

ALSO INSIDE: *The curriculum focuses on problem-solving*

Harvard Law

Summer 2010

bulletin

RE MIXING LANGDELL

*The
law
library
goes
digital*



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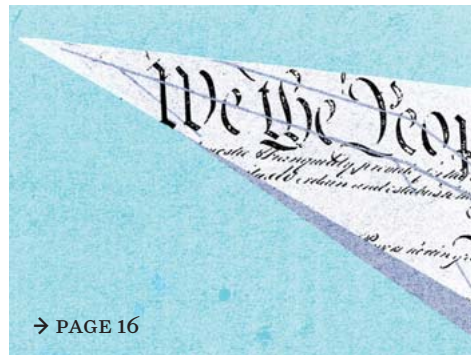
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ON THE COVER:
Heather Casteel '11
Photograph by Kathleen Dooher



Solving Problems, Locally and Globally

Creative problem-solving is the hallmark of superb lawyering. The stories in this Bulletin include a profile of Rebecca Onie '03, whose questions about how best to meet the health needs of low-income patients started during her college years and led to a holistic approach to the problem, a MacArthur “genius” award and a new direction for health care reform.

How to adapt the largest private law library in the world to the digital revolution is a problem with opportunities. Cyberlaw visionary Professor John Palfrey's ('01) leadership of the HLS library has introduced an in-house laboratory for digital innovation and on-staff statisticians assisting faculty and students with empirical research. All of Harvard University's libraries are now benefiting through Palfrey's ideas and advice from his work on a universitywide library task force.



How should we make sense of the financial crisis of '08 and '09? What solutions can

work and what measures can prevent a recurrence? These challenges engage many HLS faculty, students and alumni. Professor Hal Scott has taken his analyses to the Senate; Professor Howell Jackson '82 supports a financial services oversight council—and flags for special attention the monitoring of international firms that can elude attention by any single nation.

Byron Georgiou '74, Norm Champ '89, and Professors Allen Ferrell '95, Jesse Fried '92, Lucian Bebchuk LL.M. '80 S.J.D. '84, Bill Stuntz and Elizabeth Warren each offer insights into the financial crisis and regulatory options.

The HLS faculty as a whole tackled the problem of improving legal education with the winter term launch of the 1L Problem Solving Workshop, experienced for the first time by all 560 first-year students. Using role-play, teamwork and engagement with practicing attorneys, the workshop challenged students to tackle cases from the very beginning—when clients walk in the door with a problem—and to use creativity and analytical rigor in generating real, workable solutions. Here, the workshop moved beyond the hypothetical and theoretical, and the engagement of more than 100 practicing attorneys in instructing and giving feedback proved especially valuable to students.

One of the problems studied in the course—how to protect tenants living in foreclosed homes—was drawn from the vital work of Clinical Professor David



“The workshop challenged students to tackle cases from the very beginning—when clients walk in the door with a problem.”

Grossman '88 and the Harvard Legal Aid Bureau, work that responds directly to the financial crisis.

A new round of problem-solving is well under way as the faculty involved in the successful course assess ways to make it even better.

In all of these and other efforts, we are constantly testing Voltaire's wonderful maxim: “No problem can withstand the assault of sustained thinking.” Or, at the very least, we are attempting to make sure that

no failure to apply sustained thinking will be the cause of unsolved problems.

Dean Martha Minow

P.S. As this issue of the Bulletin was going to press, news broke that President Barack Obama '91 had nominated my predecessor, Elena Kagan '86, to the U.S. Supreme Court. We are immensely proud of our former dean, colleague, teacher and our friend!

EMERGENCY EXCEPTION DISTURBING

COMMENDABLY, PROFESSOR PHILIP Heymann '60 proposes establishing "the world's best noncoercive interrogation body" ["A Question of Interrogation," Winter 2010] and stresses that "the United States should always abide by its statutory and treaty obligations." But, disturbingly, he also favors "an emergency exception that would allow the president to authorize lesser coercive techniques" under some circumstances. That sounds like "torture lite," which Sister Dianna Ortiz [who was abducted and tortured in Guatemala] calls "an obscenity"; and it apparently rests on the popular but false assumption that coercion elicits accurate, timely information more effectively than time-tested, noncoercive methods do.

The underlying problem seems to be that much of the public, perhaps because of Bush-Cheney propaganda and entertainment like Fox Broadcasting's "24," does not appreciate just how counterproductive coercive methods really are. Educating people to the fact that lawful, civilized methods make them safer—and that torture has betrayed our nation's intelligence gathering along with much else—may be beyond Professor Heymann's scope, but it is not beyond that of President Obama '91. Perhaps he will yet use his bully pulpit to show Americans where their true safety lies and, not incidentally, to make it very hard for a future administration that reverts to torture to enjoy the same impunity that the administration personnel who authorized torture after 9/11 enjoy today.

MALCOLM BELL '58
Weston, Vt.

Bell is writing a book, titled "Sisters in the Storm," about two women who were tortured and a third (Jennifer K. Harbury '78) whose husband was tortured and murdered in Guatemala.



SO FAR, ONLY THE WORKING CLASS HELD RESPONSIBLE FOR PRISONER ABUSE

I CAN ONLY applaud Philip Heymann's proposal to establish a specialized interrogation unit that would avoid the systematic use of torture—so-called "coercive" interrogation techniques—that was our government's policy for a number of years. But the logic of his notion that those who designed, justified and ordered this policy should escape any legal accountability for their actions because "it's very dangerous for members of one administration to prosecute members of a prior administration for something that the supporters of the prior administration believe was proper" escapes me. Such political expediency is flatly inconsistent with the rule of law. So far, the only people who have been held answerable for prisoner abuse have been working-class enlisted military personnel. Our better-educated and highly privileged political class should not escape justice simply because some of their supporters still believe that torture is a good idea.

THOMAS N. CIANTRA '87
New York, N.Y.

TO AVOID BITTER PARTISAN DIVISION

I READ WITH interest Robert Stolzberg's letter [Letters, Winter 2010] in which he calls for the prosecution of the Bush administration for "any crimes" they may have committed. He also bemoans our generous treatment

of "Henry Kissinger, Richard Nixon and their cohorts" who he seems to feel would be well served breaking rocks in some federal penitentiary. While he's at it, he takes a crack at their "ideological offspring like ... Cheney, Rumsfeld and Yoo."

Mr. Stolzberg's rancor appears to be directed exclusively at Republican administrations, but in his call for impartiality he overlooks the Truman administration's atomic bombing of Hiroshima and Nagasaki and the fire bombing of other Japanese cities directed by General Curtis LeMay, all of which resulted in thousands of civilian deaths.

No, I would not have wanted President Truman or any of his Cabinet criminally prosecuted. There was a war on then, even as there is now, but I would remind Mr. Stolzberg that however harsh the interrogation methods of the Bush administration, nobody was killed and arguably valuable intelligence information may have been gained.

President Obama is understandably reluctant to encourage such prosecutions. This is probably due in part to his innate sense of fair play. But he must also be all too aware that such proceedings would bitterly divide the country along strictly partisan lines. Surely, he does not wish his administration to have such a legacy.

ALFRED G. BOYLAN '42
Pittsford, N.Y.

LOOKING GOOD

THE FORMAT, DESIGN, layout of the new (to me) Bulletin are excellent. Congratulations to Ronn Campisi.

SYDNEY MICHAEL ROGERS '52
Larchmont, N.Y.

A Measure of History

Professor Kenneth W. Mack '91
THE BOSTON GLOBE
March 25, 2010

“In recent weeks, the Obama administration ... sought to mobilize supporters around the country, after months in which that kind of improvisational, decentralized energy seemed more in possession of the opponents of social reform legislation than of its supporters.



“To the extent that the legislative triumphs of the New Deal and Great Society are held up as inspirational examples in assessing what the Obama

administration has achieved [in passing health reform legislation], one should also remember the structural advantages that Roosevelt and Johnson had in putting their programs through, and the help that they received, willing and unwilling, from political and social movement leaders who were beyond their control.

“When the definitive history of this political moment is finally written years from now, the ability of the administration, and its opponents, to foster innovation in an age of political constraint will surely be one of the central stories.”

Obama’s Legacy and the Iranian Bomb

Professor Alan Dershowitz
THE WALL STREET JOURNAL
March 23, 2010



“... Iran’s construction of nuclear weapons, if it manages to do so in the next few years, [will] become President Barack Obama’s enduring legacy. Regardless of his passage of health-care reform and regardless of whether he restores jobs and helps the economy recover, Mr. Obama will be remembered for allowing Iran to obtain nuclear weapons. History will not treat kindly any leader who allows so much power to be accumulated by the world’s first suicide nation—a nation whose leaders have not only expressed but, during the Iran-Iraq war, demonstrated a willingness to sacrifice millions of their own people to an apocalyptic mission of destruction.”

Ending the Internet’s Trench Warfare

Professor Yochai Benkler '94
THE NEW YORK TIMES
March 21, 2010

“The Federal Communications Commission’s National Broadband Plan, announced last week, is aimed at providing nearly universal, affordable broadband service by 2020.

And while it takes many admirable steps—including very important efforts toward opening space in the broadcast spectrum—it does not address the source of the access problem: without a major policy shift to increase competition, broadband service in the United States will continue to lag far behind the rest of the developed world.”



The Best Trial Option for KSM: Nothing

Professor Jack Goldsmith and Brookings Institution Senior Fellow Benjamin Wittes
THE WASHINGTON POST
March 19, 2010

“[A] military commission trial might achieve slight public relations and legitimacy benefits over continued military detention of [alleged 9/11 co-conspirator Khalid Sheikh] Mohammed, and it might facilitate his martyrdom by ultimately allowing the government to put him to death. But this would add so little to the military detention that the administration already regards as legitimate that a trial isn’t worth the effort, cost and political fight it would take.

“Eight and a half years after the Sept. 11 attacks, it is time to be realistic about terrorist detention. The number of Guantanamo trials will not, under the best of circumstances, be large. Instead of expending great energy on a battle over the proper forum for an unnecessary trial of Mohammed and his associates, both sides would do well instead to define the contours of the detention system that will, for some time to come, continue to do the heavy lifting in incapacitating terrorists.”



Beyond the Case Method

A first-of-its-kind PROBLEM-SOLVING workshop prepares 1Ls for the realities of law practice

By Elaine McArdle

IT'S A JANUARY morning at Harvard Law School, and in a classroom in Pound Hall, a revolution in legal education is under way.

Eighty 1Ls watch as a classmate, Christina Cruz Chinloy '12, interviews a female "client" in a simulated case involving wrongful termination, in the law school's new Problem Solving Workshop. "I understand how you feel slighted," says Chinloy, her voice sympathetic as she leans forward, seeking information to build the case.

Professor Todd Rakoff '75, co-creator of the workshop, which launched this year as a mandatory winter term course for first-year HLS students, stops the interaction. "Client, how's it going?" he asks Janet Katz, an HLS librarian playing the client.

"No one so far has said, 'Here are your options,'" Katz replies. "No one has asked me, 'If you could go back to your old job, would you?'" And one student, she notes, dodged her question about legal fees.

A few more students try their hand at the exercise before Harry T. Daniels, a partner at WilmerHale, steps in to show students how he would proceed, including presenting the client with options: Take the severance package? Leverage questionable behavior at the company so it will void the client's noncompete agreement?

The class is clearly impressed with Daniels. "The biggest difference was the authority with which he spoke, not only on the law, but in saying, 'This is what I'll do for you,'" says Chinloy.

Rakoff praises the students for their efforts. After all, the members of the Class of 2012 are pioneers, the first to take this new course that emphasizes



Professor Joseph Singer

JON CHASE



Deborah Lloyd, manager and senior counsel, General Electric (on right side of table), playing the role of managing attorney, listens to a presentation from (left to right) 1Ls Jason Gelbort, Daniel Cluchey, Steve Henrick, Martha McCoy, Christopher Mills.

MARITHA STEWART

WORKING IN TEAMS,
students take each case
from the very beginning,
brainstorming and
discussing strategy.



JON CHASE

practical skills, creative thinking and exercising judgment (the course was tested on second- and third-year students over the past two years). Mock client interviews, group brainstorming, decision trees, interactions with practicing attorneys—even how to write an effective e-mail and deal with the media—are not the traditional tools of American legal education, which, for 150 years, has relied more on analysis of appellate case law. And that’s precisely the point.

The Problem Solving Workshop, which Rakoff believes is the first course of its kind to be introduced into a law school curriculum, puts students in the position of real-life attorneys. Over a three-week period, it presents them with seven very different clients, from a multinational corporation with child-labor issues to a tenant facing eviction after the landlord has lost her home in foreclosure.

Working in teams, the students start each case from the beginning—when the client walks in the door—and gather facts, help the client figure out short- and long-term goals, devise a range of possible options, guide the client in weighing those choices, and negotiate with other parties.

This bottom-up approach mirrors what students will face in practice, and it’s an essential part of equipping

TEACHING REAL-LIFE LAWYERING— ambiguities and all

Law schools have long taught students to “think like lawyers” and to develop analytic skills through the study of case law. But practicing lawyers today depend on a variety of skills beyond the ones typically emphasized in law school curricula. Equipping students with additional skills—including generating creative options, managing media relations, negotiating and working in teams—is the purpose of HLS’s new Problem Solving Workshop.

Professor Joseph Singer ’81 spent the past two years developing the workshop with Todd Rakoff ’75 and testing it on upper-class students. Instead of looking at a case at its end point—an appeals court decision—the workshop presents cases that begin with the initial contact between lawyer and client. “The students improved radically over the three weeks in their abilities to generate workable solutions, drawing on theories, facts, interests, ethics and relationships,” Singer says.

The purpose of the workshop, adds Singer, “is to put students in a very practical setting, of learning how to help clients achieve their goals within the bounds of the law and ethics.” He sees it as an essential part of 1L orientation, supplementing the technical skills students learn in regular courses with an emphasis on common sense, judgment, even wisdom. It also stresses that in real life, unlike in casebooks, ambiguities abound—in the law, in the facts, in what a client wants or thinks he wants.

HLS’s clinical program—the most extensive in the world—enables students to represent clients in real cases under the guidance of practicing attorneys. In a similar vein, the workshop gives students a framework for approaching problems based on key questions: Who is the client? What are the client’s goals? What facts need to be discovered? What laws are relevant, leading to what constraints and opportunities? What options can be generated to solve the client’s problem?

“It’s the most fulfilling teaching I’ve ever done,” says Professor John Palfrey ’01. “I think we have, in the Problem Solving Workshop, a real opportunity to find better ways to prepare students to become lawyers.”

THE CLASS ATTEMPTS to mirror what students will face in practice to equip them with the tools they will need in today’s legal world.

Professor Todd Rakoff



THE COURSE STRESSES that in real life, unlike in casebooks, ambiguities abound—in the law, in the facts, in what clients want or think they want.

Clockwise from front corner: 1Ls Charles Wharton, William Paul Chapman, James Goldschmidt get feedback from Clinical Professor David Grossman on their recommendations to their client in a summary process eviction case.

MARITHA STEWART

them with tools they need to succeed in today's legal world, HLS faculty believe. Curricular reforms voted in by faculty in 2006, and designed by a team led by now-Dean Martha Minow and championed by then-Dean Elena Kagan '86, also added international and legislative and regulation courses for 1Ls. But the Problem Solving Workshop is the most striking departure from standard legal pedagogy—and it's won passionate advocates.

"I think this is the most exciting thing not only that we have done, but that any law school has done in a long time," says Professor David Wilkins '80, director of the Program on the Legal Profession at HLS. He is one of seven instructors who taught the workshop this winter. "I think, just as HLS made its mark on legal education almost two centuries ago with the case method and Langdell, this could have an equally transformative effect."

In addition to Rakoff and Wilkins, three other HLS faculty—John Palfrey '01, Joseph Singer '81 and Howell Jackson J.D./M.B.A. '82—taught workshop sections, as did Gillian

Hadfield, a visiting professor from the University of Southern California, and William Lee, a litigator and co-managing partner of WilmerHale. Relying on materials developed primarily by Rakoff and Singer, the instructors worked in close collaboration, meeting daily to compare notes and to tweak the next day's presentations. The workshop connects the classroom to law practice in diverse settings and also opens a door to HLS's clinical program. Clinical faculty, including Esme Caramello, deputy director of the Harvard Legal Aid Bureau, participated, as did David Grossman '88, clinical professor and director of HLAB, who also developed one of the course problems that simulate an attorney's first interaction with a client.

David Zucker '12 says the course was "most valuable in the ways it was different from the 'typical' law school class"; instead of individual reading followed by professor-led class discussion, the workshop involved "hands-on engagement with the legal issues presented" through client interviews and classwide debates. Zucker learned the most from interactions with practicing attorneys, including the final exercise, in which the entire 1L class traveled with their

teams to law offices across Cambridge and Boston to present their work on the final project to experienced lawyers. "I found that oftentimes an approach that may be suggested during a theoretical class discussion is not one that a practicing attorney would ever really employ; likewise, I discovered recommendations from the practicing attorneys that had never been discussed in class," Zucker says.

The workshop has drawn intense interest, with many other law schools contacting Dean Minow and the instructors. And law firms—including WilmerHale and other Boston firms that donated attorney time to help instruct students—are excited by a new model that seeks to better equip young lawyers to practice law.

Lee, whose experience as a litigator and co-managing partner of a major law firm were especially valuable to the workshop, according to the other instructors, says: "Without a doubt, I am 100 percent convinced that other law schools should adopt this because it offers a set of skills that lawyers need in the real world."

Says Wilkins, "The general counsel of a Fortune 25 company said to me, 'This is exactly what I wish I'd learned—and what I want my attorneys to know about.'" *

"THIS IS EXACTLY WHAT I WISH I'D LEARNED AND WHAT I WANT MY ATTORNEYS TO KNOW."

➔ To view an interview with Joseph Singer about the Problem Solving Workshop, go to <http://tiny.cc/singerinterview>

TEAM APPROACH gets high grade FROM STUDENTS

After the first semester of law school—including standing alone under the Socratic spotlight—one of the best aspects of the new Problem Solving Workshop in winter term is learning to rely on classmates while teaming up to resolve complex legal issues, students say.



“My favorite thing about [the workshop] was the opportunity to work in groups with other students,” says **Abraham Funk '12**, who adds that the wide variety of life experience among his classmates proved fascinating as well as invaluable in working through the problems.

Erica Harrison '12 enjoyed the workshop, “especially because it gave me the opportunity to interact with my classmates in a way I wasn’t able to do in a formal setting in the fall.” Working collaboratively, she says, was not only enjoyable but very effective—once each group figured out a working style that fit.

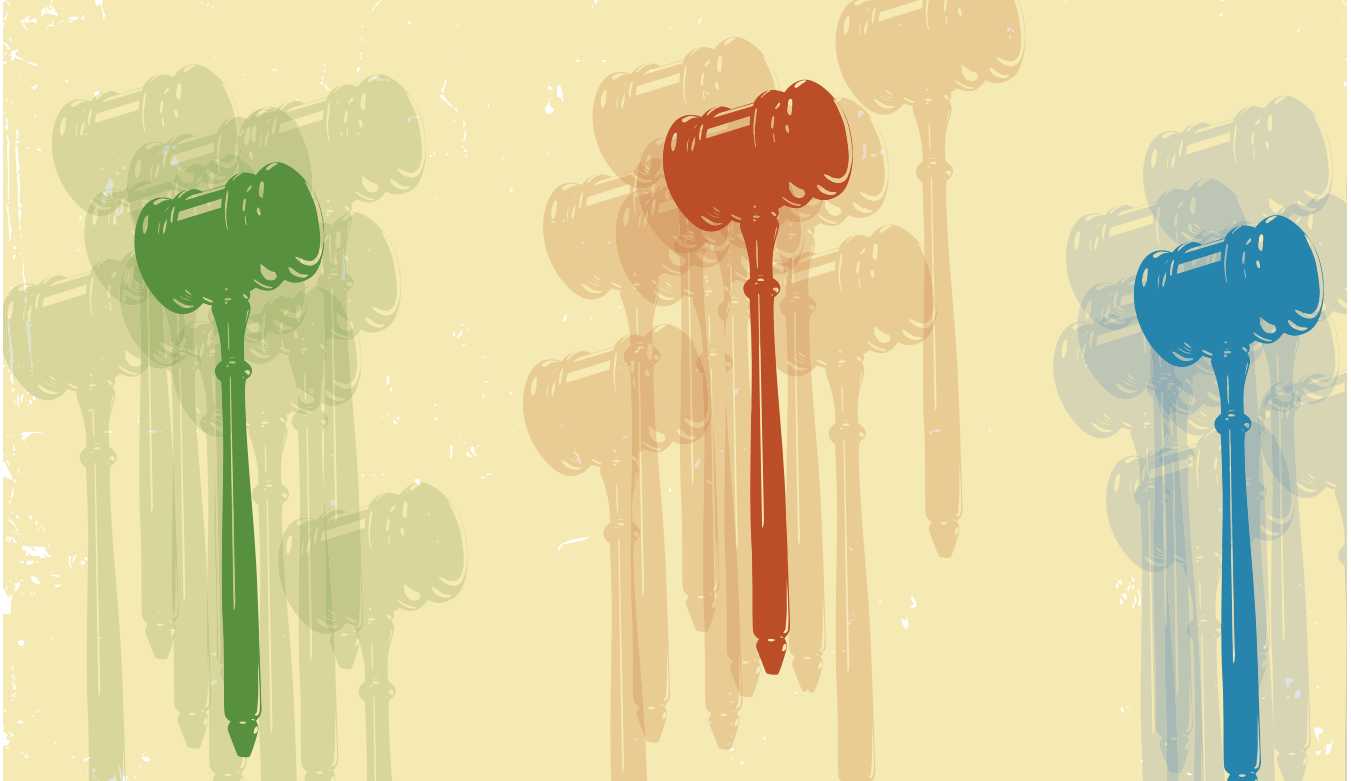


The team approach didn’t necessarily come naturally to everyone, according to **Lillian Langford '12**, “especially here at Harvard, where there tend to be very ambitious, very driven people who’ve been successful working alone. A lot of us, myself included, can use that practice of working in groups,” says Langford, who before HLS was an investigator for a public defender’s office in Florida. “You do get a lot more done.”



How Judges Decide

A Legal Realist lens for economists



WHEN JUDGES RULE on cases involving issues such as contracts, property rights, antitrust or taxes, they are not just making legal decisions. They are making economic policy. Thus, as Professor Matthew Stephenson '03 asserts, it is in the interest of those who study economics to consider how those decisions are made.

“It would be a mistake, if you were an economist trying to understand how economic policy worked, to assume that judges are merely neutral enforcers of law,” says Stephenson. “Judges often have a great deal of discretion when they interpret legal documents, and therefore understanding their decision-making processes is important to

understanding economic outcomes.”

In a paper recently published in the *Journal of Economic Perspectives* called “Legal Realism for Economists,” Stephenson examines judicial decision-making based on the theories of the

American Legal Realists, a group of lawyers, judges and law professors who were most influential in the 1920s and 1930s. This movement, he writes, provides an alternative to the two common theories on judicial

Bulletin Back Story: **THE FIRE LAST TIME**

Matthew Stephenson joined the Harvard Law faculty in 2004, a year after graduating from the school. The *Bulletin* is, of course, his alumni magazine, but it's more than that. His mother, Ellen Bernstein, was the editor of the *Bulletin* in the early 1980s. Her most memorable moment there, he says, involved faculty writing—in particular the firestorm that ensued after she published a story by Professor Duncan Kennedy, counseling HLS grads in big firms “to confront, outflank, sabotage, or manipulate the bad guys and build the possibility of something better,” in the event they were asked to take part in ethically questionable conduct.

decision-making: Formalism, which holds that legal questions have a “right answer” based on canonical legal materials, and Skepticism, which says that judges use the laws available to justify the outcomes they desire. Realism forgoes either extreme, attempting to find patterns in judicial decisions not dictated solely by formal rules or ideology. The Legal Realists, Stephenson says, showed “nuanced, insightful understanding of the interaction between law and discretion that seemed like it would be useful to economists.”

In the paper, he describes the Realist idea of legal constraint, the

belief that while judges could use law to justify nearly any result, they also are constrained by legal sources and principles. Writing for an audience of economists (Stephenson got his Ph.D.

in political science at Harvard University), he also cites the “opportunity costs” that influence judges depending on how motivated they are to reach a desired result.

“[J]udges,” he writes,

“do not automatically select the opinion that is easiest to justify legally, nor the opinion that delivers the most desired outcome, but rather the judge balances these interests, making whatever trade-off is optimal in a given case.” As

an example, he cites John Marshall’s decision in *Marbury v. Madison*, which favored the chief justice’s political opponents, but also entrenched the doctrine of judicial review that he sought to establish.

Framing judicial decision-making through the prism of Legal Realism highlights the degree to which judges are important to economic policy and the large amount of discretion they have to shape it, Stephenson says. And he hopes that economists will take heed, as they consider how these important legal and economic actors make decisions.

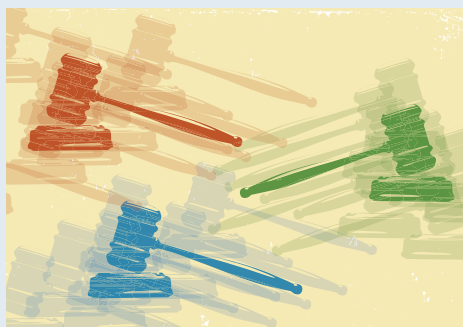
“The ultimate goal,” he says, “is to understand better how both law and the economy work in the hopes of making both work better.” *

**LEGAL REALISM LOOKS
 FOR PATTERNS IN
 JUDICIAL DECISIONS
 BEYOND FORMAL RULES
 OR IDEOLOGY**

EXCERPT: Opportunity costs and judging

“No one, to my knowledge, has developed a fully convincing social scientific account of the incentives that shape the judicial desire for legal persuasiveness and the differential costliness of various legal arguments.

Yet contemporary participants in the legal system regularly report that something like this actually does exist. Figuring out why judges experience law as constraining (assuming that they do) might suggest additional insights into how variation across judges may affect case outcomes. For instance, does a judge’s legal talent affect the degree to which that judge experiences law as a constraint? Perhaps a more talented judge will face lower costs in finding a plausible legal argument to justify a preferred conclusion, which



suggests talent is inversely correlated with constraint. However, a more talented judge may also face relatively higher costs for engaging in more creative legal arguments because

of the greater attention to detail that such arguments will demand from a meticulous judge. As another possibility, judges’ backgrounds and personal characteristics as well as their method of selection and retention may also affect how much they care about legal craft, and what sorts of legal arguments they or their constituencies experience as ‘persuasive.’”

 From “Legal Realism for Economists,” *Journal of Economic Perspectives*

➔ To read the entire article, go to <http://tiny.cc/legalrealism>

ABSTRACT

A Tax—Not an Attack—on Families

The INHERITANCE TAX defended

IN RECENT YEARS, political discourse has often focused on the idea of family values. Another contentious political issue has been the inheritance tax. The two topics commingle in a recent paper by Anne Alstott, in which she considers whether the inheritance tax is compatible with family values.

“The estate tax far more than the income tax has been a target for the claim that it compromises family life, probably because the estate tax imposes a large, once-a-generation tax,” says Alstott, the Manley O. Hudson Professor of Law and director of the Fund for Tax and Fiscal Policy Research at Harvard Law School.

Alstott contends that while the law protects the right to use one’s resources for the benefit of the family unit, the imposition of an inheritance tax does not necessarily threaten family ideals. In “Family Values, Inheritance Law, and Inheritance Taxation,” published in the *Tax Law Review*, she identifies three different conceptions of the family: liberal, which values individual freedom; conventional, which upholds traditions of family obligation; and functional, which emphasizes the family’s social role in maintaining economic security. All of these visions of the family can coexist with

Excerpt: **ALL IN THE FAMILY**

“INHERITANCE TAXATION IS obviously a tax matter, and as such it raises familiar issues about the relationship of the individual and his property to the state. At the same time, inheritance taxation also forms part of inheritance law—the body of law that regulates the

transmission of property by gift during life and by bequest during death. And inheritance law is intimately bound up in ideals about the family: the family is, after all, one of the key institutions for transmitting assets, knowledge, and values across generations, and

in the broadest sense the family itself forms part of the structures of inheritance that determine what children receive from their elders.”

From “Family Values, Inheritance Law, and Inheritance Taxation,” in *Tax Law Review*

• To read the complete article, go to <http://tinyurl.com/Alstott>



WHY THE INHERITANCE TAX DOESN'T DISRESPECT THE FAMILY

the inheritance tax, but “the three ideals do have markedly different implications for the terms of inheritance law and inheritance taxation,” she writes.

The ideal of the liberal family—its right to do with one’s property as one wishes—is often cited as contrary to an inheritance tax, according to Alstott. But the state may legitimately claim a share of an individual’s wealth and still uphold this individualist theory of the family, she says, as long as it maintains neutrality; for example, an individual may leave her money to her children or to a home for poodles, without state interference.

The conventional conception of the family differs in that it favors inheritance remaining within the confines of the family. Yet the state can still take its share of inheritance taxation without compromising this ideal, Alstott argues. At the same time, the inheritance tax could accommodate the conventional family by adopting favorable rules for family bequests and family businesses.

The functional concept likewise can be compatible with the inheritance tax as long as exemptions are offered that allow family members to provide economic security for each other, Alstott notes. If the goal were truly to ensure that family functioned as a source of financial insurance, inheritance law could even require people to leave wealth to those family members in the most need, she adds.

Inheritance taxes would endanger family values only if they confiscated so much wealth that they prevented liberal, conventional and functional families from carrying out their ideals—something no one in the political arena is proposing, she says. Thus, she believes that the inheritance tax as it now functions in America does not disrespect the family.

“Within the range of political options on the table, there remains ample room for individual autonomy and family identity transmission to coexist with paying a share of wealth at death to the state,” says Alstott. *



STUDENT SNAPSHOT

From left: Andru Wall,
Rebecca Gang and
Sayed Mohammad
Saeed Shajjan

Three Journeys, One Dream

LL.M. students recall their work in Afghanistan and share their hopes for the nation's future

By Lewis I. Rice

STUDENT SNAPSHOT

SITTING IN A graduate student lounge at Harvard Law School, Sayed Mohammad Saeq Shajjan can look to his left and look to his right and see hope for his homeland of Afghanistan. He is flanked by Rebecca Gang and Andru Wall, fellow LL.M. students who, along with Shajjan, have worked to stabilize and strengthen a country racked by war over three decades. They came to the LL.M. program after spending time in Afghanistan in different roles, together representing a confluence of efforts needed for the rule of law to predominate in his country, says Shajjan.

“The work that we have all been doing in Afghanistan is very important,” he says. “As an Afghan, I really appreciate that they put their lives at risk in coming and helping us. And I’m looking forward to them coming back there.”

Though now far away, Afghanistan is still very much in their thoughts, which they share with the *Bulletin* not long after U.S. and Afghan troops have mounted a major military offensive in the country. Before he left the U.S. Navy JAG Corps, Wall was enmeshed in such action as a senior lawyer for U.S. Special Operations Command Central, a responsibility that took him to Afghanistan often between 2007 and 2009. In that role, he focused on the issue of civilian casualties and on supporting and incorporating the rule of law. Gang—also an American—worked in the country as a consultant for the Norwegian Refugee Council on civil law issues and later helped establish Afghanistan’s first independent bar association in 2008. While she was working on that project, she met Shajjan, an attorney affiliated with the International Development Law Organization who had been selected to help create Afghanistan’s first Independent National Legal Training Center in Kabul, a central institution in the national vision to build the country’s legal capacity.

The three students share an easy rapport, despite their disparate backgrounds and experiences. Those



Sayed Mohammad Saeq Shajjan

different perspectives are all needed in a place like Afghanistan, they say. Establishing the rule of law requires both capacity-building and security, as well as the efforts of the national and international communities working together toward a common goal.

Wall, for example, notes that NGOs provided a valuable perspective when they, concurrent with the military, investigated allegations that civilians were killed during military operations. “We all want the same thing for Afghanistan,” he says. “Yes, sometimes we come at it from slightly different perspectives, but in reality when you sit down and talk, you realize that you have a lot to learn from each other.”

“Once you get into that environment,” Gang adds, “it’s clear that there’s not a distinct, dualist separation anymore between the military and humanitarians, which



Andru Wall

← “The situation [in Afghanistan] is very different now. Even judges are calling defense attorneys saying, We will have a trial tomorrow; we would like to see you.”

→ “There’s not a distinct, dualist separation anymore between the military and humanitarians.”

↙ “We’re there to help the Afghan people bring security to their country. So we’re not going to dictate how it’s done.”

makes it complicated and murky but also teaches you a lot about dealing with each other. There’s so much crossover and so much working together.”

They know that much has yet to be done in order to stabilize the nation. And they acknowledge struggles and frustrations. Yet they also point to signs of progress. After the Soviet invasion, Shajjan moved back and forth to Pakistan with his family before returning to his homeland in 2002 and graduating from Kabul University the year after. He says that during the Soviet occupation and under the Taliban, people didn’t have a right to speak when they were arrested or learn the charges against them. As recently as 2004, he went to court in order to defend someone accused of a crime. He recalls being told that a defense was not needed—only the prosecution.

“The situation is really different now,” he says. “Even judges are calling defense attorneys now saying, We will have a trial tomorrow; we would like to see you.”

Gang points to the achievement of establishing the Afghan Independent

security forces, says Shajjan, “because we understand that we do not have the army and police to protect the population of the country.”

The students all express optimism that progress will continue, though Shajjan cautions patience. It will

take time to build something that has been destroyed over the course of 30 years, he says. But he is encouraged that more young Afghans are going to university and traveling to other parts of the world. So is Gang, as she describes a scene of little girls in matching uniforms rushing to school in Kabul every morning.

“As people become more and more educated and more open to the outside world, there is a critical mass of idealistic, open-minded Afghans who



Rebecca Gang

Bar Association, which has registered almost 700 defense attorneys. At first, neither the organization nor its members fully grasped its function or purpose, she says, but within a year it was playing a prominent role, including advocating on behalf of Guantánamo detainees and a member attorney who the organization believed had been unlawfully detained. The bar association’s advocacy led to the attorney’s release, says Gang.

Wall cites “great relationships” between U.S. military personnel and Afghan forces. He notes that the recent campaign in Helmand Province was directed by the Afghan government. “We’re there to help the Afghan people bring security to their country,” he says. “So we’re not going to dictate how we think things need to be done. That’s not a recipe for success.” Afghans want the help of the international

want change, who don’t want to be seen as this hotbed of fundamentalism, who want to be part of an international community,” she says.

Gang says she feels obligated to return to Afghanistan. She doesn’t know in what role, but she wants it to be one in which she can build relationships with Afghans because that is the best way to get the job done, she says. Shajjan certainly will return home after his HLS studies. He also isn’t sure in what capacity but wants to be useful and make a difference. As for Wall, his military service is over, but he too thinks about a time when he will return to Afghanistan, not as a professional but as a tourist. He hopes for the day when he will be able to bring his children there, to show them a secure country in the process of rebirth, and to tell them that he, in a small way, helped make it possible. *

Connect!



CHRISTOPHER DYDK

SINCE THE SCHOOL launched its online alumni advising network, HLS Connect, nearly 1,400 graduates have signed up to volunteer.

In a changing legal marketplace, consider sharing your expertise and experience with students. With your help, students can gain perspective on their chosen fields and organizations, tips about the legal market in a particular geographic area, and even advice about course selection, judicial clerkships and job search strategies. Participants have addressed issues as diverse as work/life balance, international work, nonlegal career paths, starting a business and combining pro bono activities with private practice.

HLS faculty consult experts they locate through the site, and the Office of Public Interest Advising and Office of Career Services use it to find speakers for their career panels.

So, as you help the next generation of HLS graduates, take advantage of the opportunity to network and reconnect with alumni from around the country and around the world—and with Harvard Law School itself!

In addition to mentoring opportunities and an updated online directory, HLS Connect also provides access to job databases in the public and private sectors.

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Bargaining with the Devil

Mnookin explores HOW AND WHEN TO NEGOTIATE with an adversary you don't trust

By Lewis I. Rice

In the most recent U.S. presidential election, the candidates debated the wisdom of negotiating with enemies. But such a debate is not confined to political leaders. Whether it's a dispute between countries, businesses or family members, the parties involved face a crucial decision. And Robert Mnookin '68 offers a guide to making the right one in his new book, "Bargaining With the Devil: When to Negotiate, When to Fight" (Simon & Schuster).

A professor and chair of the Program on Negotiation at Harvard Law School, Mnookin presents case studies from history as well as private disputes in which he has served as mediator and arbitrator, outlining how and why people decide to negotiate and the factors that influence the bargaining process. In each case, he evaluates the wisdom of the decision and addresses the ethical and moral issues that arise.

Contrary to many others in the dispute resolution field, Mnookin advises against negotiation in certain circumstances. Indeed, the idea for the book developed out of a debate shortly after the Sept. 11 attacks, when



he argued that the United States should not negotiate with the Taliban, contending that the chances for a potential agreement were minimal and that negotiating would undermine U.S. credibility.

Mnookin praises the stances of

UNLIKE MANY OTHERS
IN HIS FIELD, MNOOKIN
SOMETIMES
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NEGOTIATE

leaders such as Winston Churchill and Natan Sharansky, who refused to bargain with the "devil" (a term he uses to describe someone perceived as untrustworthy, harmful or even evil). At the same time, he says that people who demonize an adversary often resist negotiating

even when it would benefit them. While he endorses a presumption in favor of negotiation, he recognizes that people often are driven to fight by personal morality or outrage.

“There is often a tension that’s inescapable between a resolution that can serve your interests best in the long run and the unmitigated pursuit of justice,” Mnookin says.

He counsels readers to recognize “negative traps” that can distort thinking, such as tribalism, dehumanization and moralism. In order to make a wise decision, those involved in a conflict should undertake careful analysis, preferably in consultation with an outside party, that takes into account their interests and the alternatives to—and costs of—negotiation, he writes.

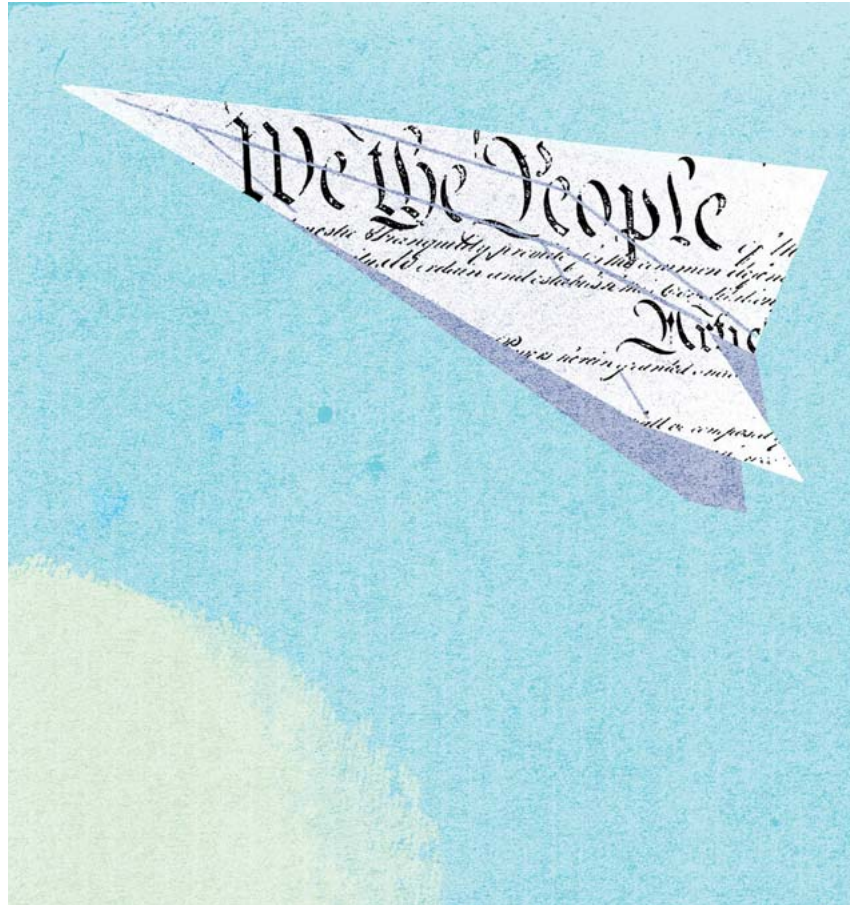
Mnookin identifies Nelson Mandela—who in the best interests of his country decided to bargain with a government that imprisoned him—as the greatest negotiator of the 20th century. His example shows that it is foolish to reject outright the possibility of negotiating with an evil adversary, according to the author. Though Mandela hated the apartheid regime in South Africa, he “ultimately achieved through negotiation an outcome that could never have been accomplished solely through violence or resistance,” writes Mnookin.

Such a lesson can serve people even when the stakes are much lower, he contends. In business and family disputes, he says, “people have the same tendency to feel that they’re not being true to themselves if they negotiate.” As a mediator, he has steered people in such cases toward negotiation—although the participants were beset by anger and mistrust. In one instance, two companies battling over the use of operating system software agreed to an unusual arrangement establishing a secured facility where relevant information was shared. It is an example, writes Mnookin, whereby “a third party, acting as mediator, can facilitate voluntary settlements when it is impossible for bitter enemies even to sit down at the negotiation table together.”

He also shows the downside of refusing to negotiate. In one bitter divorce case, the wife was offended by her husband’s settlement offer and never responded to it, necessitating a lengthy court fight. The wife’s refusal to negotiate, in Mnookin’s view, prolonged the conflict, cost substantial attorneys’ fees and prevented her from reaching a deal that would have better served her interests—and her children’s. Mnookin acknowledges that it can be painful to bargain with the devil, but it can hurt even more not to. *

Up in the Air

Tushnet argues that the Constitution matters LESS THAN YOU THINK



By Robert Garrett

THE TITLE OF Professor Mark Tushnet’s “Why the Constitution Matters” is something of a misnomer.

The Harvard Law School constitutional law expert surprises readers in the first few pages by strongly arguing that the Constitution doesn’t matter as much as you might think.

What really matters, Tushnet says, is the way politics affects the interpretation judges, politicians and ordinary citizens bring to the document.

True, the Constitution organizes our political structure, and no one would dispute, for example, the stipulation of elections for senators every six years and representatives every two. Beyond such explicit rules, says Tushnet, the ground begins to shift in ways that can make some of us feel uncomfortably “up in the air.”

Apart from politics and interpretation, he boldly declares, there is no independent meaning, carved in stone, for many fundamental rights we so cherish.

Illustration by DAVID POHL



Tushnet is in the forefront of legal scholars who assert that law is inseparable from politics. While this view is now conventional wisdom among most scholars, Tushnet's aim is to reach out with this message to a general readership. By debunking the idea of "objective" meaning, he hopes to make our discourse about the Constitution less mean-spirited.

The book is part of the Yale University Press series "Why X Matters," which has included works by Jay Parini

on poetry and Louis Begley '59 on the Dreyfus Affair.

While most of us recognize that politics and interpretation shift over time, many people, whether conservative or liberal, persist in believing that there is a "fixed" meaning in the Constitution.

Depending on your politics, says Tushnet, changes in Court opinion are typically seen as "departures from the true Constitution or a return to the true Constitution. ... Sometimes we stray from the path, then we manage to get

back on the true path." Those who disagree with our interpretation of true meaning are scoundrels acting in bad faith.

Tushnet, a self-described liberal, prefers to see reasoned arguments that disagree with his viewpoint as simply the normal political process. As we grapple with the devilish details of constitutional interpretation in an evolving society, we do not need to demonize our adversaries, he asserts.

Paying attention to how law and politics are intertwined, he says, can empower people to push harder and more intelligently for change they want—for example, by supporting political "workarounds" that mitigate Supreme Court decisions that rankle.

A case in point is the recent *Citizens United* decision rejecting corporate campaign spending limits. Tushnet advocates HLS Professor Victor Brudney's call for change in corporate law so that shareholders can vote against such funding. This strategy is "beginning to get some legs," says Tushnet.

He is fascinated by what people *don't* know about the Constitution. He talks about the "constitution outside the Constitution," bedrock rights or values

FOR TUSHNET, IT'S POLITICS THAT DRIVES CONSTITUTIONAL CHANGE

not mentioned in the document. For example, the Constitution does not forbid an active military officer from running for

president, yet the unwritten political expectation is that a general should resign from duty before running for office.

Early in his career, Tushnet saw a connection between law and politics. Influenced by the heated politics of the civil rights and antiwar movements, he was an early participant in the Critical Legal Studies movement, which posited that law is politics.

At 27, Tushnet clerked for Justice Thurgood Marshall and wrote a key memo that worked its way into *Roe v. Wade*, addressing issues confronting very young women who became pregnant.

He looks back on his time at the Court as a momentous period in his life, but wistfully admits, "I was too young to appreciate the experience."

Tushnet's wife, Elizabeth, is a lawyer specializing in prison reform. Their elder daughter, Rebecca, is an intellectual property lawyer and a professor at Georgetown.

Younger daughter Eve is a conservative blogger.

Tushnet follows the conventional wisdom in keeping harmony at the dinner table: "We avoid talking about politics." *

Censorship Without Borders

How states around the world are controlling Internet access

By Jeri Zeder

WHEN, IN FEBRUARY, Internet law expert Professor John G. Palfrey '01 spoke at a gathering of the Harvard Law School American Constitution Society, he asked his audience to consider this trio of circumstances: Turkey's censoring of YouTube within its borders—and attempts to do so beyond them; Italy's prosecution and conviction of three Google executives for not moving quickly enough to block a video showing the bullying of a child with Down syndrome; and the likelihood that Google would shut down its China search engine, google.cn, following cyberattacks Google blames on the Chinese government (the company did so a month later). The changing politics of Internet censorship reflected in these incidents is documented and explored in the new book "Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace," edited by Palfrey, Ronald Deibert, Rafal Rohozinski and HLS Professor Jonathan Zittrain '95, co-founder and faculty co-director of the Berkman Center for Internet & Society.

The Internet once held the promise of serving as a portal to the unprecedented and unfettered flow of information and ideas across borders. It appears those days are over. The Web is increasingly being blocked, filtered, surveilled, censored and otherwise controlled by a growing number of

countries—and not just the usual suspects. This collection looks at the global trend of government control of Internet content, not only in places like Russia and China, but in Western democracies as well. The report, which was published by MIT Press in April, is the culmination of an eight-year research project involving more than 100 people, a consortium of four universities—Oxford, Cambridge,

Toronto and Harvard—and a \$3 million grant from the MacArthur Foundation to the Berkman Center. Palfrey was the project's principal investigator.

A follow-up to the same editors' 2008 study, "Access Denied: The Practice and Policy of Global Internet Filtering," the latest volume finds that not only are various degrees and methods of Internet monitoring continuing to grow in the 65 countries

studied, but since the completion of the first volume, attitudinal and technological norms are now emerging to justify and establish Internet control. These norms include national security and law enforcement, the Internet's tipping of the power balance from government to private authorities, cyberwar threats and increasingly sophisticated access-control technologies.

Researchers relied on a combination of testing methodologies and legal research to arrive at their findings. Using sophisticated computer programs, they knew when

and how, for instance, the Iranian government was blocking access to Web platforms during the summer of 2009. Through legal research, they could explore how states use their laws to regulate online behavior, and to conduct surveillance of the Internet. The result, Palfrey says, is a "rich picture" of how states are increasingly controlling Internet access.

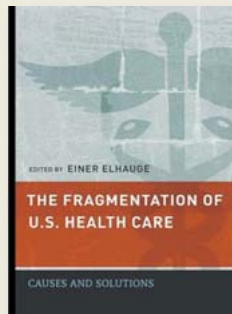
"Access Controlled" reveals discrepancies in what countries choose to block. The United Kingdom, for example, largely protects free expression and privacy, but actively surveils the Internet in the name of national security. Myanmar has been known to shut down access entirely. Falling between are countries engaging in varying levels of political or cultural censorship.

Palfrey wonders how fractured Internet access practices will affect relationships among people throughout the world. "What version of the Internet can you see?" he asks. "What does the rest of the world see? How does the emergence of an Internet that's bordered affect politics and culture developing in a digital era?" *

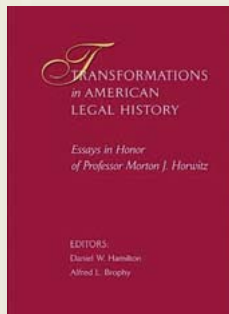
STATE CONTROL
OF THE WEB:
IT'S NOT JUST
THE USUAL
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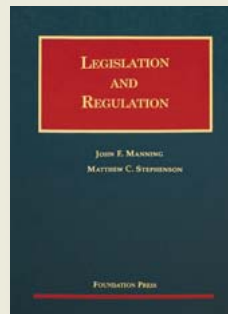
RECENT FACULTY BOOKS



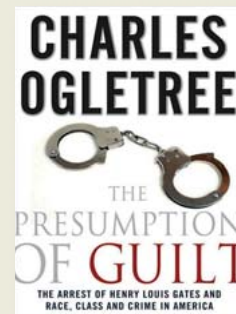
In the wake of landmark health care legislation passed this spring, a new book edited by **Professor Einer Elhauge '86**, founding director of the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics, couldn't be more timely. "THE FRAGMENTATION OF U.S. HEALTH CARE: CAUSES AND SOLUTIONS" (Oxford University Press, 2010) explores the lack of unified decision-making that plagues the U.S. health care system. The interdisciplinary volume—including a contribution from Elhauge and other professors of law, medicine, economics, health, business and political science—makes the case that this fragmentation leads to increased medical error, higher costs, less preventive care and misallocations of health care resources. It identifies possible causes—including



laws, such as ones that mandate separate payments for each provider and amount to disincentives for coordinating care. It also examines the regulatory issues and business and economic motivations the authors believe are responsible for fragmentation and proposes reforms to make the system more efficient and effective. "TRANSFORMATIONS IN AMERICAN LEGAL HISTORY, II: LAW, IDEOLOGY, AND METHODS" (Harvard University Press, 2010), edited by Daniel W. Hamilton and Alfred L. Brophy, is the second volume in a tribute to **Professor Morton Horowitz '67**. It includes contributions from HLS colleagues **Professors Yochai Benkler '94**, **Frank Michelman '60**, **Martha Minow** and **Mark V. Tushnet**, as well as former students and others.



Professors John F. Manning '85 and **Matthew C. Stephenson '03** are the authors of "LEGISLATION AND REGULATION" (Foundation Press, 2010). The new casebook introduces students to the theory and practice of statutory interpretation, the constitutional architecture of the modern administrative state, the key elements of the lawmaking processes used by Congress in passing legislation and by administrative agencies in enacting regulations, and the judicial review of regulations. The book grew out of materials Manning and Stephenson had developed in connection with teaching the new Legislation and Regulation course adopted in the reform of the HLS first-year curriculum that the faculty passed in 2006. It is specifically



designed to be used in the growing number of courses in law schools across the country that teach statutory and regulatory subjects in the first year.

After Harvard Professor Henry Louis Gates Jr. was mistakenly arrested by Cambridge Police Sgt. James Crowley for attempting to break into his own home last July, a media firestorm was ignited. In "THE PRESUMPTION OF GUILT: THE ARREST OF HENRY LOUIS GATES AND RACE, CLASS AND CRIME IN AMERICA" (Palgrave Macmillan, 2010), **Professor Charles Ogletree Jr. '78** uses this incident as a lens through which to explore issues of race and class, with the goal of creating a more just legal system for all. Ogletree is director of the Charles Hamilton Houston Institute for Race and Justice at HLS.

Enforcing Domestic Human Rights

An HLS clinic helps SECURE ACCESS TO HEALTH CARE for society's most vulnerable

By Elaine McArdle

FROM FILING AN emergency guardianship petition in probate court ensuring that the children of a dying mother are raised by the person she chooses, to appealing the denial of a disability claim in federal court for a critically ill client, the Harvard Law School Health Law and Policy Clinic prides itself on taking the toughest cases and working to shape policy to protect some of society's most vulnerable people.

Take, for instance, situations in which people are denied Social Security Administration disability benefits—a critical issue, as access to Medicaid or Medicare is often predicated on it. “The overwhelming majority of people who apply for public benefits are disabled and in desperate need of income and health care support. Yet the Social Security system is designed to reject most applications,” says Robert Greenwald, director and founder of the clinic, as well as managing director of the WilmerHale Legal Services Center in Jamaica Plain, where the clinic is based.

“We work with our clients' health care providers to build strong cases,” says Greenwald. “Legal representation and strong advocacy make all the difference in helping



THE HEALTH LAW and Policy Clinic prides itself on taking the toughest cases.

Anne Pierson '11 (seated); Julie McCormack, clinical instructor; Colleen Kelly '11; and Dan Fields '11

to secure what is literally lifesaving access to income support and health care.”

“We rarely lose these cases, and when we do, we appeal to Federal District Court,” adds Julie McCormack, a clinical instructor.

Over the past two decades, under Greenwald’s leadership, hundreds of HLS students have provided direct legal services to thousands of individuals living with chronic and terminal medical conditions, helping them to obtain public and private health insurance and disability benefits, to

fight discrimination, and to maximize control over decisions affecting their medical care and finances through estate planning. In what Greenwald sees as particularly important work, the clinic has represented hundreds of single mothers who were terminally ill, helping them officially designate through the guardianship process in probate court who will raise their children upon their deaths, so the kids do not end up in state care or possibly with an abusive relative.


The clinic has also been influential in the area of

health care policy. In the late 1990s, it convinced the Massachusetts Legislature to change state law so that low-income people diagnosed with HIV are immediately eligible to receive Medicaid and can be treated for their illness, instead of having to wait until they are disabled by AIDS to get medical care. Greenwald and his team have been working ever since to expand that reform nationally.

With approximately 50 million Americans living without health insurance, he says the clinic is on the front lines of a battle for

fundamental rights. “I would say I run a domestic human rights clinic,” he says proudly.

The clinic currently is working on three projects that keep Greenwald and his students on the road. In the State Healthcare Access Research Project, known as SHARP, students have been traveling to North Carolina, South Carolina, Arkansas, Alabama and other states to document access to health care and support services for low-income people. They conduct focus groups with local health care providers, patients, government leaders, and others, and



ON THE FRONT LINES
of a battle for
fundamental rights

Robert Greenwald, the clinic’s director, is a nationally recognized leader in the area of health care access and legal issues related to HIV/AIDS.

then produce reports on the current status of health care access in each state and help them improve access through strategic advocacy. “Working on the North Carolina and South Carolina SHARP projects has been amazing,” says Colleen Kelly ’11. “I have learned an incredible amount about the health care delivery systems in different parts of the country. More importantly, I am confident that our reports will have a profound impact on access to care in these communities.”

In the Health Care Reform Advocacy Project, Senior Fellow Dorothee Alsentzer ’05 and clinic students are on call as first responders to analyze all major congressional proposals for health care legislation. Within 72 hours, they provide a summary of each proposal to a coalition of 100 national and state-based organizations around the country, such as the Southern AIDS Coalition, determining whether the proposed



Carlo Marchioli '10 meeting with his client and her son as they review legal documents Marchioli has prepared for them

reforms will improve health care access for low-income people. A third major project is helping state-based advocates fight back against state efforts to cut Medicaid during the current down economy, including providing technical assistance to state governments to help minimize cuts as they work to balance their budgets. The clinic also works with many local and national partners on a variety of other initiatives.

Greenwald, who worked at the legal services center when he was a Northeastern University School of Law student, joined it full time in 1987 as a housing attorney. But an international crisis quickly changed his practice focus. “That was the first big wave of the HIV epidemic, and we were starting to see large numbers of people in our community get sick and die. We also started to see fear and discrimination increase toward those with the disease or perceived to have the disease,” recalls Greenwald. “We realized as a law center that we needed to respond to this,” so the center put a small ad in a newsletter of the AIDS Action Committee offering legal services to people with AIDS-related issues.

“We had no idea of the response we would get,” says Greenwald. “Literally, our phone has not stopped ringing since.” The AIDS Law Clinic, launched that year, was the nation’s first law-school-based legal services clinic to serve low-

income people living with HIV/AIDS. Later renamed the Health Law and Policy Clinic, it quickly grew into a broad health care program serving not only people living with HIV but the entire community of low- and moderate-income people who are uninsured, with an emphasis on the elderly, chronically ill, terminally ill and disabled.

The clinic now raises about \$500,000 a year in grants—millions of dollars over the past two decades—including, in December, a Ford Foundation grant of \$200,000 to fund the health care access law and policy work. A nationally recognized leader in the area of health care access and legal issues related to HIV/AIDS, Greenwald was appointed in February to the Presidential Advisory Council on HIV/AIDS, which provides recommendations to President Barack Obama ’91 and to the U.S. secretary of Health and Human Services on issues related to HIV disease and AIDS. He also serves as co-



Back to campus after a day's work at the clinic

chairman of the federal HIV Health Care Access Working Group, a national coalition of advocates working to improve access to quality care for people living with HIV/AIDS.

Greenwald credits much of the clinic's success to its students: "We could not accomplish one-tenth of what we do without the skill and commitment of the large number of HLS students who work in our clinic each semester."

Dan Fields '11 enrolled in the clinic because of his long-standing interest in health care, an issue he focused on last summer during a White House internship. Fields, who has been involved in SHARP, health care reform advocacy and disability cases, says he is "excited about working on impact-oriented health care policy and direct client casework." He adds, "I not only get to see health care issues at the macro level but how they play out on the ground level. I find the work rewarding as the people we serve are in really dire straits."

Greenwald says that working to fix the health care system, helping clients in need and mentoring students make the heavy-duty workload worthwhile. "It certainly helps motivate me that I can be on the T with my family and have a young woman come up and say, 'You may not remember me, but I'm in college now, and I turned out OK because you made sure that when my mom died, my aunt got to take care of me.'" *

NOW ONLINE

Are You an Online Journalist in Legal Peril?

A new clinical collaboration may be the answer



AN ONLINE INVESTIGATIVE journalist, working on a shoestring budget, is sued for libel. Where can he turn for legal help?

To a huge network of law school clinics and experienced private lawyers across the country, thanks to the Online Media Legal Network, a project launched in 2009 by the Citizen Media Law Project at HLS's Berkman Center for Internet & Society.

The network is designed to connect online journalists and digital media creators with lawyers and law students nationwide willing to assist them for free or reduced rates. Two lawyers at CMLP work full time to screen the potential

clients (making sure they adhere to journalistic standards, for example) and match them with lawyers who provide legal help on everything from business formation to copyright and fair use, from freelancer and other employment questions to access to government information.

In just a few months, the network has already grown to include 40 law firms with 7,000 lawyers willing to provide free or reduced-rate legal services to these new media clients. More than a dozen law school clinics are participating so far, including a number of Harvard Law School clinics, such as the

Berkman's Cyberlaw and Intellectual Property Clinic and the Transactional Law Clinics. More than 40 clients have been assisted since the project launched, ranging from very small and local online news sites to documentary producers, says David Ardia LL.M. '07, director and co-founder of the project.

"One of our goals was to build up expertise among clinics and law students all over the country in working for these clients," says Ardia.

This April, the Berkman Center CMLP and the Cyberlaw Clinic hosted a conference titled "Journalism's Digital Transition: Unique Legal Challenges and Opportunities" to mark the launching of the Online Media Legal Network. It brought together panels of academics, legal practitioners and journalists to discuss just the sort of issues raised by the Online Media collaboration, including how the legal profession can assist rather than hinder journalism's digital transition.

The Olin Advantage

At HLS there's a METHOD FOR PRODUCING FUTURE LAW PROFESSORS. (That, plus an oracle.)



FORMER OLIN FELLOWS,
now law professors:
Daniel Chen '09 and Lisa
Bernstein '90

By Seth Stern '01

Lisa Bernstein '90 knew from her first day of law school that she wanted to be a professor, though as time went on, she wondered whether that would be possible without top grades or law review credentials. What helped to set her apart from other applicants, she says, was the paper she wrote—and mentoring she received—as an Olin Fellow during law school.

“That support made all the difference,” says Bernstein, now a law professor at the University of Chicago. “I would not have gotten a teaching job without the fellowship paper.”

Each year, only 15 to 20 Harvard Law School students receive John M. Olin Fellowships in Law and Economics. But alumni of the program such as Bernstein have enjoyed outsized success landing legal academic jobs.

In fact, the annual number of Olin Fellows who get positions on top law school faculties often exceeds the number of successful

applicants from the entire graduating class of other leading law schools, apart from Yale and HLS itself, according

to Professor Steven M. Shavell, director of the John M. Olin Center for Law, Economics, and Business at the school.

The Olin Fellowship is just one of many efforts at HLS to help current students and alumni pursue academic careers. There is also advising by the Office of Academic Affairs and a postgraduate research program added in recent years.

But over the course of more than two decades, the Olin Fellowship has racked up a particularly noteworthy record, one Shavell says is due to the individualized attention faculty devote to training and mentoring Olin Fellows during their time at the law school—and beyond.

The formal requirements are straightforward. In return for a research stipend, each fellow is expected to write a research paper under the guidance of a faculty adviser. Students have presented their findings at the law and economics seminar as well as the American Law & Economics Association, among other national and international conferences.

The opportunity appealed to Daniel Chen '09, who arrived at the law school after completing a Ph.D. in economics at M.I.T. Chen had already set his sights on an academic career, but he credits Olin faculty including Shavell and Louis Kaplow '81 with helping funnel his excitement about potential areas of research into more concrete questions.

For his paper, Chen explored how laws prohibiting sexual harassment affect gender equality and found the laws actually improve labor market outcomes for females relative to males.

The stipend helped Chen hire research assistants to code appellate court decisions and damage awards. He presented his paper as a work in progress at the Olin workshop, where fellow students with backgrounds in a variety of disciplines offered their views.

“It was very helpful to get their feedback early on in a safe setting,” says Chen, who will start as an assistant professor at Duke Law School after finishing up a fellowship at the University of Chicago this year.

Not every Olin Fellow arrives with an advanced degree or a road map to academia.

Guhan Subramanian '98, J.D./M.B.A., credits the fellowship he received with convincing him to pursue an academic career. What was most striking for Subramanian was the way Kaplow treated him and his fellow students just like the faculty who attended Olin seminars.

“Engaging on an equal footing with faculty made me think I could be an academic,” says Subramanian, who is now a professor at both Harvard Law School and Harvard Business School.

Subramanian says the feedback he received was helpfully pointed. “Many people in the academic world

want to heap praise on mentees, whereas Louis and Steve tell you all the ways [the work] can be better,” he says.

Shavell says the goal is to make sure every fellow has a polished paper ready for publication in law reviews or other academic journals. He also invites fellows to return to campus for mock job talks where they further refine their presentations before entering the job market.

Equally important to Tom Miles '03 was the exposure to academic values and academic training and the mentoring that professors such as Kaplow, Shavell and Howell Jackson '82 provide.

“They were extremely helpful in thinking about the path into academia and what steps were necessary in order to begin an academic career,” says Miles, who is now an assistant professor at the University of Chicago Law School.

The advocacy for students continues behind the scenes, with faculty making calls on their behalf to other law schools. “We champion these people and try to help them find jobs that are appropriate given their skill set,” Shavell says.

Bernstein says she tries to replicate what Shavell has developed with the Olin Fellowship with her own students who want to become professors.

When it comes to charting an academic career, Bernstein says, “Steve is the oracle at Delphi.” *

“ENGAGING ON AN EQUAL FOOTING WITH FACULTY MADE ME
THINK I COULD BE AN ACADEMIC.”

REEM

**A NEW
LIBRARY
FOR THE
21ST
CENTURY**
BY JERI
ZEDER

Photographs by KATHLEEN DOOHER

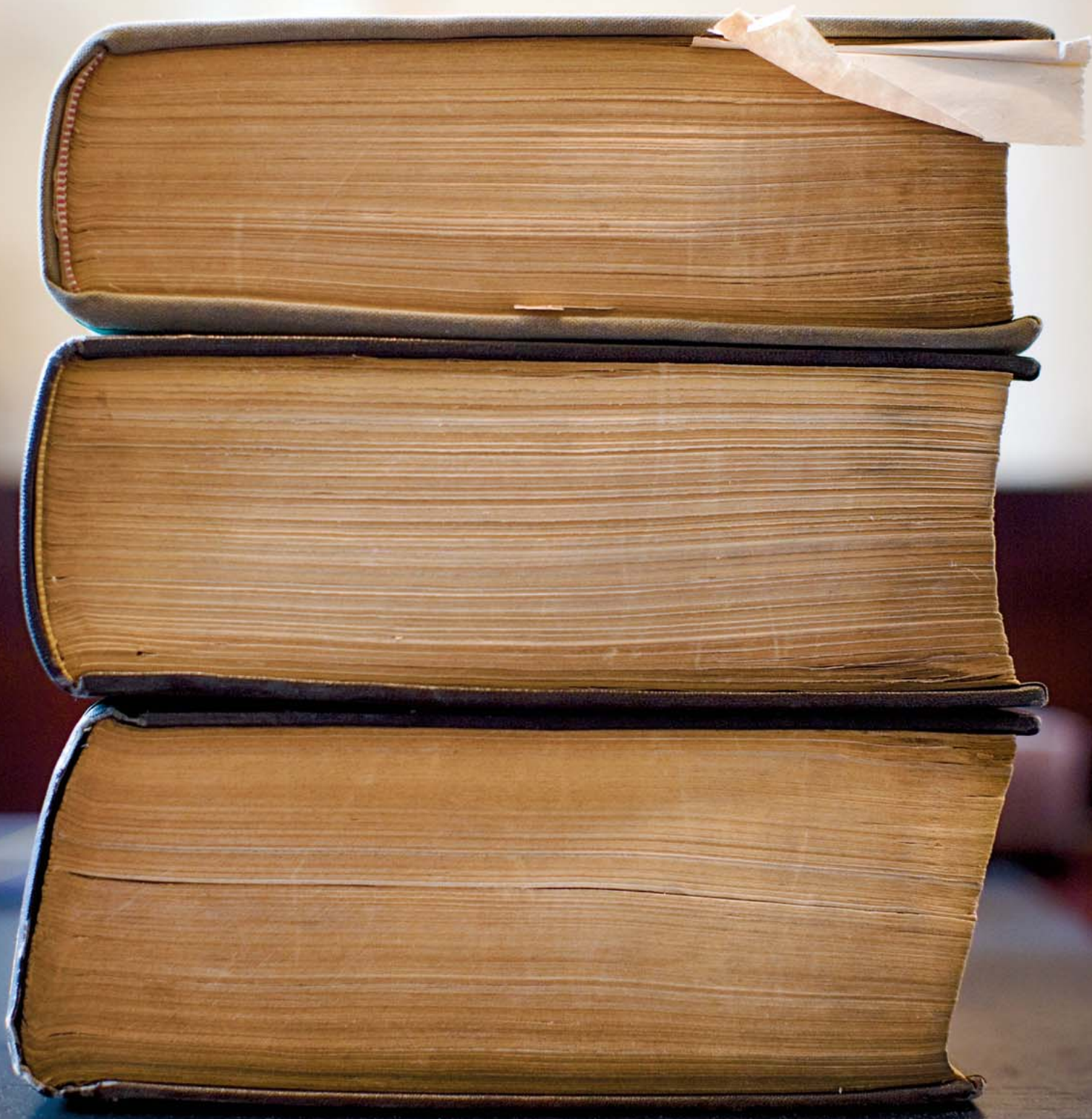
LANG

In 2008, HLS Professor John Palfrey '01, an Internet scholar who has written extensively on the ways digital technologies are shaping society, was asked to apply his expertise to the reshaping of an HLS institution: the largest academic law library in the world. Now vice dean for library and information resources, Palfrey, with his energized staff, has been working double time to define the library of the future.

XING



DELL



"WE HAVE TO DEFINE 'LIBRARY' DIFFERENTLY THAN IN THE PAST. THE REASON FOR MY URGENCY IS THAT

WE HAVE TO DEFINE IT BEFORE IT IS DECIDED FOR US."

—PROFESSOR JOHN PALFREY '01, VICE DEAN FOR LIBRARY AND INFORMATION RESOURCES



A CATALOG ENTRY sparks the imagination: On March 6, 1935, Gutzon Borglum, the sculptor who sited Washington, Lincoln, Roosevelt and Jefferson on Mount Rushmore, was in Washington, D.C., casting wet plaster over the lifeless face of former Supreme Court Justice Oliver Wendell Holmes Jr. LL.B. 1866. The object he was creating would eventually measure 26 x 17.5 x 18 centimeters, be purchased from Borglum's widow for \$1,077, and be held forevermore at Harvard. Today, Holmes' death mask, along with his desk, straight razor and annotated copy of his seminal work, "The Common Law," is now visible the world over, online, courtesy of the Harvard Law School library.

Holmes' final likeness is but one of hundreds of thousands of objects—together with 2 million volumes—in the law school's collection, now in the earliest stages of digital preservation and cataloging. And digitization, itself a remarkable feat of stewardship, is only one piece of a larger effort to launch the library into the future.

The 21st-century legal academy emphasizes interdisciplinary study, international law and empirical legal research. When the law school reformed its curriculum in 2007 and 2008 to accommodate these new emphases, it was clear that the library needed to keep pace. The question was, how? As dean, Elena Kagan '86 commissioned an external review. The resulting report became the primary blueprint for re-envisioning and reorganizing the library, a process led by John G. Palfrey '01.

Palfrey, who for six years helped to run the law school's Berkman Center for Internet & Society, was appointed vice dean for library and information resources in 2008. Palfrey is not a librarian. He is, however, a law professor and cyberspace visionary,

who has published extensively on the Internet's relationship to intellectual property and on the ways digital technologies are changing society. His task in his current position is to meld the old, the new and the emerging digital-era library. To do so, Palfrey says he has built on the legacy of his predecessor, HLS librarian Terry Martin. He also draws on the expertise of his librarian staff.

Palfrey kicked off the library's reorganization by laying out his broad vision and appointing a nine-member, professionally diverse steering committee to design its implementation. A year later, on April 30, 2009, the committee issued its report. The result: a new structure that opens the law school's extraordinary collections to the world; leverages support for, and access to, law-school-generated scholarship; strategically develops the collections; streamlines and modernizes traditional library functions; and—critical in this volatile time for libraries—prioritizes innovation.

Palfrey says part of what drives the changes is "a realization that we have to define 'library' differently than in the past. The reason for my urgency is that we have to define it before it is decided for us," he adds, noting efforts by businesses like Google to take on library-like functions in ways that are motivated by for-profit, rather than scholarly, concerns.

The law library's reorganization is one piece of a larger project to modernize Harvard's entire \$165 million, 1,200-person library system. The university recruited Palfrey to contribute to the provost's library task force, and since November he has been a member of a team looking into how to implement the task force's recommendations. Harvard Divinity School Professor David Lamberth, who chairs that effort, says Palfrey's empirically based observations pushed them "to envision not only the digital

future that is changing the landscape for information services and libraries, but the reality of the digital present for so many of our patrons." And in many ways, he says, the law school library's reorganization has provided a testing ground for the wider university efforts.

FROM RESOURCE TO ACADEMIC PARTNER

A striking accomplishment of the reorganization is a library that proactively assists faculty and students in the production and dissemination of new knowledge. "Libraries are now less about having a set of materials that you store and more about knowledge management," says Palfrey. "How do you help create materials in partnership with faculty and help curate those materials?"

One answer: Hire statisticians. The library has taken the unusual step of hiring two full-time employees to crunch the numbers for the law school's empirical legal researchers. For the uninitiated: Empirical legal research is an emerging field that crosses all legal disciplines. It might look, for example, at whether it is possible to predict how the makeup of the Supreme Court affects decisions in rape cases; the effects of various regulatory structures on corporate behavior; ethnic voting patterns with implications for redistricting; or the efficacy of programs for reducing gun violence. Assistant Professor James Greiner's empirical research focuses on the effect of assigning counsel to indigent civil litigants. He says, "[Palfrey's] team looks at information, and understanding information, as their general purpose, and that means that they're willing to get information from alternative sources, and they're willing to hire staff that wouldn't be considered traditional for libraries to hire."

Travis Coan, the statistician assigned exclusively to faculty, fields questions on issues ranging from how best to

Since its reorganization, the library has a new structure that further opens its collections to the world; leverages support for, and access to, HLS-generated scholarship; streamlines and modernizes traditional library functions; and—critical in this volatile time for libraries—prioritizes innovation.



IN MANY WAYS, THE LAW SCHOOL LIBRARY'S REORGANIZATION HAS PROVIDED

A TESTING GROUND FOR THE LARGER PROJECT TO MODERNIZE ALL OF HARVARD'S LIBRARIES.

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Digitization of the law library's massive collections is under way, and the items now online are fascinating—from postcards from a World War I civilian internment camp to 15th-century English Year Book cases. But the ambitions of the library staff go further. A new unit, the in-house Harvard Library Laboratory, is exploring other ways to serve patrons through the Internet. It aims to build a virtual library architecture that can be navigated as easily as the physical library.

merge data files to programming statistical models. He sees demand for his services steadily growing—consistent with the larger trend, visible particularly over the last decade, of an explosion in empirical legal scholarship. “I think the law library and John Palfrey are trying to get in on the ground floor of that action,” says Coan.

Statistician Parina Patel works with students doing original research in their empirical law courses for eventual publication, and occasionally guest-teaches. One of her students, Jaime Eagan '11, is researching the Americans with Disabilities Act. Patel helped Eagan glean from her data whether the extent of an advocate's expertise in ADA litigation is related to the outcome of a case in a statistically significant way.

Besides providing muscular statistical support to researchers, the library has also boosted support for the production and dissemination of knowledge through the expansion of its “scholarly communications” and “open access” functions. “Scholarly communications” refers to the process of supporting faculty along the road to publication. “Open access” refers to the movement to free scholarly work from the restrictions of for-profit publishing,

and make it widely available on the Web. The law school faculty adopted an open access policy in 2008, and one benefit has been its impact on the bottom line.

Palfrey explains: “When Laurence Tribe writes an article for a law review, he's not trying to make any money off of it. He is seeking to improve the understanding of a legal doctrine or a legal theory. And yet on the other side of that, the publishing apparatus works at cross-purposes. [It] charges us money for our own work to reacquire back into libraries, and likewise, doesn't make it freely available to people who might in fact use it.” On a practical level, open access works like this: A faculty member publishes her work in a peer-reviewed journal, but retains the copyright and deposits an author's final version (post-peer-reviewed, but pre-copyedited and preformatted) in the repository known as DASH (Digital Access to Scholarship at Harvard), where anyone can access it on the Web.

Veteran library staffer Michelle Pearse handles open access and scholarly communications for the library; the point of her job is to get content into DASH. She says, “Before [the library's reorganization], 20 percent of my time was spent on open

access; now, 80 percent of my time is.” With the law school now transitioning to open access, the number of law articles in DASH is fairly low, but Pearse is dedicated to changing that by conducting outreach to faculty members (part of her “scholarly communications” function) and also by handling the logistics necessary to bring works published before May 2008 into the repository.

RAMPED UP FOR THE DIGITAL AGE

While deploying new resources for research and teaching, the library is also tackling what Palfrey calls the “digital-plus” era head-on. “We're the largest academic law library in the world,” says Kim Dulin, associate director for collection development and digitization. “We should be putting it out there and making it more open.” Her unit boasts the new, in-house Harvard Library Laboratory, responsible for digitizing collections and for developing new ways for the library to serve its patrons through the Internet.

Jeff Goldenson, the laboratory's designer and multimedia communications specialist, is experimenting with a Web application he developed called Stack View, which would allow the virtual browsing of library shelves. The

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Act, (No. 3), 1992.

2. There shall be issued from general re-
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One thousand nine hundred and ninety two
Seven hundred and thirty thousand pa'anga in
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to this Act.

3. The Treasurer shall issue and pay su-
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**THE EMERGING
DIGITAL-ERA
LIBRARY.**

*PALFREY'S TASK IS TO
SHAPE AND DEFINE*

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THE LIBRARY HAS HIRED TWO STATISTICIANS

**TO CRUNCH THE NUMBERS
FOR THE LAW SCHOOL'S
EMPIRICAL LEGAL
RESEARCHERS.**

Palfrey wants the library to help generate new scholarship, and on-staff statisticians Parina Patel and Travis Coan (pictured at left) are helping to realize this vision. Patel works with students doing original research in empirical law classes for eventual publication. Coan assists faculty, with everything from questions about merging data files to programming statistical models. He sees demand for his services steadily growing—consistent with the boom in empirical legal scholarship over the last decade.

Harvard Library Laboratory is also striving to make the library's holdings more visible on Google and is developing a project called Shelf Life, which, as described by Dulin, "has the goal of exposing the richness of Harvard library holdings on the Web in a new and different way." An early demo version is expected this summer.

Basically, the laboratory is aiming to build a virtual library architecture as easy to navigate as the physical library. To see the value of this work, take a look at the library's website where portions of the historical and special collections are posted (see <http://tinyurl.com/specialcollections>). These collections are massive: more than 200,000 printed materials in the library's rare books and early manuscripts collection; more than 250 collections within the modern manuscripts collection; and one of the world's largest collections of law-related art and visual materials. Cataloging these items for the Web is a monumental task, but the results are breathtaking: See, for example, "Statham's Abridgment," a collection of 15th-century English Year Book cases from the time of Henry VI; or Bracton's law treatise from the early to mid-1200s; or the Ruhleben civilian internment camp papers from World War I; or the ongoing project to digitize the 1 million pages of documents related to the Nuremberg Trials—all online.

THE BRAVE NEW WORLD OF COLLECTION DEVELOPMENT

Once upon a time, the library collected everything, in every language, related to law. No more. "There's so much more published every year, the cost of what is published is increasing, and the formats have multiplied," says Palfrey. "So the expectations for some people are that we'll have a book or journal in hard copy; on the other hand, some people want a digital version to be able to search or do something with. It's too

expensive to do both." These realities led the library to develop its first-ever collection development policy.

HLS, of course, is not the only law school facing these pressures, so collections have become a natural area for law schools to work together. Palfrey calls this cooperative effort "radical collaboration," both because it has never been done before and to make a point: "Even the wealthiest, strongest libraries cannot go it alone in the digital-plus era we're getting into," he says.

The library is also more strategic about collecting the laws of other nations. "We have laws here that people don't have in their own countries, so they have to come here to use them," says Dulin. The library has discontinued collecting the laws of countries like Switzerland, which are easily accessible from other sources, and instead focuses on putting online the laws of countries with unstable regimes or with too few resources to preserve the laws they have developed.

With the goal of making as much available online as copyright restrictions allow, the library has hired Nika Engberg '10, the first Harvard Library Laboratory Fellow. Engberg researches copyright and intellectual property issues and their impact on digitization and online availability.

READY FOR ANYTHING

"This is a moment when libraries are rethinking everything," Palfrey says. No one knows yet how to organize the library's website for optimal searching and browsing, what the law school's future library needs will be, or what social media the library might invent or adopt to connect with patrons. "How do we do the traditional work that has made this a great library historically while also transitioning to an era where libraries have very new jobs to do?" he asks.

To meet this challenge, Palfrey and

his staff have embedded innovation into the library's organizational structure. Beyond the obvious example of the laboratory's research and development work, they have borrowed Google's 80/20 work principle, allowing staff members to spend 80 percent of their time at their assigned jobs and 20 percent in other areas of the library. Palfrey believes this will improve internal communications, productivity, innovation and service. At this stage of the reorganization, more than half of the staff is availing itself of 80/20 opportunities. Palfrey believes more staff will get involved over time.

Another example of planned innovation: Collection development, previously a discrete job, is now considered a librarywide responsibility. News of library resource needs can now reach the collection coordinator faster, and from more constituencies.

Finally, the entire hierarchy of the library, which has a staff of about 90, is now flatter and more porous, allowing freer communications throughout the organization. Teams are regularly convened and dispersed to execute special projects. As much as possible, the reorganized library stands ready to tackle anything.

If these changes feel dizzying, it's reassuring to hear Palfrey say, "We haven't stopped ordering books. We haven't stopped ordering serials. We do acquire more electronic resources, but we still need to catalog them." In other words, Palfrey and his staff are re-envisioning the law library at the same time that they are improving the core services it has always provided. They are, as Palfrey puts it, merging "the classical and the jazz." The point of this merger: to better support the faculty and students who are heralding in the future of law. *

Jeri Zeder is a Boston-area freelance writer.

BY JULIA COLLINS



The risky business of repairing the U.S. financial system



HARD HATS REQUIRED

The close call of 2008 exposed deep and widespread risks in the financial sector that took the most seasoned industry leaders and federal regulators by surprise. Two years after the government bailout of Bear Stearns set off the first shock wave, the Bulletin checked in with HLS faculty and alumni committed to figuring out what went wrong, for their takes on where the greatest dangers remain in our financial system and what to do about them.





Too interconnected to fail?

“WE WERE on the precipice,” said **Professor Hal Scott**, director of HLS’s Program on International Financial Systems, referring to the high-wire weeks when federal regulators and Wall Street leaders held nonstop emergency meetings to stave off collapse and decide the fate of Lehman Brothers, AIG and other tottering industry giants. Fast-forward to the present, and Scott said the greatest systemic risk of all “remains the possibility that if a major financial institution fails, others will follow. So far, we have not licked this problem.”

Since AIG’s rescue, and the creation of the TARP safety net, the phrase “Too Big to Fail” (aka “TBTF”) has become the mantra justifying the Wall Street bailouts. Scott considers TBTF misleading. The real question, he said, is, Are there institutions too interconnected to fail? As regulatory reform efforts press forward, “we’re trying to design a modern financial system without knowing the most important, basic facts,” Scott contended. For example, if a major bank failed, “how exposed would another bank be as a result? What percentage of its capital would be at risk? We have no idea.”

As he wrote in a December op-ed for *The Wall Street Journal*, and testified in February before the Senate Committee on Banking, Housing, and Urban Affairs, “We clearly need to know far more about the facts of interconnectedness.” For one thing, Scott would like Congress to demand full accounting with documentation, including details of any counterparty exposure, “of why the Fed and Treasury decided they had to rescue AIG to the tune of \$85 billion. They have yet to tell us.” If AIG had indeed failed, he said, given that Goldman Sachs claimed adequate cash collateral, the two entities’ interconnectedness did not mean Goldman Sachs too was doomed; it was an issue of capital exposure. If in fact there are no “adverse consequences from interconnectedness, then the TBTF problem becomes much more manageable”: Instead of “after-the-fact taxpayer-funded bailouts,” as Scott put it, the private sector can bear its losses, with public money injected only after that if there is no other recourse.

Somebody needs to have the big picture

“NOBODY LIKES ‘Too Big to Fail,’” said **Professor Howell Jackson ’82**. “Everyone thinks there should be consequences when a financial institution becomes insolvent. It’s modestly ironic and counterintuitive that to prevent the Too Big to Fail policy, you have to regulate large institutions in advance.”

Historically, the U.S. regulatory system has been “highly fragmented,” with lots of different agencies overseeing different aspects of the financial system, and divisions between the federal and state governments. This built-in divisiveness, Jackson noted, is “one of the elements of risk we’ve generated for ourselves.” No single regulatory agency has had an industrywide perspective. This has allowed businesses to “take advantage of regulatory gaps and play regulators off

one another.” Since the meltdown, Jackson has recommended in publications and talks that the Federal Reserve Board’s authority be expanded to cover all sources of systemic risk in the financial services industry, with better coordination with other regulatory agencies. He supports formation of a financial services oversight council, composed of regulators with frontline responsibilities, “as a step toward more consolidated supervision.” (At publication, Congress was moving in this direction.)

According to Jackson, another unresolved risk that Wall Street’s woes made plain is how hard it is to monitor the financial health of international firms. For example, when now-bankrupt Lehman Brothers got into trouble, the status of its assets outside the United States could not be determined. “We need to harmonize, to coordinate with other national regulatory systems. The problem is, who should do this?” A supranational regulatory body isn’t feasible, he said. “So far, it’s done through informal agreements among coordinators—a slow process.” For now, the Obama administration “is attempting to address cross-border regulatory variations with the G-20 and its Financial Stability Board,” the new regulatory body established post-crisis.

Rely on markets, not regulators

Byron Georgiou ’74 is head of Georgiou Enterprises, is of counsel to Coughlin Stoia Geller Rudman & Robbins and serves on the advisory board of HLS’s Program on Corporate Governance. Based on 10 years of experience investigating and prosecuting financial fraud at Enron, WorldCom, Dynegy and AOL Time Warner, he observed, “Many of the behaviors leading to the crisis were lawful but had unforeseen multiplier effects which regulators missed.” He added, “Of course, to the extent the crisis was caused by criminally fraudulent behavior, we expect that public prosecutors at the federal, state and local levels will enforce applicable laws.”

Georgiou is one of the 10 appointees to the new bipartisan Financial Crisis Inquiry Commission charged with evaluating the prime causes of the financial crisis, in 22 areas ranging from the impact of the housing crisis to the repeal of the Glass-Steagall Act of 1933, originally passed to prevent banks from speculating with depositors’ money. The commission will examine “major financial institutions that failed or would likely have failed without infusion of exceptional taxpayer assistance,” Georgiou said, and will present its report to President Barack Obama ’91 and Congress on Dec. 15.

Georgiou emphasized the need to develop “market mechanisms” to enforce behaviors that can help maintain stability of the financial system and prevent over-reliance on regulation. “One must always assume that financial innovators will come out with new products ahead of regulators” having the tools to regulate them, he explained. In the securitization market, all participants in the creation of mortgage-backed securities—including lawyers, accountants, underwriters, mortgage brokers and rating agencies—were compensated in cash, often with higher percentages for riskier, high-interest

ON AVOIDING A FINANCIAL MELTDOWN

8 QUICK TAKES ON RISK AND RELIEF



HOWELL JACKSON

The Federal Reserve Board's authority should cover all sources of risk in the financial services industry.



HAL SCOTT

The greatest risk is still the possibility that if one institution fails, others will follow. "We have not licked this."



ALLEN FERRELL

Securities class-action litigation may reveal essential information.



JESSE FRIED

"A bailout clawback would force those who profited from the risk-taking to chip in more."



NORM CHAMP

The SEC continues to find instances of advisers who fail to disclose conflicts of interest to clients as required by law.



BYRON GEORGIU

"Market mechanisms" must be developed to maintain the stability of the financial system.



BILL STUNTZ

"Criminal punishment works best when it is ... targeted. Regulators need to paint with a broader brush."



ELIZABETH WARREN

"The easiest way to reduce risk ... is to start at the front end, making the credit market safe."

products. But once the security was issued, "none of the creators retained an interest in how it performed." One solution is to require that a significant portion of participants' fees be paid not in cash but in a long-term retained ownership of the securities they create, "so that their financial interests are aligned with [those of the] investors to whom they sell," thereby encouraging responsible due diligence at the front and reducing the likelihood of nonperformance.

In the wake of the subprime lending collapse and credit crisis, the number of federal class-action securities filings has surged. Writing with co-authors Jennifer Bethel and Gang Hu (both Babson College faculty members), **HLS Professor Allen Ferrell '95** has suggested that securities class-action litigation either could expose "weak links" in the chain of participants in the process of issuing securities—from origination to underwriting to rating and sale—or could serve "to highlight where the market may have underappreciated certain risks or failed to anticipate particular circumstances." It remains to be seen whether such litigation can help tamp down future unreasonable risk-taking in the securities markets.

Trouble from the top

BONUSES PAID TO CEOs of bailed-out companies earlier last year elicited public wrath and brought the topic into public view, but **Professors Jesse Fried '92** and **Lucian Bebchuk LL.M. '80 S.J.D. '84** have long been studying the

corrosive role of unmodulated executive pay. "The boards of investment banks paid executives and traders for short-term performance," said Fried. "Not surprisingly, the boards got what they paid for. Many of these banks did not make it to the long term." Some banks that survived are taking steps to improve pay structures, such as lengthening holding periods for the equity executives receive in their compensation packages. Fried thinks holding periods should be longer, and cash bonuses based on short-term results should be smaller. Getting boards to follow suit won't be easy, however, "because executives and traders will resist."

The harsh term "clawback" is becoming familiar as the public fumes over bonuses paid to bailed-out AIG executives while legislators and legal experts debate how to rein in excessive compensation. Fried believes that current laws and arrangements impede taking back pay that executives and traders received before their firms are bailed out. At present, "it is difficult to find authority to recover pre-bailout bonuses," he said. "Compensation contracts rarely require executives to return already-paid bonuses, even if the decisions made while 'earning' these payments ruin the firm." The Sarbanes-Oxley Act permits the government to recover certain bonus payments, but only under very narrow circumstances, and while provisions of the federal Bankruptcy Code and state insolvency statutes could be used to recover payments to executives if the firm becomes insolvent, "the bailout itself prevents the use of these insolvency-triggering clawback provisions."

Fried would like Congress to adopt a law that allows the government, when it bails out a firm, to claw back cash bonuses paid out to executives and traders in the previous year or two—bonuses that can't currently be reached. "Right now, too much of the cost of cleaning up a financial firm's mess falls on the taxpayers' shoulders; a bailout clawback would force those who profited from the risk-taking to chip in more," he said, ideally impelling future decision-makers to "think twice before taking financial gambles."

Security from the SEC?

THE SECURITIES AND Exchange Commission has taken a drubbing since the meltdown for blinkered inaction and worse. Professor Scott would merge the SEC into a new "USFSA" modeled on the United Kingdom's FSA (Financial Services Authority), the regulator of all U.K. financial service providers. Said Scott, "One major failure of the current reform proposals is [the lack of] any serious reform of the [U.S.] regulatory structure." The SEC proved incapable of providing financial supervision before the crisis, he said, and is trying to fix this by creating a new division focused on risk. "But I am skeptical that they can overcome their lawyer-dominated culture."

That brings us to the notorious legacy of one of Wall Street's biggest manipulators: Bernie Madoff, a former stockbroker and investment adviser. Now serving a 150-year sentence, he sidestepped SEC detection for many years while swindling clients in the largest Ponzi scheme in history. But on a smaller scale, countless investment advisers took liberties with their clients' money in the fast-and-loose pre-meltdown markets.

From the vantage point of **Norm Champ '89**, an associate regional director for the SEC, the ongoing risk post-crisis "is that investment advisers do not treat their clients fairly." Although they are required to manage their clients' assets as a fiduciary, said Champ, "we continue to uncover instances of advisers" who fail to disclose "material conflicts of interest to clients as required by law. We're concerned that this behavior harms investors and undermines public confidence in the markets." (This point was amplified in April when the SEC brought an enforcement action against Goldman Sachs in connection with the firm's marketing of mortgage securities.) The SEC is ramping up by hiring more agents and intensifying scrutiny of investment advisers based on risk factors the agency has identified. The reviews focus on areas of investment management "where misconduct is most likely to be found"; the SEC's Enforcement Division is called in when serious rules violations are discovered.

Inevitably, the number of people criminally prosecuted will be small. According to **Professor Bill Stuntz**, this highlights the limits of using criminal punishment to police financial markets. "The worst problems affect the whole market, not a small number of badly run firms," said Stuntz. "Criminal punishment works best when it is precisely targeted. Regulators usually need to paint with a broader brush."

Legislative reform and the financial industry

"INDUSTRY IS GETTING ready for a lot of change," Scott said, as the legislative package to reform the financial sector moves through the Senate; the House version already voted on waits in the wings. Scott has consulted regularly with House and Senate members and their staffs; surprisingly, despite the bipartisan wrangling and industry foot-dragging, he believes "disagreements actually are not great" on how to deal with derivatives and clearinghouses, design resolution procedures for insolvent financial companies, jump-start private-sector securitization and come up with fixes for the rest of the problems crowding the massive bill.

The main sticking point between Congress and industry has been the CFPA, the proposed consumer financial protection agency that would oversee financial products such as mortgage loans and credit cards. **Professor Elizabeth Warren**, chairwoman of the TARP Congressional Oversight Panel, has said the Credit Card Accountability, Responsibility, and Disclosure Act passed in 2009 is "a good first step" toward fixing the "broken" consumer credit industry. But she contends an independent CFPA is vital to rein in the big banks, which she has bluntly criticized for deceptive tactics that ensnare ill-informed consumers in disastrous financial positions.

"The lack of meaningful rules over the consumer credit market has destabilized families for a generation and also contributed to the collapse of the global economy," said Warren. "The easiest way to reduce risk in the system is to start at the front end by making the credit market safe again. This can be done by a new agency with the tools to slim down the fine print and eliminate all the tricks and traps buried in incomprehensible contracts." (At publication, while the House reform bill included an independent CFPA, its fate in the Senate was uncertain, as a plan to fold the agency into the Fed was gaining traction.)

In Scott's view, the CFPA's focus on "credit cards and late fees is small potatoes compared to the high percentage of people's net worth tied up in real estate. Nobody is really protecting investors in this area. But Elizabeth Warren and I are on the same page when it comes to the mortgage problem: We have yet to come up with a convincing solution to the subprime crisis." And another wave of foreclosures threatens. As Byron Georgiou pointed out, "We haven't yet seen the collapse in the commercial mortgage-backed securities. Many of those are due in five years" and will need to be refinanced and reset.

By the time his commission issues its consensus report in December, said Georgiou, "the financial crisis will, regrettably, still very much be with us." *

Julia Collins is an independent writer working in the Boston area.

A PRESCRIPTION FOR CHANGE

BY ELIZABETH COONEY

REBECCA ONIE,
outside Boston Medical
Center, where she started
Project HEALTH 14 years ago

WHEN SHE WAS 19, REBECCA ONIE '03 CREATED A PROGRAM THAT TAKES A HOLISTIC APPROACH TO TREATING LOW-INCOME PATIENTS; ONE "GENIUS GRANT" LATER, SHE'S DETERMINED TO CHANGE THE HEALTH CARE SYSTEM.

Photograph by JESSICA SCRANTON

It all started with a simple question: If doctors had no limits on what they could offer their patients, what would they give them?

The answer, then-Harvard sophomore Rebecca Onie heard again and again, was food, housing, child care, help finding a job. Not the traditional tools of health care, these lifelines are no less essential to health. If a family is living in a car, she explains, prescribing an antibiotic for a child's ear infection can't begin to cure the deeper ills that family is suffering.

Onie marshaled like-minded undergraduates to work with longtime health visionary Dr. Barry S. Zuckerman, creating Project HEALTH 14 years ago. From a card table near the elevators outside Zuckerman's Boston Medical Center pediatrics department, the first Family Help Desk has branched out to six cities—with centers staffed by 600 student volunteers a year who fill "prescriptions" from doctors and nurses for assistance with homelessness and hunger. They are convinced that in order for doctors' offices to be places where people actually get healthy, services beyond traditional medical care must be offered.

This disarmingly simple idea and its real-world execution won Onie a MacArthur Fellowship last fall. The half-million-dollar "genius grant" catapulted the 32-year-old HLS alumna and her organization onto a larger stage just as its leaders were looking beyond merely replicating success to transforming the health care system itself.

"We have this belief that access to basic resources like food and housing impacts both health outcomes and health care utilization in general, but particularly for low-income patients, and a belief that we will only actually move the needle on health outcomes and health care costs when we have a system that addresses the social determinants of health," she said during a recent interview in Project HEALTH headquarters, which occupies space donated by the firm Foley & Lardner in Boston's Prudential Center. "So the question we ask ourselves is, If it's all so obvious, why doesn't the health care system just operate this way?"

For starters, there is a staggering lack of social workers. At Bellevue Hospital Center in New York City, for example, there is one social worker for every 12,000 patients. At Boston Medical Center, which serves many low-income patients, there is one social worker assigned to a pediatric emergency room with 22,000 visitors a year.

A volunteer workforce trained to connect patients to resources can fill in this piece of a social worker's job. But Onie has a reason for relying specifically on undergraduates, two-thirds of whom are pre-med students. She's recruiting future leaders to influence health care in the years to come.

"Having a model, however brilliant or not it may be, is not sufficient. What will be necessary to actually change the

health care system is the leadership of the health care system," she said.

Students compete for places in Project HEALTH, which requires intensive training and a time commitment of at least six hours a week to work on a help desk, follow up with clients and devote an hour to on-campus reflection with other volunteers.

On a slushy day in February,

Frances Wu, a Harvard junior in her third year with Project HEALTH, fielded phone calls and tracked cases in pediatrics at Boston Medical Center. Most of the patients' families need help with housing, she said, which is hard to resolve given long waiting lists for subsidized housing and high rents in the private market. Wu and sophomore Megan McGrath compared notes on regulations and time limits for housing and food stamps while scanning the Family Help Desk database on their laptops. They have such a firm grasp on the ins and outs of services that clients assume they work for the medical center and ask them for help getting a job there.

Wu was especially pleased to come up with recreational activities for the child of a woman who had just lost her job. She couldn't afford some programs, but Wu combined two in the same neighborhood that were much cheaper. Solutions for child care can be tougher to find, especially outside the city. "I don't know how they manage," Wu said about families far from services.

McGrath, 19, recalled one request for housing that brought her up short.

"I had someone my age who had a baby and was living with a friend. I had come in really annoyed about a chem test, but this put it in perspective," she said.

Project HEALTH co-founder Onie was also 19 when she approached Zuckerman with her questions about health care. She had volunteered in the housing unit of Greater Boston Legal Services, working on problems from vermin to evictions. "When you scratched the surface, there was always an underlying health issue," she said.

She decided she wanted to work further upstream, before children's asthma was worsened by cockroach



At Family Help Desks around the country, student volunteers fill "prescriptions" from doctors and nurses for assistance with homelessness and hunger.



BY STAFFING THE help desks with undergraduates, many of whom are pre-med, Onie hopes she is training future leaders who will transform health care.

droppings or families were out on the streets. Zuckerman had bridged law and medicine in 1993 by founding the Medical-Legal Partnership for Children, which enlisted Boston law firms to help families solve legal problems that impinged on health. After interviewing physicians at his suggestion, Onie thought about what students could do to bridge the gap between needs and available services.

On the Harvard campus, she was struck by another gap: the discrepancy between what was asked of student volunteers and what was asked of student athletes. “It seemed to me the model that tried to be more relevant for poverty ... would be that which asked more rather than that which asked less,” she said. “If you’re going to do that for water polo, surely we can do that for poverty.”

Dr. Michael Tang, a resident in the combined pediatrics program of Children’s Hospital Boston and Boston Medical Center, was an early recruit to Project HEALTH. He heard Onie speak at Harvard’s freshman orientation and was hooked.

“She was incredibly inspiring and she was hard not to sign up with,” he said recently about her 1997 pitch. Today, “[h]er energy, her vision push us to say, ‘How can we do this better? How can we make families’ health better? How can we change the health care system to improve the health of these kids?’ Project HEALTH volunteers through the years, even those who just heard her speak once, feel it.”

Zuckerman, too, was struck by Onie’s energy. After she called him up out of the blue and convinced him to see her, he recalled, “I expected to have a brief chat—she was just a sophomore in college,” he said. “She came over and we were chatting for an hour. Her energy and her intellect and her passion were extremely compelling.”

After graduation in 1997, Onie worked at Project HEALTH for three years and then enrolled in Harvard Law School. Earlier, a career in medicine had crossed her mind,

but physicians at Boston Medical Center did warn her that some days were all ear infections.

“By not being [a doctor], I potentially could enable all of those folks who were doctors to be much more effective in their own work,” she said. “I had a real belief that law would be a path to be a powerful advocate around issues that I cared about. Still the same issues, just a different tool kit.” After graduating from law school, where she was an editor of the Harvard Law Review,

Onie clerked for 7th Circuit Judge Diane P. Wood. While an associate at Miner, Barnhill & Galland, she worked on civil rights and employment discrimination cases and represented health centers, affordable housing developers and nonprofits. But in 2006 she left law for the social entrepreneurship of the organization she had helped found.

Onie reflects that she is probably too impatient for law’s pace: “There’s the occasional sweeping change, but the law is explicitly incremental, and I think for me [I had] a hunger to move faster.”

At this juncture, Project HEALTH is embarking on an \$11 million capital campaign over four years, fueled by the MacArthur grant. Onie says the effort resembles HLS’s newly established Public Service Venture Fund, on whose board she sits, and which includes seed money to launch nonprofit ventures proposed by 3Ls. Onie wants to build philanthropic equity to expand Project HEALTH programs, which some hospitals now pay for, ultimately quadrupling the number of families served in the next four years, to about 24,000.

At the same time, in the midst of the national debate about health care reform and how to hold down escalating costs, she believes Project HEALTH’s approach saves money: “Part of our vision for the next four years is to work successfully to actually establish the cost savings associated with the model and to be able to make a compelling case to Medicaid, or [to] other third-party payers, that this is a model that is actually worth investing in.”

“Our aspiration is to grow only to the extent we need to, in order to really change the health system,” she said. “I think that absolutely our goal is not to build an empire, but to really change the system.” *

Elizabeth Cooney is a Boston-area journalist who writes about health care for publications including The Boston Globe.

A U.N. advocate is fighting to protect children from armed conflicts

A MOST DISARMING

Last spring, a young woman named Grace Akallo sat in the U.N. Security Council chamber and told its delegates her story. In 1997, when she was 15, soldiers of the Lord's Resistance Army abducted Akallo from her school in northern Uganda. She learned to use an AK-47 in battle and shot other girls who tried to escape, so as not to be shot herself by the rebel commanders. She was repeatedly raped over the course of seven months, until one day when the LRA was under attack, she herself escaped. When she finished telling her story, she asked the delegates to help bring home other girls and boys who hadn't been so lucky. Sitting at Akallo's left in the chamber was **RADHIKA COOMARASWAMY LL.M. '82**. As U.N. special representative for children in armed conflict, Coomaraswamy hears stories like Akallo's regularly.

BY EMILY NEWBURGER



OSISG-CAC

WARRIOR



OSISG-CAC

Coomaraswamy traveled to the Philippines in December 2008 to negotiate the release of children recruited by the Moro Islamic Liberation Front.

The U.N. estimates that there are some 250,000 children involved in armed combat in Africa, Asia and parts of Latin America, whether as fighters, porters or sex slaves. It's her job to bring their stories to the attention of the world and to use all of the tools available to end impunity for such crimes.

Coomaraswamy was first appointed to the position in 2006 by the U.N. secretary-general. The office had been created 10 years earlier, after a study commissioned by the secretary-general—the Machel Report—brought international attention to the reality of child soldiers. It described a world of new wars, in which lighter weaponry made it easy to put children on the front lines. “Twenty years ago weapons were too heavy for children to carry,” says Coomaraswamy. “But now a child can not only carry an AK-47 but master its use in 45 minutes.” At the same time, in these new wars, combatants do not recognize the Geneva Conventions; they go after whole communities, enlisting children and women. In fact, she says, today the majority of deaths in any given armed conflict—from Afghanistan to the Congo—are of civilians.

It was her predecessor, Olara Otunnu LL.M. '78, the first special representative, who established an essential framework to end impunity for these crimes against children: Resolution 1612. In accordance with the resolution, country-level task forces monitor and report on violations every two months. “We call it the ‘naming and shaming list,’” says Coomaraswamy. Until 2008 it comprised names of member states that recruit and use children as soldiers. Since 2009, it has also included states that commit sexual violence against children and kill and maim them.

Coomaraswamy brings these violations to the Security Council and pushes for action—the next step, she says, is the creation of a special sanctions committee.

She also visits countries herself to put pressure on governments, rebel groups and military leaders.

“What you must realize,” she says, “is that a lot of these rebel leaders expect to become leaders of their countries someday, so they don't want to be on any list, and they don't want the possibility of sanctions.”

That ended up being the case when she went to the Central African Republic and met with a commander of the

APRD (Armée populaire pour la restauration de la République et de la démocratie), although in the moment—they had traveled deep into the jungle and there was shooting all around—she wasn't sure where the negotiations would lead. “He was not aware that he was on the list, and he got quite agitated,” she recalls. The moment was “quite tense,” but eventually he agreed to give up the 400 child soldiers in his forces, and a few months later, he did.

She has had similar success in other countries, including the Philippines and Nepal. Working closely with U.N. employees on the ground and national NGOs, she's made more than 17 country visits since her appointment. “Not all groups respond,” she says. “There is the Taliban and there are others we don't have full communications with. But quite a few have entered into negotiations with us because of the Security Council process.”

In the struggle to end the recruitment of child soldiers, Coomaraswamy believes international prosecutions like those at the International Criminal Court—although it can take on only a few cases—play a role. It has to do with deterrence, she says, thinking of the reaction she's gotten during her field visits. People are obsessed with the ICC, she says. “They ask, ‘Why are people being prosecuted?’ And, ‘What does it mean to be prosecuted there?’”

It also has to do with “setting the standard.” In the ICC's first case to go to trial, Chief Prosecutor Luis Moreno-Ocampo has charged Democratic Republic of Congo rebel leader Thomas Lubanga with “conscripting and enlisting children” and “using them to participate actively in hostilities.”

So much is being worked out, says Coomaraswamy, in the interpretation of these charges.

In 2008, she wrote an amicus brief, and earlier this year she testified before the court in the case that is still ongoing, arguing for a broad interpretation of the words “to participate actively in hostilities” that would cover the multiple roles imposed on children in war, in particular girls. “[They] are fighters one minute, ‘wife’ or sex slave the next, and domestic aid and food providers at another time,” she wrote.

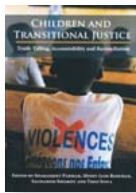
In her brief for the ICC, she also parsed the language “conscripting and enlisting,” stressing that they are both forms of recruitment. Many children, she says, like Grace Akallo in Uganda, are abducted into armed conflict. But in other parts of the world, children join voluntarily, sometimes because of need, she says, recalling a trip to the southern Sudan, where leaders of the Sudan People's Liberation Army turned over orphans who had come to the camp desperate for food and willing to enlist to get it. Sometimes they enlist out of a desire for revenge; many children have seen their parents murdered, their sisters raped. “We don't distinguish,” she explains, “because we feel that if you are a child, you are too impressionable to volunteer.”

It is U.N. policy that people should not be tried for war crimes they committed as children. The



The special representative in the Sudan, November 2009

OLIVER CHASOT/UNAMID



New book focuses on children's role in transitional justice

Today around the world, children are among the most affected by war. Yet until recently, transitional justice tools—from international and national prosecutions to truth-telling commissions—have paid little attention to their experience.

A new book, “Children and Transitional Justice: Truth-Telling, Accountability, and Reconciliation” (Harvard University Press), edited by Sharanjeet Parmar; Mindy Jane Roseman, Harvard Law School Human Rights Program academic director;

Saudamini Siegrist; and Theo Sowa, is part of recent efforts to change that.

At a panel at HLS marking the launch of the book—a collaboration between UNICEF and the school’s Human Rights Program—Dean Martha Minow called it a remarkable collection that will have “repercussions for restorative justice, but also retributive justice as well as community building.” From the first cases in international courts focused on crimes against children to involvement of children

in Liberia’s truth-telling commission, the book looks at recent efforts to bring accountability and healing and to protect the rights of children in the process—especially when the participants have not only been victims of violence, but perpetrators. It makes the case that if we are to prevent mass atrocities and help child victims of war, robust educational and economic opportunities must be part of the solution.

Archbishop Desmond Tutu, participating on the

panel via videoconference, agreed that children must be given such opportunities. He also expressed wonder at children’s resilience: “When you think that they are going to be just casualties, burnt up by a lust for revenge, you are so humbled by how they can be so magnanimous—wounded healers of other wounded persons. I pray this splendid collaboration between Harvard and UNICEF will blaze a new trail in dealing with post-conflict situations.”

Special Court for Sierra Leone and the ICC, the first international courts to try child soldier cases, have followed suit. Children who have committed crimes in these wars must come to terms with what they have done, she says, perhaps through mechanisms of restorative justice, but they should not be subject to criminal prosecution.

Many states follow this policy when it comes to national law. Coomaraswamy says the issue has been raised with the United States regarding young people detained in Guantánamo; so far the U.S. has released all of them except one.

Coomaraswamy says terrorism and anti-terrorism are increasingly affecting children. In March, she returned from a trip to Afghanistan, where the Taliban used seven children as suicide bombers in 2009. She is also concerned with allegations that Afghan forces are recruiting minors. During the trip, she secured ongoing access to recruitment and training centers in an attempt to stop the practice. And when she met with Gen. Stanley McChrystal, after a year when 131 children were killed by airstrikes, “collateral damage” was high on her list. He convinced her that he was committed to reviewing military strategy to better protect civilians. But during the very week of her visit, an airstrike killed children, and Coomaraswamy will continue to push for review of these tactics. In addition to meeting with top military officials and President Hamid Karzai, the special representative also talked to children who had fled fighting in Helmand Province. They were 6 and 7 and 8, but they used the word “martyr,” she says. “I don’t think we realize how much the discourse of resistance is in children’s minds.”

The solution, she says, can’t just be military but must address a range of problems. She was struck by how much the children, especially the girls, loved attending the school set up by UNICEF in the camp: “When you asked them about

going home, they said, ‘No, no. We’re very happy here.’”

Coomaraswamy herself first came to the U.S. from Sri Lanka (then Ceylon), when she was a girl and her father’s position with the United Nations Development Programme brought her family to New York. After 17 years, and degrees from Yale and Columbia (the HLS degree would come later), she returned to her home country in 1976 and worked there for more than 30 years, as a human rights advocate and then as U.N. special rapporteur on violence against women to the U.N. Commission on Human Rights. “It was during the worst of the war,” she says, referring to the battles between Tamil insurgents and the government. “I spent a lot of time fighting for human rights, and for women’s rights and for ethnic harmony in that country.”

That gave her firsthand knowledge of the sort of disruption that affects the lives of the people for whom she now advocates. They are so often “afraid of the Western imposition,” she says. “And when I say, ‘I understand what you’re going through because I come from Sri Lanka,’ the tone just lowers.”

According to Coomaraswamy, one of the highlights of her work is getting to know extraordinary people like Grace Akallo, “who have gone through hell but have come through it.”

When she’s asked what’s hardest, the U.N. special representative laughs: “That I have to be well-behaved.”

“I am just joking,” she says. “But on these issues [you feel] so much outrage—you can manage that and control it, and put it into diplomatic language. But I come from more of an activist background.” Yet in the U.N. system, “if you become too activist, you create a backlash,” she says. “If you want to get much done ... you have to push. You have to constructively engage and push.” *

Straddling the Gap Between East and West

Krzysztof Skubiszewski LL.M. '58



By *Katie Bacon*

FOR ALMOST half a century, Poland's foreign policy had been dictated by others—first the Germans during World War II and then the U.S.S.R. After the election of Solidarity in the spring of 1989 and the chain reaction it started, leading to the fall of Communist regimes throughout Eastern Europe, the leader of the new government, Tadeusz Mazowiecki, needed a foreign minister who could carefully negotiate the line between East and West while recreating relationships with Germany, the U.S.S.R. and other neighbors threatened by Poland's move away from communism. The man he chose was Krzysztof Skubiszewski LL.M. '58, a respected scholar of international law and an expert in Polish-German relations. "He was a complex figure, straddling the gap between East and West both professionally and politically," recalls HLS Professor David Kennedy '80, who met Skubiszewski in Poland in the early 1980s.

Skubiszewski, who died earlier this year at age 83, lived a life shadowed and shaped by World War II and communism. During the war, he went to high

school clandestinely in occupied Warsaw, and narrowly escaped deportation to a German labor camp. He taught international law at Polish universities on and off throughout his career, at times running afoul of the Communists, as when he condemned the Soviet invasion of Czechoslovakia in 1968 and when he criticized anti-Semitism within the Polish government. He also studied and worked abroad, often making contact with Polish political exiles during his travels. During his studies



AGENCIJA GAZETA

at Harvard in the late 1950s, he was particularly close to Professor Louis Sohn LL.M. '40 S.J.D. '58, a fellow Pole who left his country just before the Nazis invaded. Skubiszewski took Sohn's class in United Nations law, a topic Skubiszewski had been discouraged from investigating back in Poland.

Part of the reason he was chosen as foreign minister was his expertise on frontier issues between Poland and Germany. The tension over shifting borders during World War II was one of the vital issues that needed to be solved by the new government. Skubiszewski, an early proponent of German reunification, forged a close

relationship with Germany, and eventually negotiated an agreement recognizing Polish gains of German territory during the war.

Maintaining a good relationship with the U.S.S.R. was perhaps even more vital—even though its influence was waning. The Soviets had stored vast amounts of ammunition in Poland, and the hundreds of thousands of Soviet troops stationed in East Germany were accustomed to crossing through Poland at will. In the early 1990s Skubiszewski called for talks on their withdrawal, and 20 months of tense negotiations followed. Finally, with the intercession of President Lech Walesa, an agreement was reached.

Skubiszewski's ultimate goal was to open Poland up to relations with the West, but he knew he had to tread carefully. As he pointed out in a November 2009 interview, Poland couldn't connect with the West while still in the Warsaw Pact, yet it also couldn't unilaterally leave the pact without offending its neighbors: "The Warsaw Pact had to be weakened first, and subsequently disbanded, in an effective way—with all parties' consent. And that meant that the U.S.S.R. had to be convinced that the Warsaw Pact was dead."

Skubiszewski remained foreign minister, through four different governments, until 1993. His work building Polish relations with the West culminated in Poland's membership in NATO and the European Union.

Jerzy Makarczyk, a former student of Skubiszewski's and later a colleague in the Foreign Ministry, wrote a tribute in 1996 that captures both his mentor's importance and the tensions of life under communism: "It is thanks to men like him that we, the younger generation of lawyers, during the darkest years of communism, the university purges, the submission of our country to the U.S.S.R. and the Communist Party, never lost faith in human values, in the primacy of law both in internal and international relations, in the indivisibility of international law, in short—in our belonging to European culture." *

Ramer's List

IT'S A TYPICAL Southern California day for Bruce Ramer '58. The weather is sunny, and he's on the telephone, driving back to his Rodeo Drive offices in Beverly Hills from a lunch meeting with a Hollywood power broker. Today, he dined at Il Grano in West Los Angeles with writer and director Cameron Crowe. "We schmoozed and got the business done," said Ramer. "He's an enormous talent and a dear friend."

Ramer is sheepish about dropping names. His firm, Gang, Tyre, Ramer & Brown, is well known for its high-profile entertainment and media work. Yet it doesn't have a website and doesn't publish a client list. "We've never felt the need," said Ramer.

Word is out, however, about the many notable celebrities among the firm's clientele, including actors Demi Moore and Ben Stiller and directors Clint Eastwood and Robert Zemeckis. Director Steven Spielberg is one of Ramer's long-standing clients: Ramer has represented the director of "Jaws," "E.T." and "Schindler's List" for four decades. And Ramer boasts the dubious distinction of being the namesake of "Bruce," the mechanical shark used to terrify moviegoers in "Jaws."

It may be the ultimate



PAUL MORICI/WIREIMAGE FOR AUDI OF AMERICA

HE MAY BE THE ONLY MEMBER OF THE COUNCIL ON FOREIGN RELATIONS TO BE THE NAMESAKE OF A MECHANICAL SHARK

lawyer joke to name a 3-ton, 25-foot shark after an attorney. But Ramer insists that there are good parts to a shark, too, and that it is certainly those qualities that he is named for. "They never paid me a royalty—that's all I know," he said.

The firm represents Spielberg and DreamWorks in complex deals for feature films and television. These include a financing deal with

Reliance ADA Group and a battery of banks, led by J.P. Morgan, and a distribution deal with Walt Disney Co. The firm provided counsel on all aspects of the transaction, from the distribution agreement with Disney to the employment agreements and financing.

There is no one part of entertainment law Ramer enjoys best. He savors the variety of the

deals and the relationships with his clients. "And I adore, love and trust my partners," he said of his dozen colleagues at the firm.

Ramer's involvement in nonprofit work is nearly as deep as his client list. George W. Bush appointed him to the board of the Corporation for Public Broadcasting in 2008. He serves on the board of trustees of the University of Southern California in addition to sitting on the board of councilors of the USC Annenberg School for Communication & Journalism, the USC Gould School of Law, and the USC Shoah Foundation Institute for Visual History and Education.

He is the former presi-

dent of the American Jewish Committee and a member of the Council on Foreign Relations, and he sits on the Pacific Council on International Policy. His interest in diplomacy stretches back to his undergraduate days at the Woodrow Wilson School of Public and International Affairs at Princeton University.

"Foreign affairs and diplomacy are both issues of concern to me

as an American and as a Jew," Ramer said. In 2000, while president of the AJC, he testified before Congress against the Secret Evidence Repeal Act, arguing that its proposed ban on the use of classified information in immigration proceedings failed to draw a balance between due process concerns and national security interests. He asserted that the bill would have softened America's protections against terrorism, and the AJC strongly opposed it. After Sept. 11, he said, the bill "fell off the desk." Homeland security issues still concern Ramer, and he serves on the Homeland Security Advisory Council of Los Angeles County.

Ramer either hasn't calculated or won't admit to how much time he spends on his nonprofit involvements versus his law firm work. "That's a state secret, because I don't want my partners to know," he said. "It gives me a great sense of satisfaction. I find it stimulating, and I really believe it energizes my professional work."

At 76, Ramer gives no thought to retiring. "I truly enjoy it all. I have from day one," Ramer said. "It's trite, but it's true. I love what I do, and I do what I love. That's the way it's been. Do I look forward to the challenge of every day? Yes."

MICHELLE BATES DEAKIN

Smart About Art—Even When It's Naïve

WHEN YOU ARE standing in the middle of GINA Gallery of International Naïve Art, you feel the way you would in a flower garden on a perfect day.

That's just the ambience Dan Chill '70 hoped to create when he founded the Tel Aviv gallery in 2003.

Chill defines naïve art as a genre made up of "simple, idealized scenes that have an enchanting innocence and joyous colors." The artists—most often self-taught—paint the world "as it could be or should be."

His mission is to expose more and more people to the paintings that, he said, first "grabbed my heart" 28 years ago during a business trip in Tegucigalpa, Honduras.

On the road many months a year as general counsel for Israel Aircraft Industries and the Eisenberg Group, and then later with a company that introduced the first digital offset color printing press, Chill carved out time to buy works by local naïve artists. He soon saw that the paintings he brought home deeply affected other people as well. "When people visited our home, they spoke about what was on our walls instead of the weather and politics," Chill said. By establishing the gallery, the first to focus on naïve art from around the world, he



ALONSO FLORES, "THE PATH TO THE RIVER" (2008, ACRYLIC ON CANVAS, 75X75CM) COURTESY OF GINA GALLERY OF INTERNATIONAL NAÏVE ART

HE DISPLAYS THE WORK OF ARTISTS, FROM SOUTH AMERICA TO RUSSIA, WHO PAINT THE WORLD "AS IT COULD BE OR SHOULD BE"

sought to give the artwork the recognition he believes it merits.

Among the artists featured at the gallery is Alonso Flores of El Salvador, whose work depicts scenes from village life as he remembers it: women carrying produce from the market and children swimming in a stream. Although many of the artists represented are from countries where there is great political upheaval, violence or poverty—and Flores is no exception—these forces are never visible in the artwork. Chill insists

this is how these artists want to "see and feel" their world. He is happy to report that, since Flores' work first appeared in the gallery, it is now in demand by collectors around the world.

GINA now features the work of 200 artists from more than 25 countries, including Canada, Brazil, Spain and Russia. Prior to his visit to a country, Chill prepares and researches as care-



fully as he would for a legal case—writing a "mini doctorate" about the local art and artists and the

best contacts. Then, with the help of drivers and translators, he visits the artists' homes to "find out what's behind each piece," taking careful notes on his yellow legal pad, a habit he's held on to since law school.

In April, he traveled to Nicaragua, Honduras, El Salvador, Guatemala and Panama, and then home to Tel Aviv, visiting more than 20 artists and acquiring approximately 40 paintings, and then returned to Cambridge just in time for his 40th law school reunion. (In addition to his J.D., he holds an M.P.A. from the John F. Kennedy School of Government.)

Chill says business has been thriving in the Tel Aviv gallery, and his hope is to eventually include the work of artists from China, Australia and possibly Africa on its walls. His dream (once the gallery has been discovered by art collectors worldwide) is to create a "museum of the highest caliber" highlighting naïve art from all over the world.

"I'm really proud of taking up the challenge of bringing back into the art world a genre that is one of the oldest in history but hasn't been given the attention it deserves," he said.

LINDA GRANT

► To see more of the art on display at GINA, go to www.ginagallery.com.

A Case for Reform

WHEN HE WAS a prosecutor, Paul Butler '86 loved to put people in prison. He loved winning trials, which he did most of the time. He loved breaking defendants down on the stand and getting them off the street, which, he believed, made the community safer.

Now he would love nothing more than to set free some of the types of people he once put away. A professor at George Washington University Law School, Butler has become an outspoken critic of the U.S. criminal justice system, mass incarceration and drug laws. He recounts his views in his book "Let's Get Free: A Hip-Hop Theory of Justice," in which he advocates for alternatives to incarceration for nonviolent offenders and the release of at least 500,000 of them currently in prison.

"We'd be a lot safer if we were smarter about who we locked up, and we didn't lock up so many people," Butler says. "A lot of the reform of the criminal justice system really is about ways to be safer as much as it is about ways to treat people more fairly."

He argues that high incarceration levels have decimated black communities in particular, disrupting families and making prison—rather than employment—a social norm. Prison also

serves as a training ground for nonviolent offenders, who are more likely to victimize people after they are released, according to Butler. "The biggest threat to freedom in the United States comes not from some foreign or terrorist threat but rather from our dysfunctional criminal justice system," he writes.

He understands that system not only as a prosecutor of drug cases in Washington, D.C., for the Department

of Justice, but also as an accused criminal. During his time at the DOJ, a neighbor claimed he assaulted her. Butler was then arrested and faced a trial in which both the complainant and a police officer lied in an attempt to convict him, he says. Though he was found not guilty, the experience, he says, "gave me profound misgivings about how much justice I was doing as a prosecutor."

So did the fact that nearly all the people he prosecuted were black

like him. Butler jokes that if you go to criminal court in D.C., you'd think that white people don't commit crimes. Such racial disparities are addressed in the culture of hip-hop, which he praises for exposing a mass audience to the same social justice issues that concern him. Though sometimes criticized for misogyny and violence, hip-hop artists "know how to impact people's hearts and minds, and I think they're doing that very consciously when

it comes to criminal justice," he says.

Of course, Butler also wants to effect change in society, through his book plus appearances on news programs like "60 Minutes" and opinion pieces in major newspapers. He has perhaps garnered the most attention for his advocacy of jury nullification in cases of nonviolent offenders even if they are guilty, which he contends is a justifiable strategy that dates to the American Revolution. "When law enforcement does go too far, when it crosses the line, that's when jurors have a constitutional authority to check and balance," says Butler.

His own experience working with jurors has given him the confidence that they can use this power as a remedy for the kinds of prosecutions that in the end harm their communities. Indeed, his time as a prosecutor has informed his critique of the very system of which he was once a part.

"As a former prosecutor, I have a lot more credibility and I get a lot more attention when I talk about reforming the criminal justice system," says Butler. "It's given me an important platform that I try to use responsibly."

LEWIS I. RICE

► For more on Butler's book, see www.letsget-freethebook.com.



THE FORMER PROSECUTOR ARGUES FOR JURY NULLIFICATION IN CASES OF NONVIOLENT OFFENDERS—EVEN IF THEY ARE GUILTY

Build It and They Will Come

EARLY IN THE 1990s, when C. Raj Kumar decided to attend law school, he was swimming against the current of India's high achievers—most of them were headed into engineering, medicine and accounting. “My parents’ friends would say to them, ‘Raj is a good student. What happened?’” he recalls. The field of law—characterized by corruption, abuses of power and endemic delays in the courts—was not highly regarded. And, while the first of 15 elite national law schools had opened in the late 1980s, many of the other 900 law schools in India offered only a mediocre education.

Kumar received a law degree from the University of Delhi in 1997, and over the next several years his graduate studies and work in the human rights and national security fields took him around the globe—to Oxford, where he obtained a Bachelor of Civil Law as a Rhodes Scholar; to Harvard for his LL.M. in 2000; to NYU Law School as a research fellow; and to Japan and Hong Kong for human rights fellowships. He started thinking about the quality of the legal education available in those places and about how one would go about recreating it. He saw an emphasis on rigorous scholarship and teaching by academics at the top of their field, but he also



TOM PIETRASIK

“I THINK HE’S A VISIONARY LEADER,” SAYS
HLS PROFESSOR DAVID WILKINS OF RAJ KUMAR

noticed one characteristic that set U.S. universities apart: Most were private, nonprofit, philanthropic initiatives.

Kumar decided he wanted to create something new in India—a private research university that, while giving students the basics of Indian law, would look outward in both curriculum and hiring, drawing people from around the world to teach the intricacies of international and comparative law. His school would also prepare its students for the new economic realities, including the multibillion-dollar industry of offshoring legal work to India. He saw

it as trying to create an Indian version of Harvard or Yale. Kumar started putting together an international advisory board, and in 2006 he met with India’s law minister, H.R. Bhadraraj, who liked Kumar’s idea and asked him what he’d need to accomplish it. “I said, ‘We need someone who can put in 60 to 70 million U.S. dollars, and who can do it in a nonprofit manner, with academic freedom and independence.’ He said he would get back to me.”

Later that year, Bhadraraj linked Kumar up with Naveen Jindal, a billionaire who had made his money in the steel

and power businesses. It took more than a year of persuasion, but eventually Jindal agreed to create the O.P. Jindal Global University.

Over the next year and a half, Kumar worked with a small team to buy land north of Delhi, oversee the design and construction of the residential campus, navigate the educational permitting process, create the curriculum, hire the professors, publicize the school and select the students. “It’s been a 24/7 exercise. The process of doing something like this in India usually takes a minimum of six to eight years,” Kumar says.

The school opened last September, with 113 students and an international faculty. Kumar plans to expand the university to include a business school and schools focusing on international affairs and public policy.

Professor David Wilkins ’80, head of the HLS Program on the Legal Profession (he appears to Kumar’s left in the photo), attended Jindal Global University’s opening ceremonies. He says of Kumar: “I think he’s a visionary leader. It’s not going to be easy—starting a new institution is never easy—but I think [the school] will play an important role not just in India but around the world, as institutions figure out how to respond to the globalization of law.”

Kumar thinks big, and his ultimate goal, going back to his early days in human rights law, is reforming the Indian legal system to build a more just society. “We have a very vibrant civil society, but there’s also a fair amount of lawlessness, and a lack of respect for the law among both average citizens and the government,” he says. Kumar sees good law schools as an essential tool for addressing the problem: “It’s training people who will be at the vanguard of ensuring justice within society.”

KATIE BACON

A Citizen Journalist to the Rescue

WITHIN HOURS OF the catastrophic earthquake that hit Port-au-Prince, Haiti, on Jan. 12, Ory Okolloh '05 was working to route rescue personnel and supplies to Haitians who were desperate for assistance. Although she was located a hemisphere away in Johannesburg, South Africa, Okolloh found herself informing humanitarian aid groups and even the U.S. State Department about the developing disaster.

Okolloh gathered digital information from aid workers and others in Haiti and uploaded it to the public website that she created specifically for this purpose. Called Ushahidi (Swahili for “testimony”), it uses free software that tags on-the-ground reports and attaches them to a Google map. Ushahidi receives information from a variety of sources, including SMS text messages and e-mails. With communications systems severely damaged by the quake, the Haitian Ushahidi page became one of the few channels through which the outside world could direct assistance to those in need.

Ushahidi, which harnesses the power of the Internet to organize content generated by “crowdsourcing,” or multiple users, was born out of Okolloh’s interest in technology, citizen



TRYING TO GET ASSISTANCE TO A DISASTER-STRICKEN CITY?
MONITORING ELECTION FRAUD? SHE'S CREATED A SITE FOR YOU

journalism and international human rights work. She fostered those interests at HLS through the Berkman Center for Internet & Society.

Okolloh, a native of Kenya, did her undergraduate studies at the University of Pittsburgh and decided to go to law school because, “From when I was young, I always associated law with individuals who are pursuing justice,” she says.

Focused on international public interest work, Okolloh spent one of her summers at the World Bank in Washington, D.C., investigating corruption in World Bank projects, as a Chayes Fellow.

She interned in Nairobi during two of her winter terms, at the Kenya National Commission on Human Rights.

After law school, Okolloh returned to her country (turning down an offer from a D.C. firm) and soon enough found herself in the midst of a constitutional referendum. Responding to the lack of information about the process, she co-founded a program tracking Kenyan parliamentarians online, because “We didn’t really know what they were up to,” she explains. Mzalendo (Swahili for “patriot”) garnered international attention for the transparency it brought to Kenyan

politics for the first time in history. “We really wanted to encourage Kenyans to say, Look, if you don’t start asking these guys questions about what they are doing, they aren’t going to give that information up themselves,” Okolloh says.

At about that time, Okolloh met her partner and moved back with him to Johannesburg to work as in-house counsel for a small NGO. She returned to Kenya in 2007 to blog about the presidential election, which was widely believed by the international media to be rigged.

“There’s a lot of censorship in the government and the local

media, and they weren’t really covering the story well,” says Okolloh. “When I’d turn on the TV and the radio, there would be no news coming through. I opened up my blog and said, Send me your stories. I’ll publish them and make sure that someone sees them.”

When incumbent candidate Mwai Kibaki was declared the winner of the election despite his opponent’s announcement to the contrary, violence broke out around the country. Okolloh, who by then had a 10-month-old baby, made the difficult decision to return to South Africa.

On her way back to Johannesburg, she thought, What if there was a way for people to send the information directly to a website ... and you could have access—a record of some sort of what happened?

The idea for Ushahidi was born—and it’s since developed into an internationally recognized source of citizen journalism. With a full-time staff of 11, it’s been used to track xenophobic violence in South Africa, conflict in the Democratic Republic of Congo, elections in India and incidents of violence in Pakistan. Al Jazeera has even used it to track the war in Gaza. And it’s on call for the next disaster. EMILY DUPRAZ

1930-1939

CLARENCE E. GALSTON '33
Oct. 27, 2009

NICHOLAS C. ENGLISH '37
Jan. 11, 2010

ROBERT KAPLAN '37
Oct. 6, 2009

MARVIN P. RICHMOND '37
Dec. 18, 2009

HENRY C. BEERITS '38
July 25, 2009

NORMAN C. STALLINGS '38
LL.M. '40
March 23, 2010

J. JENKINS GARRETT LL.M.
'39
Jan. 28, 2010

LEWIS H. PARKS '39
Feb. 19, 2010

FRANK H. SPEARS '39
Nov. 11, 2009

1940-1949

DONALD R. BRYANT '40
Oct. 23, 2009

ROBERT C. HARRIS '40
Dec. 15, 2008

JOHN R. HASKELL '40
Aug. 12, 2009

RAFAEL MARTINEZ-ALVAREZ
JR. LL.M. '40
July 29, 2009

STEPHEN A. MILWID '40
Oct. 10, 2009

ROBERT D. PRICE '40
Jan. 5, 2010

RALPH C. PUTNAM JR. '40
Sept. 9, 2009

CHARLES E. SCHAFF '40
Dec. 28, 2009

GEORGE W. CREGG '41
Oct. 9, 2009

GERALD E. FOSBROKE '41
April 25, 2009

VINCENT P. "BILL"
MATASAVAGE '41
Nov. 24, 2009

ALBERT J. ROSENTHAL '41
March 17, 2010

WILLIAM C. SCHMEISSER
JR. '41
April 18, 2008

MYRON L. GORDON '42
Nov. 3, 2009

CHARLES L. MICHOD SR. '42
June 1, 2009

EARL D. MURPHY '42
Sept. 14, 2009

JESSE H. OPPENHEIMER '42
Oct. 9, 2009

FINLEY H. PERRY '42
Aug. 17, 2009

DUDLEY B. TENNEY '42
Sept. 18, 2009

FRANK MOREY COFFIN '43
Dec. 7, 2009

JOHN C. GOBOLD '43
Dec. 22, 2009

JOHN "JACK" PEMBERTON
JR. '43
Oct. 21, 2009

VICTOR B. SCHWARTZ '43
Nov. 19, 2009

RICHARD D. HOLZAPFEL '44
May 16, 2009

ROBERT G. BAILEY '48
Nov. 30, 2008

JOHN "JACK" BINGHAM '48
Dec. 7, 2009

MILTON ALFRED "AL"
DARLING JR. '48
Jan. 15, 2010

GEORGE C. GILLETTE '48
Feb. 26, 2010

EDMUND H. KENDRICK '48
Dec. 12, 2009

LEONARD J. KEYES '48
Jan. 26, 2010

F. WILLIAM MCCALPIN '48
Dec. 9, 2009

DANIEL P. S. PAUL '48
Jan. 23, 2010

PAUL G. PENNOYER JR. '48
Jan. 7, 2010

JUDD N. POFFINBERGER
JR. '48
Dec. 2, 2009

DONALD N. ROTHMAN '48
June 8, 2009

JOHN C. SIEGESMUND JR. '48
Sept. 9, 2009

MALCOLM RICHARD WILKEY
'48
Aug. 15, 2009

MICHAEL ALEXANDER '49
Feb. 16, 2010

EDWIN W. BRAGDON '49
Oct. 11, 2009

JOHN P. CARROLL JR. '49
July 12, 2009

WINSTON R. CORNELL '49
Dec. 5, 2009

FRANK N. DARDENO '49
Nov. 8, 2009

ROGER J. DONAHUE '49
Oct. 28, 2009

JOSEPH B. GEDANIC '49
July 27, 2009

ALAN G. GRANT JR. '49
Sept. 16, 2009

ERIC R. HAESSLER '49
Nov. 7, 2009

GEORGE M. HASEN '49
Oct. 31, 2009

DAVID R. HASTINGS II '49
Feb. 14, 2010

HAROLD L. HITCHINS JR. '49
March 4, 2010

SHERMAN R. SLAVIN '49
Oct. 20, 2009

EDMUND G. SULLIVAN '49
Dec. 20, 2009

ABRAHAM WAX '49
June 29, 2008

1950-1959

DAVID ALTER '50
Aug. 27, 2009

JOHN BISHOP BALLEM, Q.C.
LL.M. '50
Jan. 9, 2010

JEROME V. BLATZ '50
Aug. 20, 2009

THEODORE L. CROSS II '50
Feb. 28, 2010

JAY W. GLASMANN '50
March 19, 2010

JACK L. GOODSITT '50
Jan 11, 2010

DAVID J. O'BOYLE '50
Dec. 30, 2009

D. GLENN OFSTHUN '50
Dec. 9, 2009

EDWARD PESIN '50
March 6, 2010

GEORGE R. POOR '50
Oct. 13, 2009

CHARLES H. RANDALL JR. '50
LL.M. '54
Jan. 29, 2010

F. THEODORE THOMSEN '50
Sept. 19, 2009

PHILIP M. BOUDREAU '51
Sept. 19, 2009

JOSEPH SHEFFIELD DOW '51
March 5, 2010

EDWARD M. FOGARTY '51
Aug. 1, 2009

GEORGE B. HALEY JR. '51
Jan. 31, 2010

S. NEIL HOSENBALL '51
Dec. 23, 2009

JAY J. NEWMAN '51
Oct. 24, 2009

GORDON C. SMITH '51
July 28, 2009

STEPHEN D. WAHRHAFTIG '51
Sept. 29, 2009

HENRY A. WARCHALL '51
Sept. 3, 2009

PAUL C. GARTZKE '52
Sept. 25, 2009

ASA ROUNTREE '52
Feb. 11, 2010

ROBERT WALLACE SMITH '52
March 10, 2010

DOUGLAS BROWARD CRAIG
'53
Nov. 25, 2009

EDWARD J. HAWKINS JR. '53
Jan. 15, 2010

IAN R. MACNEIL '53
Feb. 16, 2010

THEODORE B. ROESSEL '53
Sept. 23, 2009

CHARLES J. "JACK" COOPER
'54
Nov. 19, 2009

PETER H. GHEE '54
Dec. 18, 2009

ROBERT D. HARTSHORNE '54
Feb. 19, 2010

RICHARD F. SACHS LL.M. '54
Jan. 4, 2010

ARCHIBALD SPENCER '54
Jan. 13, 2010

JOSEPH M. WALSH '54
Sept. 17, 2009

DWIGHT B. CLAAR JR. '55
Nov. 15, 2009

HARRY DOWNS JR. '55
Nov. 28, 2009

MARVIN E. GAVIN '55
Aug. 20, 2009

ALBERT ROBIN '55
Oct. 28, 2009

LOUIS A. WOOD '55
Sept. 10, 2009

FRANK C. GARDNER '56
Oct. 31, 2009

MARSHALL S. HARRIS '56
Nov. 2, 2009

EDGAR LOVE III '56
Oct. 14, 2009

PIERRE PELHAM '56
Dec. 3, 2009

BERNARD ROTHMAN '56
Aug. 20, 2009

DONALD G. ROWLINGS '56
Oct. 8, 2009

GORDON H.S. SCOTT '56
Aug. 24, 2009

JOHN P. "JACK" DRISCOLL
JR. '57
Nov. 15, 2009

HAROLD KAUFMAN '57
March 10, 2010

PATRICK J. ROHAN LL.M. '57
Nov. 26, 2009

JONATHAN H. CHURCHILL '58
March 26, 2010

THOMAS LEE CLARK '58
Feb. 22, 2010

ELI MANOS '58
Nov. 21, 2009

TEODORO P. NICHTAWITZ
LL.M. '58
May 15, 2009

JOHN C. PITTENGER '58
Dec. 6, 2009

HARRY L. SNEAD JR. LL.M. '58
May 24, 2009

GARLAND C. "BUD" BOOTHE
JR. '59
Nov. 26, 2009

RICHARD L. CLEVELAND '59
March 1, 2010

STEPHEN W. CRAIG '59
Sept. 23, 2009

JOHN D. DUNMIRE '59
Feb. 10, 2010

DANIEL C. KRAMER '59
March 11, 2010

RAY G. OLANDER '59
Nov. 3, 2009

1960-1969

BERNARD H. CLARK LL.M. '60
Feb. 27, 2009

BIRCHARD A. FURLONG
'57-'58
Feb. 2, 2010

ALEX R. SEITH '60
March 23, 2010

CHARLES W. SMALL '60
Oct. 18, 2008

RICHARD H. THOMAS III '60
Nov. 27, 2009

THOMAS G. CONWAY '61
Aug. 22, 2009

CARL F. EHMANN JR. '61
Jan. 19, 2010

STEPHEN R. BARNETT '62
Oct. 13, 2009

BENJAMIN R. SCHENCK '63
Jan. 28, 2010

SHELDON A. VINCENTI '63
March. 31, 2010

W. DALTON TOMLIN LL.M. '64
Feb. 23, 2010

RICHARD E. FLOOR '65
Feb. 18, 2010

BEVERLEE BELL HUMAN '65
Dec. 9, 2009

GALEN C.K. LEONG '65
Dec. 26, 2009

MOREY W. MCDANIEL LL.M.
'65
Oct. 29, 2009

PAUL S. BYARD '66
July 15, 2008

THOMAS J. GRAFF '67
Nov. 12, 2009

ROBERT D. JOFFE '67
Jan. 28, 2010

JACK T. LITMAN '67
Jan. 23, 2010

BRUCE A. BLUMBERG '69
Sept. 23, 2009

FRANK J. CONNORS JR. '69
Aug. 14, 2009

DANIEL J. MCAULIFFE '69
March 12, 2010

GERALD A. ROSENBERG '69
Sept. 5, 2009

RALPH J. THANHAUSER '69
Nov. 23, 2009

1970-1979

ANDREW M. LUKELE LL.M.
'70 S.J.D. '73
Feb. 1, 2008

DONALD J. JERUC '71
Nov. 10, 2009

JOHN J. KRUSE '72
Aug. 24, 2009

RICHARD J. SUTTON LL.M. '72
April 17, 2009

EDWARD N. BEISER '77
Sept. 4, 2009

BRADY DWAYNE GREEN '79
Sept. 7, 2009

1980-1989

SUSANNA E. SHIELDS '85
Oct. 17, 2009

NANCY A. O'NEAL '87
Sept. 4, 2009

STEVEN L. VOLLINS '89
Aug. 19, 2009

1990-1999

MARJORIE L. BENSON S.J.D.
'93
Jan. 4, 2010

ALBERT ROCHA '94
Oct. 22, 2009

2000-2009

ROBERT K. TOWNLEY '00
Oct. 9, 2009

KATARINA O. SAVINO '02
Oct. 10, 2009

JAMES E. MASCHOFF '06
Jan. 19, 2010



A WHITE TERN in the tropical Pacific, photographed by Theodore Cross '50 for "Waterbirds" (W. W. Norton, 2009). Nature magazine called the book "extraordinary." The same might be said of its author, who came to bird photography at midlife after a career as a successful publisher and another in which Cross (who was white) became an authority on black economic empowerment. Cross died on Feb. 28, a little more than a year after the publication of "Waterbirds." The book's success is a testament to his keen eye, to hours spent in swamps and tundra around the world, but also to his belief in our potential for reinvention.



SPRING REUNIONS → SEEMS LIKE IT WAS YESTERDAY

PHOTOGRAPHS BY KATHLEEN DOOHER

1. Sue Lee '01, Phil Lee '00
2. Pablo Buey Fernandez LL.M. '85, Dafe Akpedeye LL.M. '85, Patricia Lopez Aufranc LL.M.'85
3. Class of 1975
4. Maria Brito-Souza LL.M. '00, Oliver Brito-Souza
5. 1970 classmates Constance Vecellio, John Lovett
6. Alan Ullberg '60, Bruce McLanahan '60, George Cushing '70, Henry Dane '70
7. 1985 classmates Luis Lavin, Ken Sulzer
8. 2000 classmates Alison Corkery, Jane Frankel Sims, Yordanka Delionado
9. 1960 classmates Roy Hammer, Zona Fairbanks Hostetler
10. 1975 classmates Marilyn Hutton, Walter Jones, Julia Dobbs Gibbs
11. 1975 classmates Kari Glover, Nadine Strossen
12. 1970 classmates Mario Diaz-Cruz III, Noah Griffin, Richard Hoffman, Guy M. Blynn

LOOKING BACK
AND LOOKING
FORWARD





7



8



9



10



11



12

CALENDAR

JUNE 22, 2010
HLSA of the United Kingdom
Dean Martha Minow
 The Inner Temple
 London
 617-384-9523

OCT. 29-31, 2010
Fall Reunions Weekend
Classes of 1950, 1955, 1965, 1980, 1990, 1995, 2005 & Emeritus Club
 Harvard Law School
 617-384-9523

For the latest on Harvard Law School Association events, go to <http://www.law.harvard.edu/alumni/events/index.html>.

Jack Cogan '52 jokes that he resides "in the shadow of Harvard," having moved back to the Square after living in Lexington for years. A graduate of Harvard College ('49) and Harvard Law School, he's had a long engagement with the school and the university, serving on the Visiting Committee and supporting HLS—including most recently its international programs.

Cogan also has much experience advising HLS deans—from Al Sacks '48 to Martha Minow—and takes a long view of the school. When he thinks of the promise of today's Program on the Legal Profession led by Professor David Wilkins '80, for example, he recalls its antecedents in the early efforts by then-Dean James Vorenberg '51, including trips they took together to interest law firms in New York in support of this program. "They knew we didn't come from outer space," he recalls, "but the skepticism was pervasive."

Now of counsel at WilmerHale, he was named a senior partner in 1961 at the predecessor firm, Hale and Dorr, became managing partner in 1976 and served as chairman from 1984 to 1996. Cogan, who turns 84 in June, remains active in the financial services industry and is deputy chairman of Pioneer Global Asset Management S.p.A. (Italy) and president of the Pioneer Family of Mutual Funds (USA). During an afternoon in March, he spoke with the Bulletin before embarking on a four-mile run.

LEADERSHIP PROFILE

A Conversation with John F. Cogan Jr. '52

What is it about HLS that has elicited so much of your focus?

It's the school itself. To me, HLS is a place of enormous excitement, always. It's the sheer energy, and the spirit of inquiry—also the rigor. Of course, I'm proud to have graduated from the law school. Its impact on legal education and the profession has been profound, and I have been fascinated to watch the school evolve into a truly global law school.

What have you enjoyed most over the course of your career?

What I have enjoyed most was practicing law, but after becoming managing partner of our firm, I was able to do much less of it. In my beginning years, however, I did quite a bit of corporate work and some international work. I became interested in comparative law, in a very real, practical sense. What actions could you take under civil law that you could not under common law and vice versa? It was so different doing transactions in civil law South America from common law countries like India or Ghana. It was a very interesting time internationally because at first you were working in the closed Cold War environment and then, post-perestroika, you watched the opening up of Central Europe and Russia.

You participated on Russia's Foreign Investment Advisory Council soon after it was created. What was that like?

It was a unique experience. The council originally had 14 members representing companies from Western Europe, the United States and Japan. It was in the early '90s, when Russia was a wild and woolly place. Its closed society was trying to come of age in the world marketplace. Its large underground economy was reinforcing rampant corruption. Social, political and economic upheaval was everywhere. Yeltsin had regained the presidency after the attempted coup, but people tend to forget that the Communist Party was still in a position to block almost anything significant in the Duma that the government wanted to do. Thus, many of the economic, corporate law and accounting reforms recommended by the council to help make Russia more friendly to foreign investors were scuttled in the Duma.

There was so much to be done as Russia tried to slough off the inefficient Communist central control economy. The country had an archaic accounting system. Russia's whole statistical system was an unreliable government database with a propaganda slant to it, so you could not trust the data.

What have you found most challenging in your career?

One's integrity is always

being challenged. You have to set high standards for yourself. I remember we had a large and important U.S. client seeking to set up a project in Nigeria. It was before the revolution that took place there in the '60s and before the much-needed U.S. Foreign Corrupt Practices Act was passed in the '70s. The client needed government approval for a private sector project which was stalled. The client's local advisers kept suggesting the need for some "dash," the local word for bribes. While it was not my decision to make or to implement, I told the client if they followed that advice, I could no longer represent them. Fortunately, the client rejected the local advice, and finally, after a long wait, the project was approved.

I also think there's a certain humbling in practice. You can be involved in a problem and think you understand all four corners of it. Then sometimes in further discussions someone will make a point that makes you realize you've missed something.

What advice would you give to a graduating law student?

You can go anywhere. You know, it can be like putting a rucksack on your back and just taking off. You can go anywhere as a lawyer, be it as a lawyer in practice, public interest organizations, business or government service.

I know it's harder right now, because the job market is thinner, but for someone from this institution, it's not as thin as for others. You come out of Harvard Law School with a legacy of intellectual strength, of analysis, of understanding different systems, and people, and how they behave.

There are so many opportunities to make a difference in the world when you leave Harvard Law School. I think that it gives you a kind of *tabula rasa*. Thinking about the possibility of those opportunities still gives me a vicarious sense of excitement.

Any words of warning?

I must say this: The law itself is very demanding and enticing, and if you're a natural workaholic—which unfortunately I am, genetically, I guess—you must be careful not to be so drawn into your professional life that there is time for little else. It's as if you were in a giant centrifuge. You have to constantly try to avoid being drawn into the center and rather swim to the edge to reach other activities that enrich your life. It's an important perspective to have.

In addition to your support of

HLS, you've served many other organizations, including the Boston Symphony Orchestra, Boston Medical Center and the Boston Museum of Fine Arts. How do you balance these efforts?

Well, to me, life is a balancing act. It narrows the amount of free time that one would otherwise have and often makes for long days, but the rewards in terms of enrichment and the expansion of my knowledge and interests have been great and personally satisfying. I've had a love of classical music for years and years—from early music forward to

some of the contemporary pieces being composed today. It's been wonderful over the course of years to hear the Boston Symphony Orchestra's progression: Seiji Ozawa was a great conductor, but Maestro Levine has brought the orchestra to new heights. As to museums, I've also had a longtime interest in art, and museum visiting worldwide has been an important part of my life. While I'm not a collector in any significant way, I do collect contemporary paintings, works on paper and sculpture—some things that both my wife, Mary, an art historian by education, and I like.

What's one of your favorite pieces you've collected?

One is a large color field painting that my law partners gave me when I stepped down as managing partner, so it has special significance. I like it, but not everyone does. It's a [Jules] Olitski. And if you see it at a distance, it almost looks like a blackboard, but close up you see the textures and the subtle gradations of coloration.

Can you say something else about your long-term engagement with HLS?

It's been so enjoyable for me, especially, as earlier noted, watching the school evolve into a global law school. Anything I've done, in terms of giving to the school of time and resources, I've received back in so many different ways. And the school has had such a profound effect on my life, so I feel doubly rewarded. It's been glorious! *





GALLERY

In the Blink of an Eye

The future of Harvard Law School is emerging on Massachusetts Avenue, like a present waiting to be opened. Slated to be completed in December 2011, the environmentally friendly,



The Wasserstein Hall, Caspersen Student Center, Clinical Wing project

250,000-square-foot complex—with an academic building that will support the innovations in teaching that have been introduced into the school's curriculum, an expansive stu-

dent center and a new centralized home for the school's burgeoning clinical program—is already revealing its handsome facade now that much of the scaffolding has come down.

THE STORIES in this issue focus on creative problem-solving in the classroom and in the world. Among them, a profile of Rebecca Onie '03, whose questions about how best to meet the health care needs of low-income patients led to a holistic approach to the problem, a MacArthur “genius” award and a new direction for health care reform.

“WE WILL ONLY ACTUALLY move the needle on health outcomes and health care costs when we have a system that addresses the social determinants of health.”

—REBECCA ONIE '03
“A PRESCRIPTION FOR CHANGE” P. 41

