

Fall 2014

Harvard Law

bulletin

Working in the

statehouse

and the schoolhouse

TRAUMA

to change the paradigm

TEAM

for children who

have experienced

trauma

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The Climenko Fellowship Program is helping to cultivate the next generation of law professors.

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Harvard Law Bulletin

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Alec Karakatsanis '08 and Phil Telfeyan '08 founded a nonprofit civil rights firm to challenge the profit motive in the criminal justice system.

WHAT POLICIES will ensure access for all communities to safe, high-quality food? What can help children dealing with family violence and other adverse experiences succeed in school? What legal rules can reduce the chances that companies currently incorporated in the United States will reincorporate elsewhere to ease their tax burdens and avoid stringent corporate governance requirements? How can the constitutional guarantee of free exercise of religion be realized in contemporary society? Which goals of the 1964 Civil Rights Act remain unrealized in practice? How can law firms adapt to changing economic pressures while increasing the quality of professional services?



KEN RICHARDSON

Harvard Law School faculty, students, and alumni are pursuing intriguing approaches to these and other problems, as explored in this issue of the Bulletin.

A few years ago, a second-year student at Harvard Law School asked, “If you can ‘think’ like a lawyer, does that mean you can ‘act’ like a lawyer?” This very good question helped animate our development of the Problem-Solving Workshop, the Trial Advocacy Workshop, simulation exercises across many courses, and practice opportunities in our 37 clinics and student practice organizations.

MEANWHILE, HLS IS DELIGHTED TO WELCOME terrific new faculty members reflecting a broad range of fields, methods and perspectives:

PROFESSOR OREN BAR-GILL LL.M. '01 S.J.D. '05, who specializes in the law and economics of contracts and contracting

CLINICAL PROFESSOR CHRISTOPHER BAVITZ, an expert on intellectual property and media law and managing director of HLS’s Cyberlaw Clinic, which he first joined in 2008 as a clinical instructor

TOM BRENNAN '01, a professor at Northwestern University School of Law specializing in tax and finance, who will join the HLS faculty in July

CLINICAL PROFESSOR ESME CARMELLO '99, deputy director of the Harvard Legal Aid Bureau, where she began as clinical instructor in 2009

PROFESSOR OF EMPIRICAL PRACTICE ALMA COHEN, an applied empirical economist, who has done influential work in the areas of law and economics, risk and uncertainty, regulation and corporate governance

ANDREW CRESPO '08, a staff attorney in the Trial Division of the Public Defender Service in

Washington, D.C., who will become an assistant professor at HLS in January, focusing on criminal justice issues

PROFESSOR SAMUEL MOYN '01, a leading historian and award-winning author

PROFESSOR INTISAR RABB, an expert on Islamic law, legal history and statutory interpretation, who joined us at the start of 2014

KRISTEN STILT, an expert on Islamic law and society, property law, and also animal law

ASSISTANT PROFESSOR CRYSTAL YANG '13, a scholar specializing in criminal law and consumer finance

Future Bulletins will profile the work of these talented individuals.

IT IS A TIME OF TRANSITION, AFTER LONGTIME colleagues Alan Dershowitz and Lloyd Weinreb '62 took emeritus status. We mourn the passing of John Mansfield '56, marked by tributes in this issue of the Bulletin and in the Harvard Law Review. And we salute our colleague David Barron '94, now confirmed as a judge in the U.S. Court of Appeals for the 1st Circuit.

As we strengthen our own communities, tackle individual and societal problems, and pursue justice, the words of biochemist and science fiction author Isaac Asimov are worth remembering:

“It is change, continuing change, inevitable change, that is the dominant factor in society today. No sensible decision can be made any longer without taking into account not only the world as it is, but the world as it will be.”



BROOKS KRAFT

A call for more balance

I HAVE GOTTEN USED TO reading Bulletin articles which don't comport with my political view of the world, but Elaine McArdle's "Pay for Play" may have set a new standard for never mentioning the other side on any facet of the article's discussion.

I have a little experience with college sports, even discounting my own participation over 50 years ago. My son and daughter had outstanding college golf careers at academically demanding nonscholarship (meaning I paid) Division I institutions. Both managed to love both the golf and the overall experience. Both have terrific spouses and children, and one is now a practicing physician (with an honors degree from a top medical school) and the other has an M.B.A. and runs her own successful business. As a result, I am a little bemused by the former Brown running back (who managed to graduate from Harvard Law School) and the former NFL player and

THE BULLETIN WINS GOLD!

This spring, the Harvard Law Bulletin won the 2014 Council for Advancement and Support of Education's Gold Award for special constituency magazines. The judges found "the combination of design, story selection, illustrations, departments, writing and editing exemplary."



former president of the NFL Players Association who is now attending the Business School. Despite their protestations, it doesn't seem like either of them was prevented from getting more out of college than just football.

Since I have lived near Northwestern for almost 50 years, had basketball season tickets at one time, and have a relationship with its men's and women's golf programs, I have followed the unionization story quite closely. Even the Chicago newspapers have presented both sides of the issue. The initiator of the process, quarterback Kain Colter (with whom many would gladly have traded places to receive a virtually free education at Northwestern), was quoted as saying he was prevented from pursuing his dream of becoming a surgeon and also, after the unionization vote was completed, as saying that he was now free to pursue his lifelong dream of playing in the NFL. Maybe he wants what all of us strive for but

most of us know is beyond our reach—to "have it all." The bottom line is that no one is forced to play a college sport—life is full of choices.

I long ago resigned myself to the fact that we conservatives are probably a minority of Harvard Law School alumni, but some of us loved and even continue to love the school and would appreciate a little more balance.

Robert J. Stracks '67
Winnetka, Illinois

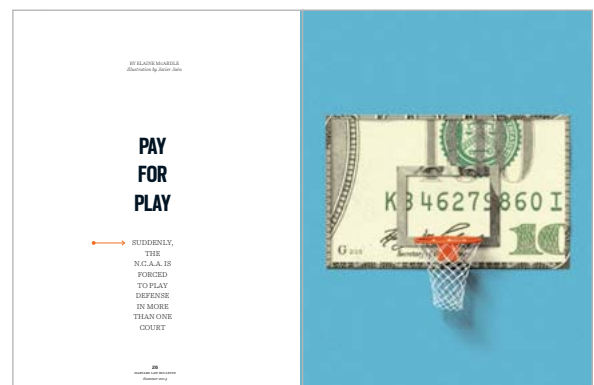
A voice for athletes' rights

THANK YOU FOR YOUR Summer 2014 cover feature

titled "Pay for Play."

Justice in college sports and recognition of players' rights in our legal system are long overdue, so the work being undertaken at HLS is important. The current regime in college sports takes value generated by unrepresented (often African-American) young men and diverts it to middle-aged (usually European-American) coaches and athletic administrators. Most of these athletes will never play sports in the NFL or NBA, so their college years may well constitute the period that should have been the highest-earning years of their lives.

In addition to the worthwhile work of your faculty and student body, your alumni have also contributed to the development of athlete rights. In 2006, my co-author and I published the first extensive analysis of whether college athletes should have the right to organize as employees under the National Labor Relations Act. (See Robert A. McCormick and Amy Christian McCormick, "The Myth of the Student-Athlete: The College Athlete as Employee," 81 *Washington Law Review*, 71-157, 2006.)





REMEMBERING JOHN MANSFIELD

Our article served as the template for the position Northwestern University football players would later take when they sought union representation to gain a voice in their working conditions.

The NLRB's regional director's carefully reasoned decision in that case is currently under appeal, and by the time the next issue of the Harvard Law Bulletin is published, the NLRB may have issued a decision. Regardless of the outcome, concerns about athlete rights will not go away. As you rightly detailed in "Pay for Play," universities and colleges are enjoying incredible revenues from the labor of athletes who perform arduous, dangerous work; who often live in poverty; and who all too often do not receive real educations in return for their efforts.

Amy Christian McCormick '91
Lansing, Michigan

Part of a bigger picture

I WAS ABSOLUTELY delighted to see the marvelous profile of Bishop ['69] and Marilyn ['72] Holifield ["Siblings in the Struggle"] in the Summer 2014 Harvard Law Bulletin. I am blessed to know them both. I would also like to point out that Bishop Holifield along with Reginald Gilliam ['68] was not only a founder of HLS BALSAs, but was instrumental in getting Derrick Bell to come teach at Harvard Law School in the fall of 1969.

As more fully presented in my blog [see bit.ly/RonBrownblog], Bell notes in a resignation letter to the

Behind a soft-spoken presence, a formidable integrity and ferocious mind YOUR "IN MEMORIAM" FOR Professor John Mansfield (Summer 2014) brought back fond memories, with a certain edge. In 1968-'69, having survived his Torts course, I was Professor Mansfield's 2L research assistant, courtesy of the then Student Aid program. Mostly I worked on immigration-law issues he formulated. I recall nothing about those, though they may have contributed to his interest in the intersections of evidence, religion and speech. However, the lessons he offered indirectly as we sat in his cluttered office remain clear. Characteristically, they came as questions. Some samples:

- "Would you rather deal with a smart corrupt party than an honest dumb one?"
- "Is it the statute, the regulation, the regulator or record-keeping that really sets the bounds?"

Ron Brown '71
Montclair, New Jersey

A new acquaintance

The fine Harvard Divinity

• "Did we start with a presumption for admission to this country? What's left of that?"

He was patrician in bearing, and his lanky and soft-spoken presence masked formidable integrity and a ferocious mind. During our sessions I came to think of him as Lord Mansfield, although I wouldn't have dared to voice that impression. We never spoke after I left Cambridge, but I've thought of him often. He was an extraordinarily nice, kind and decent man.

Michael H. Levin '69
Washington, D.C.

Stubbornly determined to try to see clearly and speak honestly

I WAS GRIEVED TO HEAR OF John Mansfield's death. I was his research assistant during law school, and despite our many disagreements in the 1990s (during the CLS [Critical Legal Studies] wars), we climbed

many hills together over the years.

He was a "conservative" in the HLS conflicts, but in no other way: He was [Professor] Mark Howe's best friend at the law school and, like Mark, spent time in the South doing civil rights litigation; he also represented American soldiers in Vietnam accused of desertion and insubordination; and he was a liberal reformer in the Catholic Church. He had a remarkably original and penetrating intellect, acute perception into psychology, and a stubbornly resolute determination to try to see things clearly and speak honestly—he was surely the least instrumental person I've ever known.

Robert W. Gordon '71
Stanford, California

EDITOR'S NOTE: A piece by Robert Gordon will appear in the Harvard Law Review in December as part of a tribute to John Mansfield.

dean of USC Law Center on June 2, 1969: "My decision to leave reflects a number of considerations. Principal among them is the opportunity to work with the more than 100 black law students who will be enrolled next year at Harvard. The challenge of working with these students became irresistible when their leaders wrote and called urging that I come."

Bulletin; Education School magazine, Ed.; and Harvard Magazine all come to me regularly. But I'd had no acquaintance with the Harvard Law Bulletin until I found your summer '14 edition during a visit with my daughter [Audrey Grossman '95] last week. I read it nearly cover to cover with great interest; congratulations to the editors and contributors.

Perhaps the most enlightening, but disturbing, outcome of this reading is the realization of just how complex, too-often-misunderstood,

and perhaps ultimately unsolvable, are the social, political, and economic issues confronting us. It makes it all the more maddening now to be subjected to the simplistic and devious barrage of news and campaign rhetoric thrown at us and to realize how effective that is at influencing voters.

Please keep up the good work; perhaps your exposition of matters, and efforts from your readers with some influence, can yet save the day.

Ernest Henninger, HGSE '56
Harrodsburg, Kentucky

Certain Change

How the Roberts Court is revising constitutional law



By *Julia Collins*

“Uncertain Justice: The Roberts Court and the Constitution” is the fruit of a collaboration that began in 2011, when Professor Laurence Tribe ’66, pre-eminent authority on the Constitution, hired Joshua Matz ’12 as head teaching fellow for a new Harvard undergraduate course on the U.S. Supreme Court. In their book, which came out this summer, Tribe and Matz focus on the Court’s activity since 2005, when John G. Roberts Jr. ’79 was appointed chief justice. In a Q&A with the Bulletin, Tribe discusses some of the implications of the decisions of nine men and women with regard to gay marriage, gun rights, N.S.A. surveillance, health care, emerging threats to privacy, immigration and more.

“The Roberts Court is, on the whole, the most legally sophisticated we have seen in our lifetimes. ... [but it] has paradoxically become among the most mysterious.”

Bulletin: What most distinguishes this Court from the Rehnquist Court and others preceding?

TRIBE: The Roberts Court is, on the whole, the most legally sophisticated we have seen in our lifetimes. Partly as a result, for a public that is smart but not legally trained, this Court has paradoxically become among the most mysterious and confusing. It has a few clear agendas that are not too difficult to describe: less separation between church and state, less attention to our troubled racial history and more belief that we can overcome that history by paying less attention to race, greater tolerance for sexual difference but not so much attention to gender discrimination, more focus on states’ rights even when the result may be to damage the ability of the federal government to cope with national and global problems. But

outside those areas, the Court can be a source of great puzzlement that can best be untangled by viewing the justices as individuals with distinct perspectives on what the Constitution is all about rather than as political partisans.

The Roberts Court opinions include those you call “thunderbolts that rock American life.” Can you illustrate what you mean?

This Court’s opinions have shaken American life on issues of sex and marriage, of race and religion, of health care and personal liberty. By invalidating the centerpiece of the Defense of Marriage Act and upholding most of the Obama administration’s signal domestic measure, the Affordable Care Act, while at the same time holding that family-owned corporations with thousands of employees

may opt out of the ACA's contraception mandate, the Roberts Court has repeatedly surprised the pundits and reshaped our national landscape. "Uncertain Justice" explains why those who looked more carefully at the Court's history should not have been surprised by any of those rulings.

Roberts cast the deciding vote in 2012, and the Affordable Care Act squeaked through the constitutional challenge, but you state that the "decision's value as a sign of things to come is far more important." How so?

A careful analysis of what drove the chief justice to vote as he did in that case, a vote I predicted publicly on several occasions, reveals an approach to government that John Roberts has consistently pursued—and an approach that is likely to lead to future restrictions on coercive uses of federal regulatory authority while upholding federal power to achieve social objectives through the use of tax incentives that nudge people to make the choices that the federal government concludes will serve the national interest.

In "Uncertain Justice," you write: "Equality is an explosive principle on the Roberts Court" and also that "decisions made by this Court may define what 'Equal Protection of the Laws' means in the 21st century." Could you talk a bit more about this?

The current Court has come ever closer to concluding that America has transcended its troubled history of racism and can best complete that difficult journey by acting as though race no longer matters, while four justices continue to argue passionately that we are not nearly there yet and have miles to go before we sleep. With Justice Kennedy [’61] holding the decisive vote on those crucial race issues, the future of our struggle with race



Laurence Tribe '66 has argued dozens of cases before the U.S. Supreme Court. Chief Justice Roberts '79 was his student, and his research assistants have included both President Barack Obama '91 and Justice Elena Kagan '86.

discrimination is necessarily uncertain. On gender, the Court has been remarkably silent for years; but there is reason to believe that its sensitivity to gender discrimination is far more limited than its sensitivity to discrimination based on sexual orientation, with the embrace of full marriage equality likely to be just around the bend.

The Roberts Court is described, often, as "pro-free speech." Is that so?

The record of the Roberts Court on issues of free speech is much more mixed than most people seem to recognize. Although it has been highly protective of political campaign speech by individuals, corporations, and unions with deep pockets, it has been disappointingly stingy about the speech of students, prisoners, public employees, and human rights activists ... and has at times invoked free speech values to restrict economic regulation essential to the protection of consumers.

You've said the Roberts Court is just beginning to suggest how the Constitution will be used to delineate 21st-century privacy. What do you discern so far—for example, with regard to new technologies?

The Roberts Court has been

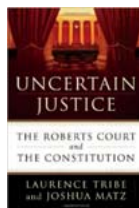
quite farsighted in approaching the threats to privacy posed by such new technologies as GPS tracking and smartphones but less so in grappling with DNA databases and texting. This is one of the many areas in which unusual alliances among justices from opposite ends of the political spectrum and unusual clashes between justices of allied political ideologies reveal the need to get beyond the cardboard-caricatures through which the media tend to depict the members of the Court.

How have gun rights and opposition fared in the Roberts Court? What makes *Heller* a landmark decision, in terms of gun regulation and the Second Amendment?

Never before the *Heller* decision in 2008 and the *McDonald* decision in 2010 had the Supreme Court interpreted the Second Amendment as the source of an individual's right to bear firearms independent of any state militia. But the Court's interpretation of that right has left so much room for reasonable regulation to reduce avoidable deaths and injuries from guns that the main obstacles to such regulation are now cultural and political rather than legal and constitutional.

How has the Roberts Court dealt with competing views of the U.S. presidency, and the need to balance liberty and security—with regard to Guantánamo Bay and N.S.A. surveillance, for example?

The Roberts Court has done more than its predecessors to insist that the president's powers are limited by constitutional constraints even in a time of war, but has left the elaboration of those constraints mostly to the lower federal courts, which have been extraordinarily deferential to the commander in chief on matters of detail.



Do you see a significant influence of politics—notably, D.C. gridlock and each justice’s own politics—on this Court’s decisions?

The Court’s decisions are undoubtedly, and properly, influenced by the political philosophies of the justices—not in the sense of partisan politics but in the sense that the law of the Constitution is inherently inflected by broadly political ideas about the nature and purposes of government. But I see no real evidence, with very few genuinely rare exceptions, that politics with a capital “P” are shaping the Court’s decisions in any improper sense. The political gridlock of D.C. obviously highlights the way in which the Supreme Court remains probably the only well-functioning branch of government, but I see no evidence that the Court is asserting itself more actively as a response to the paralysis of the other branches.

→ “I see no real evidence ... that politics with a capital ‘P’ are shaping the Court’s decisions in any improper sense.”

Decisions like *Citizens United* have led many to believe the Roberts Court is pro-business, at the expense of regular citizens. Do ordinary people have less access to legal remedies and to the courts?

Although “Uncertain Justice” goes out of its way to show that, on nearly all of the highly con-

Joshua Matz ’12 is a clerk for Justice Anthony Kennedy ’61 and was a contributor to SCOTUSblog.



troversial issues reaching the Roberts Court, there are strong arguments to be made on all sides, the one issue on which I have found it hard to be entirely evenhanded has been this Court’s persistent tendency to uphold obstacles that prevent ordinary people from vindicating their basic rights in our courts. That is why I have described this as an increasingly “anti-court Court,” less because of any bias in favor of business as such than because of an apparently sincere (even if often misguided) conviction that litigation and judicial remedies tend to be more wasteful and inefficient than arbitration and the resolution of disputes by expert administrators.

What do you mean when you say decisions from the Roberts Court in certain areas could be “uniquely” durable?

Inertia has a powerful effect in giving Supreme Court decisions great staying power even when they represent narrow victories for one view over another. That durability is likely to be especially great when the decisions have, for better or worse, adopted approaches that are calculated to make technological change irrelevant to the principles the Court announces.

According to your book, the Roberts Court’s temperament reflects the “deregulatory and cynical tenor of our age.” What does this mean?

I mean that a reluctance to embrace bureaucratic regulation, a preference for solutions that respect personal liberty, and a suspicion of government motives and of government competence, characterize this period in our history.

What legal approaches—originalism, for example—have dominated this Court?

The obsession with distinctive methodologies for interpreting and implementing the Constitution and laws of the United States is a characteristic obsession of academics and commentators rather than of the justices themselves. Although Justices Scalia [’60] and Thomas have focused on what they see as the virtues of trying to stick to the original meaning of the Constitution, they have won more converts among a few academics and students than among their colleagues on the Court, and justices like Alito have even made light of their efforts, joking from time to time about how those efforts amount to pointless inquiries into what James Madison might have thought about video games. In the end, no particular legal approaches have emerged as dominant or even as consistently influential.

Congressional overrides have fallen sharply, leaving Roberts Court decisions unchallenged. If Congress isn’t keeping as close a watch, which this suggests, or fixing anything, what are the risks?

The risks I see entail giving the Court too much leeway to refashion Acts of Congress along lines that the literal language of those enactments might suggest but that clearly undermine what Congress was trying to achieve.

According to the book, Debo Adegbile of the NAACP speaking for 11 minutes during *Shelby County* was the only time a black lawyer addressed the Court in 2012’s 75 hours of oral arguments. What should we take from this stark fact?

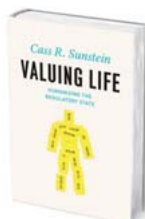
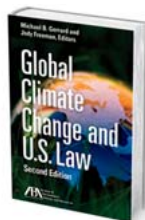
To me, this fact speaks volumes about how great a distance we have to travel as a society before we can afford to act as though race and color no longer make a difference to individual opportunity.

Books in Brief

“Human Subjects Research Regulation: Perspectives on the Future,” EDITED BY PROFESSOR I. GLENN COHEN '03 AND HOLLY FERNANDEZ LYNCH (2014, MIT). Arising from a conference co-sponsored by the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, the volume offers perspectives on a regulatory system that “seems poorly equipped to deal with the realities of human subjects research in the twenty-first century,” according to Cohen and Lynch, the center’s faculty director and executive director, respectively. Considering a framework implemented—and then essentially unchanged for decades—in the aftermath of Nazi human experimentation and the Tuskegee syphilis study, 33 contributors write on possible improvements that may better protect subjects and advance research.

“Making Money: Coin, Currency, and the Coming of Capitalism,” BY PROFESSOR CHRISTINE DESAN (forthcoming, January 2015, Oxford). Money may make the word go round, but, according to Desan, it was the reinvention of money that caused a little-understood revolution. In her book, the co-founder of Harvard’s Program on the Study of Capitalism focuses on “the old ways of making money, the revolution that redesigned that medium, and how that revolution disappeared from view.” She contends that the making of money has long shaped the English world, from “Sceattas,” early silver pennies in the eighth century, to what is considered modern money a thousand years later. And she draws a connection to the financial crisis of 2008 and how it demonstrates our continued lack of understanding about the way money works.

“Global Climate Change and U.S. Law,” 2ND EDITION, EDITED BY PROFESSOR JODY FREEMAN LL.M. '91 S.J.D. '95 AND MICHAEL B. GERRARD (2014, ABA). Much has changed since the first edition of this volume was published in 2007, according to the editors, including the U.S. Supreme Court decision in *Massachusetts v. EPA*, a U.N. climate conference, and further evidence demonstrating significant climate change. This edition features a new section on energy regulation and covers subjects such as geoengineering and cap and trade. Freeman, the founding director of the HLS Environmental Law and Policy Program, who served as counselor for energy and climate change

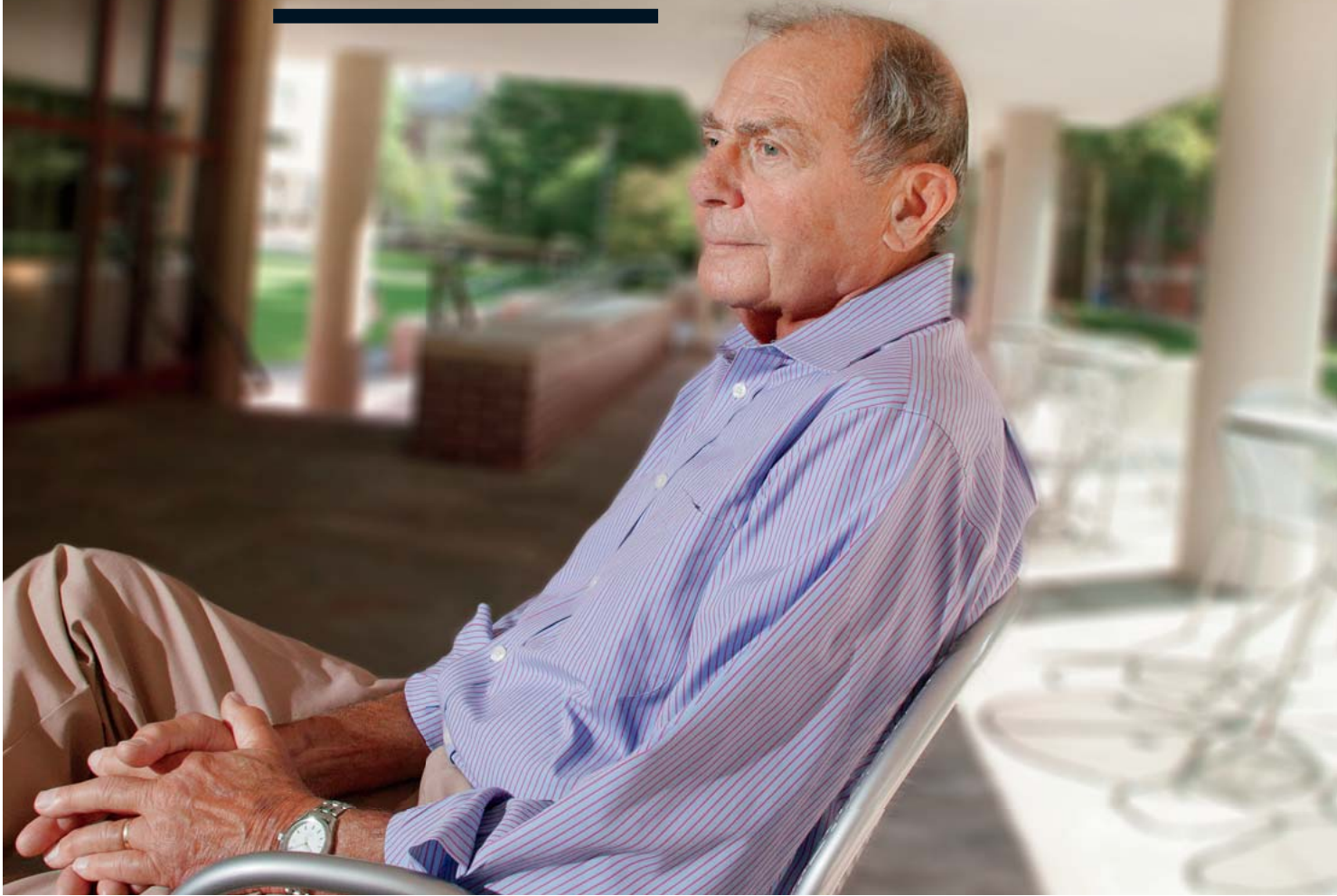


earlier in the Obama White House, co-writes the book’s final chapter on possible future legislative efforts related to U.S. climate change law.

“Religion and Civil Society: The Changing Faces of Religion and Secularity,” EDITED BY PROFESSOR MARY ANN GLENDON AND RAFAEL ALVIRA (2014, Georg Olms Verlag). Glendon, former president of the Pontifical Academy of Social Sciences, contributes an essay to this volume, examining the relationship between religion and secularity in theory and in practice. Other contributors confront topics such as family and God in civil society, religious freedom, religious advocacy, and the role of religion in a multicultural world. Glendon, who previously served as U.S. ambassador to the Holy See, notes that religion has an influence on the development of civil society at the same time as trends in civil society have an influence on religion.

“Human Rights and the Uses of History,” BY PROFESSOR SAMUEL MOYN '01 (2014, Verso). Following his book “The Last Utopia,” which examined the recent rise of human rights as a means to seek justice, Moyn in his new volume interprets some of the leading thinkers on human rights. Through this critical analysis, he considers topics such as human rights and the Holocaust, international courts, and liberal internationalism. Skeptical of humanitarian justifications for intervention, he writes, “[H]uman rights history should turn away from ransacking the past as if it provided good support for the astonishingly specific international movement of the last few decades.”

“Valuing Life: Humanizing the Regulatory State,” BY PROFESSOR CASS R. SUNSTEIN '78 (2014, Chicago). Before he returned to teach at Harvard Law in 2012, Sunstein served as administrator of the White House Office of Information and Regulatory Affairs, a position in which he focused on “humanizing cost-benefit analysis.” In this book, he writes about this government experience—how things worked and the officials he worked with—as well as difficult questions of valuation, including valuing risk and human life. Through discussions of behavioral economics (a centerpiece of his well-known book “Nudge”), psychology, and real-life cases, he shows the need for regulation that both calculates costs and benefits and considers human consequences.



EMERITUS

At the Top of His Game

For half a century, Lloyd Weinreb has improved our minds

LLOYD WEINREB '62 RETIRED AS Dane Professor of Law on July 1. Almost no one knew of Lloyd's impending retirement. He did not tell his students. Although he had apprised the dean of his plans months earlier, he did not share the news with many colleagues. Characteristically, he wanted no fuss.

But Lloyd merits a fuss. Since 1965, he has served as a mainstay of the Criminal Law and Criminal Procedure curriculum at Harvard Law School. At some point in the 1990s, Lloyd began teaching Copyright, to challenge himself and help the school,

As Lloyd Weinreb took on emeritus status, his long-time colleague and friend (and running companion) Richard Fallon wrote this tribute.

and he promptly published a much-discussed article on the subject in the *Harvard Law Review*. He achieved a similar scholarly splash when his book "Legal Reason: The Use of Analogy in Legal Argument" came out in 2005.

Most important on the scholarly front, Lloyd wrote the magisterial "Natural Law and Justice," published in 1987 by Harvard University Press. In that book, he explicated the ancient Greek idea of natural law as one of "normative natural order," including assumptions not just about how things ought

to be in the world, but also about how they are. Several years later, he followed up with the provocatively titled philosophical study "Oedipus at Fenway Park: What Rights Are and Why There Are Any" (1994).

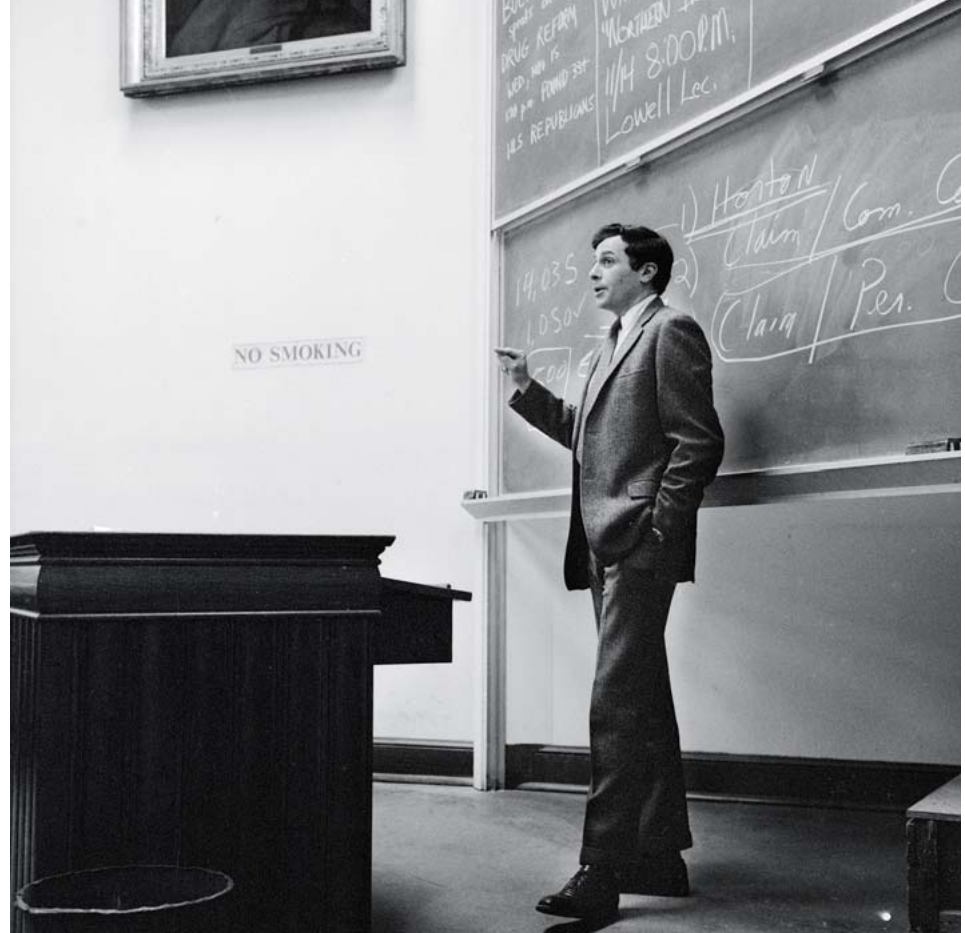
Throughout Lloyd's career, his teaching matched his scholarship. Indeed, as the author of "Oedipus at Fenway Park," Lloyd, it could fairly be said, followed in the footsteps of Red Sox legend Ted Williams, who hit a home run in his last time at bat. Like the Splendid Splinter, Lloyd—according to reports from students in his final Crim-

inal Procedure class—went out at the top of his game. He had lost nothing off his fastball. He had as many more innings left in him as he might have wanted to play.

Although I could wax on indefinitely with sports metaphors, candor requires a confession. I am quite sure Lloyd has no idea who Ted Williams was. For that matter, I doubt he knows the difference between the World Series and the Super Bowl. When Lloyd wrote “Oedipus at Fenway Park,” he had to ask me to give him the name of a Red Sox player who was conspicuously favored by natural fortune. (I suggested Roger Clemens—who, as it happens, has drawn subsequent accusations of abetting his natural endowments with regular injections of steroids.)

I might also add that I fear Lloyd would look scornfully on the triteness of my “going out at the top of his game” metaphor. In other writing, I have long relied on Lloyd, and shall continue to rely on him, to restrain me from inapt comparisons and rhetorical excesses. In this and other matters, I have benefited immeasurably from his friendship over a period of more than 30 years. In writing a tribute to him without soliciting his assistance, I feel the lack acutely (and fear that readers may pay the price). The retirement of a star almost inevitably diminishes the performance of the rest of the team, at least initially.

Lloyd and I initially bonded in friendship largely through runs along the Charles River, when he was writing “Natural Law and Justice.” Conversation never faltered. Although spectator sports hold no interest for Lloyd, it has sometimes seemed to me that nearly everything else does. He loves literature and the arts, especially theater. (Lloyd serves as president of the Abbey



HLS HISTORICAL & SPECIAL COLLECTIONS

Theatre Foundation of America.) He not only attends and reads plays, but also writes them (for his own amusement) in his free time.

Most mornings, Lloyd studies classical Greek. Yet, despite his literary and intellectual bent, he betrays no hint of self-satisfaction or stuffiness. (When President-elect Franklin Roosevelt called on the retired Justice Oliver Wendell Holmes, and asked the justice why he had been reading Plato that morning, Holmes reportedly replied: “To improve my mind, Mr. President.” Lloyd says he studies Greek because it interests him.)

In both his professional life and his personal life, Lloyd has had an abiding sense of adventure. Early in his teaching career, he took his young family to Colombia for a year to study the criminal justice system there. He still talks enthusiastically of other work that he has done assisting prison inmates struggling to rebuild their lives. He once collaborated with a police officer in writing a manual that gives plain-English instruction

Weinreb joined the Harvard Law faculty in 1965.

→ In both his professional life and his personal life, Lloyd has had an abiding sense of adventure.

to other police officers on the rights of criminal suspects.

As I think about what Lloyd has brought to the Harvard Law School faculty for nearly 50 years, I cannot help lamenting that future students will miss his erudition, his practice-based insights, and his gift for blending practical with theoretical perspectives. They will miss him as a role model. They will miss the day-to-day example that he provides of the diversity of ways in which it is possible to think and live richly, both in the law and in life more generally.

The law school will also feel the loss of Lloyd’s contributions as an institutional citizen. Combining good taste with frugality, Lloyd picked out much of the artwork that adorns Areeda Hall and the law school tunnels. For many years, he has uncomplainingly chaired the Administrative Board, the school’s principal disciplinary body. (I’m sure no one has ever called or written him to express gratitude for being subjected to “dismissal,” which is somehow a lesser sanction

continued on page 46

DEANS' CHALLENGE

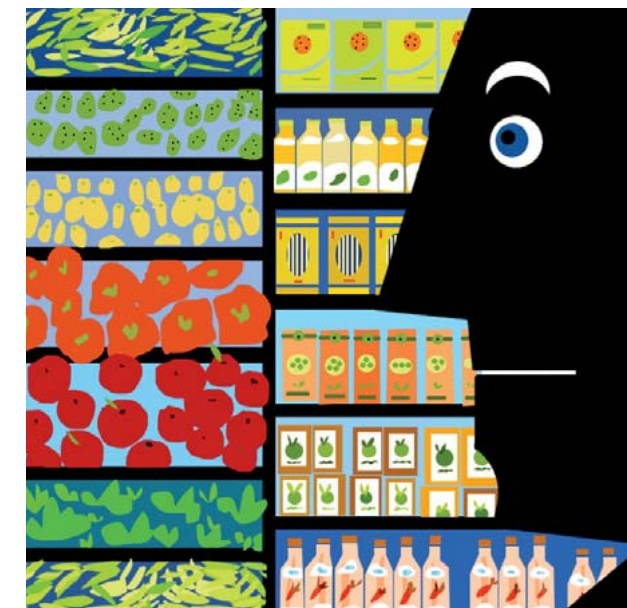
A Recipe for Innovation

New initiative co-sponsored by Dean Minow seeks solutions to issues with the U.S. food system

THIS FALL, HARVARD LAW School Dean Martha Minow and Julio Frenk, dean of the Harvard T.H. Chan School of Public Health, issued a challenge to students across the university to come up with fresh ideas for solving complex problems facing our food system.

Each year, the Harvard Innovation Lab holds a range of university-wide competitions sponsored by Harvard schools asking students to address problems in a given area of focus. The "Deans' Food System Challenge," the first sponsored by HLS, was developed in collaboration with the school's Food Law and Policy Clinic. It calls for proposals for making the food system healthier, more sustainable and more equitable, both in the United States and around the world.

Participants are encour-



aged to form interdisciplinary teams and develop projects that address one of four topics: food production, distribution and markets, improving our diet, and reducing food waste. Finalists will be announced in April. Each finalist team

will receive \$5,000 to put toward their proposal. In May, \$50,000 will be distributed among one winner and up to four runners-up.

Minow launched the competition on Oct. 27 at an event featuring keynote speaker Ayr Muir, CEO of Clover Food Lab. A range of related events are taking place throughout the year at the i-lab, as well as a series of lectures and presentations across the university coordinated by the Food Law and Policy Clinic and various partners, as part of a broader "Food Better" campaign (see bit.ly/Food-better2014).

Emily Broad Leib '08, deputy director of the Center for Health Law and Policy Innovation at HLS and director of the center's Food Law and Policy Clinic, and Ona Balkus J.D./M.P.H.

'13, a fellow at the clinic, are among those at HLS working on the challenge, as is Christopher Bavitz, clinical professor and managing director of the Cyberlaw Clinic at the Berkman Center for Internet & Society, and the dean's designate to the i-lab.

Feedback on Food?

The Deans' Food System Challenge is using crowdsourcing to help participants develop and refine their ideas. Alumni are encouraged to suggest ideas to the teams and submit feedback at the website bit.ly/Deans-food-system-challenge2014.

Course Menu

Offerings at HLS
this academic year for students
interested in food law

FOOD LAW LAB Spring 2015

Professor Jacob Gersen, founder and director of the Food Law Lab at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at HLS

FOOD LAW AND POLICY Fall 2014

Lecturer on Law Emily Broad Leib '08 and Clinical Professor Robert Greenwald, director of the Center for Health Law and Policy Innovation at HLS

FOOD LAW AND POLICY CLINIC Fall 2014 and spring 2015

Broad Leib and Greenwald

FOOD AND DRUG LAW Winter term 2015

Lecturer on Law Peter Barton Hutt '59, senior counsel in the Washington, D.C., law firm of Covington & Burling, specializing in food and drug law

Dean Martha Minow launches the "Deans' Food System Challenge," calling for proposals for making the food system healthier, more sustainable and more equitable.



FACULTY VIEWPOINTS

The Root of It All

Fighting money's power to corrupt government with a super PAC designed 'to end all super PACs'



In 2011, Lawrence Lessig wrote “Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It,” a book arguing that the ever-present need to fund political campaigns serves well-heeled funders and not the public interest. Now the Roy L. Furman Professor of Law and director of the Edmond J. Safra Center for Ethics at Harvard University has become an activist. And he is taking on the system he critiqued with a bold effort to appropriate what he sees as one of its corrupting forces.

This year Lessig launched the Mayday PAC, a super PAC designed “to end all super PACs,” as he has described it. At press time, Mayday had collected more than \$10 million in donations

in order to support candidates in up to eight races this year who have pledged to reform the campaign finance system. That includes eliminating super PACs themselves, which can raise and

spend unlimited money to support political candidates. It is a precursor to a much larger effort planned for 2016 to elect a majority in Congress who will support reform of campaign funding.

Lessig acknowledges the irony of raising money through a means he would like to abolish but says there was no better alternative than working within the current system to change it.

“I don’t feel guilt about using a system that predominantly benefits the extremely wealthy in order to create a system that’s balanced in its representation of the poor and the rich,” he says.

The fundamental problem, according to Lessig, is that politicians now spend 30 to 70 percent of their time raising money from a small slice of the wealthiest donors. This leads to a “perpetual campaign” that compels politicians to vilify the other side and polarize the public, he says. Though some contend that money does not buy influence, he points to studies that confirm that the government is more responsive to donors’ wishes than to voters’.

To replace the current system, the organization advocates “small dollar public funding,” which could be in the form of vouchers provided to voters to support candidates of their choice. It would dramatically expand people’s participation in campaigns and motivate those in power to address grass-roots concerns, Lessig believes.

He says the cause is nonpartisan, and Mayday is offering support to candidates regardless of party. Even though most Republican politicians don’t support campaign finance reform, polls show that a majority of both Republican and Democratic voters share concern over the influence of money in politics and the issue of corruption, he notes. The question is whether that concern will translate into support for candidates who make the issue a priority.

“What we’re trying to do is find a way to leverage the actual

strong support for reform into people taking the steps to vote,” Lessig says. “People haven’t tried it before because it defies the conventional wisdom. We’re trying to break the conventional wisdom.”

Lessig began to focus on campaign finance reform only recently. He says he was influenced by his friend Internet activist Aaron Swartz, an advocate for free access to online information, who committed suicide in 2013 when he was faced with federal criminal charges of illegally downloading academic journal articles without paying for them. In 2007, Swartz convinced him there was no way to make progress on policy issues, including the Internet issues the two of them were working on, until something was done about corruption.

At one time, Lessig considered pursuing that fight with a run for Congress. He decided against it and says he has a better opportunity to “spread the gospel” as an outsider than as an insider. He is spreading the word far and wide, with coverage in *The New York Times*, *The New Yorker* and *The Washington Post*, among many other outlets. The effort has been exhausting, he says, and decidedly different for a legal scholar and teacher.

“The life of an academic is a life of incredible confidence and security,” he says. “I’ve kind of thrown myself into a place where there’s no confidence and no security and it’s easy to be proved wrong. If this whole thing turns out to be a failure, it will be personally quite difficult.”

But if it is a success and helps change the way elections are funded, citizens will feel more confident participating in what their government is doing, he says. And for Lessig, that would be a gift money can’t buy.

—LEWIS I. RICE

THE CIVIL RIGHTS ACT OF 1964

Four HLS perspectives

At a panel at HLS in October commemorating the 50th anniversary of the Civil Rights Act, Professor Kenneth W. Mack ’91 focused on federalism’s historical role in shaping the legislation.

“Civil rights activists began to think about the power of the federal government to regulate employment discrimination in a sustained way,” he said. Debate leading up to the act focused on whether Congress had the right to enact such a statute. Earlier, the answer would have been “basically no,” he said. “But by ’64 the answer was maybe yes. And civil rights activists were part of that story.”

According to Professor Randall Kennedy, the primary justification for [the act] was the Commerce Clause of the U.S. Constitution—the idea that racial discrimination burdens the economy.

Calls for collective civil rights have long run up against individuals’ contentions that they have the right to discriminate to achieve their goals. Prior to the 1964 law, Kennedy said, activists had failed to successfully challenge that assertion in arguing for a right to be served at lunch counters and in stores. In crafting the law, he said, Congress responded to that conflict with Article II, which prohibits discrimination against protected groups in public accommodations.

Recent challenges involving claims of expressive association have thrust Article II back into the spotlight, noted Professor Mark Tushnet, referring to the recent U.S. Supreme Court ruling that businesses are exempted from federal laws that conflict with their owners’ religious beliefs. “The *Hobby Lobby* decision places the commercial/non-commercial distinction under pressure,” he said.

Professor Joseph Singer ’81 noted the act’s limitations. While it says that protected groups have the right to engage in commerce in places of public accommodation, it doesn’t address the treatment to which a customer might be subjected, he added. —DICK DAHL

→ For video of the panel, go to bit.ly/CivilRights50





STUDENT SNAPSHOT

Between Cambridge and Kiev

Ministering to the legal needs of
a country at war

After Malaysia Airlines Flight 17 was shot down over eastern Ukraine on July 17, killing all 298 people aboard, Svitlana Starosvit LL.M. '13 and Volodymyr Shkilevych LL.M. '12, lawyers with the Ministry of Foreign Affairs of Ukraine, worked around the clock with lawyers from Malaysia, the Netherlands and Australia to draft treaties delineating responsibilities for investigating the tragedy. Ukraine had the right under international law to be lead investigator under the "situs" rule, Starosvit says, but agreed to transfer these powers to the Dutch to ensure an independent and impartial investigation. She and

→ “The idea that keeps us [going] is that this isn’t only about Ukraine but about the integrity of international order and public international law.”

Shkilevych also worked on treaties regarding deployment of special civil forces from the three other nations to help Ukraine secure investigators’ access to the site.

The current political crisis in Ukraine defines both the professional and personal lives of the couple, who married in 2008 after they met in the ministry and then attended the LL.M. program at Harvard Law School. Until this August, when she returned to HLS to enter the S.J.D. program, Starosvit was counselor in the Minister’s Office and supervised the Office of Legal Affairs and the International Law Department within the ministry. Shkilevych is the deputy head of the International Law Department.

Over the past year, after Russia annexed Crimea and continued incursions into Ukraine in defiance of international condemnation, their work became all-consuming. Starosvit advised the minister on the legitimacy of the presidential elections held in May. When some polling stations in the east were closed due to threats of violence, people from Crimea who had fled the region had to vote at polls specially opened for this occasion.

With opponents of the election arguing that failure to hold voting in some places rendered the entire outcome illegitimate, Starosvit’s review of national legislation led to her opinion that this was not the case. “The results in the polling stations can be declared invalid, but this does not affect the results of elections nationwide,” she says.

Shkilevych, in turn, was a member of the delegation that negotiated an arrangement with a museum in the Netherlands to store—until further notice—an exhibition of historical treasures that belong to Ukraine but were under the management of a

Crimean museum. The exhibition, “Crimea: a golden island in the Black Sea,” opened in Amsterdam not long before Russia occupied Crimea on March 18, and Ukraine wants to ensure the safety of the priceless artifacts.

In perhaps their most pressing project, the couple conducted numerous meetings with foreign lawyers and experts on international law from Europe and the U.S. They analyzed conventions to see what rules Russia may have broken through its actions in Ukraine and what might be done about it, working with a team of lawyers to develop a strategy for holding Russia accountable before the international courts for what Starosvit calls “blatant violations of international law and specific conventions,” adding that the sensitive nature of the issue prevents her from saying more.

On Sept. 18, Ukrainian President Petro Poroshenko addressed the U.S. Congress, urging it to provide military assistance to counter pro-Russian eastern separatists. While President Barack Obama ’91 condemned Russia’s actions in Ukraine, he has limited military support to nonlethal equipment only. “Personally, I think the U.S. is more active than any other players around the situation in Ukraine,” says Shkilevych. “But I don’t think political pressure and some economic pressure are enough to stop Russia and resolve this situation.”

The recent political turmoil meant that the couple worked 24/7, following the news constantly in order to give prompt advice to the minister. Many times they were awakened by emergencies. “In late February and early March, when the situation with Crimea’s occupation was unfolding rapidly, we were called during the night to prepare legal opinions explaining

in legal terms what Russia had violated,” says Starosvit, who was born and raised in Crimea.

Among other matters, they advised on legal avenues Ukraine could pursue in response and outlined a plan to organize the evidence that would be collected.

“Luckily, in Kiev, things are more or less quiet; there’s no military action. Compared to eastern Ukraine, we cannot complain,” she says. At the same time, she adds, “when you see all these reports about our territory being shelled, people dying, including civilians, it is hard to stay diplomatic and focused.” Many of their family members in eastern Ukraine have now fled; ironically, she says, they’ve moved to Russia, where they have close relatives.

What has sustained the couple is the broader importance of their work. “Many times we were stressed and wanted to give up,” Starosvit says. “But the idea that keeps us [going] is that this isn’t only about Ukraine but about the integrity of international order and public international law.”

Starosvit expects to travel back and forth to Ukraine during the course of her HLS studies, while Shkilevych remains in Kiev—and when she finishes the S.J.D. program, she may return to the Ministry of Foreign Affairs to combine diplomatic service with teaching.

When she applied to the program in April, as the crisis was growing, her plan was to go into academia and teach public international law. “Now, of course, my plans have changed a lot,” she says. “My country is at war. It is reported that around 3,000 people, including civilians, were killed. I do not think it is even possible to think about a cozy professor’s chair somewhere in the university at the moment.” —ELAINE MCARDLE

Husband-and-wife team Volodymyr Shkilevych LL.M. ’12 and Svitlana Starosvit LL.M. ’13, pictured at Harvard Law School

PERSPECTIVE TAKING

The Human Rights Program at 30

A legacy of critical engagement

PROFESSOR EMERITUS HENRY J. STEINER '55 FOUNDED the Harvard Law School Human Rights Program in 1984 as a home for human rights scholarship and advocacy. In September, he joined other faculty and alumni for a conference celebrating the program's 30th anniversary and its commitment to issues ranging from counterterrorism and human rights to sexual and reproductive rights across the globe. The event also showcased the human rights movement's long-standing commitment to critical self-reflection.

In a panel on the history and future of the human rights movement, which brought together five HLS alumni, including Assistant Clinical Professor Susan Farbstein '04, co-director of the program's International Human Rights Clinic, and HRP Co-Director Tyler Giannini, panelists explored seminal moments in human rights history. Human Rights Watch researcher Clara Long '12 cited Sept. 11 and Hurricane Katrina as the most important events in recent history for their influence on domestic human rights. Other panelists named the Rwandan genocide, the end of apartheid in South Africa, the creation of the International Criminal Court and the end of the Cold War as major moments for international human rights. Several panelists said the main task for the movement in the future would be to get comfortable "working in contradiction." Long agreed, saying that for her that means to "hold a critical space for my own actions and my own effects as an advocate and an investigator." She added, "[T]he place I learned to do that was here, in this program." —LANA BIRBRAIR '15



Tyler Giannini, co-director of the HLS Human Rights Program, and Susan Farbstein '04, co-director of the program's clinic ▲



Raymond Atuguba S.J.D. '04, the executive secretary to the president of Ghana ▶



From left: Gerald Neuman, HRP co-director, with Henry Steiner, who founded the program 30 years ago ▶

HENIGSONS ENDOW VISITING PROFESSORSHIP IN HUMAN RIGHTS

During the conference, Professor Gerald Neuman '80, co-director of the HLS Human Rights Program, announced the establishment of the Henry J. Steiner Visiting Professorship in Human Rights, in honor of the program's founding director. It will be held by a professor, judge or advocate who is from and works within a developing country and who engages with human rights issues. The professorship was endowed by Henry Steiner's cousin and classmate, the late Robert Henigson '55, and his wife, Phyllis. The couple's generosity has already helped to launch the careers of numerous human rights practitioners and scholars through Henigson Fellowships with NGOs in developing countries around the world.



Professor David Wilkins, director of the Center on the Legal Profession

FRANK MONKIEWICZ

FOCUS ON THE PRACTICE

At the Center of the Profession

For a longtime HLS program, broader scope and reach

THE LEGAL PROFESSION IS going through dramatic change, affected by factors ranging from globalization to new technology to a fragile economic recovery. And a Harvard Law School institution dedicated to studying the profession is undergoing its own big change. In September, the Program on the Legal Profession became the Center on the Legal Profession, reflecting its broader scope and reach.

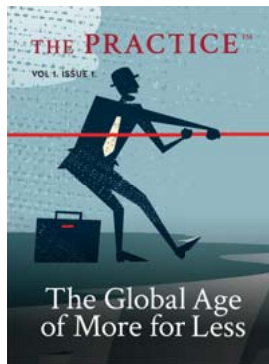
Created in 1981 and led by HLS Professor David Wilkins '80, CLP will mark this change with a new publication, launched this fall. Called *The Practice*, the online magazine covers research on the profession with a practical look at developments and trends in the legal industry. The debut of the bimonthly publication features "The Global Age of More for Less," which examines whether some of the recent changes in the profession represent a "fundamental paradigm shift or temporary correction." Another article reports on a recent survey by the center on how large companies

decide to hire—and fire—outside law firms. Future issues will cover such topics as disruptive innovation in legal services, the meaning of professionalism in the 21st century and changes in legal education.

But some things at the center will remain the same. It will continue to sponsor a range of events capturing change in the profession, such as last year's conference on Disruptive Innova-

tion in the Market for Legal Services.

And it will also continue to produce the kind of research and scholarly papers for which it has long been known. CLP conducts empirical research on the structures, norms and dynamics of the global legal profession. To that end, the center has ongoing projects centered on six core themes: Globalization, Legal Careers, the Legal Market, Legal Practice, Legal Education and Access to Justice.



A bimonthly thematic magazine, *The Practice* launched earlier this fall and its first issue is available free at CLP.law.harvard.edu. Send subscription questions to CLP@law.harvard.edu.

Upcoming Highlights

In the summer of 2014, Wilkins launched a collaboration with Benjamin Heineman, CLP distinguished senior fellow and former general counsel of General Electric, and William Lee, partner at WilmerHale and senior fellow of the Harvard Corporation, to address the responsibilities of lawyers and as citizens at the beginning of the 21st century. In the coming months, CLP will solicit comments from a range of legal professionals

to be published on its new website, CLP.law.harvard.edu, and it will host a major conference discussing these themes.

The center's Globalization, Lawyers and Emerging Economies initiative has been studying ways in which globalization is reshaping the corporate legal sector in countries including India, Brazil and China. The initiative's working papers are featured on CLP's website as part of its Research Paper Series. CLP expects to publish its India and China volumes next year, and is in the preliminary stages of expanding its Globalization, Lawyers and Emerging Economies initiative to Africa.

In the spring of 2015, CLP will release its Harvard Law School Career Study Report, an in-depth look at the professional development and career trajectories of the Classes of 1975, 1985, 1995 and 2000. The report will pay particular attention to the role of gender in career advancement and work-life satisfaction.

The Access to Justice project, a groundbreaking consumer debt study led by HLS Professor D. James Greiner, CLP affiliate, will continue its assessment of the effectiveness of financial counseling and various forms of legal assistance for people in severe financial distress. The randomized control trial takes place in Maine, with participation from academics, a financial counseling service provider, Maine's principal legal aid provider, representatives from credit bureaus and the Maine judiciary.

HEARSAY

Faculty Sampler

Short takes from recent op-eds

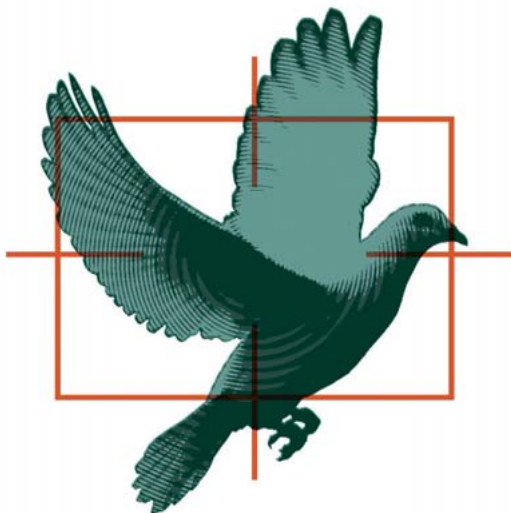
“HOW TO DEREGULATE CITIES AND STATES”

PROFESSOR CASS R. SUNSTEIN '78 AND HARVARD ECONOMICS PROFESSOR EDWARD GLAESER

The Wall Street Journal

AUG. 24, 2014

“In 2011 the Obama administration, with bipartisan support, called for an ambitious process through which federal agencies would periodically evaluate existing rules, eliminating or streamlining them when cost-benefit analysis suggested that elimination or streamlining was warranted. ... States and localities should engage in comprehensive lookbacks of their own, eliminating and streamlining burdensome requirements, including occupational licensing. In some ways, in fact, states should be able to go far beyond the efforts of national government, because of their relative ability and incentive to experiment. We envision a kind of competition at the state level to activate creative thinking about how to institutionalize regulatory simplification, freeing up the private sector without jeopardizing public safety, health, the environment and quality of life. Now is the time to begin.”



“OBAMA’S BREATHTAKING EXPANSION OF A PRESIDENT’S POWER TO MAKE WAR”

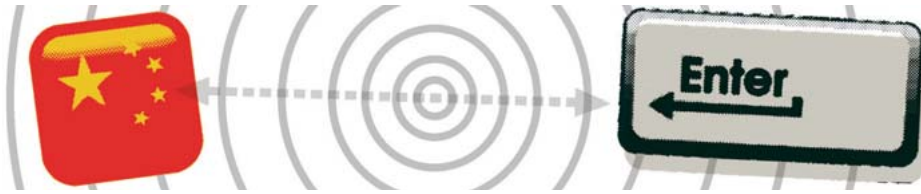
PROFESSOR JACK GOLDSMITH

Time

SEPT. 11, 2014

“The [Obama] administration has said since August that air strikes in Syria were justified under his constitutional power alone. But yesterday it switched course and maintained that Congress had authorized the 2014 campaign against

the Islamic State in the 2001 law that President George W. Bush sought to fight the Taliban and al Qaeda. The administration’s new approach allows it to claim that it is acting with congressional approval. It also lets it avoid the strictures of the War Powers Resolution because that law does not apply to wars approved by Congress. ... The largest irony here is that President Obama has long hoped to leave a legacy of repealing the Bush-era authorization and declaring the ‘war’ against al Qaeda over.”



“COULD TRADE LAW CURB CHINESE HACKERS?”

PROFESSOR NOAH FELDMAN

Bloomberg View

SEPT. 3, 2014

“[U]nder the conditions of cool war, where China and the U.S. are simultaneously engaged in peaceful economic cooperation and geostrategic, quasi-military competition, the pressure to use international trade law as a tool will be very great, as my colleague Mark Wu has been arguing. After its servers were hacked and it withdrew from the Chinese market in search services, Google Inc., like [solar panel producer] SolarWorld,

went to the U.S. government and asked for trade sanctions on the theory that it had been discriminated against because its search services were less easy to censor than those of Chinese competitors.

“The government never took final action on Google’s request, and it may well choose not to pursue SolarWorld’s. But instance by instance, the case for some sort of trade-based sanctions against China will continue to grow. When it appears that China is so fully integrated into the world trade regime that it cannot credibly threaten to withdraw, we can expect to see such claims advanced. They might even succeed.”

“THE CASE FOR KILL SWITCHES IN MILITARY WEAPONRY”

PROFESSOR JONATHAN ZITTRAIN ’95

Scientific American

SEPT. 3, 2014

“It is past time that we consider whether we should build in a way to remotely disable such dangerous tools [as Humvees, helicopters, anti-aircraft cannons and M1 Abrams tanks] in an emergency. Other technologies, including smartphones, already incorporate this kind of capability. The theft of iPhones plummeted this year after Apple introduced a remote ‘kill switch,’ which a phone’s owner can use to make sure no one else can use his or her lost or stolen phone. If this feature is worth putting in consumer devices, why not embed it in devices that can be so devastatingly repurposed—including against their rightful owners, as at the Mosul Dam [where ISIS used stolen American weaponry to fight U.S.-backed Kurdish defenders]?”



“THE MYSTERY OF ‘LIVING WILL’ RULES FOR BANKS”

PROFESSOR HAL SCOTT

The Wall Street Journal

SEPT. 3, 2014

“The Fed and the FDIC required the banks to make contingency plans detailing how in a crisis they would be wound down without suspending critical financial services, and without public support. The two regulators announced jointly last month that no plan earned a passing grade. ...



“Until regulators clearly define the criteria for a living-will passing grade and focus on their mission of sorting out critical from noncritical functions, bank by bank, they risk undermining the process and their own credibility.

“But if regulators assure the market that any of a large bank’s critical functions will remain operational when a bank becomes insolvent—while assuring taxpayers that no public support will be necessary—and if we also equip regulators with tools to combat contagious runs, then no bank will need to be ‘too big to fail.’ The resolution process will have earned not only a passing grade, but high honors.”

A fellowship
for
lawyers
who want
to teach and
study law

HOW TO GROW A LAW PROFESSOR

BY
MICHAEL
BLANDING

Illustration

by

JAMES
YANG

20

HARVARD LAW BULLETIN
Fall 2014



F

OR MANY YEARS it was possible to get a job as a law professor mainly by performing brilliantly as a law student and then clerking for a prestigious appellate court.

Over time, there's been an increased focus on candidates' publication records, and as a result: "Promising entry-level candidates need to show a track record of writing and publishing scholarship," says Susannah Barton Tobin '04, managing director of the Climenko Fellowship Program and assistant dean for academic career advising at Harvard Law School.

In the 1990s, law schools began hiring in greater numbers those who had proved their methodological chops by earning a Ph.D. in another field. But that approach disadvantaged smart lawyers who were working at private firms, nonprofits, or the government and had not had time to write. A decade ago, then HLS Dean (and now Supreme Court Justice) Elena Kagan '86 proposed a middle path, one on which practicing lawyers could return to the academy for two years and begin creating their

own body of scholarship. In 2004, she established the Climenko Fellowship Program with funding from a bequest from attorney Jesse Climenko '27.

"The purpose is to provide people who are super talented

and smart and creative and working hard with a chance to reflect and do their own work before going on the job market," says Tobin. And at the same time (in keeping with the intent of the Climenko bequest to support instruction in the practical aspects of lawyering), fellows teach legal research and writing to first-year law students, drawing on their own experiences from practice, in order to train the next generation of lawyers.

In its first 10 years, the program has trained more than 50 aspiring law professors (about half of whom

are HLS alums), who—in an increasingly competitive job market—have gone on to academic careers at law schools such as Berkeley, Duke, Georgetown, Michigan and Texas. Each year, six or seven new fellows are chosen from a pool of over 120 applicants.

For Dan Epps '08, currently in the second year of the two-year fellowship, the opportunity has been invaluable. Not that Epps didn't already have an impressive resume, including clerking for Supreme Court Justice Anthony Kennedy '61 before serving three years at D.C. law firm King & Spalding. But all along he intended to return to law school to teach, following in the footsteps of mentors such as the late HLS Professor Bill Stuntz, who had instilled in him a passion for criminal procedure.

Going into the fellowship, Epps was focused on a particular idea: "In criminal law, people say it's better for 10 guilty people to go free, so one innocent person can escape," he says. "It's an axiom we use to justify a lot of rules." As he began to look into the concept, however, he found that surprisingly little research had actually been done to justify it. And in fact, the opposite might be true: The legal system might be perversely harming innocent defendants by creating the impression in the public mind that, indeed, it routinely lets guilty people go free.

When he began presenting the idea, however, he found it a tough

sell. In conversations with other fellows, he began to crystallize the idea and respond to objections—a process that is part of the fellowship, says HLS Professor Jacob Gersen, faculty adviser to the program. "We have an internal workshop we call the 'half-baked ideas workshop,'" Gersen says. "If an idea is going to work, you need a venue to talk about it and find out if it's good, bad, silly, or already been done. If you can filter out bad ideas quickly, then you can get on to the good ideas more efficiently." Through workshops with fellows and consultations with faculty, says Epps, he was able to refine his argument, which he developed as a paper that will be published in the Harvard Law Review early in 2015 and that he will use to present in interviews. "I'll be using that paper as my job talk, knowing I've already been put through the paces," he says.

The all-important "job talk"—the paper candidates present when they apply to schools—is an essential part of interviews, says Gersen, and the right paper can make or break an application. In addition to helping fellows refine their ideas, the fellowship helps them decide on the best topic to write about in the first place.

That was the challenge facing Seth Davis, who entered the program in 2012, focused on administrative law, property, federal Indian law, federal courts and torts. "I came into the program with big ideas about pluralism and the relationships among the federal government, the states,

The program has trained more than 50 aspiring law professors.



← Dan Epps '08 came to the Climenko Fellowship Program after three years in law firm practice. All along, he had planned that someday, he'd return to law school to teach.

↓ Each Climenko Fellow teaches a section of the required first-year legal writing course, supported by three members of the Board of Student Advisers.



Susannah Barton Tobin '04, managing director of the program, with BSA members Claire Johnson '15, David Curtis '15 and Emily Nash '16, who are assisting Tobin in teaching one of the sections of the first-year writing course

“Our job is to ...
allow the fellows’
intellectual
identities to
emerge.”

and Indian tribes,” Davis says, “but I needed to learn how to sequence the writing of three planned articles so as to have a successful job talk ready for the market.”
Eventually, his work on presidential power and property law grew into the paper he used to secure a position last year at University of California, Irvine School of Law. Davis worked with HLS Professors Joseph Singer ’81, David Barron ’94 (now a federal judge), and Gersen in developing his job talk paper. Based on his work, Davis was recently invited by Singer and his fellow co-editors to join the editorial board of “Cohen’s Handbook of Federal Indian Law.”

While the fellowship can be a path to law teaching directly from

practice, some candidates also come from graduate study. Anne Fleming ’05 clerked for two years and then practiced law at South Brooklyn Legal Services before pursuing a Ph.D. in history at the University of Pennsylvania. The Climenko Fellowship offered a perfect opportunity for her to discuss her ideas with scholars who had been trained in other disciplines and who had worked in different fields of law. “After spending three years in a history department, I benefited immensely from talking about my scholarship with the methodologically diverse group of fellows and faculty at Harvard, including those who are not legal

historians,” she says. At the time, she was working on an article describing the history of the “unconscionability doctrine,” under which a court can refuse to enforce contract terms as written if they are deemed unjust by the court.

Fleming says discussion with her peers helped her balance the historian’s desire to remain faithful to the perspective of the time she was writing about with the law professor’s need to explain the implications of her work for present-day policy design. “One question that helped refine my thinking about the policy ‘payoff’ of the paper was about how much the court’s reasoning mattered versus the flood of publicity that came after [a] decision. It really shaped not just the way I answered present-oriented questions about policy design but also made me think more deeply about how litigation fit into my historical narrative,” says

This year’s fellows include Daniel Farbman ’07, Erica Goldberg, Monica Bell, Brian Richardson and Maggie McKinley. On the wall are caricatures of past fellows.



HLS Professor Jacob Gersen,
faculty adviser to the
Climenko Program



Fleming, who published her paper in *The Georgetown Law Journal* and joined the faculty of Georgetown University Law Center this fall.

In addition to the writing and research it enabled her to do, Fleming credits the fellowship with preparing her to teach first-year law students. Each fellow is responsible for a 40-person section of an introductory legal writing course, where they are able to apply their on-the-job experience to help students learn to write legal briefs. “There is a misplaced assumption that people who want to become law professors do it only to follow their own research,” says Tobin. On the contrary, she says, fellows are usually themselves inspired by law professors “and want to give back to that legacy through their teaching.”

For Ben Levin ’11, it was exposure to Climenko Fellows when he was a student that inspired him to seriously explore a career in law teaching. Now a Climenko Fellow himself, he says having the opportunity to take a

course with someone actively in pursuit of legal academe enabled him to imagine more clearly what it would be like, and decide he would likely find it fulfilling.

In addition to teaching the legal writing course, fellows often develop seminars for students based on their own expertise and participate in student life in other ways. Based on her interest in consumer debt and bankruptcy, Fleming created a seminar for upper-level law students that she taught in the second year of the fellowship and now is teaching at Georgetown. While at Harvard, Davis mentored students in the Native American Law Students Association and got them involved in tracking cases of interest to Indian tribes. “For as long as I was there, I wanted to become part of a community,” says Davis.

As much as anything, according to Tobin and Gersen, the program offers its participants an opportunity to steep themselves in a legal academic environment, giving them

For Ben Levin ’11, it was his exposure to Climenko Fellows as a student that inspired him to explore a career in law teaching.



the confidence and instincts that can come only from participating in a scholarly community and developing their own work in conversation with colleagues and mentors. “When you hit on a thesis that illuminates the connections among seemingly unrelated questions, you begin to understand who you are as a scholar,” says Gersen. “Our job is to try to teach the craft of research and to allow the fellows’ intellectual identities to emerge. Then when it is time for them to go on the job market, hiring committees know who they are and why they do what they do—and more importantly, the fellows know it themselves.”

Michael Blanding’s book “The Map Thief” was published this year by Gotham.

By SETH STERN '01

Keeping

FAITH

IN 2003, WHEN LORI (HALSTEAD) WINDHAM '05 FIRST interned at the Becket Fund for Religious Liberty based in Washington, D.C., she was accustomed to working quietly in behalf of clients' religious rights with only sporadic press coverage.

But Windham, who returned to the Becket Fund full time after graduation, has watched the nonprofit law firm's

public profile grow as it has taken on a series of challenges by representatives of religious institutions and private business owners who argue that provisions of the Affordable Care Act infringe on their religious liberties.

The Becket Fund scored its biggest victory to date in June, when the U.S. Supreme Court ruled that the federal government can't require closely held businesses, such as the Hobby Lobby craft store chain, to provide female employees with access to no-cost contraceptives.

During her tenure, Windham has also seen the ranks of Harvard Law alumni on the Becket Fund's staff grow to include Eric Rassbach '99, Mark Rienzi '00 and Angela Wu Howard '00. For a law firm with a staff of only a dozen or so attorneys, it's a striking percentage (and current Justice Department workers Roger Severino '02 and Eric Treene '92 are former staff members).

Windham, who graduated from Abilene Christian University, said she's always had an interest in religious liberty issues. She turned down a job offer from the Justice Department's Civil Rights Division to join the Becket Fund after law school.

The others took more circuitous paths to the firm founded in 1994 by Kevin "Seamus" Hasson and named in honor of Thomas à Becket, the 12th-century archbishop of Canterbury who was murdered and eventually canonized after he

resisted the English king's attempts to interfere in church affairs.

Rassbach, the firm's deputy general counsel, did transactional project finance work for Baker Botts before moving to the Becket Fund as a volunteer in 2004. His clients have included a Hindu temple in Queens, a mosque in Tennessee and a Texas priest of the Afro-Caribbean religion of Santeria, who sued for the right to slaughter goats at home as part of his religious practice.

"I never thought when I was at Harvard that I'd be doing a goat sacrifice case," said Rassbach, who won the case before the U.S. Court of Appeals for the 5th Circuit in 2009.

Howard, who previously did M&A work at Cleary Gottlieb, became the Becket Fund's international law director in 2005. Her caseload has included challenging an anti-conversion law in Malaysia, an anti-blasphemy law in Indonesia and Muslim headscarf bans in Europe.

Rienzi, a former WilmerHale patent litigator, now splits his time between teaching at Catholic University's law school and handling many of the chal-

A nonprofit law firm whose clients have ranged from Hobby Lobby to a Santeria priest



CHIP SOMDEVILLA/GETTY IMAGES

Lori Windham addresses the media after the Court's ruling in favor of the Becket Fund's client the Hobby Lobby craft store chain.



Becket Fund counsel Eric Rassbach '99, Lori Windham '05 and Mark Rienzi '00 take on cases to protect religious liberties.

lenges to the Affordable Care Act mandates, including on behalf of Wheaton College (Illinois) and the Little Sisters of the Poor, as senior counsel at the firm. (In January, in a case unrelated to the Becket Fund, Rienzi argued before the Supreme Court, successfully challenging a Massachusetts law that barred protests within 35 feet of abortion clinics.)

Windham, also senior counsel at the Becket Fund, worked on the briefs in the Hobby Lobby case from the complaint forward and “lost count” of how many media appearances she did as the organization’s spokesperson in the case.

While *Burwell v. Hobby Lobby* is the Becket Fund’s most high-profile case, Rassbach said he’s equally proud of 2012’s *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. In that case, the Supreme Court ruled 9-0 that federal discrimination laws don’t apply to religious organizations’ selection of religious leaders, in what is known as the “ministerial exception” to anti-discrimination laws.

“It staked out some pretty important rules in our field,” Rassbach said.

Becket’s legal team was back at the Supreme Court at the start of the fall term, when the justices heard an appeal by a Muslim prisoner in Arkansas who is challenging regulations prohibiting inmates from growing beards.

Citing that case, Rassbach said suggestions by the liberal political magazine *The American Prospect* that the Becket Fund has become ideological and focused on conservative causes are “complete baloney.”

“We’ve always represented everybody and we’re continuing to do so,” he said. “If you’ve decided we’re bad in advance, you’re going to ignore that, but it’s actually quite core to who we are.”

Mary Ann Glendon, HLS professor and a longtime Becket Fund board member, said she is “enormously proud of the stunning record of victories” compiled by the firm’s lawyers in recent years.

“Since 1994, when the Becket Fund was founded to protect the free religious expression of all religious traditions, religious freedom has come under increasing attack, domestically and internationally,” said Glendon, who serves as vice chair of the U.S. Commission on International Religious Freedom. “It is gratifying that some of the most talented young lawyers in the country have stepped forward to meet those challenges.”

Seth Stern is an editor at Bloomberg BNA and co-author of “Justice Brennan: Liberal Champion.”

By SETH STERN '01

Illustration by DAVID POHL



In It Together?

Do recent U.S. Supreme Court decisions on class actions mean less security in numbers?





→ Plaintiffs' lawyer Thomas G. Shapiro '69 breathed "a great sigh of relief" after the U.S. Supreme Court announced its decision in June limiting, but not eliminating, securities class actions. He had feared the worst before the March oral arguments in *Halliburton Co. v. Erica P. John Fund, Inc.*

At stake was the plaintiff-friendly "fraud-on-the-market" presumption that stock prices reflect all material information about the stock. Under the theory, investors aren't required to provide direct proof that they relied on a company's misrepresentation. Had the Court rejected the presumption, Shapiro said, it could have rung "the death knell for securities class actions."

But the Court held only that defendants should have a chance before class certification to argue that the misrepresentation didn't move the stock price. "Securities class actions live to fight another day," said Shapiro, a partner at Shapiro Haber & Urmy in Boston.

The *Halliburton* case is just the latest in a series of recent Supreme Court decisions in which a majority of the justices, "unhappy with

range of relatively narrow questions in recent years about class certification requirements, the particulars of certifying securities suits and the impact of mandatory arbitration clauses.

But, taken together, the decisions "make it more difficult to vindicate actual harms that are small claims suffered by large groups of people,"

said Rubenstein, the sole author since 2008 of the 11-volume treatise "Newberg on Class Actions."

"The decisions as a whole are unfortunate in that regard because the class action is an important procedural mechanism for achieving justice in certain situations, particularly those involving small claims," Rubenstein said.

None of the recent Supreme Court class-action cases generated as much attention as one involving the world's largest retailer, Wal-Mart, which challenged a sex discrimination lawsuit on behalf of an estimated 1 million workers. By a 5-4 margin, the Court in June 2011 rejected the lawsuit in *Wal-Mart v. Dukes* on the grounds there wasn't evidence to prove a common injury among the class members.

But it was another opinion by that same coalition of justices two

Clarence Thomas ruled companies could limit consumer class actions with the use of contractual language requiring individual arbitration. Two years later, the justices voted 5-3 in *American Express Co. v. Italian Colors Restaurant* that such arbitration requirements are enforceable even when the cost of a plaintiff's pursuing an individual claim is likely to exceed the potential damages.

Now, when considering whether to bring a consumer class action, Shapiro said, the "first thing we do is look at whether there's an arbitration provision." He added, "There are a lot of consumer claims we think are good but we don't pursue because in the fine print there's an agreement to arbitrate."

The financial stakes are enormous: Consumer class-action settlements between 2010 and 2013 alone totaled \$18 billion, according to a July 2014 study by NERA Economic Consulting.

Gauging the full effect of the Court's arbitration decisions will have to wait a number of years until it's possible to see whether the decisions led to a more widespread use of mandatory arbitration clauses in consumer contracts ranging from cell phone agreements to website terms and conditions, Rubenstein said.

The arbitration decisions' impact has already extended beyond consumer cases to wage and hour claims by employees, who are required to sign contracts waiving their class-action rights, said Shannon Liss-Riordan '96 of Lichten & Liss-Riordan in Boston, who has challenged arbitration clauses in a variety of industries, including in cases brought on behalf of janitorial, staffing agency and call-center workers.

Workers who find security in numbers are less likely to pursue individual claims against their employers, which is exactly the outcome companies want, Liss-

In its recent class-action rulings, the Court hasn't gone as far as plaintiffs' lawyers feared—or corporate defendants and their attorneys hoped.

aggregate litigation," have added new procedural hurdles that make pursuing class actions harder, said Harvard Law Professor William B. Rubenstein '86.

The Court hasn't gone nearly as far as plaintiffs' lawyers feared, or corporate defendants and their attorneys hoped, as it has addressed a

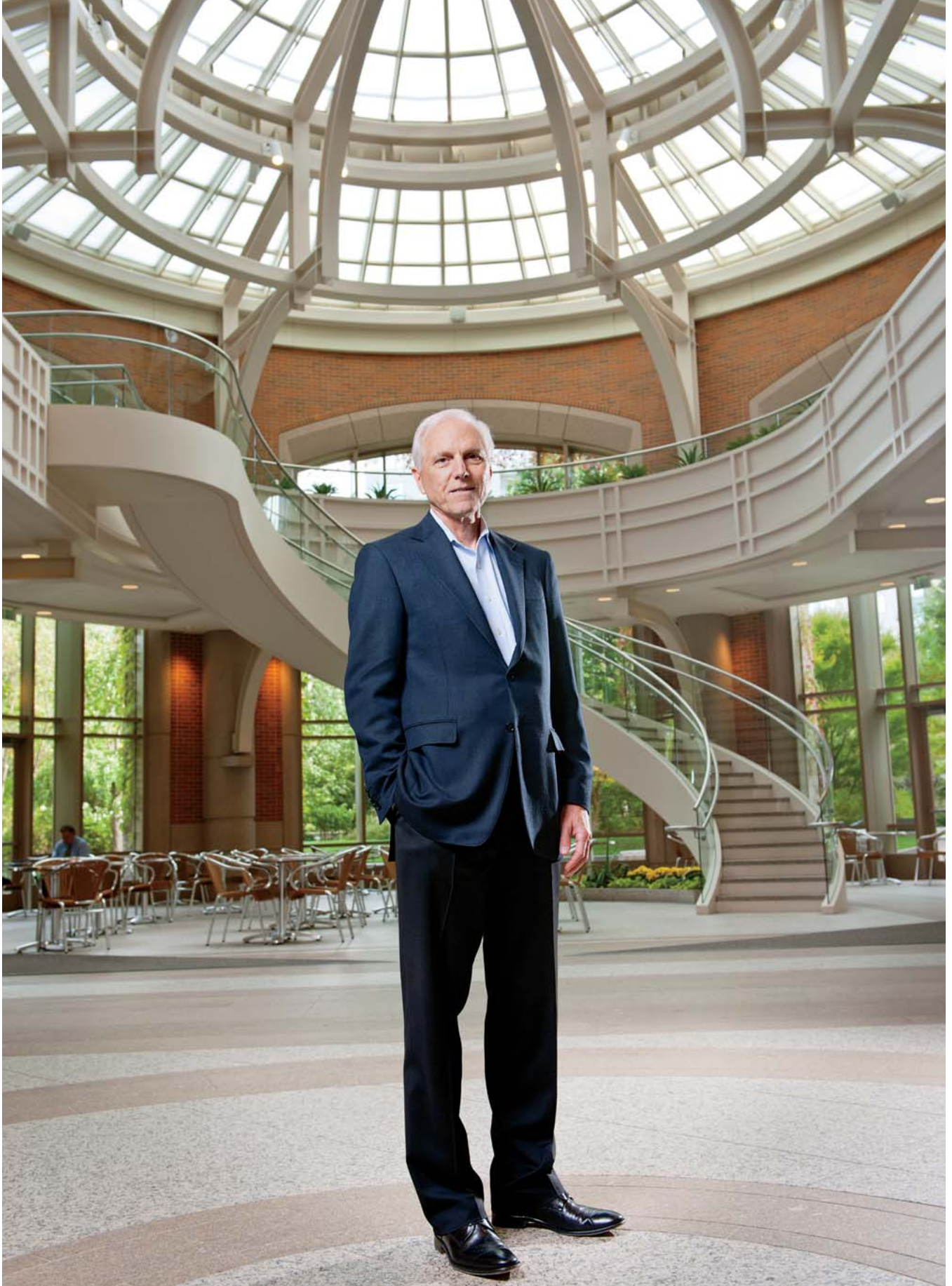
months earlier that plaintiffs' lawyers say has had a greater impact, making it harder for consumers to file class actions altogether.

In *AT&T Mobility v. Concepcion*, the 5-4 majority of Chief Justice John G. Roberts Jr. '79 and Justices Samuel A. Alito, Anthony Kennedy '61, Antonin Scalia '60 and



Sarah Heaton Concannon '00 SAYS AFTER *HALLIBURTON*, DEFENDANTS STILL INCUR SUBSTANTIAL COSTS TO DEFEND CLASS ACTIONS, WITHOUT PLAINTIFFS BEING REQUIRED TO PUT FORWARD WELL-PLEADED COMPLAINTS.

Photograph by WEBB CHAPPELL



Plaintiffs' attorney Thomas G. Shapiro '69 SAYS, "THERE ARE A LOT OF CONSUMER CLAIMS WE THINK ARE GOOD BUT WE DON'T PURSUE BECAUSE IN THE FINE PRINT THERE'S AN AGREEMENT TO ARBITRATE."

Photograph by WEBB CHAPPELL

Riordan said. Where employees do pursue individual arbitration, as in one case she is handling on behalf of janitorial workers, “administratively, it’s a bit of a nightmare.”

“It would take years to go through 100 arbitrations,” she said.

In contrast, the *Halliburton* case isn’t likely to have as dramatic an effect on the volume of cases filed, said Sarah Heaton Concannon ’00, a partner at Goodwin Procter.

“The Court was presented with an opportunity to revisit arguably bad law with regard to what a plaintiff needs to establish to prove a claim,” but instead “simply shifted the timing” of when defendants are allowed to present evidence that the alleged misrepresentation didn’t affect the securities’ price, Heaton Concannon said.

Defendants will continue to incur substantial costs to defend and resolve class actions, without a requirement on the plaintiffs that they put forth a well-pleaded complaint, she said.

“It’s not as much of a sea change as I personally or others on the defense side would have liked to have seen.”

Some of the justices would also have gone further. In a separate



more factual determinations in connection with the class certification determination. This trend will “weed out cases that don’t economically justify that kind of investment upfront,” said Morris Ratner ’91, a former plaintiffs’ lawyer at Lief Cabraser Heimann & Bernstein who has taught at HLS.

“By increasing the litigation costs and risks plaintiffs’ counsel bear before knowing if a class is to be certified, *Halliburton* will likely have the practical effect of further increasing concentration within the plaintiffs’ bar by favoring repeat players with deep pockets,” said Ratner, who now teaches at the University of California Hastings College of the Law.

Both plaintiffs’ and defense counsel say event studies, which

nouncement by AIG, which insures against securities lawsuits, shortly after the *Halliburton* decision, that it will pay for event studies early in litigation.

Ferrell said he expects an “immediate uptick” in the instance of lower courts’ consideration of class-action certification issues being put on hold pending *Halliburton*, and added that much remains to be sorted out by district court judges about how defendants can rebut the “fraud-on-the-market” presumption.

“One issue is, what’s going to constitute evidence defendants can proffer, and what’s going to be enough to meet that burden of proof?” said Ferrell, who co-wrote a paper with HLS Professor Lucian Bebchuk LL.M. ’80 S.J.D. ’84 on the assumption of market efficiency underlying the “fraud-on-the-market” doctrine, which was cited by both sides in the *Halliburton* case.

The Court will be deciding on two more securities class actions in the 2014 term. While a majority of the justices seem intent on curbing them, Rubenstein said plaintiffs’ lawyers have proved “remarkably adept at finding ways” around the decisions.

“Just as water finds ways around obstructions, lawyers find new ways of approaching cases and dealing with doctrinal roadblocks,” Rubenstein said. “So I wouldn’t be ready to write the obituary of the class action quite yet.”

Consumer class-action settlements between 2010 and 2013 alone totaled \$18 billion, according to a July 2014 study.

concurrence, Justice Thomas, joined by Justices Scalia and Alito, indicated they would have overruled entirely the “fraud-on-the-market” presumption first set out in the 1988 *Basic, Inc. v. Levinson* decision.

Halliburton is consistent with the trend in recent Supreme Court decisions of front-loading the costs of litigating class actions, by requiring courts to make

are used to determine whether there was a statistically significant change in a stock price when the misrepresentation was made or disclosed, will play a central role in assessing whether securities class actions will be certified.

“It’s clear that event studies are going to be even more important, and they were quite important already,” said HLS Professor Allen Ferrell ’95, who pointed to an an-



**Proposals
for reversing
the corporate
inversion trend
bring home
the need for
tax reform**

Tax Turnaround Time?

By Elaine McArdle
Illustration by Adam McCauley

LAST SUMMER, as more American companies like Mylan and Walgreen announced plans to relocate their headquarters overseas to avoid paying U.S. taxes—typically through combining under a new foreign holding company—the issue of “tax inversions” gained increasing attention in the media. Some 75 companies have inverted in the past two decades, most in the last seven years, according to the Congressional Research Service. The Joint Committee on Taxation reports that this has resulted in the loss of as much as \$20 billion in tax revenue for the U.S. over the past decade.

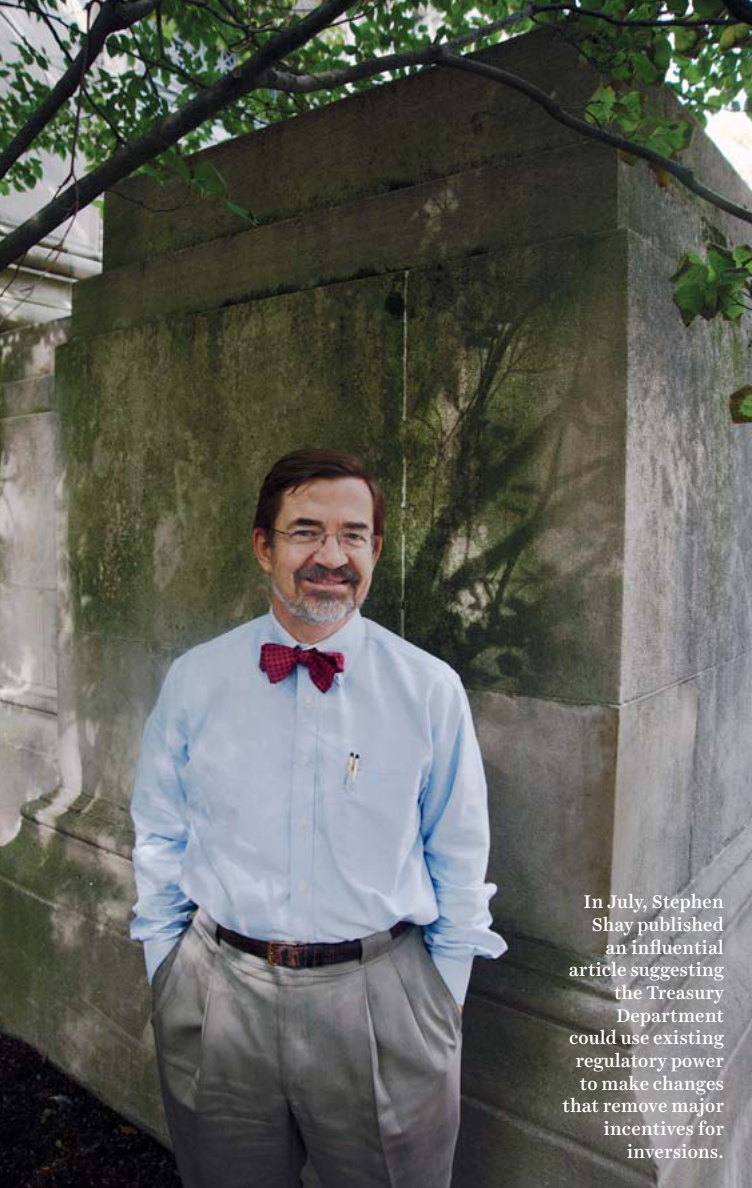
Predictably, as the issue of inversions grew in prominence, it quickly became polarized. President Barack Obama ’91 decried these companies for their lack of “economic patriotism,” and said in July, “I don’t care if it’s legal—it’s wrong.” Corporate lawyers and others took issue with this characterization. “Our clients are doing something that’s perfectly acceptable under current law as it stands, and we assist them in doing it the right way,” says Michael Mollerus ’88, a partner with Davis Polk & Wardwell and an expert on inversions.

The problem is that the U.S. tax rate is too high, the business community believes. The system “is broken and not working to the advantage of U.S. companies and the U.S. economy in general,” says Mollerus. “What you’re seeing with inversions is a response to a system not working very well, and no one really taking any action to fix it.”

The U.S. has the highest corporate tax rate in the world: about 39 percent at the high end when state and federal taxes are combined, compared with 29 percent in other countries in the Organization for Economic Co-operation and Development. Others claim this figure is misleading: Through the use of credits and deductions—loopholes, in other words—the effective tax rate for corporations is actually 27.1 percent, lower than the average effective rate of 27.7 percent in other OECD countries, according to a report by the Congressional Research Service. And profitable U.S. companies with at least \$10 million in revenue had, on average, an effective federal tax rate of just 13 percent on their worldwide income for financial accounting purposes in 2010, according to The Wall Street Journal, quoting a Government Accountability Office report.

President Obama tried to find a solution that would please the business world without losing too much revenue: Two years ago, he proposed cutting the corporate tax rate to 28 percent while also closing loopholes. But Congress chose not to act.

But the problem isn’t just the tax rate, corporate lawyers say. Unlike most other nations, which generally tax income earned within their own borders—what’s called “territorial



In July, Stephen Shay published an influential article suggesting the Treasury Department could use existing regulatory power to make changes that remove major incentives for inversions.

taxation”—the U.S. taxes money earned elsewhere once it’s brought stateside, through a “worldwide taxation” regime. That serves as a disincentive for corporations to bring money earned abroad back into the U.S., including for investing in jobs and plants.

And so, the inversion stampede continued—and, without congressional action, there was nothing the administration could do, Treasury Secretary Jacob Lew lamented in mid-July.

Harvard Law School Pro-

fessor of Practice Stephen E. Shay thought otherwise. On July 29, Shay, who served as deputy assistant secretary for international tax affairs in the Treasury Department before joining the HLS faculty in 2011, published a short article in a respected but arcane tax journal. He suggested that the Treasury Department could use existing regulatory authority to make changes that remove major incentives for inversions: the ability of U.S. companies to deduct interest payments

on loans from their new foreign affiliates, thus reducing their taxable income—a practice known as “earnings stripping”—and the ability to use untaxed offshore earnings for dividends and stock buybacks. Shay, a former tax partner at Ropes & Gray, said the Treasury could simply recharacterize excess debt as equity and expand limits on the use of untaxed offshore earnings.

“I was suggesting these things aren’t out of bounds, and we ought to be thinking more outside the traditional envelope,” Shay says.

Just days later, in a complete about-face, Lew announced that the Obama administration was debating whether to take executive action to halt inversions.

Many have applauded the creativity of Shay’s regulatory proposal. When Congress is dysfunctional, “it’s not so bad for Treasury to step in,” says Thomas J. Brennan ’01, a professor at Northwestern Law School who is joining the HLS faculty next year. Even those who disagree with Shay’s proposal praise him for catalyzing discussion on tax reform. “The president and Secretary Lew are saying we’d prefer to have legislation,” says Mollerus. “But this has certainly added to the debate.”

On Sept. 22, the administration announced new regulations that remove one of the major incentives to invert that Shay had recommended could be addressed: the tax advantage of so-called “hopscotch

loans,” by which the parent company in the U.S. avoids paying taxes on its foreign subsidiaries’ earnings. It appears Treasury may go even further: The administration has asked for comments on its regulations, including on how to address the problem of earnings stripping.

Meanwhile, Congress remains deadlocked on the issue, even as lobbying by corporations such as Novartis AG, Medtronic Inc. and Mylan to halt congressional or administrative action doubled in the quarter ending Sept. 30, according to Bloomberg Business News.

ONE THING UPON WHICH there is widespread agreement: The focus on inversions has brought much-needed attention to a tax system desperately in need of an overhaul.

The U.S. is losing billions through companies taking deductions on loan interest paid to their sister corporations in other countries, says Brennan. In addition, there are many more trillions parked overseas that the U.S. can’t tax unless it’s brought home; corporations aren’t about to release it, given the U.S. tax that would be imposed. In 2004, the U.S. government declared a tax holiday, offering to forgive 85 percent of all the tax due on monies stockpiled overseas, and companies returned \$312 billion to American shores, Brennan notes. But instead of tax holidays and exceptions, he

The U.S. has lost as much as \$20 billion over the past decade due to corporate inversions, according to the Joint Committee on Taxation.

This is “an opportunity for real reform,” says Mihir Desai. Inversions are “the tip of the iceberg on the distortions the corporate tax has given rise to.”



Thomas Brennan '01



John Coates



Mihir Desai



H. David Rosenbloom '66



Michael Mollerus '88

says, it would be far better to create a stable tax system more in line with those of other countries.

Over and above lost revenues, HLS Professor John Coates, an expert in mergers and acquisitions, finds inversions very unhealthy from both the M&A and corporate governance perspectives. Given the high costs of undertaking an inversion, Coates says, “It’s a bad thing generally from the perspective of economic efficiencies for multibillion-dollar transactions to be pursued principally for tax reasons.” Moreover, U.S. shareholders enjoy far less protection when a corporation is based in a foreign jurisdiction, he adds.

The issue of addressing inversions is “urgent,” says Mihir A. Desai—who holds professorships at HLS and Harvard Business School—not just because of the tax revenue lost to the U.S. but also because of the loss of investment and productivity.

“There is deep dysfunction in the corporate tax system today, giving rise to numerous distortions, the most visible of which is inversions, which are very costly,” says Desai, who testified on the issue before the Senate Finance Committee in July.

While he is adamant that action is needed, “The question is whether you do something that is a stop-gap measure to stop these particular transactions, or something more thoroughgoing that addresses the un-

derlying issue,” Desai says.

This moment is “an opportunity for real reform” to the tax code, he adds: Inversions are “the tip of the iceberg on the distortions the corporate tax has given rise to. I hope we can think about it that way, as opposed to, ‘Oh, we have a revenue problem and we have to stop these crazy transactions.’ That would be missing the forest for the trees.”

Since both sides agree on the need for a reduced tax rate and the move to a territorial system, Desai believes real reform is possible.

“There’s enough consensus about what’s problematic that we could actually get there,” he says.

But the key, Brennan says, is to engender reform that would incentivize companies to keep their headquarters in the U.S. without “giving away the farm” and reducing revenues too much. Like Desai and others, he would like to see the U.S. move to a territorial regime and lower its corporate tax rate to something more akin to those of other countries—20 percent, say. “That would take away a lot of the advantage of moving to another country,” he says.

Coates agrees with the need for reform. “The right thing is for Congress to pass a general set of tax reforms that ideally would be revenue-neutral ... and eliminate incentives to move abroad,” he says, adding that such reforms could be accomplished in a number of ways. Unlike Desai, he’s not hopeful.

“Since neither party can figure out how to compromise ... it’s likely nothing will happen at that level,” Coates says.

Others are equally skeptical about the likelihood of real change. “It just ain’t gonna happen—not in my lifetime,” says H. David Rosenbloom ’66, a partner at Caplin & Drysdale in Washington, D.C., who served as international tax counsel and director of the Office of International Tax Affairs in the Treasury Department for four years. Congress “can’t get together to name a post office, let alone do something as important as this.”

In the meantime, the administration is stepping in.

“That leaves it to Treasury and the executive branch, which has a fair amount of discretion to cut back on some of the tax benefits of inversions,” says Coates. “While those will both be controversial and not fix the problem entirely, that would go a long way toward improving things.”

Adds Brennan, “It’s a very clever idea on how to go about stopping inversions.” But unlike a major change based on carefully considered principles, “it’s more of a stopgap for [preventing] substantial bleeding—and then [we’ll] come back in a couple of years and get it right.”

Elaine McArdle is a regular contributor to the Bulletin and is based in Portland, Oregon.

FOR THE CHILDREN

*FROM THE
STATEHOUSE
TO THE
SCHOOLHOUSE,
AN HLS INITIATIVE
CHANGES THE
PARADIGM FOR
EDUCATING YOUNG
PEOPLE WHO HAVE
EXPERIENCED
TRAUMA*

•

BY
JON
MARCUS

Illustration
by
LUKE
BEST

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38
HARVARD
LAW
BULLETIN
Fall
2014

WHO 'FELL THROUGH

THE CRACKS'



PLEASE

PLEASE

STOP

579

- 215

364

$\times 3 = 1092$

FOR SPENCER CHURCHILL '15, one of the most enduring lessons of law school so far has come not from a reading assignment or a research project.

He learned it from a child.

On the outside, the 12-year-old girl, who went to an urban school near Boston, seemed well behaved and in control, but she was failing her classes. When Churchill started representing her to try to secure her special services as part of his work at the Education Law Clinic at Harvard Law School, he gradually discovered she was dealing on the inside with so many problems in her life, it was “almost more than you would believe could happen to one kid that age.”

Taken from her single parent because of neglect, intermittently homeless and severely bullied at school, the girl put so much energy into trying to hide what was happening to her that “she had little bandwidth left to focus on her work,” says Churchill. “And she fell through the cracks. Everybody felt she must not be smart because she wasn’t doing well. She wasn’t acting up, so she wasn’t getting help.”

While the behavior of some students who have experienced traumatic events gets them suspended or expelled, other students, like the girl who Churchill represented, fly under the radar.

For the past 10 years, students and faculty of the HLS clinic have been successfully advocating to get such students back on the education track. And in July, after a yearlong effort, they helped to pass—against great odds—a pioneering Massachusetts law to provide much broader protection for students at risk by supporting schools to do such things as aligning existing anti-bullying and drop-out prevention programs, recognizing

warning signs of stress, and providing positive reinforcement rather than knee-jerk discipline.

Many people may not know that this effort is connected to HLS, says Sara Burd, districtwide behavioral health coordinator for the public schools in the Massachusetts town of Reading, who is involved in the movement to create trauma-sensitive schools.

“I think that speaks to the humility of the people involved,” Burd says. “But they were essential.”

Churchill says legislators also seemed surprised to find Harvard Law students advocating for the law. Representatives or aides would often ask him why he cared.

“Getting to know this child, who had been through so much and who was so misunderstood,” says Churchill, “and having seen how the system really does miss people who need help—that created a sense for me that there was an injustice.”

FOR SUSAN COLE, UNDERSTANDING THE link between trauma and behavior also started with a child.

A lawyer and former special-education teacher, Cole began to work as an attorney for Massachusetts Advocates for Children in 1988. By the early '90s, the non-profit found itself coping with a wave of student expulsions from schools that resulted from a zero-tolerance provision of a Massachusetts education reform law.

The law empowered principals to throw students out of school for misconduct that purportedly threatened the safety of classmates or teachers. But it made no provisions to educate them unless it could be proved they had disabilities that qualified them for special education.

In just two years, the number of expulsions shot up by more than 50 percent. Cole began representing many of these students, trying to get them back in school.

That's when she met a 15-year-old in foster care, removed from his mother's custody because of neglect and then from his father's because of abuse. He had been expelled from school for two full years, and during that time, he went in and out of the juvenile justice system.

The boy had been kicked out of school after fighting with another child and touching the teacher who tried to separate them, a basis for expulsion under the education reform law, Cole says. In the course of trying to have him certified as eligible for special education, Cole took the boy to a psychologist who was a trauma expert.

What the expert told her left her speechless.

“She said, ‘Drop all of those other diagnoses. This child has post-traumatic stress disorder.’”

When Cole took those findings to a hearing to return the boy to school—that this 15-year-old had the kind of PTSD that is suffered by combat soldiers—“You could have heard a pin drop,” she says. “People at that time didn’t understand the underlying reasons why a student might be acting this way.”

The boy was admitted to a school that could address his emotional needs, and Cole “got to see the transformation of a really bright young man,” she says.

But it also had a much broader impact. Cole began thinking back to other children she had taught and represented who didn't fit neatly into

*COLE BEGAN
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← Susan Cole co-founded the Trauma and Learning Policy Initiative and started the Education Law Clinic at HLS.

→ As part of the Education Law Clinic, David Li '15 (second from left) and Spencer Churchill '15 (right) lobbied successfully on Beacon Hill last spring for a Safe and Supportive Schools act. Also pictured: Sen. Sal DiDomenico and Rep. Ruth Balser, the act's lead sponsors.



the special-education category, wondering whether they were victims of traumatic experiences.

To widen families' access to legal help, in 2004, Cole helped create the Trauma and Learning Policy Initiative, a collaboration between Massachusetts Advocates for Children and HLS, of which she is now the director. That same year, she also founded the school's Education Law Clinic, where children and their families can get legal help securing education services.

And she and her colleagues started asking parents if their children who had been expelled from school had previously been exposed to violence.

"We were shocked at how many parents were saying, 'Yes,'" Cole says.

THE PREVALENCE OF TRAUMA IN American society was not well documented until as recently as the late 1990s. The first revelation of its impact on children in particular came in a 1997 study by the Centers for Disease Control and Prevention, which found that two-thirds of 17,000 people surveyed had suffered at least one adverse childhood experience of some kind, including witnessing domestic violence, being sexually or physically abused, or having a parent who used illegal drugs or was in prison.

"The frequency of traumatic experience among children was far higher than anyone had ever imagined," says Joel Ristuccia, a veteran school psychologist who is the initiative's training director and also the lead professor in a graduate trauma certificate program at Lesley University. "It was a real wake-up call."

Work by neuroscientists including Jack Shonkoff, professor at the Harvard T.H. Chan School of Public Health, and Martin Teicher, director of the Developmental Biopsychiatry Research Program at McLean Hospital, has linked childhood trauma to developmental problems. Its victims, they have found, are often unable to focus on learning or to trust adults. They often suffer from hopelessness, lack of control and diminished self-worth. Remembering traumatic experiences triggers anxiety that suppresses the area of the brain associated with language, making it difficult for them to communicate effectively.

"It's only in the last 10 years that we've gotten a complete picture of how significantly trauma can affect kids' learning," Ristuccia says.

A study of elementary school students in Spokane, Washington, found that children who

experienced trauma were two to four times more likely to skip school, act out or bring other problems to the classroom. U.S. schools suspend more than 3.3 million students annually, according to the National Education Policy Center, 95 percent for reasons other than using drugs or carrying weapons. In Massachusetts, many students who were expelled from school in one district just dropped out of the educational system, since no other district had to take them.

But recently, in part because of the research that underlies the movement for trauma-sensitive schools, says Jerry Mogul, executive director of Massachusetts Advocates for Children, "you've started to see the pendulum swing back and people start to think about, 'OK, what happened to these kids?'"

MICHAEL GREGORY '04, TOO, WAS INSPIRED by a child.

When Gregory was student-teaching in Providence as part of his work toward a master's degree in teaching at Brown, he was frustrated by a pupil in his 10th-grade English class who had already failed the course twice. The young man's father was in prison, his mother was nowhere to be found, and he was living with a sister barely older than he was.

"He was really bright, but he wasn't able to focus," says Gregory, "and I couldn't reach him."

Gregory says he came to HLS because he "wanted to address these issues as a lawyer, as an advocate." He is now an assistant clinical professor who teaches with Cole in the Education Law Clinic. He also teaches the elective he took as a first-year student, Education Law and Policy.

He and Cole began to realize that helping individual families was making only incremental inroads into the broader educational problems faced by many traumatized children. It was clear to them, especially once researchers began to document the breadth of the problem, that what was needed was to change the culture of schools.

"There are way more traumatized students than lawyers to represent them," Gregory says. "What we need to do is create whole-school environments that help all students learn, that are calming, that feel safe."

As part of that effort, Cole and Gregory, in partnership with Massachusetts Advocates for Children, co-wrote the landmark publication "Helping Traumatized Children Learn," which came out in 2005. Colloquially known as the Purple Book, it has become a go-to resource for educators, advocates, and parents, and has been bought or downloaded more than 100,000 times,

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→ Michael Gregory '04, an assistant clinical professor, teaches in the Education Law Clinic. He also teaches a course on Education Law and Policy.



← Anne Eisner, a clinical social worker with 30 years of experience, is the Trauma and Learning Policy Initiative's deputy director.

PUTTING KIDS FIRST

Throughout his career, Mela has fought to secure needed services for at-risk students

TWENTY-TWO YEARS. That's how long Tom Mela '68 and his colleagues fought the Boston Public Schools in a class-action lawsuit over huge backlogs in providing special education to students with disabilities.

Mela, now managing attorney and director of the Children's Law Support Project at the nonprofit Massachusetts Advocates for Children, has since devoted most of his career to school discipline and special-education law.

He says he fell into it by accident. After teaching for a year at Newton North High School in suburban Boston when he finished law school, then practicing employment discrimination law, Mela got a call from the organization that is now Massachusetts Advocates for Children.

"They needed someone," he remembers. "My wife had already been teaching for years, so public education was my own background and hers. And I had gone to law school knowing that I wanted to work with low-income families."

So he took the job, and, "45 years later," he says, "we're still fighting that fight."

With a few detours.

Mela also worked as general counsel for the Massachusetts Office for Children, chief attorney for the New England office of the U.S. Department of Education Office for Civil Rights, a staff attorney at the Massachusetts Law Reform Institute and co-director of the Boston University Legal Aid Program.

"I'm a kid from the '60s, and I wanted to make a difference

→ Tom Mela '68, managing attorney and director of the Children's Law Support Project at Massachusetts Advocates for Children



for low-income disadvantaged people," he says. "Kids are at a particular disadvantage because they don't vote. They tend to be the last considered by the politicians."

While he himself has returned to the organization where he began this work, he says, "There remain too few advocates. There are 160,000 kids [with special needs in Massachusetts], and the number of free advocates I can count on one or two hands."

Sometimes, he says, "we have fabulous success stories." He describes an eighth-grader in Somerville, near Boston, who was expelled, with no chance of getting an alternative education. Mela got the decision reversed, and he has since followed her trajectory to her graduation from high school.

That 22-year lawsuit in Boston resulted in a Massachusetts Supreme Judicial Court decision

that found the school system in contempt and ordered small cash payouts to families of children who couldn't get special-education services during a bus strike.

Many children and families in need of help are poor, says Mela. "And they're up against school districts represented by counsel and special-ed directors who are sophisticated and knowledgeable, as opposed to the parent, who typically has no special-ed experience. ... It's not an even playing field."

Wealthier families can hire lawyers or tutors or send their kids to private schools, Mela says, while, "as with everything else, the problem low-income kids find themselves in is that much worse."

That's why Mela and his fellow advocates—including collaborators at the HLS Education Law Clinic—have been pushing for

changes in state laws, which have a more widespread impact than they can make representing clients one at a time.

Before the clinic succeeded this summer in passing the Safe and Supportive Schools act, Massachusetts Advocates for Children and others managed to change Massachusetts law so that school districts will exclude students only as a last resort and can no longer automatically deny alternative education services to those who are expelled, like the girl from Somerville—who Mela arranged to have testify to lawmakers, "and tell her story about how close she came to ending her education at age 15."

Although he still represents families, "We can't represent 160,000 of them," he says. "But what we can do is try to change the laws in ways that can affect a significant number."

—JON MARCUS

*THE INITIATIVE
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TOGETHER.”*

with requests for translated editions coming from as far afield as Brazil and the Netherlands.

The goal of the Purple Book was to raise awareness among educators about trauma, the effects it can have on learning, and the need for a schoolwide approach to helping students. Recently, the team published a second volume, “Creating and Advocating for Trauma-Sensitive Schools,” based on five years of work in Massachusetts schools, led by Ristuccia and Deputy Director Anne Eisner. By both working in schools and representing families, the initiative “uses a unique model of social change that brings the voices of educators, parents and children together,” says Gregory. These perspectives led to the second volume’s expanded policy agenda, which calls for change at the district and state levels to support educators in this work.

To help bring about that change, the clinic began to focus more on legislative advocacy. In 2008, it helped to push through the Massachusetts Legislature a bill that addressed the need for schools to promote the social and emotional well-being of all students. That law established a task force to consider ways that students with mental health challenges, including those affected by trauma, could be served in schools—not just suspended, expelled or overlooked. The idea was to transform the whole learning environment.

The commissioner of education appointed Cole and the other initiative members to serve on the task force, which issued its final report in 2011, making recommendations to the Legislature. The HLS team then went to work to put the task force’s recommendations into law.

SOME SCHOOLS IN MASSACHUSETTS AND in other states had already begun experimenting with creating trauma-sensitive learning environments, many in collaboration with the Trauma and Learning Policy Initiative.

In an elementary school in Brockton, south of Boston, educators got a graphic representation of the issues many of their students were facing when a social worker from the district attorney’s office superimposed the coordinates of gun and drug offenses over a map of the school district. Gasps were heard in the room, the principal, Ryan Powers, later recounted for a New York Times blog. But then the teachers went to work. For students who had trouble grappling with their emotions, they set up beanbag chairs in quiet corners, gave them headphones to listen

to classical music or excused them from class to go for walks. Police began letting schools know when they visited an address where children live so counselors could look out for problems. Eisner and Ristuccia worked closely with the school, and after two years of integrating this new approach, the number of students sent to the principal’s office with discipline problems plummeted by 75 percent.

In Lynn, on Boston’s North Shore, an elementary school set up a committee to look after students whose behavior might be a sign of trauma. After they identified one struggling boy, they learned that several of his mother’s boyfriends had physically abused him. Few activities seemed to engage the boy, but when members of the committee learned he loved to play baseball, they arranged for him to join a team. The activity and the attention helped stabilize him. In the past, his behavior would have simply led to expulsion.

After a string of drug overdoses among students, public schools in Reading, also north of Boston, bulked up their mental health staff, added more breaks in preschool and kindergarten classes to keep students focused, put dozens of teachers through Ristuccia’s program at Lesley on the impacts of trauma, and assigned them to read the Purple Book.

“We started to notice a huge trend where kids were really struggling with a lot of social and emotional needs,” says Burd, the behavioral health coordinator. Now, she says, “to have the grounding and the science and the research makes [the Reading teachers] such confident professionals when it comes to dealing with the emotional needs of students.”

But schools like these three are still rare—in Massachusetts and elsewhere in the U.S.

“Traditionally, schools are not structured to offer that kind of thing,” Burd says. “You not only need to know what the kids are dealing with; you have to have all these supports” on top of teachers’ and administrators’ other obligations.

Creating trauma-sensitive environments “means you have to completely change your work, the way you see the field, your day-to-day job—and change is terrifying,” she says. “Especially when you don’t have the confidence that everyone is going to change with you.”

AS THE RECOMMENDATIONS OF THE STATE-wide task force were being fashioned into legislation early this year, the Education Law Clinic was temporarily transformed into a legislative clinic.

Over the course of the 2013-2014 academic year, its five students—alongside

THE NEW LAW
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AT RISK—AND
FOR ALL
STUDENTS.

Cole, Gregory and Eisner, a clinical social worker with 30 years of experience who works with clinic students—set out to lobby for the bill. Known as An Act Relative to Safe and Supportive Schools, it calls for a statewide

framework to help all schools create trauma-sensitive environments.

It provided a comparatively small \$200,000 for a grant program to fund early adopter schools to serve as models of this new approach.

Advocates say they foresee little additional cost, since most of what the law requires is better coordination of existing programs or reallocation of resources.

The odds were long. “We talked with representatives who had a good deal of experience, who pretty much seemed to take it for granted that the bill wouldn’t be passed this year,” remembers Churchill, “but by raising its profile [we thought] it would have a pretty good chance of being passed next year.”

Gregory and Cole convened a lobbying boot camp for their students, gave them transit passes to go back and forth to Beacon Hill, and sent them on a scavenger hunt around the Statehouse so they could familiarize themselves with its geography. The students wrote scripts and practiced them together, and then set out to gather the support they needed.

From an original 36 backers, the team and its allies among other advocacy organizations managed to cultivate 55 legislators by the end of the semester. In the end, 97 voiced support for the law. “Every day the students were com-

ing in here and saying, ‘I got another one,’” Gregory says. And by convincing legislators to include the Safe and Supportive Schools provisions in legislation tightening gun regulations—a hot topic strongly backed by the Massachusetts speaker of the House—they helped to get the measure voted in, just one day before the end of the legislative session.

“It passed!!!” Gregory wrote in an ecstatic email to the clinic students, who had by then dispersed for the summer.

Two weeks after that, Gov. Deval Patrick ’82 signed the provisions into law.

“We were elated,” says David Li ’15, another student in the clinic, who also worked as a teacher before he came to HLS. “I honestly had to reread the email to make sure that it was right.”

The Education Law Clinic, which has resumed representing clients, will have to lobby again next spring to renew the funding for the law it helped get passed. Cole and other members of the HLS initiative have been appointed to serve on the Safe and Supportive Schools Commission, which must submit an annual report on what schools need to implement the law, along with recommendations for future legislation to address these needs.

But in the meantime, the experience proved that advocacy works, Cole says.

“Five students,” she says, “can change the world.”

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Jon Marcus writes about higher education and other topics for Time, The Boston Globe, Washington Monthly and other publications.

Lloyd Weinreb

► Continued from page 10

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than “expulsion,” though that elusive difference sometimes has provoked hours of testy debate among faculty colleagues.) Earlier, he served a long stint on the Appointments Committee.

For Lloyd, however, I am delighted to project that life in retirement—apart from his absence from the classroom, of course—will remain largely

unchanged. He will still arrive at his office earlier than nearly anyone else to study Greek, write fiction, and attend to correspondence. He will dispense advice to me and the other faculty members who regularly seek it. He will go to the gym every afternoon. He will keep up attendance at the theater and the opera. And he will maintain a travel agenda that includes a trip along China’s Silk Road, scheduled for this spring.

As always, Lloyd’s marvelous wife, Ruth—herself a scholar of French literature and a retired professor—will grace his home life with warmth,

hospitality and vibrant conversation. Lloyd will spend more time with his children and beloved grandchildren. He will enjoy frolics with a just-acquired Labrador retriever puppy.

Who knows? Lloyd may even have time to learn the difference between the World Series and the Super Bowl—though I suspect he will always look askance at my comparison of his last semester of teaching to a walk-off home run. —RICHARD FALLON

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Richard Fallon is the Ralph S. Tyler, Jr. Professor of Constitutional Law at HLS.

FIRMLY OUTSIDE THE BOX

A venture capital lawyer wants to bring disruptive innovation to the legal profession

Each day at her job at a venture capital firm, **Sarah (Burgess) Reed '91** logs 7 to 8 miles on a treadmill desk, which is outfitted with a work surface that puts her computer, phone, documents—and water—all within easy reach.

"It's the 'gameification' of the law," jokes Reed, using a term that comes up a lot in the venture capital world. "I'm reading these terribly dry documents all day long, so I play a game with myself of how many miles I can walk while I'm reading them."

It's typical of Reed's approach to problem-solving. From rethinking how venture capital firms meet their legal needs to focusing on broadening access to legal services for all people, she has been a pragmatic innovator.

Early in her career, after practicing in law firms and serving as general counsel at Palomar Medical Technologies in Burlington, Massachusetts, Reed decided that venture capital companies were losing time and money by not having in-house counsel. Outside counsel were continually forced to "reinvent the wheel" on legal issues standard to venture capital firms and their portfolio companies.

At first, her idea failed to gain traction in the venture capital world, but she persisted, peddling a three-ring binder she had created and dubbed "Law Firm in a Box." It organized a startup company's legal needs into different tabbed sections: equity, human resources, even estate planning for the entrepreneur. Reed pitched her idea until she met the right match in 2000 and was hired as general counsel by Charles River Ventures, located in Cambridge



and Menlo Park, California.

Although new to the venture capital world, Reed quickly saw an opportunity to innovate. Working with the National Venture Capital Association, she initiated a project providing free online access to high-quality, vetted documents. It helped streamline her own practice and won her the NVCA's Outstanding Service Award in 2007. The project continues to be the NVCA website's most visited page, and it has been emulated by corporate lawyers around the world, including in Latin America, Europe and Asia.

After more than a decade in venture capital, where she says disruptive innovation is imperative, she is convinced that the

same sort of change needs to take place in the legal profession—even if it leads to an erosion of the profit margin for lawyers.

"[I]nnovation that is disruptive is fundamentally about taking a 'bespoke' product and making it available and affordable to the mass market," says Reed, who spoke on "Disruptive Innovation in the Market for Legal Services" last spring at a conference at Harvard Law School sponsored by its Program on the Legal Profession.

"We have lots of people who need lawyers and yet people who cannot find them," continues Reed. She says the lawyer-written ethical code prohibiting the unauthorized practice of law by nonlawyers should be changed.

Sarah Reed '91 wants the UPL rule changed to open up certain areas of practice to nonlawyers.

"We [in the legal profession] have managed to preserve the right to operate as a cartel, as a monopoly, while at the same time, for all other businesses, that's illegal."

Reed wants the unauthorized practice of law rule changed to open up certain areas of practice to nonlawyer professionals. They would be supervised by attorneys and analogous to nurse practitioners in the medical field.

Reed also thinks the legal field should embrace the opportunity to match clients and attorneys over the Internet. She offers as an example JustiServ, a website being developed by Harvard undergraduate Michael Gants (the son of Massachusetts Supreme Judicial Court Justice Ralph D. Gants '80 and Northeastern Law Professor Deborah Ramirez '81), whom Reed met at last spring's conference. Expected to launch this year, the website will publish lawyers' rates, allowing consumers to compare.

This fall, Reed started in a new venture of her own, as chief operating officer and general counsel for MPM Capital, based in San Francisco and Boston. The life-sciences/biotech venture firm is backing cancer treatment initiatives and has already built and sold the company that created Sovaldi, a cure for hepatitis C.

"I love being thrown into new environments," she says, "where you have to learn quickly to adapt."

—ALEXANDRA VARNEY
McDONALD

ORIGIN STORY

How Nathan Dane finally got to Wisconsin

On the second floor of the City-County Building in Madison, Wisconsin, just outside the room where the Madison Common Council and Dane County Board meet for legislative sessions, there now hangs the portrait of a man named Nathan Dane. The same steady gaze examines visitors 1,100 miles away as they step off the elevator on the fourth floor in Langdell Hall at Harvard Law School.

The name might sound vaguely familiar to anyone who has lived in the Gropius Complex's Dane Hall, or to Harvard Law history buffs who know that, for a brief time, the law school was known as the Dane Law College. To many HLS students, however, the portrait looks like one of dozens hanging in the library—a painting of an elderly man with graying hair, dressed in black and holding a book.

But to **Tim Kiefer '98**, the painting has always held a special significance. Kiefer attended college in Madison, the seat of Dane County, Wisconsin. Everyone knew who Madison was named after—the fourth president of the U.S., James Madison—but few knew the origin of the county's name.

When Kiefer arrived at Harvard in 1995 and found himself living in Dane Hall, the former history major's mind began to make connections. With a little digging, Kiefer discovered that Dane, a Harvard College graduate, had stepped in to save HLS in 1827 when it was down to just one student and one professor, endowing a law professorship and later funding the school's first commissioned building.

He went on to learn that Dane

also drafted the Northwest Ordinance, a document that established the Northwest Territory, laying the groundwork for the entire Midwest region. Dane inserted a last-minute and surprisingly unopposed amendment prohibiting slavery in the newly acquired territory. The addition would come to have a tremendous effect on the national debate between admitting new states to the Union as free or slave states, a battle that would ultimately culminate in the Civil War.

Although Kiefer had never heard of Nathan Dane until stumbling across the portrait nearly 20 years ago, he has since found the tale of a man inserting a history-defining provision into a foundational document at the last minute to be deeply inspiring. He hoped the story would speak to current HLS students as well as

the citizens of Dane County.

In 2011, Kiefer, a Madison attorney and current member of the Dane County Board, hoped to arrange for a loan of the portrait for the county's 175th anniversary. When it became clear that the painting was too old and fragile to travel, the Harvard Club of Wisconsin agreed to finance a painting based on the original, but stipulated that the artist be a Harvard student from Wisconsin. Kiefer set out to find the right undergraduate.

The search led to Neng Thao, a Harvard College student who was born in Chiang Kham Refugee Camp in Thailand—the son of Vietnam War refugees—and came to Madison with his family as a child. Although focused on genetic engineering at Harvard, Thao loves art and has been drawing as long as he can remember. “We

had these two people, both of whom attended Harvard College, including one born 200 years after the other, and they're linked by this portrait,” Kiefer said. “It shows the best of what Harvard can be in a lot of different ways.”

A plaque now commemorates both the original painting by Chester Harding and Thao's copy in Madison's City-County Building, telling the tale of Nathan Dane and his contribution to the region. And to ensure that the story is never again lost to history, a manila envelope tucked behind the painting includes clippings explaining the stories of both Dane and the copied painting. “If 50 years from now the painting is lying somewhere in an attic and people are trying to figure out what it's about, this will help it from being forgotten,” Kiefer said. —LANA BIRBRAIR '15



With help from Harvard connections, Tim Kiefer '98 puts a face to Dane County, Wisconsin's history.

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FIGHTING UNEQUAL JUSTICE

Two alumni use the law and the 'sheer force of their personalities' to enforce the Constitution

Until last spring, scores of destitute people—virtually all of them African-Americans—were locked up in the city jail of Montgomery, Alabama, for traffic tickets they couldn't pay, sentenced to a day in jail for every \$50 they owed.

But on May 1, a federal judge issued a preliminary injunction barring the imprisonment of three debtors for nonpayment of fines, citing a 1983 Supreme Court decision that prohibited imprisonment for debt, in a lawsuit filed by two Harvard Law School graduates. **Alec Karakatsanis '08** and **Phil Telfeyan '08** brought the case through Equal Justice Under Law, the nonprofit civil rights organization they launched in March—supported by a 2013 HLS Public Service Venture Fund seed grant—to challenge the profit motive in the criminal justice system.

Last year, the city of Montgomery reaped \$15.9 million from the practice of jailing people for nonpayment of fines. And the company it hired to monitor debtors charged people a monthly fee for being on probation, according to the two lawyers.

These practices have been enormously lucrative for the city and for the corporation with which it has contracted to collect the debts, said Karakatsanis, "but devastating for poor people of color in Montgomery."

The three plaintiffs in the original suit were freed by the judge's ruling, and dozens of others were later released by the city, which is under court order to prove that it isn't jailing people because they're too poor to pay. And the firm has now filed a class-action suit opposing the practice. "At the core of it all is the idea that no

human being should be caged by her government for being poor," said Karakatsanis.

The city canceled its contract with the probation company, freeing about 1,500 people from having to pay \$40 a month to the company in addition to whatever they owed the city. "We negotiated a new set of procedures to be applied going forward in Montgomery, and we are working toward a broader settlement that will bring big changes," he said.


Since its founding, the Washington, D.C.-based organization has further expanded the focus of its work. Before the shooting death of Michael Brown in Ferguson, Missouri, in August, which focused attention on the militarization of local police forces, Karakatsanis and Telfeyan had already turned their attention to that issue by filing three major cases against the District of Columbia.

"The cases were the culmination of a yearlong systemic investigation into the D.C. police and their practices and tactics in terrorizing low-income families

of color with hundreds of SWAT home raids," said Karakatsanis.

The organization is also investigating and preparing a major challenge to the bail industry, and has challenged Alabama's severe sex offender law, passed in 2011, as a violation of the prohibition against ex post facto laws. The new law punishes people who completed their sentences decades ago, making it nearly impossible for them to get jobs or housing. Along with a Montgomery attorney who originally filed the case, Karakatsanis and Telfeyan tried it in federal court in Montgomery in March; the judge's decision is expected soon.

Before launching the practice, Karakatsanis, who'd also worked as an assistant federal public defender in Alabama, litigated criminal and civil cases with the Public Defender Service for the District of Columbia, and Telfeyan was a trial lawyer in the Civil Rights Division of the U.S. Justice Department. They served together at HLS on the Harvard Law Review and in the Criminal



Alec Karakatsanis '08 (left) and Phil Telfeyan '08 are the founders of the nonprofit civil rights firm Equal Justice Under Law.

Justice Institute, and as Harvard Defenders.

Alexa Shabecoff, head of the HLS Bernard Koteen Office of Public Interest Advising, who is directing the Public Service Venture Fund, said Karakatsanis and Telfeyan's proposal for funding was especially compelling because of its unique focus on challenging the profit motive in the criminal justice system. The fund committee recognized exceptional potential not only in their backgrounds and their vision, Shabecoff added, but also in the "sheer force of their personalities."

Said Karakatsanis: "One of our goals is to identify things that have become utterly normalized in our legal system that we think are outrageous and should not be accepted."

"I think all judges and all lawyers enter the profession because they have a sense of justice," said Telfeyan. "Our goal, especially when dealing with judges, is to remind them ... to act based on that sense of justice."

—ELAINE McARDLE



“Phoning Home: Essays,” by **JACOB M. APPEL '02** (*South Carolina*)

Tapping into his background as a doctor, lawyer, and bioethicist—and his personal background and family experiences—Appel writes on subjects ranging from his secret prank calling of his parents (in the title essay) to his favorite psychiatric patient (upon their final parting, they share a mutual desire never to see each other again). He also tackles social issues such as opting out of end-of-life medical care. Throughout, the author shares emotions and insights with a humorous and skeptical perspective.



“America’s Culture of Professionalism: Past, Present, and Prospects,” by **DAVID WARFIELD BROWN '63** (*Palgrave Macmillan*)

A self-described “recovering professional” who left the practice of law, Brown critiques a professional culture oriented toward seeking status and commodifying knowledge. He contends that many professions, including the law, medicine and finance, primarily serve themselves. And too often experts expect to solve problems without citizen participation. Instead, he espouses “potluck deliberation”—citing jury deliberation as an example—in which citizens join experts to “find common ground where everyone has something to contribute and something to learn.”



“Leo Strauss: Man of Peace,” by **ROBERT HOWSE LL.M. '90** (*Cambridge*)

To some, the title itself may be a misnomer for a book about a man accused of being a warmonger and regarded as the philosophical inspiration behind the Bush administration’s aggressive foreign policy. But Howse contests this view, citing Strauss’ letters, lectures and books to assert that he in fact held a strong preference for peace over war. His subject, Howse writes, abhorred power for power’s sake, opposed imperialism and nationalism, and “believed that what is most admirable in man transcends national and racial boundaries.”

“Secular Government, Religious People,” by **IRA C. LUPU '71** and **Robert W. Tuttle** (*Eerdmans*)

Drawing on constitutional themes and legal history, the authors, both professors of law at George Washington University (Lupu recently retired), explore the relationship between civil government and religion. In the U.S., where people are among the most religious in the world, the government is secular but not hostile or indifferent to religion, they contend. The book covers such issues as government funding of religious institutions, religious activity inside government, and government accommodation of religious institutions and believers.

“Bridging the Gender Gap: Seven Principles for Achieving Gender Balance,” by **LYNN ROSEBERRY LL.M. '92** and **Johan Roos** (*Oxford*)

Although many people claim a commitment to



Filmmaker Lacey Schwartz '03 with her mother in a scene from the documentary “Little White Lie”

equality among men and women, they often make assumptions rooted in stereotypes about masculinity and femininity, according to Roseberry, a professor at Copenhagen Business School in Denmark, and its former president, Roos, who conducted interviews with university colleagues, corporate executives, and business managers that led to that conclusion. Through seven stories and corresponding guiding principles, the authors describe their vision of gender-equality: gender-integrated workplaces of all kinds, equal participation of men and women in child-rearing, and men and women sharing positions of power.

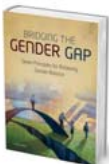
“Ivory Tower,” directed by **ANDREW ROSSI '98**

In this documentary, Emmy Award-nominated filmmaker Rossi casts a skeptical lens on the value of present-day higher education, exposing issues of educational access, tuition increases, growing student debt (now exceeding \$1 trillion) and bleak job prospects for graduates. The film features interviews with students, faculty and administrators at campuses throughout the country, including

at Harvard. It explores the limits of proposed alternatives to traditional higher education, such as Massive Open Online Courses and programs like UnCollege, which encourage students to “hack their education.” But it also calls into question the long-held assumption that a college degree is a path to a better life.

“Little White Lie,” directed by **LACEY SCHWARTZ '03**

A scene from “Little White Lie” shows Schwartz attending a Harvard Black Law Students Association meeting. The seemingly ordinary moment is part of an extraordinary journey for a black woman who, she said, “grew up believing that [she] was white.” The documentary, which is scheduled to air on PBS in the spring, traces a personal and sometimes painful story of a “nice Jewish girl” from Woodstock, New York, who discovers only in young adulthood that she is the product of her mother’s extramarital relationship with a black man. Including candid interviews between Schwartz and her parents, the film reveals the burden of secrets and the complications behind a seemingly ordinary family.



In his latest documentary, Andrew Rossi '98 explores the value of higher education.

IN MEMORIAM

1930-1939

JOHN T. SAPIENZA '37
March 12, 2014

1940-1949

BERNARD LISMAN '42
April 18, 2014
THOMAS B. LEECH '43
June 20, 2014
RICHARD G. MARTENS '44 ('46)
Nov. 28, 2011
JOHN S. PENNISH '44 ('48)
Aug. 30, 2012
SETH A. ABBOTT '48
June 21, 2014
GORDON F. BLOOM '48
April 6, 2014
ARTHUR L. ENO JR. '48
Aug. 6, 2014
CORNELIUS B. KENNEDY '48
June 7, 2014
DONALD E. MCNICOL '48
June 29, 2014
MORTON MYERSON '48
June 25, 2014
ROBERT P. YEOMANS '48
June 2, 2014
HUGH CALKINS '49
Aug. 4, 2014
LUDWIG H. CLIFTON '49
July 27, 2014
CHARLES B. GORDON '49
Aug. 30, 2014
GERALD T. HERSHCOPF '49
Sept. 8, 2014
GEORGE B. MUNROE '49
Aug. 19, 2014
DAVID C. PRUGH '49
April 16, 2014
LEONARD SOMMER '49
Aug. 15, 2014
THOMAS M. STARK '49
April 27, 2014
AUGUSTUS F. STUHLREHER '49
May 31, 2014
ROLAND M. "BOB" URFFIRER '49
Aug. 27, 2014

1950-1959

WILLIAM S. CONNOLLY '50
April 22, 2013
WILLIAM J. HOLLOWAY JR. '50
April 25, 2014
FRANK A. HOWARD JR. '50
Oct. 12, 2013
RICHARD J. MCNAMARA '50
July 11, 2014
JACOB L. ROTHSTEIN '50
Jan. 7, 2013
JOHN FETHERSTONHAUGH LL.M. '51
April 15, 2014
GEORGE E. HALL '51
June 15, 2014
NORMAN HEWITT '51
Aug. 12, 2014

NOEL ARNOLD F. LONSCHEIN '51
Aug. 31, 2014
LANE MCGOVERN '51
July 31, 2014
HOWARD T. ROSEN '51
May 23, 2014
LEONARD W. SCHROETER '51
April 28, 2014
EDWIN T. SUJACK '51
June 12, 2012
JAMES G. WHEELER '51
April 13, 2014
JACK C. PEPPER '52
Sept. 5, 2014
L. ROBERT PRIMOFF LL.M. '52
Aug. 16, 2014
JAMES E. REIK '52
April 15, 2014
ROBERT A. BLEY '53
Sept. 13, 2014
ARTHUR M. BOAL JR. '53
Aug. 18, 2014
ANDREW CAY '53
July 25, 2014
DONALD M. LANDIS '53
Aug. 24, 2014
GILBERT B. LESSENCO '53
July 30, 2014
WALTER S. MATHER '53
April 16, 2014
ROBERT J. MCKEAN JR. '53
Aug. 9, 2014
EUGENE C. MILLER JR. '53
June 14, 2014
ARTHUR "ARCHIE" SHERMAN '53
Feb. 26, 2014
HUGH L. CORROON '54
April 18, 2014
DAWSON C. HERON '54
Dec. 2, 2012
LESTER ROSEN '54
June 13, 2014
MARVIN H. TAYLOR '54
April 26, 2014
JOHN T. WIGHAM '54
May 26, 2014
DAVID R. DRISCOLL JR. '55
April 2014
ROBERT F. ERBURU '55
May 11, 2014
JOHN E. FENTON JR. LL.M. '55
Aug. 24, 2014
L. RUSSELL GOBBEL '55
May 31, 2014
IRWIN I. KIMMELMAN '55
Sept. 12, 2014
ANDREAS LOWENFELD '55
June 9, 2014
THEODORE J. MALVIN '55
April 16, 2013
SAMUEL W. PRINGLE '55
May 11, 2014
CHARLES P. RIPPEY '55
Aug. 5, 2014
NIGEL G. WRIGHT '55
May 24, 2014
BENJAMIN M. ABLON '56
Sept. 13, 2014

PURDY CRAWFORD LL.M. '56
Aug. 12, 2014
GRIFFITH H. JONES '56
July 15, 2014
WILLIAM A. KING '56
Aug. 28, 2014
W. LOEBER LANDAU '56
Sept. 1, 2014
ARTHUR WARREN MUDGE '56
May 23, 2014
NOEL R. NEWMAN '56
May 3, 2014
DONALD A. SCOTT '56
April 14, 2014
LESLIE ZINES LL.M. '56
May 31, 2014
HAROLD E. ABRAMS '57
June 22, 2014
WILLIAM T. KING '57
June 13, 2014
JAMES B. MAY '57
June 10, 2014
JAMES B. REAP '57
June 8, 2014
PETER C. SNELL '57
April 9, 2014
CHARLES B. TURNER '57
May 10, 2014
NEAL R. ALLEN '58
July 21, 2014
DAVID B. FILVAROFF '58
Sept. 6, 2014
JOSEPH D. HURWITZ '58 ('59)
Sept. 9, 2014
ROBERT C. JOHNSTON '58
June 1, 2014
DAVID K. PAGE '58
July 1, 2014
ALEXANDER C. ROBERTSON LL.M. '58
April 30, 2014
FRANK E. SCHWELB '58
Aug. 13, 2014
J. RICHARD WALTON '58
Sept. 19, 2014
EDWARD C. BERKOWITZ '59
Dec. 22, 2013
ALBERT L. BESWICK '59
July 5, 2014
ORVILLE F. RECHT '59
June 18, 2014

1960-1969

RICHARD F. COYNE '60
Aug. 23, 2014
JOHN GIANNETTI '60
May 2, 2014
FRANCIS C. BROWN JR. '61
Aug. 11, 2014
JOHN E. DUNSFORD LL.M. '61
April 14, 2014
SCOTT ELLWOOD '61
April 20, 2014
WALTER C. HARTRIDGE '61
April 23, 2014
RICHARD F. KERR '61
Sept. 23, 2014
WILFORD L. WISNER '61
Jan. 29, 2014

RICHARD A. FRANK '62
April 20, 2014
MICHAEL GOODMAN '62
Jan. 24, 2014
JAMES M. JEFFORDS '62
Aug. 18, 2014
JAMES COX HAMILTON '63
Aug. 4, 2014
CHARLES F. LEAHY '63
Aug. 21, 2014
DOROTHY M. SCHRADER '63
Aug. 5, 2014
MARVIN S. FREEDMAN '64
April 19, 2014
WILLIAM D. MULLIKEN '64
July 17, 2014
MICHAEL B. SHEPPARD '64
Feb. 12, 2012
MORTON BOBOWICK '65
July 25, 2014
MICHAEL C. JOHNSON '65
June 24, 2014
FREDERIC L. "RICK" BALLARD JR. '66
May 11, 2014
V. THOMAS FRYMAN JR. '66
July 10, 2014
CHARLES P. GAMER '66
March 27, 2014
JOHN W. HAYEK '66
Aug. 31, 2014
GITTA M. KURLAT LL.M. '66
April 26, 2014
ANDREW W. SINGER '66
Jan. 7, 2013
DONALD F. WINTER '66
April 5, 2014
THOMAS E. BERG '67
July 4, 2014
STANLEY A. GREENBLATT '67
Sept. 27, 2013
JAY HOROWITZ '67
April 30, 2014
RICHARD C. JOHNSON '67
April 17, 2014
RICHARD D. PARDO '67
May 30, 2014
FREDERICK R. ANDERSON '68
July 14, 2014
R. JOHN COOPER III '68
June 11, 2014
MICHAEL J. FLEMING '69
April 13, 2014

1970-1979

JOHN A. KIDWELL '70
March 10, 2012
J. ERIC SWEET LL.M. '70
May 4, 2011
DONALD I. MIRISCH '71
July 26, 2014
DOUGLAS L. REED '71
July 9, 2014
THEODORE M. HAGELIN LL.M. '72
May 18, 2013
GEORGE R. KNAPP '72
July 21, 2014
JEREMIAH F. HEALY III '73
Aug. 14, 2014

SHARON W. LINDSAY '73
May 21, 2014
TAKAO YAMADA LL.M. '73
Oct. 25, 2013
JOHN T. GREENWOOD '74
Feb. 26, 2013
CECELIA E. WIRTZ '74
May 28, 2014
RICHARD W. BOURNE LL.M. '75
July 12, 2014
JOHN C. HENRY JR. '75
Dec. 28, 2013
VENRICE R. PALMER '77
Sept. 12, 2013
GREGORY W. SMITH '77
April 10, 2014

1980-1989

SANFORD J. FRANK '81
April 18, 2014
STEPHANIE S. CAMPBELL '84
Nov. 29, 2013
MARC PALLEMAERTS LL.M. '85
May 2, 2014
STEVEN R. ORR '88
July 2, 2014

1990-1999

THEODORE HIRSCH '91
June 25, 2014
GLORIA Y. RIVERA '91
June 2014
CHERYL HANNA '92
July 27, 2014
WILLIAM F. STREET '94
Sept. 8, 2013

2000-2009

DAN MARKEL '00
July 19, 2014

→ Visit the In Memoriam section online at bit.ly/Inmem2014 for links to available obituaries.

OBITUARY INFORMATION

→ Notices may be sent to Harvard Law Bulletin, 1563 Mass. Ave., Cambridge, MA 02138 or to bulletin@law.harvard.edu.

Salvo Arena LL.M. '00

President of a community without borders

Every two years, the Harvard Law School Association appoints a new president to oversee an organization aimed at fostering engagement and community among the nearly 38,000 alumni living in 148 countries around the world. In June, the HLSA passed the mantle from outgoing President Paul Perito '64 to Salvo Arena LL.M. '00. An Italian attorney practicing in New York City, Arena is just the third non-U.S. graduate of Harvard Law School to be president of the 128-year-old organization.

Arena, who attended Harvard as an LL.M.



student after receiving a J.D. and a Ph.D. from the University of Catania in Italy, is a believer in the power of HLS connections. He recalled attending a conference in St. Petersburg, Russia, earlier this year and meeting a fellow attendee who happened to be the president of the HLSA chapter in Russia. "The bond between us was immediate," Arena said. "At that point, it wasn't about him being Russian and me being Italian, or anything else happening in the world. It was just

about being a part of the Harvard Law School."

Arena, who is now the managing partner of the New York City office of the Italian law firm Chiomenti Studio Legale, has been deeply involved with the HLSA since graduating. He began with the HLSA of Europe, where he organized events including one in Sicily in 2006 that was attended by then Dean Elena Kagan '86. Over the years, he has made it a priority to stay involved with the Alumni Association. "Non-U.S. people really feel, even many years after graduation, very proud and very honored to have been part of the Harvard Law School," he said. "So to that extent I wanted to be very active, committed, and to give my time, thoughts, and contributions to connect as many people as possible."

Arena stressed the importance of the Harvard network and the benefits both professional and personal of staying invested in the community after graduation.

He noted that every time he arrives in a new place, even on vacation, he seeks out the local HLS alumni. He lauded the many friends he has made over the years as well as the opportunities for networking available through HLSA connections.

In his own work on international deals, for example, he said he often finds himself drawing on the community of HLS lawyers when he needs to retain local counsel around the world: "I definitely feel more comfortable to involve first a friend and second someone from Harvard Law School."

In the future, Arena hopes that the HLSA will continue to expand by fostering both new local and international HLSA clubs as well as its shared interest groups, such as the thriving Women's Alliance (with 15 chapters around the world), the Recent Graduates Council and the Latino Committee.

"It's an amazing community," he said, "with no geographical borders."

—LANA BIRBRAIR '15

FOR MORE on HLSA events in your area or on special interest groups, go to HLSA.org.



← HLSA was founded on Nov. 5, 1886. Today the HLSA serves over 38,000 alumni worldwide.



↑ The Harvard Law School Association of Europe held its 2014 annual meeting in Madrid May 29 through June 1. The event was attended by over 100 participants from over 20 countries of Europe. Academic sessions included a lecture on international responses to corporate tax avoidance, delivered by HLS Professor of Practice Stephen E. Shay (see

feature on this topic, Page 34), and a panel discussion on “EU Restrictive Measures: Present and Future.” Cultural highlights included a visit to the Museo Thyssen-Bornemisza and a tour of the Congreso de los Diputados (Spanish Congress) led by Congressman José Maria Beneyto LL.M. ’90.

← JACQUES SALÈS LL.M. ’67 with the HLSA Award. The first non-American to be elected president of the HLSA, in 1998, Salès chaired the host committee for the HLS Worldwide Alumni



Congress held in Paris in 2001. He has also served as secretary, vice president, and president of the HLSA of Europe and is a member of the HLSA of France.

The next HLSA of Europe annual reunion will be held in Paris: May 14 to 17, 2015.



↑ Mike Feuer ’83, Los Angeles city attorney, spoke to more than 50 HLS alumni and friends in July at an HLSA of Los Angeles event focused on lawyers working in public interest law.

↓ This summer, the Harvard Law School Women’s Alliance hosted a panel discussion on feminism across the generations at Skadden, Arps, Slate, Meagher & Flom in New York. Among the panelists at the July event were U.S. District Court for the District of New Jersey Judge Faith Hochberg ’75, former Congresswoman Elizabeth Holtzman ’65, Carolyn Edgar ’93, Adrienne Baker ’10 and Rebecca Cress ’15. Cress (center) is pictured with classmates Cecilia Vogel (left) and Ashley Cheung.



← Richard Clary ’78 joins guest speaker Dean Martha Minow at a September HLSA of New York City event. Over 130 alumni and guests attended the talk held at Cravath, Swaine & Moore.



↑ To kick off the 2014 American Bar Association meeting held in Boston this summer, the HLSA of Massachusetts hosted a reception for alumni and guests on Aug. 7. More than 60 attendees participated and were addressed by HLS Professors David Wilkins ’80 (second from left) and Scott Westfahl ’88 (third), pictured above with former HLSA President Robert N. Shapiro ’78 (far left) and Cameron Casey ’03.

FALL REUNIONS 2015 Oct. 23–25, 2015

► Classes of 1955, 1960, 1965, 1970, 1975, 1980 and Emeritus Club

WHEN BRYAN CRESSEY J.D./M.B.A. '76, a native of Seattle, was putting himself through the University of Washington by working at a conveyor-belt company, he grew intrigued by the “go-go era of the '60s,” as he puts it, when business innovators such as James J. Ling were creating giant conglomerates. Cressey decided he wanted to build companies and applied to the J.D./M.B.A. program at Harvard. From his first job in 1976 with a venture capital firm in Chicago; to four years later co-founding Golder, Thoma & Cressey (later Golder, Thoma, Cressey, Rauner); to the present, Cressey's leadership in industry consolidation with a particular expertise in the health care and medical services fields has been recognized by *Fortune* and *Time* magazines, among many other publications.

Today Cressey, a member of the Dean's Advisory Board at HLS, is a partner at Cressey & Company, a firm he founded in 2008 to invest in and build leading health care businesses. With six general partners, it manages \$1 billion of capital committed to building health care companies. Cressey lives with his wife, Christy, in Chicago, where he is chair of the HLS Leadership Council of Chicago.

Why did you choose the joint-degree program?

I was interested in both business and law school but wasn't sure which I wanted to do. I knew I might want to build companies, and I was interested in mergers and acquisitions. I liked the growth aspect. It seemed like a new frontier.

How did a law degree help with your goals?

Law school taught you to think about the “what-ifs.” As long as it doesn't slow you down too much, that's a good way to think: spotting possibilities and knowing how to systematically think them through. I don't practice law, but law is involved in everything we do—management agreements, financing. You go find a young company you want to invest in, and the first thing you're confronted with is a legal agreement. If you have only an M.B.A., you have no idea which parts are important, which to ignore. Harvard Law School taught me how the world works.

What is a favorite HLS memory?

One of my favorite courses was Contracts with Phillip Areeda [’54]. He was a dy-

namic, real-world, voluble professor—fun but very tough. I loved Contracts and it proved extremely useful going forward in the world.

And another?

I worked while I was there, part time, as a janitor of the apartment building where my wife and I lived. We would clean up apartments when people moved out, stay up all night painting and vacuuming. I did some pretty mundane work to pay my way through. So those were the days.

What was your first job out of Harvard?

I wanted to get into venture capital, which I'd learned about in school. A business professor introduced me to a group in Chicago I ended up joining. I think that year, 1976, only two people in all the U.S. were hired into venture capital. It was a nascent industry, and it was during a deep recession. I was extremely lucky.

What prompted your interest in the health care industry?

I made my first health care investment in 1979. After that, I recognized it as a strong growth industry,

relatively noncyclical, with a lot of room for management improvement. Until 1984, the biggest part of the industry—hospitals—had a cost-plus payment system. They were reimbursed by Medicare for what they spent plus a profit margin, which encouraged them to spend more and build more buildings. When you compared health care to competitive industries like technology, what you found were managers who hadn't been trained in real-world economics and sales and marketing and IT systems and business processes. Although there are a growing number of great managers in the field, I think that's a legacy that still affects health care today.

What do you like most about your work?

One of my favorite things in the world is visiting a new company for the first time. It's so exciting to me, figuring out what it can do differently. It's a little bit like trying to unravel a mystery. Every year they get compensated less per unit of care delivered because the system can't afford much more, and therefore our

companies have to improve quality and efficiency every year. They have to work on it constantly, and good companies can do that. It's a silent revolution, and we love doing that.

What's your prediction for the U.S. health care system?

In the U.S., we complain about cost of health care, yet in 10 to 20 years, we'll see a far better system because of the innovators working on ways to be more efficient. That's why I love investing in it: There's more room for improvement and it's a big industry—18 percent of the total U.S. economy—and it's crucially important to each of us. I think we already are the best system, with leading practitioners and the best entrepreneurs, and I think we'll become more and more efficient. But it will take a couple of decades. Don't hold your breath. It won't happen tomorrow.

What is unique about your company?

I think we are the only private-equity group in the U.S. that has a “patient quality” activity that we implement in each of our companies. One of my partners, Bill Frist [former U.S. senator], a heart and lung transplant surgeon, leads that effort for each company. One thing we've found is that the highest quality is correlated with the highest profitability. A lot of people think you spend money to have quality, and that's patently false.

Bryan Cressey has long been invested in the U.S. health care industry and in ways to make it more efficient.



→ “One of my favorite things in the world is visiting a new company for the first time. It’s so exciting to me, figuring out what it can do differently.”

Our best companies have higher quality and higher profitability, and studies now prove that, which is good news for patients. No one needs to skimp on quality.

Why have you remained involved with HLS?

I think Harvard Law School is an extremely special place. Whenever I am there and talk to professors, the dean, and students, they

are just so caring about the world we live in and how can we improve it. That’s inspirational. They’re also driven. I like that about any institution, whether it’s one of our companies or HLS—that they’re driven to be better and better.

You’re an author in your spare time.

I’ve written a play, and a book called “End Game”; it’s a thriller. I do like to write

as a hobby. It’s exercising different parts of the brain. I also do amateur acting, at a local theater in Barrington, Illinois. I just love it. It probably helps my judgment and helps me see reality a little more richly.

Speaking of health, how do you take care of your own?

I do five snow sports: snowboarding, skiing, snowmobiling, tubing and snowshoeing. We have a ranch in

Steamboat Springs, Colorado, so we get to really get out and play and exercise in the snow. My three daughters and I are all vegans. Now I’ve been vegan for 17 years because my daughters were vegetarian and vegan, and it was a way to get closer to them. The more I learned how healthy it was and how good for animals, the more I spread the word, so now two of the six partners in my firm are vegan.

GALLERY | *Home Rule within Enemy Lines*

During World War I, about 400,000 “enemy aliens” were imprisoned by all sides in camps on nearly every continent. During that time, Germany’s only exclusively civilian prison camp, Ruhleben Gefangenenlager, became a model of civil functionality.

Ruhleben—“quiet life,” in German—refers today to both the now-vanished site on the outskirts of Berlin and a pair of archives at Harvard Law School Library Historical & Special Collections. The Maurice L. Ettinghausen and John C. Masterman collections include photos, posters, publications, drawings, ticket stubs and more: ephemera that shed light on civilian internment from 1914 to 1918.

“It’s one of the most heavily used [HLS] collections,” said Curator of Digital Collections Margaret Peachy of the Ruhleben materials. They are espe-

Capturing life in a WWI internment camp

cially popular with genealogists, historians, and sociologists, and with students of what makes society civil. Beginning in 2008, the two archives were digitized, making more than 11,000 images more accessible.

Ruhleben is a unique lens for viewing the fate of civilian prisoners. Following a declaration of war on Aug. 4, 1914, negotiations between Germany and Great Britain regarding an all-for-all trade of civilians quickly failed. On Nov. 6, about 4,000 British men aged 17 to 55—tourists, businessmen, expatriates and merchant seamen—were arrest-

A view of the camp’s “Trafalgar Square,” an attempt—like nearby “Bond Street”—to transform Ruhleben into a Little Britain within enemy lines



A boxing match at Ruhleben. Many sports were played, but only football (soccer) and cricket were wildly popular.



Men line up at Ruhleben for parcels. Relief packages from Britain were a regular boon to camp life.





Men passing through a gate in the camp. Later in the war, individual prisoners were sometimes allowed to leave the camp to go shopping in Berlin for a few hours, accompanied by a guard.



German guards at Ruhleben, all unarmed here, were seldom seen within the camp after September 1915. But as war privations increased in Germany, guards regularly went through prisoner garbage in search of food scraps.

→ The HLS Ruhleben materials were preserved by two men who spent a full four years in the camp. Maurice Ettinghausen, the camp librarian, became a rare book dealer and sold his collection to the HLS Library around 1932. The materials saved by John Masterman, the Ruhleben tennis standout who went on to play professionally before becoming a World War II hero, an Oxford don and a fiction writer, were bought by HLS in 1974.



Cast members—three dressed as women—from a September 1917 performance of “The Ruhleben Empire,” one of the hundreds of productions put on by internees

ed and sent to Ruhleben. (Women, children and the elderly were exempt.) By February 1915, all other male Commonwealth civilians in Germany were detained, and Ruhleben’s wartime population peaked at 4,273.

The first inmates were assigned freezing stalls in the former horseracing track, with no power or ventilation. But by 1915, inmates had gotten German authorities to let them take over the administration of the camp. In many ways, Ruhleben became a miniature Britain, with its own economy, a home-rule administration, elections, a clinic, a police force and sports teams. There were food and nursery gardens, theaters, and schools. (“There is so much studying,” wrote an Anglican bishop who visited in 1916, “that I call it the University of Ruhleben.”)

In this miniature Britain, however, English class distinctions still held sway. So did social prejudices. For a while, the camp’s 70 Jews were segregated in run-down Barrack 6; 100 black inmates, sailors from the West Indies and British West Africa, lived in Barrack 12—banned from all social activities except sports.

Ruhleben was no utopia, but fewer than 60 inmates died between 1914 and 1918, most from natural causes. Meanwhile, the war killed 16 million and wounded 20 million. In wartime military prisons, at least 750,000 died.

Since being digitized, the collections have only grown in popularity. With the centennial of World War I, history buffs are among those who add traffic to the site. So do those who research camps for war-displaced civilians—model or otherwise. “Unfortunately,” said Peachy, “that history is repeating itself.”

—CORYDON IRELAND

INSIDE OUT | *Tax Turnaround Time?*



THIS IS “an opportunity for real reform,” says Mihir Desai. Inversions are “the tip of the iceberg on the distortions the corporate tax has given rise to.”

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