Advertising and Commercial Speech: A First Amendment Guide" with Robert Sack, a New York federal judge. He served on the boards of the Lakeside and Bush schools, the Seattle Art Museum, ACT Theatre, Children's Hospital and Seattle Community College. He also served on the board of the Lopez Community Land Trust, a nonprofit devoted to affordable housing and sustainable local industry.

**JAMES L. MAGEE '62** of Bellevue, Wash., died Oct. 24, 2008. He practiced law for more than 46 years, mostly with Graham & Dunn. He tried civil and criminal cases, handled international commercial and trade regulation matters, and was a prominent figure in an antitrust jury case involving the salmon industry that made national headlines. He served as fellow and chair on the Professionalism Committee of the American College of Trial Lawyers and as fellow to the International Society of Barristers. For four years, he was a lawyer-delegate to the 9th Circuit Judicial Conference, and he served four terms as senior warden of St. Thomas Episcopal Church. In 1956, he entered the U.S. Air Force, and he was first stationed in Texas as a single-engine jet pilot and later did a three-year tour of duty at Castle Air Force Base in Merced, Calif., where he served as an intelligence officer in the Strategic Air Command.

**O. STEVENS "STEVE" SUGHRUE JR. '62** of Winchester, Mass., died Sept. 12, 2008. He was an attorney for 46 years at O. Stevens Sughrue Law Firm in Boston. He was a member of the Winchester Country Club and the Harvard Club. He served in the U.S. Navy from 1956 to 1959 and retired as a commander of the U.S. Naval Reserve after 27 years.

**JOHN L. DOWNING '63** of Philadelphia died Aug. 22, 2008.

**ALAN H. MACPHERSON '64** of Laguna Beach, Calif., died Dec. 8, 2008. He was most recently the founder of MacPherson Kwok Chen & Heid, where he practiced as a patent litigator and counselor. Prior to this, he served as chairman of Skjervén Morrill MacPherson, a leading patent boutique in Silicon Valley. After law school, he held positions as patent counsel at Fairchild Camera and Instrument Corp. in Silicon Valley and at Bell Telephone Laboratories in Mur-

ray Hill, N.J. He was featured as a top patent lawyer in California Lawyer and Upside magazine. He served on the board of directors for the San Jose Symphony, Stevenson House and Mid-Peninsula Citizens for Fair Housing.

**PETER R. RICHARDS '64** of Ewing, N.J., died Oct. 2, 2008. After law school, he worked as a special attorney in the Organized Crime and Racketeering Section, Criminal Division, of the U.S. Department of Justice. He then took the position of deputy director of the New Jersey Division of Gaming Enforcement prior to joining the law firm Martinez & Jennings in Ewing. He later served at the Office of Criminal Investigation, Division of Taxation, at the New Jersey Criminal Justice Division and most recently as supervisor at the Internal Security Unit within the Division of Taxation in Trenton. He served in the U.S. Army Reserve prior to law school.

**THOMAS R. REYNDERS '65** of Darnestown, Md., died Feb. 1, 2009. He was most recently a senior associate at Checchi and Co., a Washington-based economic consulting group. At the time of his death, he was in Afghanistan conducting a supervisory visit of U.S. Agency for International Development projects. He joined Checchi in 1996 and had project management responsibilities for USAID-funded legal development and institutional reform projects in Afghanistan, Indonesia, Madagascar, Montenegro and the West Bank/Gaza. Reynders served in the State Department from 1967 to 1987 as an economics officer. In the early 1990s, he led the ABA's Law and Democracy Project in Cambodia. He served in the U.S. Army in Korea.

**RICHARD D. COPAKEN '66** of Potomac, Md., died Dec. 8, 2008. He was a longtime partner at Covington & Burling in Washington, D.C., where he specialized in international and public interest law, including assisting the island-municipality of Culebra, Puerto Rico, and the commonwealth of Puerto Rico to end U.S. naval training on Culebra. He wrote "Target Culebra," which is scheduled to be published this year by University of Puerto Rico Press. He joined Covington & Burling in 1967 and became a partner in 1974. In 2006, he co-founded Epagogix, a British company that analyzes film scripts to predict potential box office earnings. He was appointed a White House Fellow in 1966. During his career, he guest-lectured on international law at universities nationwide and was a member of the Washington Color School, where he painted; one of his paintings is on display at the U.S. Embassy in Tokyo.

**HOWARD P. GOLDBERG '66** of Freehold, N.J., died Jan. 7, 2009. He was in private practice for most of his career, specializing

in tax, personal estate and real estate law, mainly in Cranford, N.J. He was named a Rufus Choate Scholar while in attendance at Dartmouth College. He was an avid golfer and enjoyed the opera.

**GARY J. GREENBERG '66** of Harrison, N.Y., died Jan. 1, 2008. He was a solo practitioner specializing in commercial litigation, corporate and business counseling, and counseling and managing classical musicians. He was president of Vicky Tiel U.S.A., Ltd., vice president of Marion Greenberg Inc. and managing partner of Zephyr Realty Associates.

**ROBERT MARTIN MURPHY '68-'69** of South Dennis, Mass., and Bonita Springs, Fla., died Oct. 3, 2008. As one of the first paratroopers on the ground during the 82nd Airborne Division's lift into Normandy on D-Day, he would later dedicate part of his life to maintaining the memory of the civilians and soldiers who died there June 6, 1944. From the 1960s, he returned annually to Sainte-Mère-Église, a small town in the Normandy region of France, where there is a street named after him. He spearheaded a campaign to raise funds for a C-47 aircraft (the type the paratroopers used on D-Day), which is now on display in front of the Airborne Troops Museum in Sainte-Mère-Église. He retired from the Army a highly decorated colonel, earning three Purple Hearts, the Bronze Star and the Legion of Honor. He wrote "No Better Place to Die," a book about his role in the Normandy landing, and later served as president of the 82nd Airborne's Veteran's Association. After his return to civilian life, he practiced with the firm of Murphy & Murphy in Boston and from 1980 to 1991 served as the Massachusetts assistant attorney general.

**1970-1979 JOHN O. CALMORE '71** of Chapel Hill, N.C., died Feb. 24, 2009. He was the Reef C. Ivey Professor of Law at the University of North Carolina at Chapel Hill, where he taught civil rights, critical race theory, local government law, social justice lawyering and torts. He co-wrote the casebook "Social Justice: Professionals, Communities, and Law" in 2003. Beginning in the early 1970s, he worked for several institutions in California: the Western Center on Law & Poverty, the National Housing Law Project (West Coast office) and the Legal Aid Foundation of Los Angeles, where he was director of litigation. He began his academic career with the North Carolina Central University School of Law in 1985. He returned to North Carolina to join the faculty at UNC's law school in 1994, after serving as a professor at Loyola Law School in Los Angeles. He served as a program officer with the Ford Foundation and as a member of the boards of the New World Foundation, the National



Asian Pacific American Legal Consortium and Oxfam America. In 2006, UNC held a symposium devoted to Calmore's work.

**PIERRE R. DUSSAULT LL.M. '71** of Montreal died Dec. 21, 2008. He was a professor of taxation law at the University of Sherbrooke from 1967 to 1990. During his career, he also taught tax law at the University of Montreal, at the University of Laval and as part of professional development programs at Bureau Canadien, Bureau du Québec and the Canadian Institute of Chartered Accountants. He was a member of the Commission des valeurs mobilières du Québec from 1981 to 1988. In 1990 he was named judge to the Cour canadienne de l'impôt, where he stayed until his retirement in 2006.

**JOHN H. MCGUCKIN JR. '71** of San Francisco died Dec. 1, 2008. He served as knight grand cross and lieutenant of the Equestrian Order of the Holy Sepulchre of Jerusalem, Northwestern Lieutenancy. Recently, he was on the international board of trustees for Bethlehem University and the Catholic University in the West Bank. He was senior executive vice president, general counsel and secretary of UnionBanCal Corp. and Union Bank of California for 24 years. He served the Archdiocese of San Francisco as a member of the Finance Council, the chairman of the Archdiocese Deposit/Loan Fund Governance Committee and a member of the board of directors of Catholic Charities, where he received the Archbishop's Ring of Charity. He was on the board of advisers of St. Anne's Home, was a member of the Knights of Malta, and was honored with the St. Thomas More Award for his achievements in the field of law and commitment to faith. He is author of the books "Edward J. LeBreton: Benefactor and Friend" and "Working for God Alone: The Little Sisters of the Poor in San Francisco."

**GARY C. LEEDES LL.M. '73 S.J.D. '84** of Richmond, Va., died Nov. 4, 2008. He taught at the University of Richmond for 25 years and in 1998 was honored with the school's Distinguished Educator of the Year Award. In addition, he was a visiting professor at Washington University in St. Louis, the University of Wyoming, Santa Clara University, Loyola of Los Angeles, Queens College, Cambridge University and Emmanuel College at Cambridge University. He taught constitutional law, jurisprudence and various interdisciplinary courses for undergraduates. Leedes was awarded a fellowship from the National Endowment for the Humanities at Columbia University and a Ford Foundation fellowship for research focusing on desegregation of public schools in Virginia. He wrote "The Meaning of the Constitution: An Interdisciplinary Study of Legal Theory" in 1986 and also wrote more than 25 published articles, many of them

dealing with religion, law and legal history. During his legal career, he acted as an attorney for the Rutherford Institute and for churches with free exercise of religion cases, and was a consultant to McGuireWoods.

**MICHAEL J. CALHOUN '74** of Mill Valley, Calif., died Feb. 24, 2009. He was a leader in the global fight against AIDS, serving as chief operating officer of Pangaea Global AIDS Foundation, based in San Francisco. Previously, he served for 14 years as a senior health care executive and consultant, including as vice president of strategic planning and marketing for Stanford Hospital and Clinics and as a consultant to the U.S. National Institutes of Health. Beginning in the late 1970s, he served as international trade counsel to the U.S. House Committee on Ways and Means, and he was later appointed by President George H.W. Bush to serve as chief of staff to Dr. Louis Sullivan, secretary of the Department of Health and Human Services. In this position, he oversaw a \$625 billion budget and 65,000 employees. He served on the boards of several institutions, including Princeton University, the Morehouse School of Medicine, California Pacific Medical Center and Marin Horizon School. He was a member of the Council on Foreign Relations and an adviser to the Japan Society of New York, and he wrote a book, "The Silver Market: New Opportunities in a Graying Japan and United States."

**DEAN M. WEINER LL.M. '77** of Los Angeles died Feb. 14, 2008. He was a partner at O'Melveny & Myers.

**LINDA GRAY FEE '78** of Phoenix died June 12, 2008.

**DONNA E. ARZT '79** of Syracuse, N.Y., died Nov. 15, 2008. A professor at Syracuse University College of Law since 1988, she founded and directed the school's Center for Global Law and Practice. After the explosion of Pan Am Flight 103 over Lockerbie, Scotland, she started the Lockerbie Trial Families Project, which kept family members of victims of the bombing apprised about developments during the trial. More recently, she helped run the Sierra Leone Project, which allowed students and faculty to assist the Office of the Prosecutor of the Special Court for Sierra Leone. She served as a member of the International Relations Department at the Maxwell School of Citizenship and Public Affairs, and taught courses in international human rights, refugee law and comparative law, among others. From 1979 to 1989, she served as director and general counsel of the Soviet Jewry Legal Advocacy Center. She published many articles about human rights abuses in the Soviet Union and on human rights issues in the Middle East and wrote a book, "Refugees Into Citizens: Palestinians and the End of the Arab-Israeli Conflict." She served as

a consultant to Human Rights Watch, the Association for Civil Rights in Israel and the United Nations special rapporteur on population transfer. After law school, she was the assistant attorney general for the commonwealth of Massachusetts in civil rights and regulation of charitable solicitation. In recognition for her work as a scholar and human rights advocate, she received the Tyson Award for Excellence in Human Rights Advocacy from the Union of Councils for Soviet Jews in 1990.

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**1980-1989 SUSAN L. HURLEY '88** of Bristol, United Kingdom, and formerly of Santa Barbara, Calif., died Aug. 16, 2007. She was a philosopher of international distinction devoted to exploring the mind with the aid of natural and social sciences. She held a chair in the department of politics and international studies at the University of Warwick from 1994 to 2006 and was professor of philosophy at the University of Bristol. Earlier in her career she had taught at Oxford. She later held visiting posts at Berkeley, Princeton, Harvard and Canberra. She was the author of three books: "Natural Reasons: Personality and Polity," in which she tackled the problem of choice; "Consciousness in Action," in which she portrayed the mind and self as inextricable from complex webs of perception and action; and "Justice, Luck, and Knowledge," about the distribution of reward and opportunity. She co-edited a two-volume collection of papers on imitation and a collection of papers on rationality in nonhuman animals. Most recently, she was awarded a large grant that brought together researchers from the humanities, the natural sciences and the social sciences to study consciousness as both a natural and a cultural phenomenon. It led to an international conference, which she helped to organize and which she participated in, a month before her death.

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**2000-2009 JASON J. KIM '04** of Vienna, Va., died Jan. 7, 2009.

**JOSÉ M. TESORO '06** of Washington, D.C., died Dec. 19, 2008. He was an associate at Paul, Weiss, Rifkind, Wharton & Garrison. Born in the Philippines, he came to the United States to attend high school and earned his undergraduate degree from Yale University. After college, he moved to Hong Kong to become a writer for Asiaweek magazine, serving as a Jakarta correspondent from 1997 to 2000. He wrote "The Invisible Palace," a nonfiction account of the unsolved murder of a prominent Indonesian journalist, which was published in 2004 while he attended HLS. He died after falling from an automobile ramp at Hong Kong International Airport.

## “Helping Harvard is helping way beyond Harvard”

HOWARD AND ABBY MILSTEIN met while students at HLS. Both serve on the Executive Committee of the Dean’s Advisory Board, and on the boards of numerous philanthropic, civic and professional organizations. Abby S. Milstein ’76 is a founding partner of Constantine Cannon, president of the New York Legal Assistance Group, and was recently appointed to the HLS Visiting Committee and also the Visiting Committee for the Harvard Libraries. Howard Milstein ’77 (J.D./M.B.A.) is chairman and CEO of New York Private Bank & Trust Corp., and of various Milstein family operations in real estate development and management. He has just completed two terms on the HLS Visiting Committee. Recently, the Milsteins dedicated a gift to the construction of a conference center in the law school’s new Wasserstein Hall, Caspersen Student Center, Clinical Wing project. In May, the Bulletin’s Margaret Salinger spoke with the couple at Howard Milstein’s offices in New York City.

### **BULLETIN: Were there experiences at HLS that particularly inspired you?**

**AM:** The highlight of my years at HLS was The Lawyering Process class taught by Gary Bellow, a pioneer in clinical legal education. He infused the course with all his passion for improving the lives of people in need by using the law. I have very vivid memories of my clinical experience. There I was, a 2L, sitting in the kitchen of a lady in Roxbury who had come to us for help about a housing matter. Sitting there with her, I realized that I could use the law beyond helping her with the housing issue; there were benefits to which she was entitled that I could help her to get, and I could help her to write a will so that her few treasured possessions could go to the people whom she wanted to receive them. That was very significant and meaningful for me, and inspired me more than the classroom, no matter how intellectually stimulating the standard courses were.

**HM:** Abby has always had a passion for justice!

### **How has your HLS education contributed to your success in business and as a philanthropist?**

**HM:** Well, it applies to both areas. Part of what I bring to my philanthropy, as to business, is a certain level of intellectual rigor to think through the strategic objectives and tactics of any organization. That intellectual rigor—the standard for that—was set at Harvard Law School.

### **You once said the Socratic method had nothing on what went on at your dinner table growing up.**

**HM:** That’s true! A lot of people felt intimidated by the process, and they felt that the professors were very fearsome. And because I was not at all intimidated—I enjoyed it—I

think that the Socratic method served me well. I didn’t have too much invested in having to prove I was right in the exchange; I had my point, which I thought was good, and they had their point, which they thought was good. Between the two, you learned.

I’m a big believer that all of us today, as Newton observed, are “standing on the shoulders of giants,” and I feel in my institutional relationships—also in my personal and family relationships, I’m the third generation in a family business—that through my intellectual antecedents, through Paul Freund, through Oliver Wendell Holmes, whom Freund idolized, I really trace myself back to the Civil War in America. In my own modest way, I like being part of that tradition, and that has supported my feeling of fraternity and having a stewardship with the law school.

### **What’s the significance to you of your recent support of the HLS “Setting the Standard” campaign?**

**AM:** It’s really the result of a long process. After my graduation from the law school, I did not have warm feelings about the school. It was not so easy to be a woman there in those years, and I was put off by what I perceived to be a sort of ugly competitiveness. I went from being someone who loved school to being someone who no longer did, and so I was feeling cool. But around 10 years ago, Bob Clark began a persistent campaign to re-engage and reconnect Howard and me with the law school. Eventually he won us over and we joined the Dean’s Advisory Board. We were both on the Dean’s Advisory Board and the Executive Committee for all of Elena Kagan’s deanship, and I have to say we watched with great enthusiasm all the great things she did to strengthen and humanize the school. I think she’s made a tremendous difference.

When we began to think about our gift to the campaign, we wanted it to be something that would be meaningful to the school and meaningful to us as a couple who met there, and so we hope that this conference center will be a place where people meet; and that it will be a vibrant center that’s going to be important to students, faculty, alumni and visitors.

### **What would you say to law students concerned about the challenges they face in today’s economy?**

**HM:** The opportunities of today are obviously not principally financial, because of the state of the economy; the opportunity is to affect society, because society is now in a transition, from structures, especially regulatory structures, and a certain high level of materialism, to some other place. Anyone who has a law degree, particularly a Harvard law degree, is well-equipped to be part of directing that trajectory.





**I know how important family is to you, but of your outside accomplishments, what are you proudest of?**

**AM:** In the wider world, I would point to the work that I've done with the New York Legal Assistance Group, where I've been a hands-on chairman for more than 10 years. It's grown tremendously in the period of my chairmanship—I think the budget was about \$1 million when I became chairman, and now it's over \$8 million, and we're largely privately funded so we don't have any of the restrictions that have existed when you take government money. We provide high-quality civil legal services to the poor and near-poor in New York.

We work in an ever-increasing list of practice areas: elder law, family law, immigration law, workers' rights, special ed. We're constantly increasing the range of our practice. We have a great staff and give the lawyers lots of room to be creative and even entrepreneurial. NYLAG is an extraordinary organization, and I really am extremely proud of the work that I've done there.

**What do you most hope to accomplish in the years ahead?**

**AM:** I hope that I can continue to give back in meaningful ways. I do work for lots of organizations that I find very gratifying, particularly the New York Public Library, and I'm a commissioner on the New York City Public Design Commission. I'm also involved in the National Humanities Center and other organizations. And I do look forward to an increasing role at Harvard. So, there will be more reasons to come to Cambridge and more reasons to see various aspects of what's going on at Harvard.

**HM:** The most meaningful thing I've done, the thing I'm most proud of, is what I've been able to do with the New York Blood Center. Under my leadership, first as chairman of the Executive Committee and then as chairman of the Board, we've strengthened the financial structure, so that 10 years ago we had no endowment, and we now have an endowment of hundreds of millions of dollars which we created by running the place better. One of the areas I've taken a particular interest in there is the cord blood center. Through the work of Dr. Pablo Rubinstein, who works at the Howard Milstein National Cord Blood Center at the New York Blood Center, we have saved thousands of lives.

We also have, at the Abby and Howard Milstein Program and Core Facility in Chemical Biology at Cornell Medical College, research where we're looking for double antigen cures to tuberculosis and malaria. Now if that works, we'll be proud, because it will save millions of lives.

**Do you see a connection between helping HLS and helping to make education and legal services available to all?**

**AM:** I really think that helping Harvard is helping way beyond Harvard, because I think that it's, let's say, "Setting the Standard." It sets standards, and it does pathbreaking things that resonate through higher education and throughout many spheres of life. To me, helping Harvard is not an inward-looking parochial activity. I see it as having great societal resonance.

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*To read the full interview, go to <http://www.law.harvard.edu/news/bulletin/2009/summer/closing.php>.*



## A Price Paid for Conviction

In the 1950s, the HLS Bulletin asked for alumni updates just as it does today. “Please send us news about yourself, your classmates and other alumni—anything interesting for the Harvard Law School Bulletin,” read the form from Harrison S. Dimmitt ’25, the Bulletin editor. Among those who replied was **Benjamin J. Davis ’28**, a leading figure in the American Communist Party, who was also a civil rights attorney and a former New York City councilman. The first black Communist ever to be elected to office in the U.S., he worked to bring national attention to lynchings and Jim Crow laws. Davis joined the Communist Party shortly after law school, while he was defending a young black Communist labor organizer who had been sentenced to 20 years under a slave insurrection statute. At the height of the Cold War, Davis was a trenchant critic of the U.S. government.

When Davis replied to the Bulletin, he had plenty of news: He had just been released from federal prison the year before, in April 1955, after being charged, tried and incarcerated under the notorious Smith Act, for alleged subversive activities. Not long afterward, he was charged again—this time under the McCarran Act, which carried a possible sentence of 30 years in prison—for his refusal to register as an agent of the Soviet Union. In 1962, with the charges still pending, Davis returned to HLS to speak on a panel with Dean Erwin Griswold LL.B. ’28 S.J.D. ’29. Davis died two years later, at the age of 60. The letter to the Bulletin, excerpted here, was discovered by historian Clarissa Atkinson this spring in the Harvard Law School archives. At the top is a handwritten note: “Not used in Bulletin. Put in file.” —EMILY NEWBURGER

*A half century after it was written, a letter to the Bulletin is finally published*

DEAR MR. DIMMITT: What kind of information do you want? ...

The most recent highlight of my life was my release last April ('55) from prison after serving a 5-year sentence for violating the thought-control Smith Act, and a 2-month sentence for contempt for refusing to reveal names of my co-workers, that is, for refusing to become an informer. These sentences I bore with pride—because they involved persecution for a devotion to the Bill of Rights, which I as a Negro have never fully enjoyed, and which I learned to appreciate more at Harvard Law. I am one of the first eleven Communist leaders convicted and sentenced by [Judge Harold] Medina back in '49.

I am now under what is known as conditional restrictions which extend all the way from my personal movements to a ban against my practicing law. When those restrictions are finished I shall resume my activities on behalf of peace and democracy and in particular for the full liberation of Negro Americans from such as the barbarism in Miss. I hope that in the days to come the free and open market in ideas, inherent in the 1st amend., will return to our country, and that the American people will have the opportunity to hear and decide for themselves on such ideas as socialism vs. capitalism, and that dissent will not be equated with subversion.

By the way, it seemed to me the recent dissenting opinion of Judge William H. Hastie '30 and of Messrs. Justices Black and Douglas on Smith Act cases, are far more in line with the best of Harvard Law than those of Mr. Justice Frankfurter [LL.B. '06] or even of Justice Learned Hand [LL.B. 1896]—the latter two seemed to have been caught up in the hysteria and fears of the moment, without their having the foresight to see that these fears are purely transitory. I have abounding faith in the good sense of the American people, and that the sanity, identified with the best of Harvard, to which I'm indebted, will replace the witch-hunting insanities of the present day. There are already signs that this process is beginning.

I know little of my classmates—and I presume none of them—or few of them—would touch me, so to speak, with a 10-ft. pole, not even as my attorney through this period. This too is a very practical matter, since I'm still under a '48 indictment for membership in the Communist Party (the sentence I served was for conspiracy to teach and advocate the violent overthrow etc.), which is, in principle, double jeopardy if ever there was such a thing. I often wonder if any of my classmates or other alumni would be bold enough to represent me! That's a good project for interested Bulletin readers. I am interested in hearing and reading of Law alumni, particularly of my classmates, and don't despair of them, even if they despair of me. For example I'd like to see William H. Jackson '28 make a lot of progress in removing barriers to closer East-west contacts between the U.S. and the U.S.S.R. ...

I'm not in a position to contribute at this time to such publications as the Bulletin. (I haven't been able to find an employer daring enough to hire me.) But I'd appreciate continuing to receive such publications, in the understanding that I'll contribute when I'm gainfully employed.

Ben J. Davis  
1 W. 126 St., NYC

System 2 Release  
7/20/82

**HARVARD LAW SCHOOL**

**NEWS FOR  
THE ALUMNI NOTES**

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Please send us news about yourself, your classmates and other alumni—anything interesting for the Harvard Law School Bulletin. Thanks.

HARRISON S. DIMMITT  
*Editor, Harvard Law School Bulletin*

Dear Mr. Dimmitt: What kind of information do you want? What do I shall give you is, at least, mine and represents an ancient liberal tradition of Harvard which is somewhat unpopular today and which Ben. Browder has desperately to extinguish by his unprincipled gutter-sniffery against the Party and against Harvard in general.

The most recent highlight of my life was my release last April (55) from prison after serving a 5-year sentence for leading the thought-control Smith Act, and a 2-month sentence for contempt for refusing to reveal names of my co-workers, that is, for refusing to become an informer. Great sentences I have with pride because they involved persecution for a devotion to the Peace of Rio de Janeiro which has never been justly enjoyed, and which I believe to appreciate more at Harvard Law. I am one of the great alien Communist leaders convicted and sentenced by Medina back in '44.

I am now under what is known as conditional restrictions which extend all the way from my personal movements to a ban against my practicing law. When these restrictions are finished I expect resuming my activities in behalf of peace and democracy and in particular for the free liberation of King Americans from such a terrible prison as this. I hope that in the long run the job and open market in ideas, inherent in the 1st Amendment, will return to normalcy, and that the American people will have the opportunity to hear and decide for themselves on such issues as socialism or capitalism, and that dissent will not be equated with subversion.

By the way, it occurred to me the recent dissenting opinion of Judge William W. Hastie '30 and of Messrs Justice Brandeis and Douglas of Harvard Law School.

Harvard Law School Bulletin, Langdell Hall, Cambridge 38, Mass.

(over)



TIME & LIFE PICTURES/GETTY IMAGES



C. M. STEIGLITZ/LIBRARY OF CONGRESS

**BENJAMIN DAVIS (STANDING) AND EARL BROWDER**, general secretary of the American Communist Party, preparing to testify in front of the House Un-American Activities Committee.

**DAVIS AND ROBERT THOMPSON** outside the federal courthouse in New York City during their trial. After they and the other defendants were sentenced under the Smith Act, demonstrations broke out in Harlem.



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PHOTOGRAPH BY CHRIS HARTLOVE



*“THE PATHS we take now will shape how the public and private sectors interact with one another for decades to come. That makes TARP ... where much of the action takes place.” —Josh Ruby '10*

**RUBY (RIGHT) AND NICK SMYTH '09** interned in D.C. over the spring semester with the Congressional Oversight Panel, the committee in charge of monitoring the Troubled Asset Relief Program.