

ALSO: THE LAWS OF ADAPTATION | GIVING VOICE TO BRAZIL'S PRISONERS | HLS'S FIRST CENTURY

Harvard Law

Fall
2015

bulletin

TEN

YEARS

IN

A Tribute to John G. Roberts Jr. '79 on His First Decade as Chief Justice of the United States | BY MARTHA MINOW

Fernando Delgado '08 works with HLS students in Brazil's prisons, where there are constant reminders of the limits of legal advocacy.

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Change is coming to the legal profession. HLS is at the forefront of efforts to prepare students for it.



DANA SMITH

ON THE COVER

Photograph of John G. Roberts Jr. '79 by Steve Pyke/Contour/Getty Images

Peter Renn '06, staff attorney at Lambda Legal, is among those focused on the work ahead after *Obergefell*, the landmark ruling guaranteeing a right to same-sex marriage. ▶



AMANDA FRIEDMAN

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JESSICA SCRANTON

Michele DeStefano '02, a visiting professor at HLS this year, is the creator of LawWithoutWalls, an innovation space for law students and lawyers.



Harvard Law Bulletin

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BETH PERKINS



Jonathan Hiles '16 (right) helped Kareem Bellamy sue for the 14 years he spent wrongfully imprisoned. Bellamy says if he could give up the money to change what happened to his 26-year-old self, he "would do it in a second."



“THERE IS NOTHING SO STABLE AS CHANGE.” So said Bob Dylan (and Heraclitus, too). Yet we yearn for continuity. Chief Justice of the United States Melville Fuller (who attended HLS briefly in the 1850s) noted, “Without continuity, men would become like flies in summer.” Law and legal training help ensure both continuity and change for individuals and for societies. This is good to remember as the legal profession faces fundamental challenges and opportunities.

As new technologies and businesses introduce disruptive innovations in selling and buying everything from books and music to transportation and travel accommodations, now it is the turn of the learned professions. Artificial intelligence can accurately diagnose malignancies and mine data to identify optimal treatment. A virtual psychologist may actually elicit more honest conversation than a human one. Thus far, the closest connection between A.I. and theology may be in Steven Spielberg’s movie “A.I.,” which has a soundtrack by the music group Ministry. But digital resources are already altering how lawyers do research and generate documents—and, increasingly, how nonlawyers can gain access to legal help. This Bulletin learns from efforts by the HLS Center on the Legal Profession, led by my visionary colleague David Wilkins ’80, to understand, assess, and influence innovations in law-related technology and business. Our faculty and students benefit from this vital work, teaching us to change before change happens to us. The center’s pathbreaking research on women in the profession is also featured.

Legal institutions, such as courts, legislatures, and corporate boards, channel change through formal procedures, precedent, and structured participation. Marriage equality litigation in the United States, prison reform in Brazil, corporate governance reforms, and global national security initiatives are distinct areas of notable change and also of continuity, as explored in stories presented here. And I offer reflections on the first decade of leadership by Chief Justice John G. Roberts Jr. ’79,

whom I first met when we served as law clerks during the Supreme Court’s 1980 term.

Change and continuity run through the new book by Dan Coquillette ’71 about Harvard Law School’s first century, and we are especially delighted that the book’s publication coincides with our efforts to plan the school’s third century. As we launch the HLS Campaign for the Third Century in October as part of the university’s campaign for renewed resources, we also are excitedly planning to celebrate our 200th anniversary in 2017. Please stay tuned for more information about events and projects of reflection and rededication, critique and celebration!

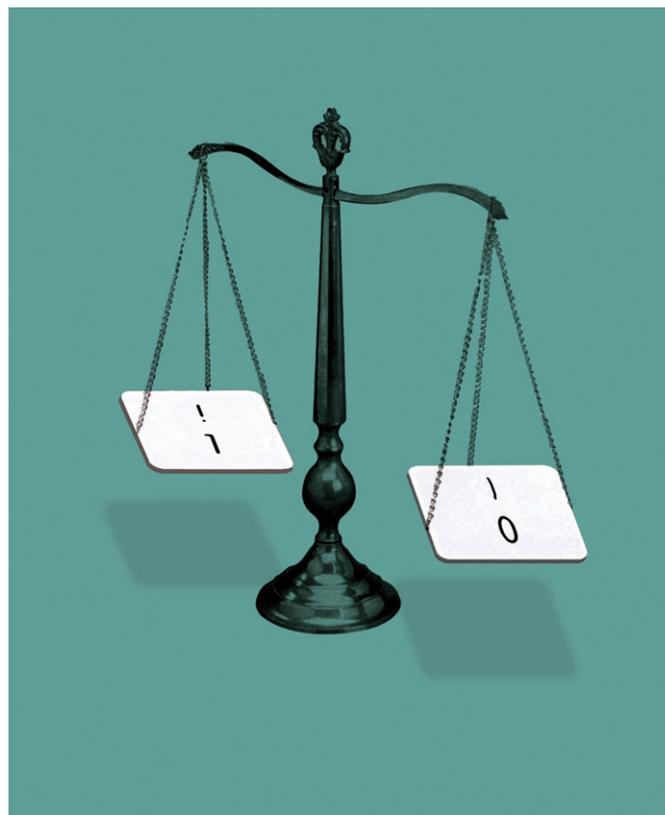
In May, HLS lost a revered professor, public servant and alum, Dan Meltzer ’75; in July, we also lost a treasured advocate for the poor, colleague and alum, David Grossman ’88. As we deal with this hardest kind of change, their friends and students renew efforts to carry on the superb work they forged.

Technology has already begun to alter the work of lawyers and access to justice for nonlawyers.

Matthew Minow



KEN RICHARDSON



OLIVER MUNDAY

What's First Amendment law got to do with it?

AS A LONGTIME CORPORATE law practitioner who has also taught law and written law review articles on corporate governance, I cannot help but express mixed feelings on Professor John Coates' thoughts ["Will Corporate 'Speech' Undermine Productivity?," Spring 2015].

On the one hand, I share his view that in too many cases, corporate executives do a disservice to their organizations and customers with an inordinate focus on legal issues. Whether this involves lobbying efforts regarding public policy matters which may impact the organization or more mundane corporate or contractual issues, it is usually antithetical to the needs of customers, employees, communities and ultimately firms themselves. Time devoted to such topics could and should be spent more productively on development of better products/services or provision of better service to the marketplace. Professor Coates is entirely correct that as a matter of policy, corporate "speech" is likely to be a waste of time and resources—at best. Hopefully, large institutional and other shareholders will heed this message and so advise corporate managements, and vote accordingly for directors.

However, I am not sure what any of this has to do with First Amendment law. It is universally understood that the amendment

exists to allow all political speech—not merely that which is or is deemed to be economically desirable or productive. Plausible arguments may be made for and against *Citizens United* based upon the text of the First Amendment and related jurisprudence and scholarship. I am not aware of any authority allowing or requiring that speech be scrutinized for its impact on productivity.

Indeed, much individual speech can be said to be economically unproductive such that the speaker or writer should be admonished to use their time for other things. I am sure that Professor Coates would agree that no court should or would incorporate such analysis into the consideration of whether the speech is protected by the amendment. As the Founding Fathers understood, today's frivolous or "unproductive" speech often becomes tomorrow's brilliant, ground-breaking idea.

I feel that it is essential that your readers put in context the difference between Professor Coates' laudable advice to corporate management and the constitutional considerations expressed in your article.

Martin B. Robins '80

Barrington Hills, Illinois

John Coates responds:

I appreciate Mr. Robins' comments and agree that corporate managers may be mispending corporate funds when they focus on lobbying and legal tactics. I also agree that no legal conclusion follows directly from speech



being economically unproductive. We will have to disagree about other points. Nothing in Supreme Court precedents or the text of the First Amendment supported the result in *Citizens United*. On the contrary, *Citizens United* expressly conflicts with two prior Supreme Court decisions, and more generally conflicts with 150-plus years of judicial deference to prudential decisions of Congress and the states in the regulation of corporate behavior, including speech and participation in elections. On text, even a literalist would have to confront the fact that Congress cannot help but affect someone's ability to use corporate funds to express their views whenever it regulates corporate governance—and it would be absurd to suggest that no changes in corporate governance are ever constitutionally permissible because of the First Amendment. Nothing in the First Amendment's text allocates power among shareholders, directors and managers over the use of corporate funds for any particular purpose. Economic productivity is relevant, then, as a basis for policy, and as a valid way to fill gaps in constitutional meaning. Good policy—and good law—would deny corporate managers the right to seek profit at both shareholder and taxpayer expense through socially unproductive lawsuits and lobbying.

Criminal defense clinic also benefits prosecutors

I TOOK CJI: CRIMINAL DEFENSE in my 3L year (and the

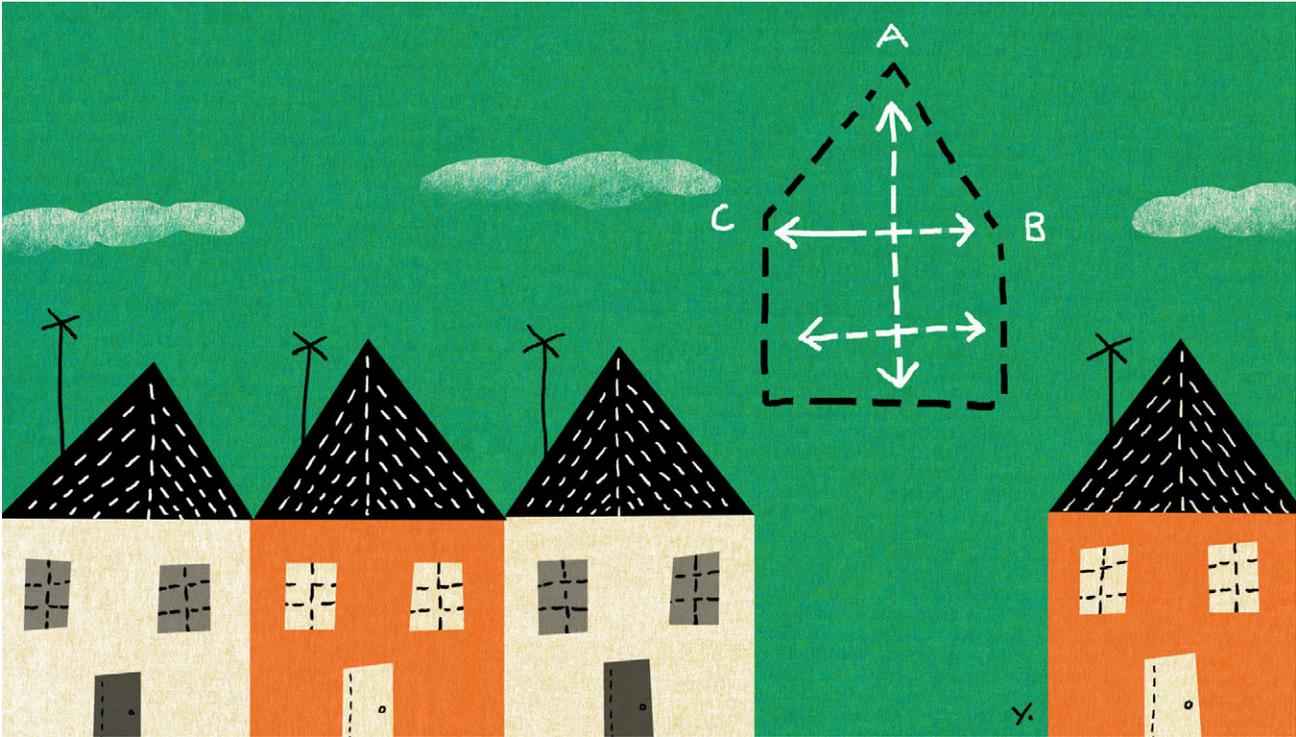
Trial Advocacy Workshop). I had the great privilege of being taught by Professors Charles Ogletree [78] and Mary Prosser, who were and remain mentors and friends. In those classes, I learned from the best defense lawyers in the world how to be a defense lawyer, and how defense lawyers think and why they do what they do. I also conducted a jury trial, obtaining an acquittal on behalf of my client charged in Roxbury court with a mandatory minimum drug offense—in what remains one of the best and most rewarding moments of my career. In CJI, I learned how to be a lawyer—a real lawyer.

And then I became a prosecutor. I worked as a prosecutor for 12 years, at Main Justice in the Honors Program, the United States Attorney's Office for the District of Columbia and the United States Attorney's Office for the Southern District of New York. Then I established and ran a nonprofit organization at NYU School of Law devoted to studying and improving the exercise of prosecutorial discretion, before departing for my current position at the law firm Jenner & Block, as a partner in its white-collar practice.

Because of what I learned and from whom I learned it in CJI, I was a better prosecutor. I'm sure that, as a result of those classes, I was more effective in bringing and prevailing in cases on behalf of the government. But more importantly, I better understood the → 9

Freedom Is Just Another Word for ... Regulation

With new book, Singer touts rules that make the free market and property possible

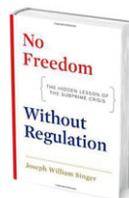


IN A PROPERTY LAW CLASS AT HLS, THE DISCUSSION turned to a regulation by a condo association that prohibited residents from flying a flag. One resident refused to comply, and the condo association eventually relented. Congress later passed a law forbidding condominium covenants that prevent residents from flying the U.S. flag.

Two libertarian students in the class began to argue. One said the federal statute interfered with the property rights of the neighbors and the condo association. The other countered that a fundamental right of an owner to fly the flag should not be interfered with. For Professor Joseph Singer '81, who was teaching the class, the point wasn't who was right. The point was that two people who shared the same political philosophy of limited government both wanted regulation that would preserve their concept of freedom. The choice, as he writes in his new book, "No Freedom Without Regulation: The Hidden Lesson of the Subprime Crisis," was "among regulations, not a decision whether or not to regulate."

Singer argues in his book that regulations make markets and property possible. Regulations are needed to protect us from harm and fraudulent ac-

Property law expert Joseph Singer argues that regulation promotes conservative values.



tions by others, to ensure that people can acquire property, and to allow all of us to exercise equal freedoms, he writes. The subprime crisis was a painful and dramatic example that demonstrated the need for consumer protection regulation, including laws that promote disclosure and prevent banks from selling mortgages to people who can't afford them.

"I don't think those people were doing anything wrong," Singer said in an interview. "They wanted to buy a home, and they were told by experts that they could afford the home. And I have no issue with people who trusted the banks when they said, 'This is a mortgage that's appropriate for you.'"

The book continues his work over the past 30 years focusing on a "progressive version of property law." He points to the Civil Rights Act of 1964 as a signal event that changed the country and eventually led to his journey to reframe the concept of property. At the time, he explains, people contended that a restaurant owner had a right to exclude someone based on race.

When Singer started teaching property in the mid-1980s, he found nothing in the casebooks on public accommodation statutes. They were con-

sidered to be part of anti-discrimination law, not property law: “And I thought, They’re not teaching property law correctly,” he said.

Public accommodation law gives people the right of access to the marketplace, he said—the right to *acquire* property, not just sell it. People may exclude others from their church or home, but the marketplace is open to everyone. This past summer, Singer applied that principle to an article he wrote asserting that there should not be religious exemptions to public accommodation statutes, such as for florists who refuse to sell flowers for display during a same-sex marriage ceremony.

His book is filled with similar examples of how one person’s property rights affect the property rights of others.

“It is surprisingly easy to forget,” he writes, “that property rights are not merely individual entitlements but a system that requires the rights of each to be compatible with the rights of others.” Zoning laws, for example, may limit what we can do with our own land because it may affect neighbors’ enjoyment of their property. Landlords can’t fail to provide hot water or comply with a building code. And Singer notes that subprime mortgages were property rights that didn’t just affect home buyers and banks. They nearly ruined the world economy.

Some of the points he raises about the necessity of regulation seem obvious, Singer said. After all, Republican candidates for president are not campaigning to repeal a regulation like the Clean Water Act or the many others that have become ingrained in the American way of life. But he was compelled to respond to the increasing vitriol against regulation, which he

traces to the modern president most associated with conservative values.

“Reagan made it in some sense a majority view that government is the problem. Before that, there was debate about what government should do,” Singer said. “Nobody really wants to abolish government. But the rhetoric is that government is evil and corrosive, and regulation takes away our freedom. I think our rhetoric is not in tune with our values.”

He argues that in fact regulation promotes conservative values. For example, consumer protection laws promote freedom of contract by ensuring that buyers get what they want. Likewise, a great deal of law is needed to support a private property system. Regulation protects the individual, which he notes is a core conservative norm. At the same time, free markets and private property reflect liberal values of autonomy and equality, he writes, with legal structures that promote equal opportunity.

The benefits of regulation are all around us, yet many of us don’t see them, Singer said. But he does. He served on the building committee when Langdell Hall was being renovated in 1996. Because of the Americans with Disabilities Act, enhanced disability access was required. It’s true, he said, that without the regulation, the project would have been easier to complete. But then it would have been much harder on people with disabilities (which, as he noted, will be many of us at some point in our lives). For them, the elevators and lifts at the entrance provide access to one of the world’s great law libraries. For Singer, they provide a daily reminder of the freedom that regulations bring.

—LEWIS I. RICE

Global Prosecutor

New book looks at the ICC
Office of the Prosecutor

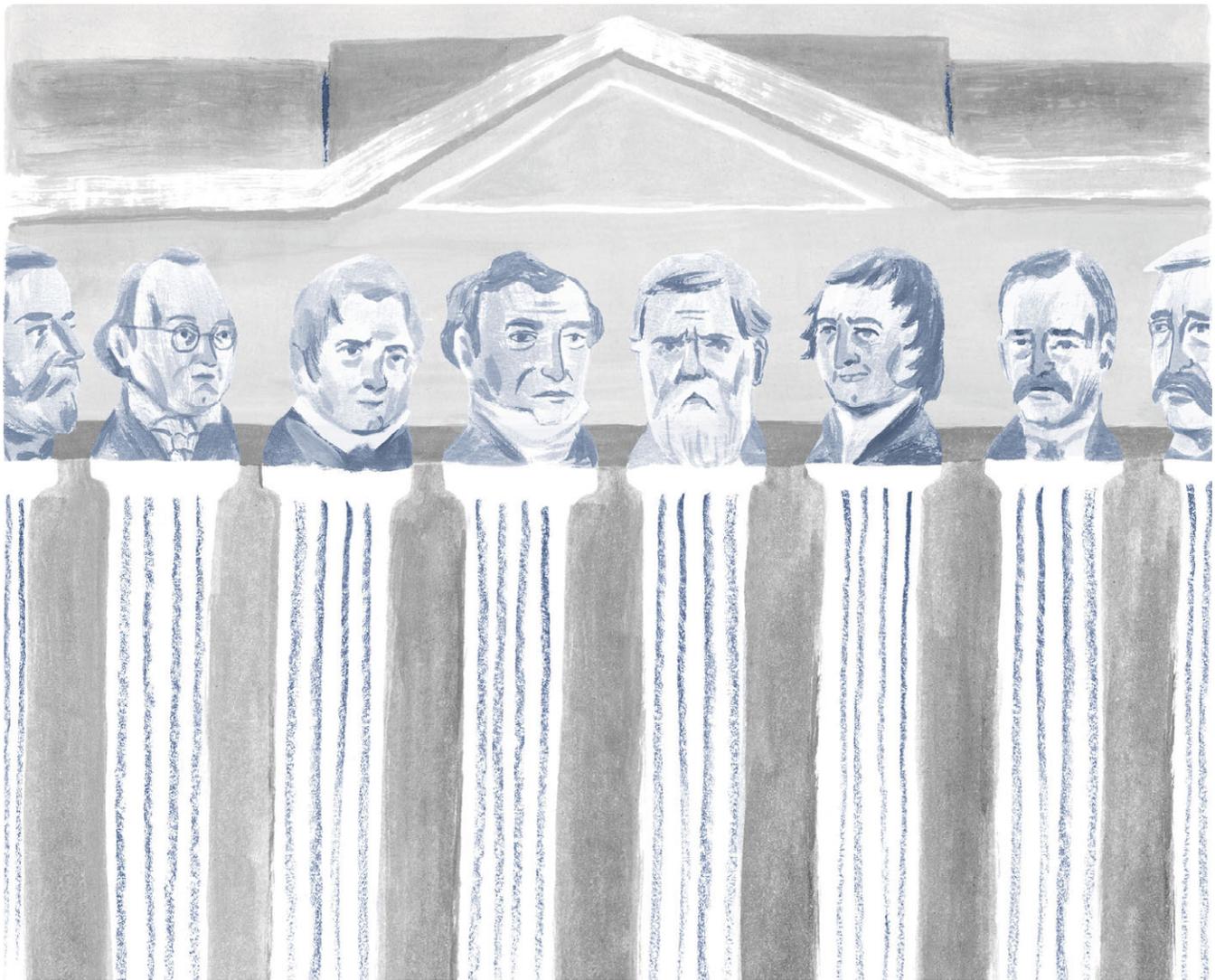
In January 2010, Martha Minow, then the new dean of Harvard Law School, taught a seminar examining the Office of the Prosecutor of the International Criminal Court. Bolstering that effort was her co-teacher, Alex Whiting, who later that year would begin a three-year tenure at the ICC, managing first investigations and then prosecutions for the office. The other co-teacher was the ICC’s first chief prosecutor, Luis Moreno-Ocampo.

The seminar kicked off a sustained effort to understand the challenges and opportunities a prosecutor faces in the international justice arena. It offered the prosecutor a “lab” to examine and assess the role and operations of the brand-new office at the brand-new international court. Moreno-Ocampo shared draft and published policies for the office, for analysis by students and by a range of



HLS professors, as well as others directly involved in the international legal process. To further advance that work, Minow and Whiting, a professor of practice at HLS, along with C. Cora True-Frost LL.M. '06, an associate professor at Syracuse University College of Law who worked for the U.N., have edited and contributed to a new book, “The First Global Prosecutor: Promise and Constraints.”

Featuring a prologue by Moreno-Ocampo, the book offers the perspectives of academics and practitioners in the field on the limitations and potential of the first permanent office for global prosecution of war crimes and crimes against humanity. Whiting, who also previously served as senior trial attorney at the International Criminal Tribunal for the former Yugoslavia, considers investigations at the ICC and ways the prosecution could bring “stronger, better-supported cases,” such as an increased focus on witness security measures. True-Frost explores the relationship between the prosecutor and the U.N. Security Council. Minow writes about the possible role for the ICC prosecutor to help member states adopt and evaluate efforts to enhance education about conflict prevention and resolution. Other chapters are written by experts on war crimes, international tribunals, criminal justice reform and international law. Writing together, the editors praise Moreno-Ocampo for finding ways to turn institutional constraints—such as no power to subpoena evidence or make arrests—into collaborations with member states, but also caution that he and his successor, Fatou Bensouda, face ongoing questions about whether the Office of the Prosecutor—and the ICC itself—will become marginalized or instead truly advance protection for people all over the world.



Harvard Law's First Century

The first volume of a new history aims at full disclosure

If you're short on time, the history of the first hundred years of Harvard Law School is available as an architectural telegram. On the stone roofline of neoclassical Langdell Hall are engraved the names of those men (yes—all men) who were foundational to the institution's opening century: Gray, Ames, Thayer, Smith, Story, Greenleaf, Parsons and, of course, Christopher Columbus Langdell himself.

But for a deep, detailed, compellingly written, unstintingly transparent view of the school as it was from the fall of 1817 (six students) to the spring of 1910 (765 students), look to "On the

At the core of a new history of Harvard Law School are "three radical ideas" that were developed by the school's early faculty and that would transform American legal education.

▲

Battlefield of Merit” by HLS Visiting Professor Daniel R. Coquillette ’71 and Bruce A. Kimball, published by Harvard University Press. It is the first of two volumes intended to mark the school’s bicentennial in 2017.

Previous histories of the school come under fire in the new book, including Charles Warren’s 1908 “History of the Harvard Law School and of Early Legal Conditions in America.” Coquillette and Kimball call it a “victory lap” meant to memorialize Harvard’s first place in the realm of legal education, but at the price, they say, of ignoring the stories of racial, ethnic and gender conflict that marked Harvard Law’s first century. (In 1894, for one, Warren, who had graduated from HLS two years earlier, founded something called the Immigration Restriction League.)

With an eye toward full disclosure, “Battlefield” includes HLS’s connection to profits from slavery and its brush with a long-ago era’s mistrust of America’s cultural outliers, including blacks, Irish, Asians, Jews, Italians, and Roman Catholics (a target of explicit institutional vitriol). Evidence of “racism,” most of all, says Coquillette, “runs like a river through volumes 1 and 2.” In addition, there is the exclusion of women from law classes until 1950. (A 1967 history of HLS devotes only three pages to the subject.)

That “Battlefield” will be different is evident at first glance. On the book’s cover is a photo of the Class of 1874, which included the first Asian graduate and the second black graduate, a former slave. The class also arrived in the midst of stunning reforms set in motion between 1870 and 1886. Among them: requiring admitted students to have a bachelor’s degree, or

its equivalent; extending the degree track to three years; requiring written examinations; and teaching the law from cases. This inductive method was a pedagogical novelty.

The 1874 picture illustrates another goal of the new history: to take a century-long look at student life. Another chapter describes the novel and uneasy inclusion of students from non-Ivy backgrounds. Most law school histories, says Kimball, “are about what faculty did.”

At the core of the book are what the authors call “three radical ideas” developed at HLS that would transform American legal education.

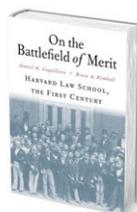
First, HLS would be a professional school within a degree-granting university, an idea that originated in 1817. (Until the mid-19th century, most lawyers trained as apprentices or at lecture-based proprietary law schools.)

Second, it would defy the notion that all law was local. The idea of a national school came in 1829 with Joseph Story, who rescued a teetering law school and opened the door to an influx of students from the South. Third, attendance at Harvard

Law would eventually depend on academic merit, which the authors argue can be traced to Charles W. Eliot’s Harvard presidency, which began in 1869. He conceived of school deans; one of his first hires was Langdell.

The authors also cover another topic that has been excluded from past histories: HLS’s contribution to antebellum legal tangles, and to the Civil War itself. One chapter looks at faculty infighting over the Fugitive Slave Act, the Emancipation Proclamation, the wartime suspension of habeas corpus, and the limits of executive power. Add to that the sheer numbers. On both sides, nearly 600 HLS alumni fought in the war and 111 died, a sum equal to two entire classes in that era. Eleven Confederate generals and 40 colonels went to HLS, as did leaders on the Union side—a total of wartime officers surpassed only by West Point.

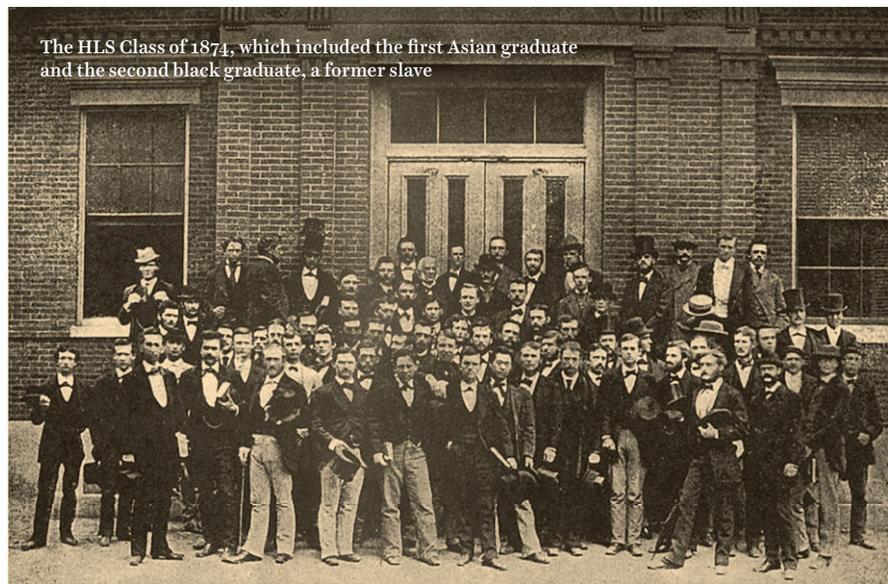
“Battlefield” sets itself apart from incomplete histories and from “attack histories,” too, which characterized books on Harvard Law in the late 20th century, including 1994’s “Poisoned Ivy.” Says Coquillette, “We don’t come to this with any ax to grind.” —CORYDON IRELAND



A HISTORY'S BACK STORY

“Battlefield” and the history’s second volume, focused on the 20th century, were nearly two decades in the making. They are the fruit of the Harvard Law School History Project, which from the beginning has included scholarship from students and alumni—nearly 300 so far.

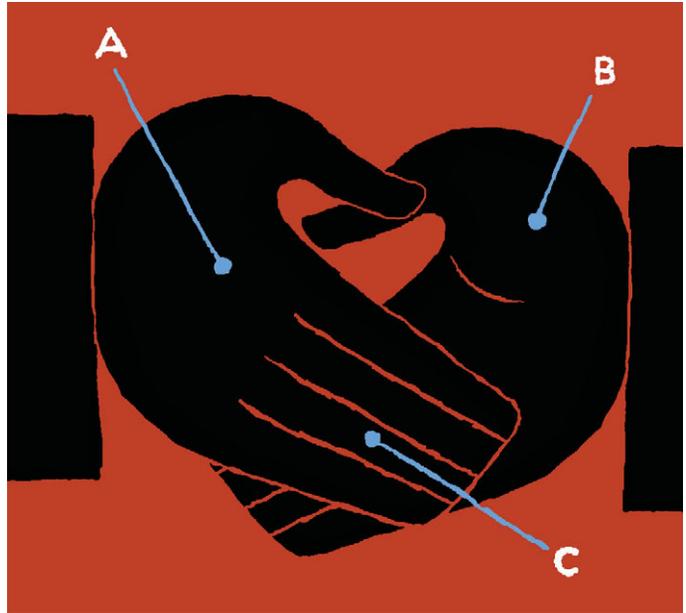
Undergirding the research overall, the authors say, is the Historical & Special Collections arm of the Harvard Law School Library. Many of its holdings have been digitized, are word-searchable and are accessible, the authors write, “beyond the dreams of earlier historians.” (Read about one of those collections on Page 72.)



The HLS Class of 1874, which included the first Asian graduate and the second black graduate, a former slave

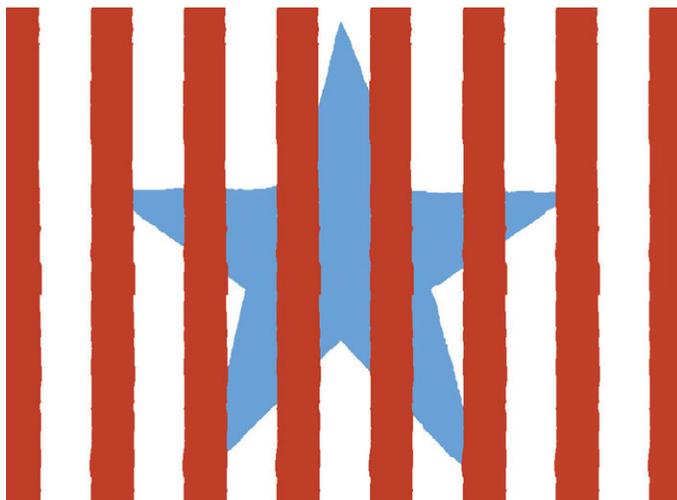
In Brief

“Contract as Promise: A Theory of Contractual Obligation,” 2nd Edition, BY PROFESSOR CHARLES FRIED (Oxford). The intent in writing the book, as Fried explains, was to display the underlying structure of contract law and show how this complex legal institution could be traced to a small number of moral principles. The new volume includes an essay by the author that arose from a symposium in 2011 that celebrated the 30th anniversary of this classic work. The essay considers scholarship in the field since the publication of the first edition. The original text, whose perspective remains sound, according to Fried, is also reproduced. Fried’s audience for his teachings on contracts has expanded to nonlawyers, through his popular online ContractsX course offered this year through HarvardX.



“Reconsidering the Insular Cases: The Past and Future of the American Empire,” EDITED BY PROFESSORS GERALD L. NEUMAN ’80 AND TOMIKO BROWN-NAGIN (HRP). Arising out of a conference held at HLS in 2014, the volume shines light on early 20th-century Supreme Court decisions ruling that full constitutional rights do not extend to people living in the U.S. territories—decisions that remain in force today. The contributors (Dean Minow provides the preface), who focus on Puerto Rico, consider options for reform including changes to the constitutional framework, admission to statehood and full independence. As Neuman, who organized the conference with Brown-Nagin, notes, “The path forward is complicated, however, by disagreements over the direction that reform should take and by the need to secure federal approval.”

“Christian Human Rights,” BY PROFESSOR SAMUEL MOYN ’01 (Penn Press). Moyn asserts that the rise of human rights after World War II was prefigured and inspired by a largely conservative worldview embodied in religious thought in the years just prior to the outbreak of the war. The author of “The Last Utopia: Human Rights in History” ends his latest book with a chapter that traces contemporary European struggles to assimilate Muslim immigrants to the continent’s legacy of Christian human rights.



“The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity,” EDITED BY PROFESSOR CHARLES J. OGLETREE JR. ’78 AND KIMBERLY JENKINS ROBINSON ’96 (Harvard Education). More than 40 years after the U.S. Supreme Court decision in *Rodriguez*, holding that the Constitution does not require equal education funding for children in poorer school districts, disparities in educational opportunity still exist, which “betray our national identity, shackle our economic future, and mock the nation’s professed commitment to justice and fairness,” write the editors (Ogletree, an HLS professor, and Robinson, professor at the University of Richmond School of Law). The book’s essays, contributed by school finance attorneys and education and law policy scholars, examine litigation that has sought to reform school financing; offer ideas for state-level reform; and propose federal avenues to enhance equal access to educational opportunities.

“*Second-Best Justice: The Virtues of Japanese Private Law*,” BY PROFESSOR J. MARK RAMSEYER ’82 (University of Chicago). A scholar who has written many works on Japanese law, primarily with a law and economics approach, Ramseyer focuses in his latest book on the Japanese system of litigation, which stands in stark contrast with the U.S. system, he writes. A primary difference: fewer lawsuits, which some have ascribed to cultural factors or even interpreted as a sign of a legal system that doesn’t work. The author argues, however, that the Japanese system works well by aspiring to be “mostly right” as opposed to “exactly right” (the standard in the U.S.). Japanese courts hire capable professionals, tell them what to do and monitor them throughout their careers, according to the author. The result, he writes, is a system that usually “compensates victims uniformly, predictably, and cheaply.”

“*Choosing Not to Choose: Understanding the Value of Choice*,” BY PROFESSOR CASS R. SUNSTEIN ’78 (Oxford). Choice, while a symbol of freedom, can also be a burden: If we had to choose all the time, asserts the author, we’d be overwhelmed. Indeed, Sunstein argues that in many instances, not choosing could benefit us—for example, if mortgages could be automatically refinanced when interest rates drop significantly. The book defines in what circumstances default rules (as opposed to active choosing) work and when they don’t, and also explores the future of personalized default rules, wherein past personal preferences would dictate what the default should be. “Without default rules,” he writes, “it would be far more difficult for us to exercise our autonomy.”



defense function and appreciated it, and exercised my discretion as a prosecutor more sensitively and appropriately.

Your wonderful [Spring 2015] article [“First Line of Defense”] described accurately the incredible experience gained by HLS students in CJI. It also properly noted that about half of CJI students go on to be public defenders, which is wonderful. I think it is worth noting that the experience and education received in CJI are equally valuable and important for students who go on to careers as prosecutors.

Anthony S. Barkow ’95
New York City

It’s time for liberals to deal with the here and now

THE SPRING 2015 EDITION OF the Bulletin is brilliant in its organization, presentation and interesting content. However, I am tired of reading of academicians’ and community activists’ revisits to poverty, civil rights abuses, and “justice denied.” We need to move forward from regurgitating the horrors of lynchings, segregated schools and victimization. That’s so 1950s. Instead, how about some creative attention to the real present-day problems of our society, and of people of color especially—fatherless families; out-of-wedlock births; the unending cycle of dependence on social welfare; a culture sanctioning petty criminal offenses; excuses couched as prejudice, discrimination. Where is the applause for local law enforcement? Isn’t it a crime to shoplift or sell untaxed cigarettes? We need to be unaccepting of “woe-is-me” attitudes and the standard script of “My son’s a good boy. He’d never do what he’s

accused of.” It’s time for well-intentioned but behind-the-times liberals to deal with the here and now.

Steve Susman ’60
Denver

What about the social injustice of our tax system?

THERE WERE MANY INTERESTING articles and notes in the Spring 2015 Bulletin and I enjoyed reading it. But overall its content and tone are overtly left-wing, full of (self-declared) “social justice” issues and animus toward business and corporations. I would like to see more balance in your coverage choice of topics. Perhaps an article on the social injustice of a tax system that confiscates over half the wealth I create to spend it on causes and programs I don’t support?

Richard P. Sybert ’76
San Diego

Kudos from a direct descendant

AS A MEMBER OF THE BARONIAL Order of Magna Charta founded in 1898 and a direct descendant of several of the Barons *and* King John (it is nice to hedge one’s bet!), I read with interest “Magna, Cum Laude” (Spring 2015). The collection of related items housed in the HLS Library is most impressive as only four copies of the original 1215 charter remain in existence, held by the British Library and the cathedrals of Lincoln and Salisbury. As a Dartmouth history major prior to attending [Harvard] Law School, I commend the Bulletin for featuring this iconic piece of English legal and cultural heritage on this its 800th anniversary.

Phil Curtis J.D. ’71/M.B.A. ’74
Atlanta



FACULTY VIEWPOINTS

The Right Fit?

Spier discusses the use of ‘tailored lawsuits’ in the litigation process

Litigation is often seen as an either/or proposition. You either settle out of court or go to trial and leave the outcome entirely in the hands of a judge or a jury. But Professor Kathryn Spier, an economist on the HLS faculty since 2007, has researched another option: whereby parties go to trial with an agreement in place on the ceiling and floor for the plaintiff’s recovery.

Parties that sign pretrial agreements are hedging their bets, Spier says, and often unknown to judges or juries.

She spoke with the Bulletin about the benefits and potential pitfalls of such “tailored lawsuits” as well as her unique role on the faculty.

▲ What kinds of cases are best suited for these agreements?

The cases that might go to litigation anyway, and also cases that are perceived to have high risk associated with them. So, both parties think that on average they’re likely to win or do well at trial, but there’s also a risk of

something like a runaway jury award. In those cases, they want to limit their risk by using some kind of a tailored suit or a high-low agreement.

If people can agree on a general range of damages, why can’t they settle their case without going to court?

That’s kind of a puzzle. Some practitioners and judges see the high-low agreement as a first step toward a settlement. In terms of the statistics, we’re seeing mixed results on this.

Based on insurance company data, about half of the cases that signed high-low agreements subsequently settled. But the other half went to trial or arbitration. I don't think we can conclude that the high-low agreement was causing them to settle or preventing them from settling. In theory, it could go either way. If parties have these options available, it makes trial less risky and therefore more attractive, so these agreements could discourage settlements rather than encourage them.

Should the legal system actively encourage these kinds of agreements?

I have mixed feelings about it. The libertarian side of me feels that if the parties want to sign these kinds of contracts, then they're signing them because it's in their mutual financial interest to do so, so we should let them. If they don't know about these types of contracts, letting them know about them does them a service. However, there are some downsides. If this drives more people to the court system, the fact that our taxpayer dollars are paying for that could be a bad thing from a public policy perspective. Some of these cases might otherwise settle out of court altogether. The parties are basically gambling by using these contracts; they're speculating. So maybe we shouldn't be promoting this kind of speculative activity.

Litigants aren't required to disclose the existence of high-low agreements during trial. Why is this, and what are the consequences for failing

to disclose such an agreement?

There's a sense that if it were disclosed, there'd be an anchoring effect, so that if a judge or jury were to hear what a high-low agreement was, they might then disregard the evidence that's presented and instead use those offers as evidence in deciding the case. From a public policy perspective, I think it is a problem that it's not disclosed to a judge or a jury. A judge or a jury may waste a lot of time deciding "Should we award \$10 million or \$20 million?" It could save hours or days trying to make that fine distinction, trying to do a really good job accurately pinpointing the award. And in the end it's not going to matter.

How widespread have these agreements become?

It is hard to say. In one data set from a large national insurer, of the cases that went to trial or arbitration, about 4 percent had high-low agreements. In another data set from New York's summary jury trial program, about 80 percent had these agreements. When I tell friends of mine who are lawyers what I'm

→ "If parties have these options available, it makes trial less risky and therefore more attractive."

working on, most of them say, "I negotiated one of those once." I don't really know why high-low agreements are not more common. There are some pretty obvious advantages in having them. I think people are not as informed about them as they might be. Maybe because lawyers are trained in law schools and not as financial analysts. This is what people who hedge markets do—financial folks do these kinds of things all the time in other contexts. I think they're just not as familiar to legal practitioners.

Speaking of which—what has your experience been like as an economist on the Harvard Law faculty?

I love it here. I'm having the greatest time. I started off teaching in the economics department at Harvard as an assistant professor, and then my husband and I moved out to Northwestern, where we taught at the business school. That was all fine, but my research has always been on litigation and contracts and torts, so I always felt a little torn. I would go into the classroom and teach managers about strategy, and we'd talk about how managers could make more money, but I wouldn't be talking about legal issues. And so coming here, I'm basically teaching the managerial stuff that I used to teach in business school to law students. And I can incorporate some of the legal strategy issues into the classroom. The other great thing is that I'm kind of unique here. At business school, almost everybody is an economist, so all the classes are taught by economists. But around here I'm unique and my courses are different, and the students appreciate that option. The law students like me better than the M.B.A. students!

—INTERVIEW BY LEWIS I. RICE



Kathryn Spier says she loves being an economist on the Harvard Law School faculty: "I'm having the greatest time."

STUDENT SNAPSHOT

Making the State Pay

Jonathan Hiles '16 helps Kareem Bellamy sue for the 14 years he spent wrongfully imprisoned by the state of New York

31 JONATHAN HILES WAS 5 YEARS OLD WHEN KAREEM BELLAMY WAS ARRESTED FOR MURDER. THIS PAST SPRING, HILES HELPED BELLAMY WIN A \$2.75 MILLION SETTLEMENT FROM THE STATE OF NEW YORK FOR THE 14 YEARS HE WAS WRONGFULLY IMPRISONED.

Bellamy's nightmare began when a young man named James Abbott was fatally stabbed in April 1994 in Far Rockaway, Queens, where he and Bellamy both lived. A few weeks later, a cashier from a local supermarket phoned the NYPD and reported that she saw, standing on the street where the murder had taken place, a man she claimed had been in the same checkout line as Abbott just before his murder. The man was Bellamy. He was promptly arrested.

Hiles describes footage of Bellamy's trial—preserved by a Court TV show—as

“heartbreaking.” The government's case unraveled when its sole eyewitness (whom police had coaxed into identifying Bellamy from a live lineup at the station) failed to pick him out of a photo lineup—with Bellamy in the courtroom. But his lawyer didn't capitalize on the government's fecklessness, and the jury convicted. After hearing the verdict, Bellamy was so inconsolable that he had to be carried from the courtroom by four bailiffs, one on each limb.

From left:
Jonathan Hiles
'16, Kareem
Bellamy
and Thomas
Hoffman

The agony captured by Court TV, however, would help provide for Bellamy's deliverance: Locked up at Shawangunk Correctional Facility upstate, he wrote to every lawyer he could find, imploring them to watch the debacle on tape. None responded, until a Manhattan attorney named Thomas Hoffman, having first thrown Bellamy's



letter in the trash, pulled it back out and began digging into the case.

“How could I not say, ‘I will look at it?’” says Hoffman, a Hungarian Holocaust survivor who was hidden from the Nazis by his father’s employees. “How could we be part of a system that doesn’t even look at it? I couldn’t keep it in the garbage can.”

The two would need help. “We were having money problems—because Tom was a ghetto poor lawyer,” Bellamy joked recently as the three rode together in Hoffman’s car to a lunch upstate. (Hoffman is actually a successful solo practitioner, but reversing a wrongful conviction generally requires years of costly investigation and litigation.) In an echo of Bellamy’s letter-writing campaign, Hoffman sent the Court TV tape to every major law firm he could find. None wrote back, until—nine years after Bellamy’s conviction—newly minted Cravath partner Darin McAtee ’91 took the tape home to watch with his wife.

“She said, ‘You have to take the case—that guy’s innocent,’” McAtee recalls. They were both struck by Bellamy’s reaction to the verdict: “You could just tell that he was so rattled by this—it’s not the reaction you would expect from somebody who had killed somebody.”

Soon McAtee was immersed in his first-ever criminal case, knocking on doors in blighted Far Rockaway and heading up to Shawangunk to meet his new client. Cravath would end up pouring around \$5 million in pro bono hours and costs into the case. At its height, McAtee says, it was “the equivalent of a major case for any big corporate client,” with two Cravath partners—McAtee and his friend Antony Ryan ’95—as well as six associates and two private investigators working full time.

After a winding journey—prolonged by Bellamy’s refusal to accept a plea that would have implied guilt, even in exchange for his freedom—the team won Bellamy a new trial in June 2008. He was released from prison that August, and all charges were formally dismissed in September 2011.

Hiles joined what he calls this “unlikely troop” in 2009, when he spent the summer before his senior year at Brown interning in Hoffman’s office. He was working on a separate case but got to know Bellamy a little; he describes him, during their first meeting, as “shy but then very warm,” with a sense of humor in spite of the “sword of Damocles” of “possibly having to return to prison for life” hanging over him. Hiles then kept in touch with Hoffman while teaching middle school English in Jackson, Mississippi, through Teach For America, during which time he accepted Hoffman’s invitation to start putting together a manuscript of the Bellamy saga. A year into HLS, he took a leave to

work full time on the book, which he and Hoffman are now finalizing.

During that year, Hiles also began assisting with Bellamy’s civil claims: the state case, which settled in May for \$2.75 million, and the federal case, which continues to go forward in front of Judge William F. Kuntz II ’77. For the state case, Hiles helped Hoffman prepare a comprehensive letter, presentation and binder boiling down the entirety of the case; for the federal case, he’d already logged well over 500 hours, culling nearly 30,000 pages of discovery, prepping for and attending depositions and hearings, working on various discovery motions—all while completing his 2L year.

Hiles is reluctant to put his own involvement front and center—insisting that he can’t begin to understand the toll of the work the way the lawyers who have been with Bellamy since 2004 can—but he speaks about Bellamy’s odyssey with encyclopedic knowledge. Anger comes through when he discusses the state’s attempts to “use Kareem’s fear of dying in prison to extort a face-saving plea for them,” and pride when he discusses his refusal to take the deal.

“We’ve become like a tightknit family,” Hiles says, noting the letters and meals that he, Bellamy, and Hoffman still share with the other lawyers and investigators who worked on the case. The bond is especially deep, he notes, between Hoffman and Bellamy: “Tom’s been the one person Kareem can count on in his life.”

The now-48-year-old Bellamy is quick to emphasize that if he could give up the money to change what happened to his 26-year-old self, he “would do it in a second.”

“I cry a lot because of my kids,” he says. When he was arrested, he had three children under the age of 10. “They were affected just as much as I was. In a way I think even more—because they didn’t deserve to be raised without a father.”

Though Bellamy now devotes his own time to helping others who have been wrongfully imprisoned, Hoffman stresses that the team’s work helping Bellamy is far from over. “They say lawyers shouldn’t get involved with their clients,” the 71-year-old laughs. “But I never really agreed with that.”

Hiles has adopted the same ethos: He describes Kareem as a “close friend” and knows his life inside out—from his case to his family to his health problems.

“As I told Jonathan and Kareem,” Hoffman adds, “if we’re unable to help Kareem transition back, then we’ve done nothing.” He pauses, shifting to address Kareem: “We’ve gotta help you get back on your feet.” —MICHAEL ZUCKERMAN ’17

→ “We’ve become like a tightknit family,” says Hiles.



Versatile

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Nimble

CHIEF JUSTICE JOHN G. ROBERTS JR. '79: A MASTERFUL MANAGER

BY MARTHA MINOW

Sept. 29 of this year marked the 10th anniversary of the day Chief Justice John G. Roberts Jr. '79 took his seat on the U.S. Supreme Court. At the time of his appointment, he was the youngest justice on the Court. Nonetheless, right from the start, his leadership has shown mastery and deft management—not only of the Supreme Court but also of the federal judiciary.

This initial decade of his service prompts many commentators to venture assessments about the Court's

direction. Rough tallies of the outcomes and tilt of high-profile decisions provide the focus. Here, the work of Chief Justice Roberts defies simplistic summary. During the past decade, the Court—with the Chief in the majority—has restricted campaign contribution limitations and voting rights enforcement. Writing for the Court, he rejected the use of race to assign students to public schools. Yet, led by the Chief Justice, the Court also has upheld, twice, President Obama's health care reform. His opinion for the Court bars judicial candidates from directly

soliciting donations. He joined the majority in ensuring physical accommodations for pregnant workers. He wrote for the majority that police officers do not necessarily violate a person's constitutional rights when they

stop a car based on a mistaken understanding of the law, but he also joined the Court's majority in denying police the authority to detain and search drivers during traffic stops. His opinion for the Court protected freedom of speech by protesters on a public sidewalk near a funeral, and he has joined many

other decisions strengthening protections for freedom of expression.

Chief Justice Roberts does not always agree with the prevailing rulings. He joined dissenters when the Court extended constitutional protection for marriage to couples of the same sex. He similarly joined the dissent when it offered broad deference to agency interpretations of their own jurisdiction and when it rejected a challenge to a state's refusal to issue license plates decorated with the Confederate flag.

As he indicated during his confirmation hearing before the Senate Judiciary Committee, Chief Justice Roberts' decisions are not likely to etch a consistent political agenda. His decisions apply and interpret the Constitution and statutes with great learning, precision, and discipline. His opinions and his votes provide considerable evidence that he tries to act impartially and with restraint, as he told the Senate he would. He testified at his confirmation hearings: "I think it is a very serious threat to the independence and integrity of the courts to politicize them. I think that is not a good development, to regard the courts as simply an extension of the political process. That's not what they are." These views help to explain why this Chief Justice has often defied expectations—and generated criticisms from both conservative and liberal Court-watchers. Chief Justice Roberts also told the Senate during the confirmation hearings that the Court and the nation are served better by unanimity than by closely divided decisions.

As chief justice, he can nudge the Court in this direction. He can contribute to the tone and even to results by

framing discussion during the private justices' conference and by assigning the drafting of opinions when he is in the majority (and assigning the drafting of dissents when he falls on that side). For example, he can assign the drafting of an opinion to a justice—including to himself—who is likely to write a narrow or modest opinion rather than a broad and sweeping one. Chief Justice Roberts has used these opportunities to promote greater consensus. Neal Katyal, former acting U.S. solicitor general, commented in a recent story in *USA Today*: "The signs thus far point to something that we have seen emerging over the past few years—that the chief justice is truly fashioning the court into his own image. ... There is less ideology and more unanimity."

An outstanding appellate lawyer before joining the bench, Chief Justice Roberts prevailed in 25 of the 39 cases he had argued before the Supreme Court while in practice, and he represented plaintiffs and defendants, corporations and indigent individuals. In high school, he served as halfback, linebacker and captain of the football team. On the Court, he leads with versatility and nimbleness, mindful of the different roles and ongoing relations of justices, advocates, and parties. Chief Justice Roberts has cautioned against rhetorical excesses and "tar[ring] the political branches with the brush of bigotry."

One aspect of his role seldom seen by the public involves overseeing the entire federal judiciary. He chairs the Judicial Conference. There, the chief judges of each court of appeals, district court judges from each regional judicial circuit, and the chief judge of the United States Court of International

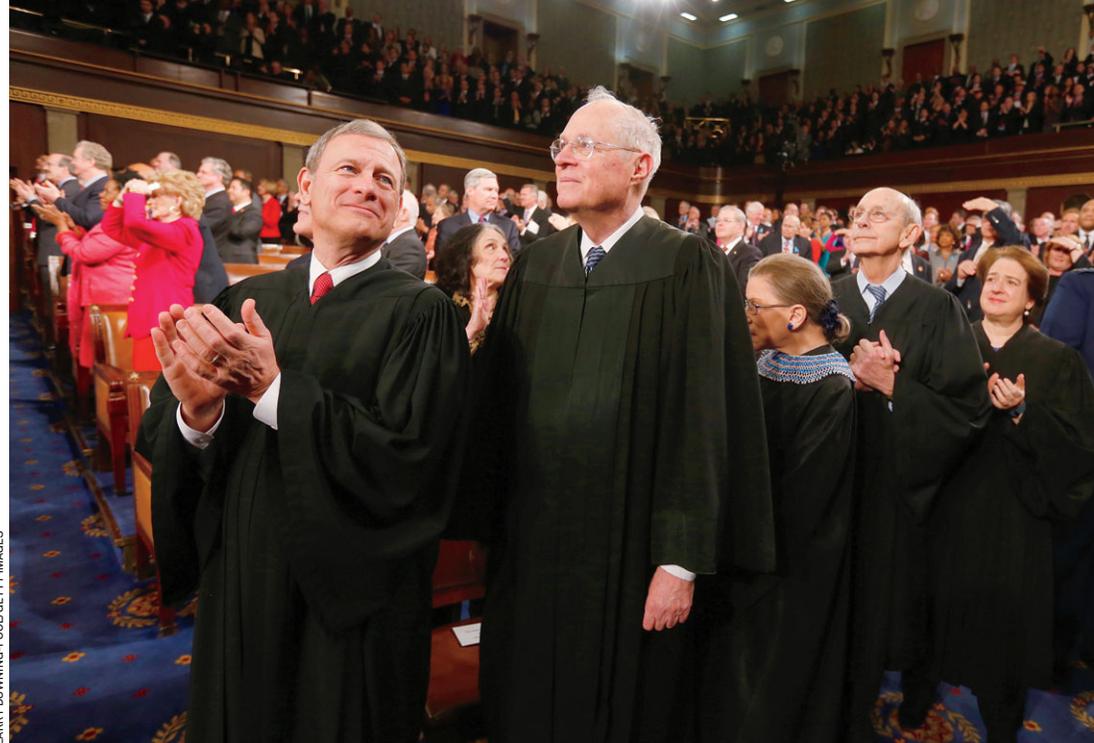
The Chief Justice's annual reports can be poetic and hint at a droll sense of humor.

Trade develop national judicial administrative policies, recommend legislation and rules of procedure and evidence, devise case management and electronic access to court documents, and oversee surveys of judicial business.

In his 10 annual reports to Congress thus far, Chief Justice Roberts has outlined improvements in judicial administration and efficiency including cost-containment measures both before and following the economic downturn. These reports also have shown his deep immersion in history. They also manifest his steady attention to preconditions for judicial integrity and independence “to fulfill the Framers’ vision of a judicial branch with the strength and independence ‘to say what the law is,’ without fear or favor. *Marbury v. Madison* (1803).”

His historical references can be poetic. He reflects on efforts by the Smithsonian Institution (he chairs the board of the world’s largest museum complex) to preserve the American flag known as the Star-Spangled Banner: “This tattered flag nevertheless inspires deep reverence. Why? Because it speaks eloquently to the sacrifices of every American who has contributed to the preservation of the United States.” His comments can also be vivid, as in his description of the experience of moviegoers during the Great Depression:

“In 1935—in the midst of the Great Depression—many Americans sought respite from the Nation’s economic troubles at their local movie theaters, which debuted now-classic films, such as *Mutiny on the Bounty*, *Top Hat*, and *Night at the Opera*. Moviegoers of that era enjoyed a prelude of



LARRY DOWNING-POOL/GETTY IMAGES

short features as they settled into their seats. As the lights dimmed, the screen beamed previews of coming attractions, Merrie Melody cartoons, and the Movietone newsreels of current events. The 1935 news shorts also provided many Americans with their first look at the Supreme Court’s new building, which opened that year.”

His reports give hints of a droll sense of humor: “New Year’s Day in America means football, parades, and, of course, the Year-End Report on the Federal Judiciary.” In this comment, as when he traced public awareness of the majestic Supreme Court building to the short movie features watched by moviegoers escaping from the Depression, Chief Justice Roberts reveals a sense of proportion and modesty about the Court and his role, traits that do not always accompany impressive and talented people in positions of great power.

Although clearly not a favorite topic, the low salaries for federal judges figure prominently in his reports to Congress. He notes the large number of judges leaving the bench for private practice due to financial need. This

trend risks undermining the experience, diversity and independence of the judiciary. He observes how the cost of modest salary increases for judges would be “miniscule” in comparison with what is at stake. His year-end reports honor the thoughtfulness and decency of those serving the judiciary. He points to retired senior judges, who, without extra compensation, carry caseloads—much needed, especially in overburdened districts. (After these reports, judicial salaries did rise.)

In 10 years at the Supreme Court, Chief Justice Roberts has drawn upon the lessons from his distinguished private practice and his public service as a special assistant to the attorney general, as associate counsel to the president, as principal deputy solicitor general, and as a judge on the Court of Appeals for the District of Columbia Circuit. There have been 44 presidents but only 17 chief justices of the United States. Chief Justice John Roberts has made his alma mater very proud.

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Martha Minow is the Morgan and Helen Chu Dean and Professor at Harvard Law School.

“Chief Justice Roberts reveals a sense of proportion and modesty about the Court and his role, traits that do not always accompany impressive and talented people in positions of great power.”

Undermining Injustice, One Prison Visit at a Time

Fernando Delgado '08 and his students in the International Human Rights Clinic put prisoners' voices in Brazil at the heart of a human rights case / By Cara Solomon / Photograph by Dana Smith



There is no marker

in Aníbal Bruno prison that speaks to home. In some cells, there are only dozens of men, sleeping on floors stained with feces, eating out of plastic bottles cut in half. But when he stands at the bars, Fernando Ribeiro Delgado pauses, as he would at the doorstep of any stranger's house.

He offers a handshake to every man inside. He looks them in the eye. He calls each prisoner "Sir." And though Delgado already has official permission to enter, he asks, because asking matters: Would it be all right if I came in?

"It's the kind of respect that is obviously required, but that they are denied regularly by nearly everybody," said Delgado, a clinical instructor in the International Human Rights Clinic at Harvard Law School.

Over the course of the years, as an expert on prison conditions in Brazil, Delgado has argued before the inter-American human rights system; negotiated with government officials; and nurtured relationships with prisoners' families, prison officials, and members of the national press. But it all begins, for Delgado, in the cell blocks and hallways of Brazil's most overcrowded prisons, listening to the people who live there.

Born in Brazil, fluent in Portuguese, Delgado has worked in these prisons for years, challenging his clinical students to think through the complications that come with mass incarceration and neglect. Inside Aníbal Bruno, they watch him closely: the calm, firm way he negotiates with officers for access; the undivided attention he gives to prisoners; the deference he shows to his local partners, whom he considers the undisputed experts in the rhythm of the place.

"I was really impressed to see him being so respectful, being so collaborative in his efforts, and not the Harvard professor who knows all," said Colette van der Ven '14. "He was a role model for so many of us."

Any praise that comes his way, Delgado deflects to his mentors, in particular his clinical professor, James Cavallaro, former executive director of the HLS Human Rights Program and current vice chair of the Inter-American Commission on Human Rights. Over the years, Cavallaro has tracked Delgado's career: Fearless, rigorous and dedicated are the words that come to his mind.

"Fernando's work in detention centers in Brazil is unparalleled by anything being done by any clinic or NGO outside Brazil," said Cavallaro. "He's documented the most serious abuses in the most dangerous centers in the country."

José de Jesus Filho, a Brazilian human rights lawyer, saw the potential when Delgado was an HLS

student investigating the high-profile prison and police violence that hit São Paulo in May 2006. Delgado kept at it until 2011, when the HLS clinic released a joint report that exposed widespread police corruption and, according to de Jesus Filho, changed the way the Brazilian public viewed the sequence of events.

To de Jesus Filho, who monitored prisons for 20 years with Pastoral Carcerária (Catholic Prison Ministry), that kind of commitment stood out.

"When Fernando starts with something, he goes to the end," he said.

In the field

of prison rights advocacy, litigation before the inter-American human rights system is a powerful tool. When the court orders emergency measures, it binds all levels of government to the promise of protecting the life, safety and health of the persons at that facility. This, in turn, triggers a system of monitoring and reporting.

One of the clinic's closest partners, Justiça Global (Global Justice), was at the forefront of this litigation, helping to secure protective measures at Urso Branco, one of the country's most notorious prisons, back in 2002. It's a case Delgado worked on as a fellow with Justiça Global and is still litigating today.

The work on Aníbal Bruno began years later, when a group of Brazilian rights organizations looked at mass incarceration patterns across the country and found another focus: the state of Pernambuco, where a new policy provided bonuses to police for every arrest they made.

Soon enough, they honed in on Aníbal Bruno, one of the largest prisons in Latin America, and among the most abusive. Since then, the clinic has worked with Serviço Ecumênico de Militância nas Prisões (Ecumenical Service of Advocacy in Prisons), Justiça Global, and Pastoral Carcerária to secure precautionary measures for all persons at Aníbal Bruno—including prison staff and the families of prisoners.

"I like this word Fernando uses: coalition," said Wilma Melo, of Serviço Ecumênico de Militância nas Prisões, a longtime advocate and the family member of a former prisoner. "Each step we take, we take it together, and I believe this is the strength of our work."

Years of monitoring have led to clear wins: a camera ban lifted, a punishment cell dismantled, medical help for the critically ill. Hundreds of illegally detained prisoners have had their cases reviewed



In Aníbal Bruno—a prison designed for fewer than 2,000 men, now holding 7,000—gangs of prisoners force payment from anyone who wants a designated place to sleep.

and then have been released—including a forgotten man who was kept incarcerated 10 years beyond his original sentence.

But for every individual violation reported and remedied, there are thousands more. In a prison designed for 1,819 men, the population recently hit 7,000. At best, there might be one officer on shift for every 100 prisoners.

With so few officers on duty, gangs of prisoners take on, or are given, the power of policing. Their leaders, known as “Chaveiros” or “locksmiths,” have keys to the cells and use them to govern an economy of beds, forcing payment from anyone who wants a designated space to sleep. On Delgado’s first visit to Aníbal Bruno, he met with a Chaveiro whose personal cell was furnished with a full-sized mattress and a meeting table. A cellphone lay on the tabletop. A knife hung from his belt.

“It’s chaos,” said de Jesus Filho.

At the very least, advocates say, the monitoring has forced a kind of reckoning on prison officials. They’ve gone from denying the depth of the problems at Aníbal Bruno to acknowledging many of them, and working with others to address them. This may be why, at one public meeting, a representative from the prison officers’ union put the question to

the clinic and its partners:

“Can we get precautionary measures for every other prison in the state?”

When Delgado, his

students and his partners walk through the entrance to Aníbal Bruno, they hear the same thing every time. First, the call goes out, from one cell to another: “Human rights!”

Then come the arms, reaching out from behind the bars, too many to count: “Over here!” “Over here!” “Over here!”

Some days, the team will interview more than 100 people. The students will pair off with Delgado and then settle into a space the prisoners have cleared for them. In the presence of women, some prisoners will put on their shirts. They’ll offer what water they have on hand. And then the stories will start.

Months of picking through international law could not have prepared James Tager ’13 for the pressure. At one point, he took down all the details that made up one man’s story and then realized, as he was leaving the cell block: He had forgotten to ask for the

man's name and ID number.

"It's not like you can call back next week and double-check the facts," said Tager, who later got the man's name. "I was literally shaking—this idea that after talking to someone, because I hadn't gotten his name, he wouldn't be helped."

The learning for students is intense, said Clara Long '12, who now visits detention centers as an immigration and border policy researcher with Human Rights Watch. She trained under Cavallaro and Delgado, working with them on the Urso Branco case.

"You have a very compressed time period to build trust with someone, figure out how to keep them safe while they're talking, figure out the right questions and get the most accurate information possible," said Long.

Nerve-racking is a good word for it. Before going through the metal detectors, van der Ven took a picture of a badly beaten man, only to hear a prison official's warning about the camera ban inside. The ban had been in place for months, but there, in the moment, Delgado had an idea: Can anyone here draw?

Van der Ven had taken a few art classes in high school. That was enough.

"Just draw what you see," he told her.

As she sketched a warehouse where hundreds of men ate and slept, some of the prisoners organized themselves so she could better see the space. Others gathered around, looking over her shoulder.

"It was like a unifying moment," said van der Ven, now an associate in trade litigation at Sidley Austin. "We were all working toward justice for them."

When the prisoners spotted a friend of theirs in her sketch, they joked that he was headed to the U.N. Instead, the coalition presented a slideshow of the sketches during a public hearing with the prosecutor's office. The next time the team visited Aníbal Bruno, the camera ban was no longer in place.

There are many days when the question comes to Delgado's mind: Are we making a difference?

Sometimes, the answer is clear and yes. Last spring, in response to repeated concerns the coalition raised, the court ordered a ban on strip searches of prison visitors. Several months later, prison administrators had passed their own statewide ban.

Number of people affected: 30,000 families every week.

But in prison work, there are constant reminders of the limits of legal advocacy. Recently, after the coalition created an online archive of thousands of pages of evidence, the state put the camera ban back in place.

So Delgado tries to remember: Small victories matter. The human barrier he forms with his students and partners, so that a prisoner suffering knife cuts

can talk to medical staff privately, without the scrutiny of an officer. The extra time a team stands by the gate of the warehouse, refusing to leave until each prisoner gets bread they've been denied.

With their actions, they are undermining injustice in the moment. They are sending a message to all who are watching that every person is equal—deserving of dignity, protection and privacy.

"It's not enough to report on the problems," said Melo. "You have to make an impact there in the moment in order to produce the change."

Take cell number

5. Melo had reported it before: a tiny, dank punishment cell, where Chaveiros would dump prisoners they had beaten. A long metal sheet was welded to the bars of the cell, perforated with small holes for air and light.

"The only thing comparable would be hell," said Celina Beatriz Mendes de Almeida LL.M. '10, who trained under Delgado and went on to become a professor at the Fundação Getulio Vargas School of Law's Human Rights Clinic in Rio de Janeiro.

The team interviewed the 16 men inside, photographed their injuries, took down their names and then walked to the warden's office, where Melo announced that she had "discovered" a punishment cell.

Nearly an hour later, after the prisoners had been removed, the warden stood in front of it, surrounded by a gang of Chaveiros, their arms folded across their chests. Hundreds of prisoners watched in silence behind them. Melo had insisted the metal door come down.

The warden examined it again, then finally turned to a nearby prisoner, and ordered him to find a tool that could remove it.

From somewhere in the crowd of prisoners, there came a suggestion: "A hammer?"

Yes, Melo said, a hammer. And so it came to be, that late one October afternoon, in one of the worst prisons in the country, the warden called for a hammer, and a prisoner proceeded to swing it, and together they brought the metal door down.

Even now, it is hard for Delgado and Melo to describe the emotion of the moment. To comprehend the ripple effects it had—for the prisoners, the warden, the Chaveiros, and beyond.

It was not the kind of victory that would make the newspaper. But it spread the spirit of possibility within the system, so that years later, when a prisoner told Melo about another punishment cell, he asked her to dismantle it, just like she did with cell number 5.



Wilma Melo, a longtime advocate in the Anibal Bruno prison, is a member of one of the organizations with which Delgado and his students collaborate. "Each step we take, we take it together," Melo said, "and I believe this is the strength of our work."

By Julia Collins

PHOTOGRAPHS BY WEBB CHAPPELL

All-Star Team *on a* Winning Streak

Cite by cite, download by download, the HLS corporate governance group has built a powerful reputation among scholars and practitioners, in classrooms, courtrooms, and boardrooms, for its prolific output of influential work. 2014 was the third time in a little more than a decade that half or more of the “Ten Best Corporate and Securities Articles” of the year (Corporate Practice Commentator) were written by HLS professors. Studies by corporate governance faculty have attracted about ten thousand citations on SSRN (Social Science Research Network); at the end of 2014, 13 HLS faculty made SSRN’s 100 most-cited law professors list—with Lucian Bebchuk ranking first. One of the most widely read law websites is the school’s Forum on Corporate Governance and Financial Regulation.

We checked in with several corporate law faculty during the summer for an update on what they are thinking and writing about, and to ask what motivates their choice of research topics.

**CORPORATE GOVERNANCE
SCHOLARS AT
HARVARD LAW
KEEP PUTTING UP
GREAT NUMBERS**



“MANY NORMAL PROCESSES of corporate governance that keep too-big-to-fails moving forward efficiently can start to degrade,” making the financial system overall more vulnerable.

The Too-Big-To-Fail Problem

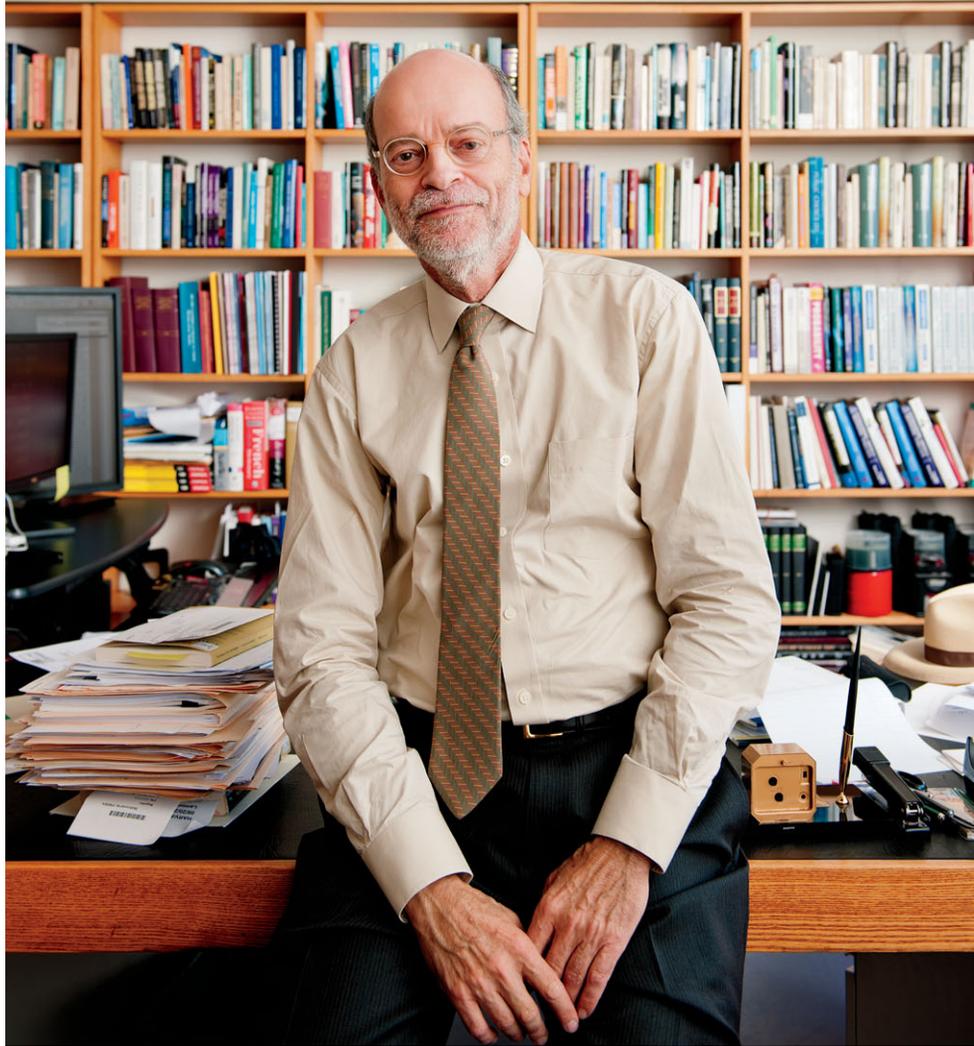
MARK ROE '75

David Berg Professor of Law

IN 2010, THE GLOBAL FINANCIAL CRISIS waning, Federal Reserve Chair Ben Bernanke talked about the dangers of huge conglomerates going under and said, “If the crisis has a single lesson, it is that the too-big-to-fail problem must be solved.”

Five years later, the problem isn't solved, but where do things stand now? Mark Roe, who has written multiple papers and op-eds relating to the crisis, in the *Financial Times* and *The Wall Street Journal*, recently applied corporate governance mechanisms “to understand how too-big-to-fail firms will wind up,” in his article “Structural Corporate Degradation Due to Too-Big-To-Fail Finance” (*University of Pennsylvania Law Review*, 2014).

Roe's article won the 2015 European Corporate Governance Institute's Allen & Overy Law Prize for best corporate governance paper; it was also voted one of 2014's “Ten Best” in the poll of corporate and securities law professors conducted by *Corporate Practice Commentator* (as was his co-written article in the *Virginia Law Review* on the foundations of bankruptcy priority). In it he details how inefficient financial conglomerates have been shielded from restructuring pressures thanks to the “too-big-to-fail funding boost”: the lower debt-financing rates from lenders confident that the U.S. government won't risk having corporate giants go under. This boost undercuts firms' natural tendency to spin off businesses that no longer fit, since spunoff or restructured firms would lose that embedded subsidy. “Many normal processes of corporate governance that keep too-big-to-fails moving forward efficiently can start to degrade,” explains Roe, making the financial system overall more vulnerable.



The consensus is that regulation has improved, he says. To the extent it has, the funding boost should diminish accordingly. Then deal-financing interest rates will no longer exceed debt-servicing rates, “and the largest financial firms will face strong pressures to resize and restructure.”

Roe testified before Congress on “The Bankruptcy Code and Financial Institution Insolvencies”—a subject on which he has written several law review articles and op-eds since the financial crisis. An article underway examines and updates 100 years of bankruptcy history. “Normally, a handful of decision-making mechanisms are available to decide how and whether to restructure bankrupt firms,” he says.

The dominant mechanism has shifted over the last century, often in response to market conditions, with the big three having been an administrative system imposed by a judge or regulatory agency, arising during the 1930s; a deal among creditors of a firm, dominating in the 1970s and 1980s; and the sale of the intact firm in recent decades.

Also on Roe's agenda: a chapter in the forthcoming “*Oxford Handbook of Corporate Governance*.” Here he returns to his 30-year interest in how big-picture political currents and interest groups affect the structure of corporate and financial law—a topic he developed in two books and a dozen law review articles.

FERRELL TESTS THE agency view that corporate social responsibility directs managers toward doing good with other people's money.

THE FINANCIAL CRISIS HAS GENERATED a huge amount of securities litigation, and for Allen Ferrell, related legal issues have been of particular interest. He has covered many, applying law and economics analysis to the credit crisis, the housing market downturn, and subprime mortgage lending, among other things.

Now he has a paper coming out in the Washington University Law Review (written with Stanford Law School colleague Andrew Roper) on the Supreme Court's June 2014 decision in *Halliburton Co. v. Erica P. John Fund, Inc.* (aka Halliburton II). The decision holds that big institutions may be able to defeat class certification in securities fraud cases if the defense can show that the alleged misrepresentations had no impact on the stock price.

"Our paper addresses the intersection of law and economics in this case," Ferrell notes. "As economists, we're asking: What economic evidence would speak to the showing or lack of showing of existence of a price impact?"

Ferrell is continuing research and analysis started in "Socially Responsible Firms," a paper that won the 2014 Moskowitz Prize for outstanding quantitative research. He and co-authors Hao Liang and Luc Renneboog use large-scale data sets for 59 countries on firm-level engagement and compliance with environmental, labor, and social issues.

Using the econometrics method of instrumental variables, they test the "agency view" that corporate social responsibility, or CSR, directs managers toward "doing good with other people's money," wasting corporate resources and weakening internal governance. In fact, the authors find that better-managed firms engage in more CSR. "That's because firms getting high valuations tend to be well run generally and therefore are on top of climate impact, employee protections," and other CSR issues, Ferrell explains, whereas when a company "is a mess in terms of its internal systems, it's not on top of things in other areas either."



A Matter of Securities

ALLEN FERRELL '95

Harvey Greenfield Professor of Securities Law

“IF A COMPANY is buying and selling a lot of its own shares, catering to long-term shareholders may well lead managers to destroy economic value to get the long-term stock price up.”



Mom, Apple Pie and Long-Term Shareholder Value

JESSE M. FRIED '92

Dane Professor of Law

THE COMMON DENOMINATOR for two recently published articles by Jesse Fried is a unique and increasingly important feature of U.S. public corporations—they buy and sell \$500 billion to \$1 trillion of their own shares annually, via stock repurchases and equity issuances. “Firms on average are trading about 30 percent of their market capitalization over a five- to six-year period,” Fried explains. Yet the firms aren’t required to provide detailed, timely reports of these transactions—only monthly or quarterly aggregate data “that is not disclosed until five or six months later.”

“Insider Trading via the

Corporation” (University of Pennsylvania Law Review, 2014), featured on the 2014 “Ten Best” list, focuses on an important implication of this unfettered “new world” of trading: Management teams can use corporation transactions indirectly to benefit from inside information, at the expense of public investors as a whole. “If the CEO wants to buy \$1 million in shares on his own account, he has to report and it is public within two days,” Fried explains. However, “if she owns 5 percent of the company and the company buys back \$20 million in shares at a low price, it is economically equivalent to buying \$1

million in shares personally, except that nobody will ever see this transaction. We will see only the total amount of shares repurchased by the firm that month, and will see this only several months later.” Hong Kong and countries including the U.K. and Japan require disclosure of these transactions within a day or two, a practice Fried thinks the United States should adopt.

In “The Uneasy Case for Favoring Long-Term Shareholders” (Yale Law Journal, 2015), Fried challenges the popular view that managers who serve long-term over short-term shareholders’ interests will generate more economic

value for the firm. “Like Mom and apple pie, long-term shareholder value is supposed to be good by definition,” Fried says. But here, too, transacting corporations complicate the picture: “If a company is buying and selling a lot of its own shares, catering to long-term shareholders may well lead managers to destroy economic value to get the long-term stock price up.” For example, managers may manipulate the stock price down when the firm is repurchasing shares or pump the stock price up when it is issuing shares. Evidence suggests these manipulations will happen, Fried says.

BEBCHUK IS A principal drafter of a rulemaking petition that urged the SEC to adopt rules mandating that public companies disclose their political spending to investors. The petition has thus far received support from more than a million comments that have been filed with the SEC.

LUCIAN BEBCHUK, DIRECTOR OF HLS'S Program on Corporate Governance, is working on several fronts at once, including writing and research projects on how long-term value creation would be best facilitated, hedge fund activism, empirical corporate governance, and corporate political spending.

From proxy battles to liquidating assets, the influence that hedge funds have remains a contentious topic. In "The Long-Term Effects of Hedge Fund Activism" (Columbia Law Review), published this June, Bebchuk and co-authors Alon Brav and Wei Jiang examine whether such activist interventions ultimately hurt or help companies and their shareholders. Analyzing data across a "five-year

window," the authors find that it does not support concerns that activism has adverse effects in the long term and that such concerns do not provide a valid basis "for limiting the rights, powers, and involvement of shareholders." The Wall Street Journal, The New York Times, The Economist, and many other media outlets have reported on the article's findings and their implications for the policy debate.

How governance provisions affect share value is another issue Bebchuk has taken up in several studies. In earlier work, he and HLS faculty colleagues Alma Cohen and Allen Ferrell set forth a comprehensive "Entrenchment Index" based on key provisions that correlate negatively with

shareholder value, including golden parachutes, poison pills and staggered boards. As of this summer, financial economists have deployed the index in more than 300 papers. Bebchuk is now engaged in further empirical research on the relationship between particular governance provisions and shareholder value.

With regard to corporate political spending, Bebchuk and Robert J. Jackson Jr. '05 were the principal drafters of a rulemaking petition, submitted by a 10-professor committee they co-chaired, that urged the SEC to adopt rules mandating that public companies disclose their political spending to investors. The petition has thus far received support from more than a million comments that have been filed with the SEC, as well as from 44 U.S. senators and many institutional investors. Bebchuk and Jackson followed up with a 2013 Georgetown Law Journal article, "Shining Light on Corporate Political Spending," and they now have a monograph in the works on the topic, with co-author James Nelson.

A Director at Work on Many Fronts

LUCIAN BEBCHUK LL.M. '80 S.J.D. '84

William J. Friedman and Alicia Townsend Friedman
Professor of Law, Economics, and Finance



“WHAT WOULD HAPPEN if you put everything on the table, and tried to sort out a compromise package on corporate governance that we could agree, overall, is a better regime than what we currently have?”

“I’VE HAD THE BENEFIT OF having a seat at the table in two very different schools,” says Guhan Subramanian. “At the law school, the agency lens and incentive design are important tools when we think about boards’ work and how managers do their jobs. On the other side of the fence, at Harvard Business School, I teach in an executive education program called Making Corporate Boards More Effective, which is for public company directors. I sit on one public company board myself, and when I look around the table, I see people who are fundamentally trying to do the best job they can.”

From this dual perspective, Subramanian offers fresh proposals on governance challenges. His article “Delaware’s Choice” (Delaware Journal of Corporate Law), which also made that 2014 “Ten Best” list, takes “a more nuanced approach” to the vigorously debated staggered board structure, in which a fraction (often one-third) of the directors are elected at a time rather than en masse.

“Corporate Governance 2.0,” published in the Harvard Business Review in March 2015, is a more practitioner-oriented extension of “Delaware’s Choice.” It is his response to the “knee-jerk reactions” to governance issues that frequently set shareholder advocates and more board-centric advocates at odds.

“We all know from the Negotiation Workshop at HLS that if you negotiate issue by issue, you’re not going to achieve value-creating trades across the issues,” Subramanian says. “Corpo-



Negotiating Corporate Governance

GUHAN SUBRAMANIAN J.D./M.B.A. '98

Joseph H. Flom Professor of Law and Business, Harvard Law School;
H. Douglas Weaver Professor of Business Law, Harvard Business School

rate Governance 2.0” is the result of a thought experiment: “What would happen if you put everything on the table, and tried to sort out a compromise package on corporate governance that we could agree, overall, is a better regime than what we

currently have?”

Over the past few months the article has been quoted favorably in The Wall Street Journal and The American Lawyer, among other places. In a recent speech at Stanford Law School, SEC Commissioner

Daniel Gallagher praised Subramanian’s “potentially transformative approach to the corporate governance debate,” calling “Corporate Governance 2.0” an “antidote to the caustic trench warfare on these issues.”

"YOU CAN RATIONALIZE *Citizens United*, but not on the basis of the understood application of the First Amendment to corporations throughout U.S. history."

Corporations Are Our Creations

LEO STRINE

Senior Fellow of the Harvard Program on Corporate Governance;
Austin Wakeman Scott Lecturer on Law

AWAY FROM THE BENCH, THE eighth chief justice of the Delaware Supreme Court and former chancellor of the Delaware Court of Chancery writes and lectures on those interests that have always animated his career: "public service focused on building an inclusive society," he says, "combined with my professional preoccupation with the role of corporations in our society and globally."

Of late, Leo Strine has had his eye on two landmark U.S. Supreme Court cases and what they portend for the role of corporations in society, noting, "A concern of corporate law scholars is that the federal judiciary's understanding of the historical organization of corporations in the U.S. isn't as sound as it could be."

In his forthcoming article for *Notre Dame Law Review*, "Originalist or Original: The Difficulties of Reconciling *Citizens United* with Corporate Law History," written with Nicholas Walter, Strine takes issue with Justice Antonin Scalia's ('60) application of originalism in a concurring opinion for *Citizens United v. Federal Election Commission*. "You can rationalize *Citizens United*, but not on the basis of the understood application of the First Amendment to corporations throughout U.S. history," Strine contends. "Chief Justice Marshall's concep-



tion of the corporation was that it is the opposite of the Lockean/Jeffersonian citizen, of the idea that we each are born with inalienable rights." Rather, a corporation "only has the rights society gives to it."

In the past, "company leaders would focus on stockholders, follow the rules of corporate law and leave the rest to regulators," Strine says. Now the balance has shifted, and federal courts are receptive to granting corporate interests the right to act on society and the political process in ways that were not recognized 25 to 30 years ago. Yet when the executive branch and elected officials try to regulate corporate conduct, those actions are "put under

the judicial microscope."

Turning to his new article, "A Job Is Not a Hobby," due out in the *Journal of Corporation Law*, on the high court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, Strine cites the maxim of early common law, credited to Sir Edward Coke (1552-1634): "corporations have no souls." By accommodating the religious views of the owners of Hobby Lobby, a retail operation, the Supreme Court established that minimum health care benefits of the Affordable Care Act are no longer a worker's right but rather rely on the corporation's "conscience to give workers their due," leaving Congress to fill the gap, with shortfalls covered by other taxpayers.

Thus, *Hobby Lobby* allows a corporation, through whoever controls it, to "imbue its actions with religious ethos," Strine argues, and constitutes "another situation where government is regulating the private sector, and the corporation is able to exempt itself." He connects the Court's decision to America's legacy of corporate paternalism and employer efforts to restrict employees' freedoms.

Corporations "are our creation," he says. "These recent cases have potential to reduce the creator's capacity to regulate the conduct of its creation. This is an important issue in a globalizing economy, challenging every notion on how to constrain corporate behavior."

KRAAKMAN APPLIES “ASSET PARTITIONING” theory to ancient Roman commerce to explore “how sharply business assets were separated from personal assets when creditors made claims on business enterprises.”

Commercial Entities Weren't Built in a Day

REINIER KRAAKMAN

Ezra Ripley Thayer
Professor of Law

ONE ADVANTAGE OF A LARGE LAW school like HLS is its “deep bench of active business-law scholars,” says Reinier Kraakman. “Although our work and backgrounds are very different, we share general interests as well as a commitment to empiricism and meet often to discuss early drafts of each other’s projects.”

Kraakman spanned two millennia in his own research for two 2014 working papers. In “Incomplete Organizations: Legal Entities and Asset Partitioning in Roman Commerce,” he and his co-authors apply “asset partitioning” theory to explore differences between modern and ancient legal entities, “and especially how sharply business assets were separated from personal assets when creditors made claims on business enterprises in ancient Rome.” Roman laws apparently could accommodate highly utilitarian entities such as the *societas publicanorum*—akin to a limited partnership but available only for specialized purposes. But such niche forms lacked the legal powers required to support large enterprises.

“The most robust Roman entity was arguably the extended family whose assets were formally owned by its *paterfamilias* or patriarch,” Kraakman explains. “Rome relied on the estates of wealthy aristocratic families for much of its commerce, even if the nobles of these estates would engage in commerce only through slaves and subordinates.” The authors conjecture that Rome failed to create true legal entities for general use in part because its aristocracy had contempt for commercial activities, although in later centuries the imperial state’s distrust of large private enterprises also discouraged legal innovation.

Shifting to the present, in “Market Efficiency after the Financial Crisis:



It’s Still a Matter of Information Costs,” Kraakman and his co-author argue that contrary to common opinion, the global economic crisis did not undercut the long-standing Efficient Capital Market Hypothesis that stock prices respond rapidly to new information in actively traded markets. The crisis “disproved” the ECMH *only* if analysts took market efficiency to mean that prices precisely mirrored the fundamental value of financial assets—“a slippery concept because fundamental value is inherently unobservable, unlike

prices,” Kraakman explains. “A modest concept of market efficiency remains a reasonable working hypothesis for describing and explaining rapid price reactions to new information in markets for publicly traded stocks. Why these markets function as efficiently as they do is important,” he says, “and has continuing implications for regulatory reforms that attempt to mitigate the inevitable risks posed by new and complex financial instruments”—like the infamous collateralized debt obligations during the subprime mortgage crisis.

Beyond Obergefell: What's Next?

*After the landmark ruling,
the Bulletin looks at the
territory ahead*

BY LANA BIRBRAIR '15

Alumni Advocates for LGBT Rights Reflect on the Challenges That Remain

IN THE WAKE of the Supreme Court's decision in June in *Obergefell v. Hodges* holding that states cannot deny persons the constitutional right to same-sex marriage, the LGBT activist community is tackling the questions of what the movement will look like after the blockbuster win and how to engage the public with causes that have received comparatively scant attention.

AN OMNIBUS LGBT RIGHTS BILL

WITHIN DAYS OF OBERGEFELL, PROponents of LGBT rights were chiming in with a common refrain, a warning not to rest easy. As Peter Renn '06, a staff attorney at Lambda Legal, puts it: "You can get married on Monday, fired from your job on Tuesday, evicted from your house on Wednesday, and thrown out of a business on Thursday, all because of who you are."

Not all agree with that description. Chai Feldblum '85, a commissioner of the Equal Employment Opportunity Commission, disagrees with the part about being fired. Since April 2012, the EEOC has worked to include transgender, gay, and bisexual employees under its interpretation of Title VII's ban on public and private employers' ability to discriminate "on the basis of sex." For decades, courts have interpreted Title VII to prohibit discrimination against employees who do not conform

to gender stereotypes. According to the EEOC, LGBT individuals should also be able to seek recourse under Title VII, under the theory that such discrimination is based on employees' alleged failure to present their gender, or choose their partners, in the way employers expect based on their born sex. Feldblum fears that if people hear that the law does not protect them, they will think there is nothing they can do. Instead, she prefers to say, "You can get married in the morning and fired in the afternoon. But if you get fired, thank goodness the EEOC has opened its doors to taking your charge."

Though Renn and Feldblum may differ in the framing, they agree wholeheartedly on the goal: Congress needs to pass an omnibus bill in the mold of the Civil Rights Act of 1964, which widely outlawed discrimination on the basis of race, color, religion, sex or national origin. In the 1990s, Feldblum had worked with legislators on drafting such a bill. Then, in 1994, the military instituted Don't Ask, Don't Tell, a policy allowing LGB citizens to serve in the military, but forcing them to remain in the closet. "When you lose that badly on Capitol Hill, you really lose momentum," Feldblum recalls. The bill was scaled back to cover only employment, and the result, the Employment Non-Discrimination Act, has been introduced in almost every Congress since 1994 and has failed to pass each time.

In the meantime, regulators and litigators have tried using existing legislation such as Title VII to protect LGBT workers. But while the EEOC, as an agency, has significant discretion to do so, courts have been less consistently

willing to extend existing protections. For this reason and others, many agree that a sweeping bill explicitly offering protections on the basis of sexual orientation and gender identity is necessary.

TRANS RIGHTS

SINCE THE MOMENT CAITLYN JENNER became a transgender icon, it's as if the country has suddenly awoken to a conversation about trans rights it didn't realize had been missing. When Alex Chen '15, who wrote an article for the Harvard Law Review about how federal agencies have begun accommodating trans individuals, applied to law schools, he said, "it looked like there had been glacial movement. The fact that things have moved so fast in the past five years has caught me totally off guard."

A few of the most important changes involve routine paperwork. Commonplace tasks, from going to the doctor to applying for a job to doing business at the DMV or requesting Social Security benefits, can present herculean obstacles for a trans person, whose identifying legal documents and gender identity often don't match. As of just a few years ago, to change a person's sex designation on official documents, most federal agencies no longer require evidence of sexual reassignment surgery—which is rarely covered by health insurance and not always recommended for or desired by individuals who are transitioning.

Obstacles remain, such as the requirement of a doctor's note, which several countries have eschewed in

favor of a simple declaration from an individual of his or her gender identity. And trans rights can seem particularly subject to the political climate, says Chen, who pointed to a decision by a Virginia-based federal judge in July refusing to apply Title IX protections—which prohibit sex discrimination in schools—to a male-identifying trans student’s request to use male bathrooms. The opinion repeatedly refers to trans identities as a mental illness. “With people like that on the federal bench and a possibly less favorable administration,” Chen says, “we could see a period of retrenchment.”

CONNECTIONS TO POVERTY, ISSUES IN SCHOOLS

ALL ELSE BEING EQUAL, LGBT PEOPLE, particularly women, are more likely to be poor and to not have adequate daily food than heterosexuals. The statistics concerning trans people are even grimmer: They are four times more likely than the general population to live in poverty, twice as likely to be unemployed, and nearly twice as likely to be homeless. Inevitably, LGBT rights are intertwined with other social justice concerns about poverty and discrimination. “A right not to be fired from your job doesn’t mean all that much if you can’t *get* a job,” says Douglas NeJaime ’03, a professor at UCLA School of Law and faculty director of its Williams Institute, a national think

untouchable or unspeakable in certain contexts.” That begins with schools, he says. It means adopting curricula that are LGBT-inclusive, refusing to turn a blind eye to bullying in schools, and accommodating trans students in bathrooms, in locker rooms, and on overnight field trips, for starters.

RELIGIOUS ACCOMMODATION

RELIGIOUS ACCOMMODATION AND THE balancing of First Amendment rights with principles of nondiscrimination pose two of the greatest challenges for the LGBT community. In late March, Indiana gained attention when it passed its own version of the federal Religious Freedom Restoration Act, aimed at allowing individuals and companies to obtain religious exemptions from laws of general applicability. Indiana’s law sparked a nationwide debate about whether wedding photographers, caterers and others should be required to serve LGBT customers if doing so interferes with their religious beliefs.

According to Wu, the country can pick one of two paths. First, people could see LGBT discrimination as exactly the same as all other forms of prohibited discrimination. “The second and more dangerous path sees LGBT discrimination as different—as acceptable in certain situations,” he says. “That path forgets the long histo-

adopting the framework that “the mere existence of a gay person in the workplace or in your business substantially burdens your religious exercise.” He cites a GLAD case in which a food services manager at a Catholic high school cafeteria had his job offer rescinded after he listed his husband as an emergency contact on employment forms. In that case, Wu says, the man’s job had nothing to do with religion and he would have had almost no interaction with students.

IT IS RARE FOR A CONVERSATION ABOUT LGBT rights not to touch on how swiftly the movement has galvanized the public. Renn, in fact, fears that the LGBT movement could fall victim to its own success—that people will believe the fiction that “because we’ve won marriage, the fight is over and people can pick up their tents and go home.” From this side of history, it may well seem that way, says NeJaime. “Yes, there’s something dramatic about the rate of support that the marriage equality cause achieved in a relatively short time, but it’s also been a very long battle that a lot of people have fought for a long time.”

Months after *Obergefell*, attorneys and advocates for whom same-sex marriage was a job description look back on the day and declare, unequivocally, that it was a civil rights victory in the vein of *Brown v. Board of Education*, which desegregated schools, or *Loving v. Virginia*, which barred anti-miscegenation statutes. But such comparisons can be worryingly revealing, particularly of the limits of law. *Brown* was decided in 1954, yet de facto segregation persists in many schools to this day. Standing alone, without vigorous social movements that reinforce and act in accordance with the legal changes, judicial opinions can fail to create the long-lasting effects envisioned by their authors. “Legal victories are great,” says Wu. “But they’re just words on paper unless they make a real difference in people’s lives.”

“You can get married on Monday, fired from your job on Tuesday, evicted from your house on Wednesday, and thrown out of a business on Thursday, all because of who you are.”

—PETER RENN ’06

tank on sexual orientation and gender identity law and public policy.

According to Janson Wu ’03, executive director at Gay & Lesbian Advocates & Defenders, the end goal of the LGBT movement is “to create a world where our community isn’t treated as

ry of religiously based discrimination against other groups, like different races and women.”

While Wu recognizes the need for balance and the important religious liberty protections ingrained in the Constitution, he warns against



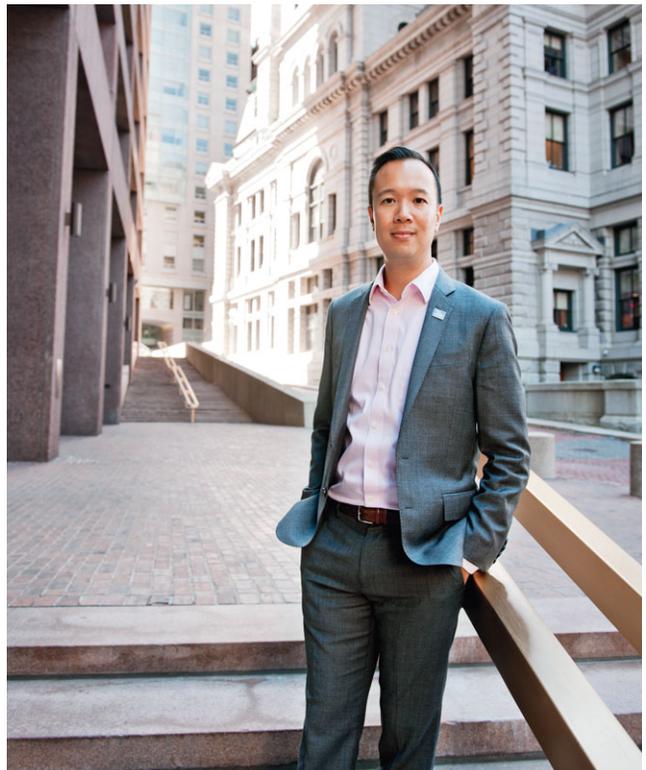
CHAI FELDBLUM '85 believes that in addition to efforts on other fronts, Congress needs to pass an omnibus LGBT civil rights bill in the mold of the Civil Rights Act of 1964.



DOUGLAS NEJAIME '03 sees LGBT rights as intertwined with other concerns such as poverty and discrimination.



PETER RENN '06 fears that “because we’ve won gay marriage, ... people will believe the fiction that the fight is over and people can pick up their tents and go home.”



JANSON WU '03 sees the end goal of the LGBT movement as creating “a world where our community isn’t treated as untouchable or unspeakable in certain contexts.”

Religious Liberties Proponents Survey the New Landscape

ONE YEAR AFTER a major win in *Burwell v. Hobby Lobby*, advocates for religious accommodation fear *Obergefell* could herald a narrowing of space for those who oppose same-sex marriage to express their views and could lead to a trampling of their beliefs.

ERIC RASSBACH '99 OF THE BECKET Fund for Religious Liberty, which filed an amicus brief in *Obergefell* urging the Court to leave room in its decision for religious rights, was heartened by at least one aspect of Justice Anthony Kennedy's majority opinion. Kennedy '61 signaled that the Court seemed to understand that, unlike the racists who defended the anti-miscegenation statutes overturned in *Loving v.*

Virginia, opponents of same-sex marriage base their opposition on "decent and honorable religious or philosophical premises."

Religious exemptions, according to Rassbach, are thus a question of religious liberty, not blanket discrimination. He rejects what he calls the red herring arguments involving "lunch counter" discrimination, whereby owners of private businesses could refuse to serve customers they know or suspect to be LGBT. Nobody, he believes, is really arguing for such a broad right to refuse service. Instead, he says, the real, thornier debate involves free speech rights and participation in same-sex marriage ceremonies themselves, citing the common examples of bakers and wedding photographers who oppose same-sex marriage.

Strong opponents of same-sex marriage, such as Robert P. George

'81, a Princeton University professor and recent visiting professor at HLS, see *Obergefell* as another in a line of cases, including *Roe v. Wade*, in which the Court overstepped its bounds and decided an issue better left to voters. Although he hopes that the political tide will change and the decision will be reversed or overturned by constitutional amendment, he says that the bigger battles in the coming years are likely to involve the tension between LGBT and religious rights.

For example, George argues, those who seek to restrict religious liberty exemptions only to "religious activities," and not to secular actions performed in religious institutions, misunderstand the nature of religious institutions. "Religious people cannot draw that distinction," he says. "They see religion pertaining to the whole of life, especially when it's the life of a religious institution." Among



ROBERT VISCHER '96 calls for more nuanced conversations about the scope of religious liberties.



ERIC RASSBACH '99 says religious exemptions are a question of religious liberty, not discrimination.



ROBERT GEORGE '81 believes the Court overstepped its bounds in *Obergefell* as in *Roe v. Wade*.

other concerns, George cited the possibility that religious organizations might lose tax-exempt status if they fail to accommodate same-sex marriage.

Although litigation and legislation involving religious rights are quickly moving through courts and legislatures, Robert Vischer '96, dean of the University of St. Thomas School of Law and a frequent author on religious rights issues, agreed that many of the upcoming battles will likely be cultural as much as legal. He believes opponents of same-sex marriage have overrelied on traditional characterizations of marriage that have long been eroded by the rise of no-fault divorce and the "cultural cheapening of marriage." In the aftermath of *Obergefell*, Vischer expects to see social conservatives focus on bolstering the traditional institution of marriage—a goal separate from eradicating same-sex marriage, which he thinks is politically unlikely. For example, he said, states may see a potential uptick in laws such as those in Arkansas, Arizona and Louisiana that allow couples to enter into "covenant marriages," which limit the grounds available for divorce.

More importantly, post-*Obergefell*, Vischer looks forward to more nuanced conversations regarding the scope and limits of religious liberties. Until now, he said, arguments have cut clean lines, with those who favor same-sex marriage arguing, almost automatically, that religious liberty exemptions ought to be limited, and those who oppose same-sex marriage arguing the opposite. "These are hard issues, and as a country, if we're going to continue to care about religious liberty, we have to take the question seriously and avoid these simplistic, black-and-white responses," Vischer said.

RELIGIOUS ACCOMMODATION IN THE AGE OF CIVIL RIGHTS

A major conference leads to scholarship exploring divergent views

In April 2014, at a conference held at HLS, "Religious Accommodation in the Age of Civil Rights," panelists articulated tensions within constitutional and statutory civil rights commitments. Scholarship stemming from the conference was published this year in special issues of three journals: the *Southern California Law Review*, the *Harvard Journal of Law and Gender*, and the *Harvard Law and Policy Review*. In these issues, authors with divergent views explore how best to respect both religious freedom and guarantees of individual equality and dignity in intimate relationships. Excerpts from several of the articles follow.
—E.N.

"I HAVE BEEN a gay rights advocate for more than 25 years. Here in this article, for the first time, I make common cause with my longtime adversaries. I have worked very hard to create a regime in which it's safe to be gay. I would also like that regime to be one that's safe for religious dissenters."

—ANDREW KOPPELMAN, professor, Northwestern Law School, "Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law," *Southern California Law Review*

"IF 'RELIGIOUS liberty' does not include a 'right to discriminate' then, obviously, there is very little conflict between 'religious liberty' and antidiscrimination laws. But, in fact, religious liberty does sometimes include a right to discriminate in ways that would otherwise violate civil rights laws. ... Although it cannot plausibly be defined away or declared illusory, it is still crucial to

remember that this tension is *among* civil rights claims."

—RICHARD W. GARNETT, professor of law and of political science, University of Notre Dame, "Religious Accommodations and—*and* Among—Civil Rights: Separation, Toleration, and Accommodation," *Southern California Law Review*

"DISCRIMINATION represents a serious harm in its own right—regardless of the availability of alternatives. A black person made to sit at the back of the bus is harmed, though he arrives at his destination. A woman denied employment on the basis of sex is not made whole, though she secures a position elsewhere. A same-sex couple refused service by one bakery suffers injury, though a second bakery will serve them. By the logic of *Hobby Lobby*, however, any time a state or private entity fills the gap caused by a business's discriminatory denial of statutory rights, its employees and would-be

customers are not harmed."
—ELIZABETH SEPPER, associate professor, Washington University School of Law, "Gendering Corporate Conscience," *Harvard Journal of Law and Gender*

"ONE DEFENDER OF accommodations describes them in these terms: 'Religious people are subject to two sets of sometimes competing obligations; a secular government that is decently modest about its own pretensions will try to accommodate those allegiances if it can.' A statement I once heard at a conference on religious liberty from the Mennonite theologian John Howard Yoder suggests a response. As I recall the statement, Yoder said, 'It's not the Christian's role to tell Satan how to do his job; the referent of 'Satan' being 'the government.'"
—HLS PROFESSOR MARK TUSHNET, "Accommodation of Religion 30 Years On," *Harvard Journal of Law and Gender*

Evan Wolfson Rests His Case

AT 10 A.M. ON FRIDAY, JUNE 26, Evan Wolfson '83 sat tied to his phone, repeatedly refreshing SCOTUSblog and Twitter.

He was surrounded, as he had been for days, by fellow staff members in a Manhattan conference room at the office of Freedom to Marry, the national advocacy group he had founded in 2003. Suddenly, the news broke. Justice Anthony Kennedy '61 was reading the majority opinion in *Obergefell v. Hodges*, the decision holding that same-sex couples have a constitutional right to marry in all 50 states. Cheers erupted and champagne bottles popped open. Wolfson retired to his office to read the opinion in full, and was surprised to find himself in tears. Thirty-two years had passed since he wrote a paper as a student at Harvard Law School arguing for the right to same-sex marriage, and two decades since he had served as co-counsel in the first state case to gain real traction for that right. The legal battle was over. He was finally, gloriously, out of a job.

To call the legal and cultural battle for same-sex marriage Wolfson's life-work is no exaggeration (presuming that for attorneys, life really begins in law school). At Harvard Law, in his 3L paper—the thesis then required for graduation—he developed an interdisciplinary argument for understanding marriage as a human, individual right guaranteed by the U.S. Constitution to



EVAN WOLFSON, founder of Freedom to Marry, has been arguing for a right to same-sex marriage for 32 years.

all, including same-sex couples.

Wolfson was not the first to explore this topic. Three years earlier, the Harvard Law Review had published “The Right to Join a Family: Traditional Marriage and the Alternatives,” a student note setting out possible constitutional arguments in favor of same-sex marriage, notably that marriage is a fundamental right that the state lacks a sufficiently important interest to deny. Indeed, Wolfson wrote his paper 10 years after the first cases made their way through American courts seeking a right to marry, and failing to—as in the words of *Baker v.*

Nelson, the only Supreme Court case on the matter pre-*Obergefell*—present “a substantial federal question.”

While for Wolfson, working on his paper was a personally profound experience melding law, history, culture, and political thought, he was met with mostly benign skepticism and indifference. He needed a faculty supervisor and was turned down by the obvious candidates, professors whose work directly involved issues of family law, constitutional law and even LGBT rights. Some thought the subject too trivial or, as the *Baker* Court had put it, too insubstantial,

to serve as a capstone to three years of law school. Others found the topic not nearly radical enough, as it advocated for a traditional relationship that many feminist thinkers at the time opposed. Finally, Wolfson approached Professor David Westfall '50, an expert on family law and trusts and estates, who agreed to oversee his work.

Wolfson thought of Professor Westfall as a very “bread and butter” man—not edgy at all. He is sure that the paper Westfall ultimately received was not the one he was expecting—relatively brief in its exploration of law, and sweeping in its engagement with questions of gay history and

By Wolfson’s third year, a photo appears with IDs—but only a fraction of COGLLI members were pictured, and Wolfson was not among them.

One student smiling in the 1983 photo, however, was Wolfson’s close friend Brian Koukoutchos '83. He was a double rarity—a student who was willing to be a public face for COGLLI, and a heterosexual member of the group. Koukoutchos felt he was essentially immune from attack, but he remembers walking into on-campus job interviews and being met with hostility. When he asked if there was an issue with COGLLI, the sole extracurricular activity listed on his resume, he

hands with Koukoutchos and Michael Hardwick, the ultimately losing plaintiff, as Tribe faced questions from the justices comparing sodomy to incest and bigamy.

In 1996, Wolfson and the movement enjoyed a brief win when a Hawaii lower court held, in *Baehr v. Miike*, that the state had no rational reason to deny marriage licenses to same-sex couples under the state constitution, only to fall back again when Hawaii passed a constitutional amendment to prevent same-sex marriage and the U.S. Congress responded with the Defense of Marriage Act. In 2000, Wolfson argued before the Court in *Boy Scouts of America v. Dale*, in which the Court ultimately decided that the Boy Scouts had a First Amendment right to exclude openly gay men.

Fifteen years later, as Wolfson sat in his office—months away from finally shutting its doors for good—reading the Kennedy opinion, he was flooded with memories of conversations he had had over the years with the pioneers of a right to marry, the men and women who had brought cases throughout the '70s and '80s. They laid the groundwork for him and for other advocates such as Mary Bonauto, the movement’s lead lawyer in *Obergefell*. Everything they had been arguing for—the language of dignity and core, basic humanity—appeared on the screen before him in the majority opinion. At first, he thought that was what had made him so uncharacteristically emotional. But mostly, he realized afterward, he was relieved.

For decades, Wolfson had been Mr. Marriage (he was married himself, to Cheng He, in 2011). Wolfson never doubted that the marriage movement would eventually prevail, but it was easy to overlook, on such a jubilant day, how many losses the movement had suffered on the way. On the darkest of days, he would rally the troops and make speeches about moving forward. He knew that if they lost *Obergefell*, they would pick up the pieces and start again. “I was ready for that if I had to do it,” he said. “But, boy, was I glad not to have to.” —LANA BIRBRAIR

If they lost *Obergefell*, they would pick up the pieces and start again. Wolfson was ready for that. “But, boy, was I glad not to have to,” he said.

social change. Wolfson admits he was disappointed to receive a B. Years later, however, he was tickled to read Westfall interviewed about him saying simply, “It’s so refreshing to see a student apply something he learned in law school.”

Observers, including the dissenters in *Obergefell*, often note that the LGBT movement has seen swift change. Today, HLS’s LGBT student group Lambda boasts more than 100 members. A yearly career fair at the Lavender Law conference draws over 130 law firm recruiters seeking LGBT lawyers.

By comparison, in 1981, three years after the founding of HLS’s first LGBT group, the Committee on Gay & Lesbian Legal Issues, or COGLLI, was represented in the law school yearbook for the first time. Beneath the photo of six men and two women, a caption states that the members chose to appear “after careful consideration of the possible personal and professional ramifications, to give expression to the efforts of those who fight unjust discrimination on all fronts, especially with regard to the right to love.” The caption includes no student names.

faced an uncomfortable silence—and a quick end to the interviews.

In Wolfson’s years at Harvard, COGLLI became increasingly politically active. One project involved questioning employers who planned to interview at HLS about whether they would abide by Harvard’s nondiscrimination policy. And at a time when student identity groups frequently sponsored moot courts, COGLLI joined in with its own, focusing on issues involving LGBT rights.

Wolfson never published his paper, but in 2004, he published a book, “Why Marriage Matters: America, Equality, and Gay People’s Right to Marry,” that drew heavily on themes he had first explored 20 years prior. By then, despite an upswing in support for LGBT rights, he had endured a career filled with painful losses.

After law school, he worked with Koukoutchos, who pursued a career in appellate litigation, and Professor Laurence H. Tribe '66 on *Bowers v. Hardwick*, a case that ultimately upheld a Georgia anti-sodomy law. In 1986, he sat in the audience of the Supreme Court’s oral arguments, holding



THE LAWS OF ADAPTATION

Change is coming to the legal profession—whether attorneys like it or not—and HLS is at the forefront of efforts to anticipate it, and prepare students

BY ELAINE
McARDLE

Illustration
by OLIVER MUNDAY

THE WARNING BELLS have been ringing for at least two decades: The legal profession as we've known it is doomed, and lawyers must adapt—or face extinction. For the most part, these dire predictions have been ignored, even as globalization and technology have revolutionized markets, affecting everything from airline travel to taxicabs. Yes, law firms have been outsourcing legal research to India, and electronic discovery is taking over some basic tasks. But lawyers have tended to see themselves as immune: a guild of highly educated advisers whose wisdom, savvy and deep understanding of a complex series of laws are irreplaceable.

Then a computer named Watson beat a human on “Jeopardy!” Now all bets are off.

Watson's victory showed that artificial intelligence can master what was considered a uniquely human realm: using judgment to select best options after sorting through huge amounts of complex information communicated in real language. Cancer doctors from the nation's top research institutions were among the first to recognize the broad implications. Today, they are

working with the IBM Watson project to sort through massive amounts of data to try to find new ways to diagnose and cure the disease. If a computer can displace doctors—or at least, significant aspects of what doctors do—who's next?

In fact, lawyers may be far more susceptible than physicians, says Harvard Law Professor David B.

Wilkins '80, vice dean for global initiatives on the legal profession. As a rules-based system, law is similar to chess, he notes, in which Watson's predecessor, Deep Blue, prevailed 14 years earlier, beating the world chess champion.

“The Watson people say, ‘We won't replace doctors or lawyers; we'll just help them be more effective,’” Wilkins laughs, adding, “But of course, they *will* replace some doctors and lawyers.” The question, he says, is which kinds of lawyers, and how big a share of the legal market?

Because of technology, globalization and other major market pressures, “law is ripe for disruption,” says Wilkins, faculty director of the HLS Center on the Legal Profession, which is a leader in research and analysis in this area.

Disruptive innovation, a term coined by Clayton Christensen, a professor at Harvard Business School, occurs when existing patterns of work

and organization are radically transformed in a relatively short period of time, when new competitors arrive to offer low-cost alternatives at the bottom end of the market. The incumbents ignore these upstarts—until the disruptors become the norm and the old guard adapts or is replaced. Personal computers replacing mainframes, cellphones replacing landlines, retail medical clinics replacing traditional doctors' offices, and Uber replacing taxis are important examples, Wilkins says. The legal market—which has maintained some of the highest profit margins for professional service businesses—faces the same challenge. Legal information is being digitized, and low-level tasks are being outsourced. Now the inspiration aspect of legal work—the solving of complex problems—could soon be facing competition from sophisticated computers. Meanwhile, consumers are turning eagerly to low-priced alternatives to traditional lawyering, such as online divorces and wills, and new online matchmaking services through which lawyers can compete for clients—like Uber, but for law.

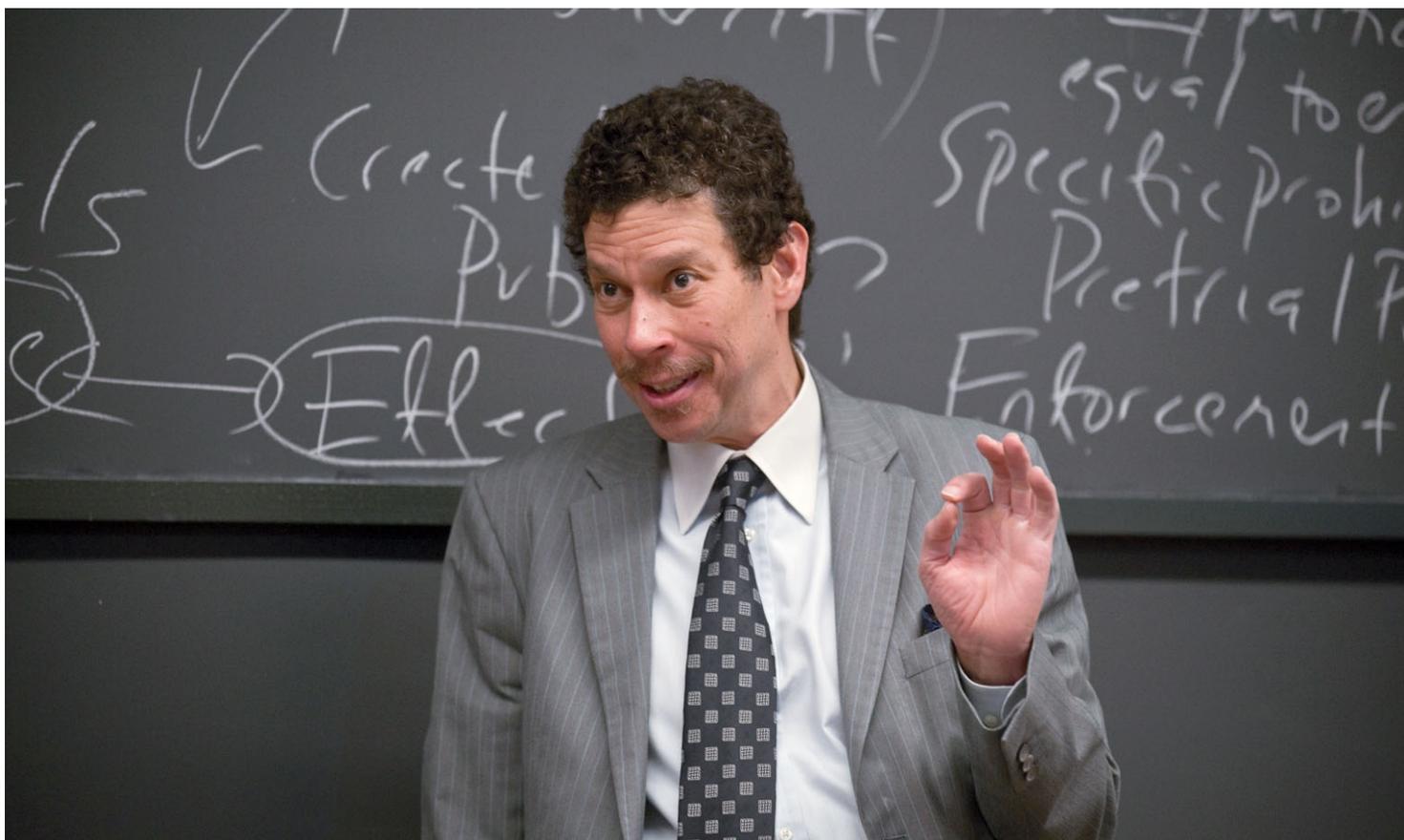
Avvo, a tech-savvy method making it easier and cheaper for people to get legal advice, was founded by Mark Britton, the first general counsel for Expedia, which revolutionized travel planning. Shake, a new technology that provides consumers with online contracts, legal advice and other legal services for free—or at very low prices—has this mission statement: The “legal market is huge, inefficient, underserved by technology, and begging for change.”

High-end lawyering won't be immune, since clients there, too, are looking for alternatives.

Indeed, Legal OnRamp, a virtual information-sharing platform for lawyers launched six years ago, is working with the IBM Watson project and major banks to figure out how Watson can help banks analyze tens of thousands of derivative contracts in order to respond to the “too complex to manage” challenge, says Paul Lippe '84, Legal OnRamp's CEO. That collaboration sprang from a summit of representatives from banks and major law firms in July, which itself grew out of a 2014 HLS conference, “Disruptive Innovation in the Market for Legal Services,” sponsored by the Center on the Legal Profession, Lippe says. At the same time, a leading New York law firm is working with OnRamp to “Watson-ify” some of its large M&A client engagements. “No one is looking to ‘disrupt’ per se,” Lippe says, “just find ways to manage work better in a complex world.”

The relative resistance to innovative technology is seen as cultural or structural, “but it

The inspiration aspect of legal work could soon face competition from computers.



actually is a finite phenomenon that arises from the market dynamics of the last 30 or 40 years,” says Lippe. As those dynamics shift dramatically, so does the imperative to innovate.

Indeed, since the financial crisis of 2008, all clients—especially general counsel at major companies—have had more market power than ever, “and they aren’t likely to give it back,” says Scott Westfahl ’88, HLS professor of practice and faculty director of Executive Education.

“The leverage is now all with clients,” agrees Romeen Sheth ’15, who this year won an international competition in legal innovation by designing a cloud-based system for managing M&A work.

In other words, lawyers not only have the capacity to adapt—they have to, at all levels of the profession. While these legal disruptors currently are focusing on the easiest targets, such as legal research, “eventually they will go on to other things,” says Wilkins. The implications are huge not just for Big Law but for lawyers across the spectrum, including the 80 percent in the U.S., in small firms or solo practice, who will have to figure out new ways to offer services at lower costs. Some of the biggest winners may be

the low- and middle-income consumers who will finally have access to affordable legal services through these new alternatives, he says.

These changes also mean a shift in the way law is taught. “We need to teach students how to unbundle legal problems and collaborate across organizational boundaries with other providers, which is the biggest challenge,” Wilkins says. “We have to work across divides, including with the disruptors themselves.”

Eyes on the Profession

No one should be surprised by the rise of new forms of competition to traditional legal services, says Wilkins, who has been studying the legal profession for 30 years. Yet many lawyers, he says—including at sophisticated law firms—remain quite unaware, or unconvinced. “I find when I talk about this, particularly to people who are not quite in the middle of it anymore, they are stunned,” he adds. “They have no idea what’s going on.”

The Center on the Legal Profession is focusing significant resources on disruptive innovation in the legal market, with data-driven research; publications including its digital magazine, *The*

There will always be a space for sophisticated legal services, says Professor David Wilkins. “The question is how big that space will be and how many will be in it.”

▲



JESSICA SCRANTON

Scott Westfahl '88 launched a new team-based course at HLS, Innovation in Legal Education and Practice.



The HLS Center on the Legal Profession is exploring better ways to evaluate the quality of lawyering.

Practice; executive education; and the convening of top thought leaders from around the world. Last year's conference on disruption included Christensen and others leaders, such as Mike Rhodin, senior vice president of the IBM Watson project.

Wilkins expects disruption at all levels of the legal world. But unlike some others, "I don't think we'll see the death of Big Law because there will always be a space for sophisticated legal services," he says. However, "the question is how big that space will be and how many will be in it. For high-priced, high-profit-margin work, how much of that could be done by other providers?"

There is plenty of opportunity for lawyers who are willing to adapt: Megafirm Morgan Lewis, for example, has developed its own electronic discovery department so clients won't go elsewhere for that aspect of services.

Lawyers willing to make these kinds of innovations themselves have a natural advantage because the legal disruptors haven't yet really figured out the legal market, Wilkins says.

"They're a bunch of hammers looking for nails. They equate everything we say about the distinctiveness of practicing law as protectionism, but I don't think that's true. Lawyers are

not exactly like taxicabs, which can be replaced by Uber"—although, he warns, "they're a lot more like cabs than lawyers want to think."

Without a good way to evaluate legal work, consumers may see no difference between filling out an online contract and getting the guidance of an experienced lawyer. "The disruptors are mostly trying to measure quality in the same way Uber does, which is through customer satisfaction. That's not irrelevant but it's a very crude measure of quality and might work less well in law,

particularly where consumers are less sophisticated about the quality" of what they're getting, Wilkins says. The center is working to develop better ways to evaluate the quality of lawyering.

"None of this means that law firms are going to disappear, I don't think," says Wilkins. "But I do believe there's a significant amount of change coming and we shouldn't be surprised—because we'll just be seeing in law the kind of change we've been seeing in the rest of the economy."

Innovation Training

In the new economy, Westfahl believes, collaboration is among the most important skills. Last spring he launched a new team-based course at HLS, Innovation in Legal Education and Practice.

Drawing from other disciplines, including neuroscience and psychology, Westfahl modeled the course on the work of Michele DeStefano '02, a professor at the University of Miami School of Law, who is a visiting professor at HLS this academic year. The course teaches students how to design and maintain effective teams, requiring them to work to identify challenges in the legal world and come up with solutions. Among team proposals were a better mentoring program for new HLS students, and a means to encourage mindfulness meditation training at law firms in order to lower stress and increase error-free productivity. Class participants say the collaborative approach has been a liberating experience.

"Students in law school are taught to be apex predators, alone and armed to the teeth against everyone else. But these days, that is [neither] a feasible way to build a practice nor how the law works," says Caitlin Hewes '15, who was part of a team that designed ways to make the 3L year more efficient and useful.

With 80 percent of students entering HLS with at least a year of work experience after college in a wide variety of settings, "we need to leverage that experience," says Westfahl. "It's a huge gift to the law school to have all these people here together."

"The skills involved in being able to come up with an innovative proposal, to make a compelling presentation as a team in front of real-world, critical judges—that's what law students will be called upon to do later in life, and the majority of them will need those skills," says Westfahl. "We haven't traditionally helped law students understand how to work effectively in teams; [this is] unlike business schools, where teamwork and building networks are seen as a central part of the educational process."



JESSICA SCRANTON

Michele DeStefano '02, a visiting professor at HLS this year, is the creator of Law-WithoutWalls, an innovation space for law students and lawyers. ◀

Law schools could make real strides by adding a business-case-type problem into torts, civil procedure, and other classes, he says, “so we could build skills without sacrificing traditional educational and critical legal thinking, which we do well and shouldn’t give up.” He and Wilkins are two of the seven instructors for the HLS Problem Solving Workshop, which uses such methods and is required of all J.D. students.

Westfahl also draws on his experience heading up Executive Education at HLS, where managing partners at major law firms and other legal leaders exchange ideas and gain cutting-edge exposure to the world of disruption and innovation. “How do you rally your team? How do you work with others in the business to get to the right answer?” asks Fred Headon, assistant general counsel for labour and employment law at Air Canada, and chair of the Canadian Bar Association Legal Futures Initiative, who recently took the HLS executive education course. “That’s a skill set that’s crucial to successfully practicing but is something that doesn’t really show up on the curriculum of most law schools.”

As Westfahl notes, innovation is not something many lawyers are trained to foster, however much they believe they are: “A managing partner will call in the professional development people and say, ‘We really need to do something innovative on how we recruit. What’s everyone else doing?’”

Disruptive innovation is not limited to Big Law and servicing corporate clients, Westfahl emphasizes; he, like Wilkins, sees enormous potential for solving a broad range of law-related problems, including access to justice for low-income people.

Some HLS clinics are already exploring that potential. The HLS Cyberlaw Clinic, for example, has been assisting the Massachusetts Supreme Judicial Court as it seeks to leverage new technologies to help people, including pro se litigants, navigate the legal system.

“I’m excited,” says Westfahl. “The evidence is right in front of us, that if we help students and lawyers to work together more collaboratively, to understand how to work in teams and how to drive innovation together, our graduates and the

lawyers who come to our programs will have so much more impact on the world.”

Thinking Outside the Walls

In the fall of 2010, frustrated by how slowly the legal world was responding to the fast-paced changes swirling around it, Michele DeStefano '02 launched an innovation space for law students and lawyers.

“I felt that the world was changing but the law market, legal educators and lawyers were not changing to meet the 21st-century marketplace,” she says.

Her creation, LawWithoutWalls, a kind of “American Idol” meets “Shark Tank,” has grown from 23 students each year to 100, from an initial group of six law schools (HLS among them) to 30 law and business schools. It now comprises 750 “change agents”—academics, lawyers, multinational business professionals, venture capitalists and others—in a global “collaboratory” dedicated to innovating the future of legal education and practice, DeStefano says.

“There’s nothing else like it, and that’s what makes LawWithoutWalls so rewarding—that I can be a catalyst for change,” she says. “I help students find their passion that was either buried

or that they didn’t think they could apply to law.” Students who apply are selected because they can add value to the collaboratory and can benefit from it—their law school grades aren’t even considered, she emphasizes.

Combination hackathon, conference, webinar, and professional network, LawWithoutWalls convenes students from around the world

and places them in teams with a broad base of mentors: lawyers, academics, businesspeople. It charges them with identifying a problem in legal education or practice and gives them four months to create a business plan for a startup that would solve that problem. It kicks off with interactive exercises to foster idea generation and teamwork; then, using the latest technologies, teams e-meet every week. Finally, they present their proposals before a panel of multidisciplinary judges including venture capitalists.

LawWithoutWalls teaches skills not emphasized in traditional law classes or executive education courses, including cultural competency, teamwork, presentation skills, communication, project management and leadership, says DeStefano, who worked for eight years in the business world before attending HLS and helped the → 48

Law students have traditionally been taught to be “apex predators, alone and armed to the teeth.”

Gender STUDY

A new HLS report charts progress and obstacles for women in the law

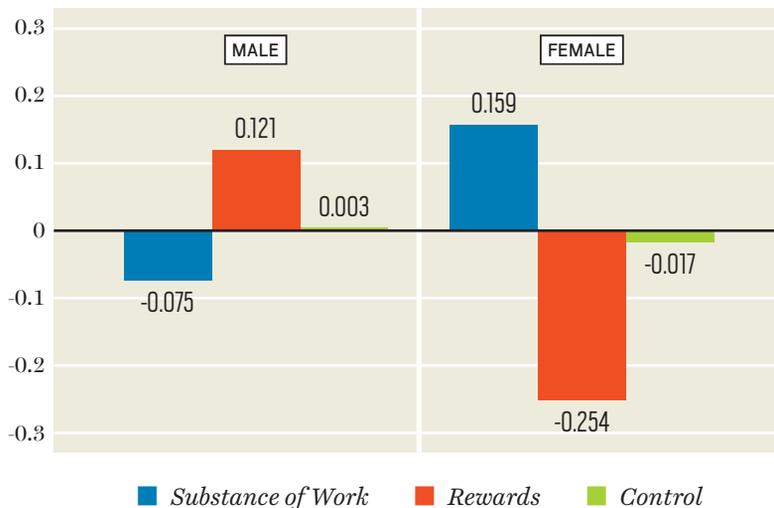
Since Harvard Law School first admitted women in 1950, the school has progressed toward gender parity in admissions, with the Class of 2017 the first to be 50 percent female.

Yet among HLS graduates who work at law firms, men are significantly more likely to be equity partners and to be in positions of leadership than their female classmates—even though women work more hours, on average. Women experience significantly more workplace consequences, including loss of seniority, as a result of having a child, and twice as many female partners as male partners do not have children. The percentage of male law partners who are married far outpaces the percentage of female partners.

These are among the provocative findings of the first systematic empirical study of the career trajectories of HLS graduates, conducted by the HLS Center on the Legal Profession. Begun with a grant from a group of HLS alumnae, the study examined data collected in 2009–2010 from four HLS classes and was released this year as “The Women and Men of Harvard Law School: Preliminary Results from the HLS Career Study” (see bit.ly/HLScareer2015).

“These findings are especially important because they underscore that even women who have all of the same educational credentials as their male peers continue to experience important differences in career outcomes, particularly in obtaining leadership positions in private law firms,” says David B. Wilkins '80, vice dean for global initiatives on the legal profession and faculty director of the center, who co-wrote the study with Bryon Fong, the center’s assistant research director, and Ronit Dinovitzer, associate professor of sociology at the University of Toronto.

Factors of Satisfaction—Across Employment Sectors



BOTH MEN AND WOMEN ARE HAPPY TO BE LAWYERS, BUT FOR DIFFERENT REASONS: *Men report being happy with the pay; women, with the substance of the work. Neither men nor women are particularly happy with the control they have over their work and personal lives.*

Even as the legal profession stands at a pivotal point of transformation, the status of women in the law presents its own complexities. The number of women entering the legal field has increased dramatically—with women in leadership positions at many major legal institutions, including three female justices on the U.S. Supreme Court—but the percentage of women in top positions lags far behind that of men. And women, even those who achieve prestigious positions, are leaving the legal profession “in alarming numbers,” the study found.

There wasn’t a large gender gap in pay between HLS men and women in their first jobs out of law school, probably because over 60 percent worked for law firms, where there are standardized salaries, according to the study. But there are significant income differences between men and women in their current jobs, with the gap narrowest for the Class of 1985 and largest for the 1995

cohort. The biggest factor appears to be that men who aren’t practicing law are more likely than women to work in business, where their total compensation is far in excess of that of even highly paid law firm peers, it found.

Even as women enter the legal profession in increasing numbers, “the typical career path in the profession is not just made for a

man—it is made for a man who has a wife who does not work,” Wilkins says. “These patterns of work, organization, and advancement will have to change significantly in the coming years if the legal profession is to continue to attract and retain the quantity and quality of talented lawyers that clients and society will need to tackle the complex legal problems of the 21st century.”

Both women and men report extremely high levels of satisfaction with their decision to attend law school and with their overall careers. But men report being more satisfied with the rewards—that is, money—while women are satisfied with the substance of their work. Neither women nor men report being particularly satisfied with the control they have over their work and personal lives.

Among other findings:

Students with work experience between college and law school have increasingly become the norm at HLS.

→ Just over one-third of HLS graduates enter public-sector positions in their first jobs, with women slightly more represented in this sector than men.

→ Women and men entering the public sector have higher grades in law school than those joining law firms.

→ Across all cohorts, women are significantly more likely to be working part time or not to be in the paid workforce.

→ About a quarter of women and men working full time in their current jobs do not practice law.

→ Men make higher grades as 1Ls, but that gap largely disappears with respect to cumulative grades.

The study examined the careers of HLS graduates across the past six decades, through surveys of four classes: 1975 (one of the first classes in which women made up a significant percentage), 1985, 1995 and 2000. To establish a baseline for comparison, it collected data from the 1950s and ’60s and it used data from admissions records and transcripts, which was anonymized and reported only in the aggregate. It also compared findings from “After the JD,” an American Bar Foundation-sponsored longitudinal study co-written by Wilkins, which has been tracking the professional lives of more than 5,000 lawyers, including graduates of many law schools.



MARTHA STEWART

school launch its executive education program. It has also become a global multidisciplinary network that breaks down barriers between lawyers and clients, law and business, and professors and students. Its supporters and participants include major international law firms such as London-based Eversheds, as well as American Express and the Ethics Resource Center.

Among its student proposals in the startup stage is *Advocat*, a multilingual computer interface that helps immigrant children in the federal detention system work with their advocates. A national leader in advocacy for these children—there are 70,000 immigrant child detainees in the U.S. today—is looking to pilot *Advocat* across the U.S. Another project, the website and app *ProBono123*, connects law students and lawyers with pro bono opportunities and tracks and verifies their hours.

In September, *LawWithoutWalls* won the Faculty Innovative Curriculum Award from the International Association of Law Schools.

“I set out to transform the way law and business professionals partner to solve problems,” says DeStefano. That transformation starts, she believes, with helping today’s law students think differently about innovation and creativity in the legal world.

“We have to work across divides, including with the disruptors themselves.”

Student as Innovator

“If HLS produces one innovative company that changes the legal industry, that’s blockbuster success. I think the possibility of that happening is very, very high.”

So says Romeen Sheth ’15, who someday may very well do just that. In April, as a 3L, Sheth won the international *LawWithoutWalls* competition. His team created *CORE*—a product that helps law firms and in-house lawyers manage their use of legal process outsourcing and better analyze its value—and they won \$25,000 in seed capital to develop it further.

CORE isn’t Sheth’s first legal innovation. During his 1L summer at a law firm in Atlanta, he was perplexed at the incredibly outdated, inefficient way firms manage M&A work. “You have 150 shareholders signing 10 documents each, which they’re sent in an email, and I’m keeping them all tracked and collated, marking them off in a Word document—this is a terrible, terrible process! Lawyers hate it, and we’re not billing for it,” he recalls. Calling upon his experience in other industries, including with hedge funds, which he says are miles ahead of law technologically, Sheth devised a cloud-based project-management system to streamline the process and help stakeholders communicate better, a system he developed at the Venture Incubation Program at the Harvard Innovation Lab.

“This has nothing to do with lawyers wanting to change—it has to do with them wanting to have a job,” says Sheth, who is now the business development lead at *Ravel Law*, a Silicon Valley startup that has raised \$9.2 million to improve the analytics behind legal research. “In this economic environment, they have to evolve.”

Yet law is a conservative profession, and lawyers remain averse to new ideas. In an article he wrote for *The Practice*, Sheth noted that legal startups aren’t thriving: Investment in them declined sharply last year after attracting \$150 million in 2013. Among the barriers was that lawyers tend to want an idea to be fully developed before they’ll invest in it, which precludes the iterative development that leads to startup success. And the billable hour incentivizes inefficiency, so technology that reduces it eats into the bottom line.

Despite the obstacles, “I think in the next five to 10 years, the legal industry is going to dramatically change,” says Sheth. “To me, it’s a no-brainer—this industry will be completely turned on its head.”

LAWYERS, ETHICS AND CHANGE

The HLS Center on the Legal Profession has been looking at ethical questions for lawyers in today’s new environment. How does law adjust to these changes, asks David Wilkins, the center’s faculty director, “while preserving the core commitment of law as a public profession?” Wilkins, with Ben W. Heineman Jr., Distinguished Senior Fellow at the center and former general counsel of General Electric; and William F. Lee, partner



WILKINS



HEINEMAN



LEE

at *WilmerHale*, lecturer at HLS, and member of the Harvard Corporation, addressed that question and others in their article “*Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century*” (see bit.ly/CLPessay2015). They presented the paper at an April conference hosted by the center, which was attended by a range of law firm leaders, general counsel and legal academics.

EUROPEAN PRESSPHOTO AGENCY



A SUPREME OPERA Just about two weeks after the U.S. Supreme Court issued its last opinion for the 2014-2015 term, the words of two of its justices, Ruth Bader Ginsburg '56-'58 and Antonin Scalia '60, once again took center stage—this time coming out of the mouths of opera singers.

“Scalia/Ginsburg,” a comic opera by Derrick Wang, had its world premiere at the Castleton Festival in Rappahannock County, Virginia, on July 11. Justice Scalia (portrayed by tenor John Overholt, pictured above) has to pass through a series of supernatural trials (inspired by Mozart’s “The Magic Flute”), and he does so with the assistance of his colleague and frequent intellectual adversary Justice Ginsburg (soprano Ellen Wieser). It’s been called “an affectionate, comic look at the unofficial leaders of [the Court’s] conservative and liberal wings,” and draws on their decisions, their differing views of the Constitution—and their friendship.

They often attend opera together, and among those in the audience for the premiere was Justice Ginsburg herself. (The real Justice Scalia was in Rome that evening.)

A PASSION FOR REFORM

Jeff Robinson wants you to be uncomfortable with mass incarceration in the U.S.

Jeff Robinson '81 worked as a Seattle criminal defense lawyer for 34 years—a span of time that, he notes, “basically coincided with the largest increase in our incarcerated population in the history of the United States.” Now, as the newly appointed director of the ACLU’s Center for Justice—a job previously held by Vanita Gupta, the Justice Department’s top civil rights lawyer—he will be tackling that metastasis head-on.

The 59-year-old’s passion for criminal defense ignited after he attended, at age 11, a march led by Dr. Martin Luther King Jr.—just a week before his assassination—in Robinson’s hometown of Memphis, Tennessee. The march “ended in violence,” and Robinson’s father—a school principal and lifelong educator who later moved the family to a white area and sat in the driveway with a shotgun across his lap for several nights to stare down hostile neighbors—took him to court to see the arrested marchers’ hearings. “I saw these guys called criminal defense lawyers who seemed to come out of nowhere, and they were making these arguments, and saying how the police were wrong for what they did,” Robinson recalls. “And I came out of the courtroom asking, Who are those guys, and how do you be one of them?”

Robinson never wavered. He came to HLS set on criminal defense, and accepted an offer after his 2L summer to work as a King County public defender in Seattle. After five years there and another three as an assistant federal defender for the Western District of Washington, he entered private practice at Schroeter Goldmark & Bender, where he

After 34 years as a criminal defense attorney, Jeff Robinson is the new director of the ACLU’s Center for Justice.



tried more than 15 civil cases but “99 percent” of his work was criminal defense. During those decades, America became the world’s most incarcerated nation, with just 5 percent of the earth’s population but 25 percent of its prisoners. And that incarceration boom, Robinson notes, has been far from colorblind.

“If a federal law-enforcement agent came and said, ‘I know that black people and white people smoke marijuana at about the same rate, and I know there are more white people than black people, so there’s many more white people smoking marijuana than black people, but I want to arrest black people at rates four to five times higher than white people, just so that we can get them into the criminal justice system,’ that person would be rejected in every state in the country,” Robinson observes. “But that’s exactly what we’ve done.”

At the ACLU, which he joined in September, Robinson attacks not

just the system’s “front end” — challenging everything from foundational “economic justice” to jurisdictions that force public defenders to field 700-plus cases per year—but also how people are treated in prison, and what opportunities are available upon release. “The majority of people who go to prison are coming out,” Robinson points out. “So, how would you like for them to have been treated in prison when that happens? Would you like them to have been in a system where they were abused, given no education, physically and mentally terrorized—and then the doors open and it’s ‘Good luck’? Or would you like to see somebody who has been treated humanely and with respect and who actually now has a chance to improve himself by coming back into the community with a chance to be a success?”

“That seems to me a very simple question with a very simple answer,” Robinson says. “But we

don’t behave like it is.”

Robinson hopes to help change the policies with which America answers that question through a combination of litigation, advocacy and education. While acknowledging that people should expect plenty of the first two—“The ACLU has never been afraid to litigate our cases,” he says with a smile—he seems especially excited about the new job’s educational opportunities.

“These are problems that we can solve,” Robinson says of the panoply of wrongs that attend American mass incarceration. “It’s just going to take getting uncomfortable enough.”

“You know, if I put enough itch powder on your arm, at some point you will scratch it,” he continues. “And so that may be part of the nature of my job: to go around the country with a big old can of itch powder, and keep throwing it on people until they’re ready to start scratching.”

— MICHAEL ZUCKERMAN '17

A LEADER ON NATIONAL SECURITY

Adam Schiff has carved a niche as the top Intelligence Committee Democrat

The most likely place to find Congressman **Adam Schiff** '85 these days is in a suite of windowless offices three floors below the Capitol.

Schiff can't discuss much of what he reviews in this underground "bunker" when he speaks with constituents back in his Southern California district—or even with most of his own staff. Such is the routine since he became the top Democrat on the House Permanent Select Committee on Intelligence in January.

"It's deeply interesting, but also very isolating and very time-consuming," Schiff said. "But given the broad array of threats to the country these days—from ISIS and Al Qaeda to a newly aggressive and expansionist Russia to an ascendant China to Iran negotiations—there's no shortage of a need for good intelligence."

After 15 years in Congress, Schiff has emerged as a leading Democratic voice on national security—not an entirely unexpected outcome for someone who began his career as an assistant U.S. attorney prosecuting an FBI agent for espionage.

Schiff wasn't always certain he wanted to be a lawyer. Born in Massachusetts, he grew up in Scottsdale, Arizona, and Alamo, California, where his father owned a lumberyard. He considered himself pre-med at Stanford while majoring in political science and wound up taking both the MCAT and LSAT before enrolling at Harvard Law School.

"All my pre-med friends thought I made the right decision,



U.S. Rep. Adam Schiff says his work on national security is "deeply interesting but very isolating."

and all my poli sci friends thought I made the wrong decision, and then I went into politics and *everyone* thought I screwed up," Schiff joked.

He worked as an assistant U.S. attorney for six years in California, where he prosecuted an FBI agent in a sex-for-secrets case. When a fellow prosecutor ran for the state Legislature, Schiff said, he started thinking about doing the same.

In his fourth try for public office, Schiff won a seat in the state Senate in 1996. The Los Angeles Times named him one of the "stars of the freshman class" for his ability to negotiate and build consensus. (Another Times story labeled him a "tenacious technocrat.")

In 2000, he defeated Republican James Rogan, in what was then the most expensive ever House race, to represent a Southern California district that included Burbank and Pasadena.

He landed seats on the International Relations and Judiciary Committees. His priorities included intellectual property rights—an issue of particular interest to the Hollywood studios within his district—and juvenile justice. His experience as an AUSA explains why he was tapped to serve as a prosecutor during the 2010 impeachment trial of a federal judge. "It's a very hot bench," said Schiff of the panel of 12 senators who heard the case.

His investigative background also explains why then Speaker of the House Nancy Pelosi had asked him in 2008 to serve on the Intelligence Committee, which was probing the destruction of CIA interrogation tapes.

He has pushed for the revision of the Foreign Intelligence Surveillance Act and for a new authorization for the use of military force aimed at ISIS, questioning

whether the one approved by Congress in 2001 after the 9/11 terror attacks is applicable to the newer threat.

Schiff's role as a leading voice on national security for congressional Democrats was previously filled by Jane Harman '69, another Southern Californian who served as top Democrat on the Intelligence Committee, said Michael Genovese, a political science professor at Loyola Marymount University in Los Angeles.

"He's not flashy, he's not bombastic, he might not be the most charismatic person," said Genovese, "but he's demonstrated very prudent judgment, and he's a very solid source for what Democrats are thinking about national security issues."

Beyond national security, Schiff has taken up the cause of getting Turkey to recognize the Armenian genocide, learning enough Armenian to deliver a speech in the language on the House floor, a gesture appreciated in his district, which is home to a large Armenian population.

Schiff was briefly mentioned earlier this year as a potential Senate candidate after Barbara Boxer announced plans to retire, news that came the same day he was named top Democrat on the Intelligence Committee. He said he gave a run "serious thought" but was "reluctant to leave" the new post. Still, he's not entirely ruling out a run for higher office in the future.

"There will be other opportunities down the road," Schiff said. —SETH STERN '01

THE POWER OF THE OUTSIDER

As FTC chair, Edith Ramirez has focused on protecting consumers in the age of big data

Edith Ramirez '92 still considers herself a Washington outsider, even with the fourth-floor Pennsylvania Avenue office provided to the chair of the Federal Trade Commission with views of the Capitol dome and National Gallery of Art.

Born in Southern California to Mexican immigrants, Ramirez returned to her home state after graduating from Harvard Law to clerk for a 9th Circuit judge and then began her career as a litigator at Gibson Dunn. She later moved to Quinn Emanuel, where her practice included both intellectual property and antitrust work.

She might never have left the West Coast, if not for the election of President Barack Obama '91. They first met while serving together on the Harvard Law Review, and Ramirez served as a Latino outreach coordinator during his 2008 presidential campaign. He nominated Ramirez to a seat on the five-member FTC in 2009 and chose her to be chair four years later.

As head of the primary government agency tasked with protecting the rights of consumers, Ramirez has focused much of her efforts on digital privacy, often involving products that didn't exist at the time she came to the FTC.

Last year, for instance, Ramirez announced an FTC settlement with Snapchat, a photo- and video-sharing app that launched in 2011 and promises its images will "self-destruct" within seconds of being opened. In reality, the FTC alleged, recipients had several ways to save the images, and a security failure led to the disclosure of 4.6 million Snapchat

usernames and phone numbers.

To Ramirez, the Snapchat case "illustrates that there is no data privacy without data security," a lesson borne out repeatedly during her tenure, which has seen massive data breaches involving retail giants such as Target.

Ramirez has also focused on the privacy implications of Internet-enabled devices, or the "Internet of things" in the age of big data. For example, companies score consumers and then use the scores to deny them the ability to complete transactions, a trend she's described as "discrimination by algorithm."

Of particular concern is the way "unscrupulous organizations can use big data to [target] misleading offers or scams to the most vulnerable prospects," Ramirez said in a June speech at a big data conference in Hong Kong.

Jeffrey Chester, executive director of the Center for Digital Democracy, a Washington, D.C.-based consumer protection

and privacy organization, credits Ramirez with "helping bring the Federal Trade Commission into the 21st century."

"Her focus on ensuring the agency protects vulnerable consumers, including low-income Americans, and addressing unfair practices targeting minorities is incredibly important," Chester said.

In addition to her work protecting the digital rights of consumers, Ramirez has devoted much of her time to the FTC's competition work, including consideration of major mergers ranging from Express Scripts and Medco (approved) to Sysco and US Foods (rejected).

In August, the commission adopted new principles explaining how it will exercise its authority to confront unfair or deceptive practices in response to internal and external concerns that its approach wasn't clear enough.

For the first time, it detailed the three factors it will use in de-

termining whether to exercise its authority to challenge unfair competition. Ramirez said she was glad to be able to build consensus among commission members for a "broad, flexible" approach rather than a prescriptive code of regulation.

For most of her term, Ramirez has stood out in Washington for the degree to which she has avoided the public spotlight, said Janis Kestenbaum '92, who first met Ramirez at Harvard and served on her staff at the FTC for four years.

"She's really about the substance and the job, and she's not really all that interested in promoting herself," said Kestenbaum.

Asked in August about her plans for this fall, after her term at the FTC would expire, Ramirez said she remains focused on the job at hand.

"I'm not even at all thinking about what I'm doing after I leave the FTC," she said. "There's still more to come."



LASTING LAUGHS

Jonathan Goldstein has forged a career in Hollywood as a comedy writer—and now a director

Sometimes attorneys face a precedent that makes it challenging to succeed. **Jonathan Goldstein '95** knows this well. In his case, the precedent was more than 30 years old but still held great influence among people he was trying to persuade. His strategy? Well, it was pretty much what he tries to do in every case.

Be funny.

Over the summer, Goldstein made his directorial debut with the movie “Vacation,” a sequel to the popular 1983 comedy “National Lampoon’s Vacation.” The new film, which he co-wrote and co-directed with his longtime writing partner, John Francis Daley, marks the most high-profile effort yet for Goldstein, who began writing comedy, initially for TV and later for films, shortly after his HLS graduation. For “Vacation,” he wanted to make a movie that stood on its own yet was respectful of the original version for the many people who have fond memories of the Griswolds’ misadventures on a family trip.

“It’s a lot of pressure. We knew that going in,” said Goldstein. “For a lot of the audience, they come in wanting to hate it. You’re so nostalgic about something from your youth and you love it so much, you feel like, ‘This can only be worse.’”

But he approached the assignment—including directing established stars like Ed Helms and Christina Applegate, and the stars of the original version, Chevy Chase and Beverly D’Angelo—with the confidence that propelled him to Hollywood in the first place. He had always loved comedy, having grown up devouring Monty Python, Woody Allen and the Marx Brothers. Yet he had no

idea how to channel that interest into a career. Instead, he went to Harvard Law, which was like a life insurance policy, he said—a way to acquire a marketable skill.

That seemed to work out when he got a job with a six-figure salary at a large New York law firm. But he soon realized that his interest lay elsewhere, particularly when he heard that his friend Ted Cohen ’95, with whom he had written humorous columns for *The Harvard Law Record*, had landed a writing gig on the hit TV show “*Friends*.” So Goldstein quit his job in 1998 and ventured to Los Angeles, where he read scripts for agencies for around \$400 a week with no benefits. As dubious as that career move may have

appeared, he soon progressed to write for TV sitcoms, and then later sold film scripts he co-wrote with Daley, including “*Horrible Bosses*,” “*Cloudy with a Chance of Meatballs 2*,” and “*The Incredible Burt Wonderstone*.” Now he is in talks to write and direct a sequel to “*Vacation*,” as well as to write a new film in the *Spider-Man* franchise.

In some ways, his unconventional path helped propel him to success in the entertainment industry. His time at Harvard Law, he said, “gave me confidence to think that if I could do this, there’s no way I couldn’t do other things like working in Los Angeles in film and television.” Even his time at the law firm inspired him to write

the character Kevin Spacey played in “*Horrible Bosses*,” loosely based on some partners at the firm.

People in comedy generally aren’t big on teaching valuable lessons. Famously, the motto for the classic sitcom “*Seinfeld*” was: No hugging, no learning. But when Goldstein reflects on the winding journey that eventually took him to a place he always wanted to go, he offered some advice:

“Look deep inside and forget about money for a minute and [ask] that guidance-counselor question, ‘If you could do anything, what would it be?’ And then find the job that lets you do that. That’s the only path to happiness.”

—LEWIS I. RICE



Jonathan Goldstein (left) wrote and directed “Vacation” with his longtime writing partner, John Francis Daley (right).



SPRING REUNIONS 2015: BRINGING PEOPLE TOGETHER “We have entered a phase of our nation that is overly partisan,” said Julián Castro ’00 in his keynote address during HLS Spring Reunions in April. The secretary of the U.S. Department of Housing and Urban Development appealed to his fellow alumni to use their skills as lawyers to bring Americans together: “[The law] gives us that perspective—that moderation—that oftentimes in our national discourse is in too short supply.” His brother, Texas Congressman Joaquín Castro ’00, also participated in the reunion—the largest in HLS history, with more than 800 alumni and guests (see bit.ly/HLS2015SpringReunions).

TENACITY REWARDED

For Yas Banifatemi, a 10-year arbitration fight ends in a record \$50 billion settlement

Yas Banifatemi LL.M. '97 was at home in Paris on July 18, 2014, when an email arrived revealing the outcome in an arbitration case that had consumed her career for much of the previous decade.

In three decisions spanning 1,800 pages, the Permanent Court of Arbitration in The Hague awarded her clients \$50 billion for Russia's improper expropriation of the Yukos oil company.

The Yukos case, with its largest-ever arbitration award—which French *Vanity Fair* described as Vladimir Putin's "most crushing defeat" in 15 years in power—was the culmination of a career in international arbitration, which took root at Harvard.

Banifatemi first came to Harvard Law School as a visiting researcher in 1993, while working on a Ph.D. in public international law back in France. (She was born in France, where her father earned a Ph.D. in nuclear engineering, and she moved back there from Iran at age 12 following that country's 1979 revolution.)

She returned to Harvard in 1996 for an LL.M. while writing her 500-page Ph.D. thesis, a feat which earned her the nickname "E.T." among HLS friends. Learning about the high-stakes cases and complex legal issues involved in international arbitration in Arthur von Mehren's class prompted her to consider it as a career.

After graduating, she went to work for Shearman & Sterling in Paris and within four months was asked to help on a case brought by the Czech state bank against the Slovak Republic. It proved to be just the first of "a very long series of public international law cases," fueled in part by a boom in invest-

ment treaty arbitration, she said. The Yukos case began in October 2003 with the arrest and imprisonment of the company's billionaire chairman, Mikhail Khodorkovsky. The Russian government subsequently brought enormous tax claims against the company and forced it into state control, a takeover shareholders claimed was politically motivated.

After Khodorkovsky's arrest, Banifatemi and her colleagues were approached by the majority shareholders of Yukos, then Russia's largest oil company.

Dealing with the extremely complex issues the case raised involving international, Russian and tax law occupied "60 to 150" percent of her time in the years that followed, Banifatemi said. She traveled to Finland, where Khodorkovsky's terminally ill criminal lawyer provided testimony about "the inhuman and degrading treatment of every person even remotely related to Yukos by the Russian authorities."

"The case was about the discriminatory treatment of Yukos and the expropriation of our clients, Yukos' majority shareholders," she said, "so these human rights aspects were very important to the understanding of the political nature of the case."

In 2008, Banifatemi and her colleagues finally argued the tribunal's jurisdiction in The Hague. Four more years would elapse before the final hearing in the fall of 2012, and it took two additional years before the tribunal issued its final awards in 2014.

"It was a great moment: finding out that we had prevailed, finding out that we had also prevailed on the costs of the arbitration, and adding up the figures and trying to work out how many billions our clients' compensation represented in total," Banifatemi said.

The award was "historic and groundbreaking" for more than the amount of money involved, said HLS Assistant Professor Mark Wu, who hosted Banifatemi and

her colleague Emmanuel Gaillard when they spoke about the case at an HLS event earlier this year.

"In holding that the Russian Federation breached its obligations under the Energy Charter Treaty, the tribunal also did not hesitate to venture into a politically sensitive case involving a major power, thereby demonstrating the potential reach of international law," Wu said.

Banifatemi was happy to see the Yukos case end, although her work on it hasn't quite ended. Efforts to enforce the award continue in a number of countries.

She has resumed a more normal routine, dividing her time between serving as an arbitrator, teaching and working on public arbitration law cases involving countries from Egypt to Croatia.

She also has a book in the works and "dreams" of starting film and photography projects.

"My problem is that I can't stay put—I need to be active," she said. —SETH STERN '01

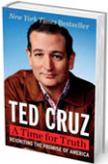


Yas Banifatemi says it was an HLS class in international arbitration that first led her to consider it as a career.



“Seattle Justice: The Rise and Fall of the Police Payoff System in Seattle,” by **CHRISTOPHER T. BAYLEY '66** (*Sasquatch Books*).

In the early 1970s, as the newly elected prosecutor in King County, Washington, Bayley was intent on changing the culture of corruption in Seattle that had been in place for a century. His memoir tells the story of how he and a group of other young idealists made it happen.



“A Time for Truth: Reigniting the Promise of America,” by **TED CRUZ '95** (*Broadside*).

A Republican candidate for the presidency in 2016, Cruz shares his personal story of growing up the child of a Cuban immigrant and his ascension to the U.S. Senate, where his actions have often roiled members of his own party as much as those of the opposition party. The book includes his reflections on his time as an HLS student, which led to a U.S. Supreme Court clerkship, and notable moments such as his work on behalf of George W. Bush during the 2000 presidential vote recount and his marathon filibuster seeking to stop the Affordable Care Act. Citing Ronald Reagan and Margaret Thatcher as inspirations, he states his case by touting “opportunity conservatism,” using the free market to lift every American to prosperity.



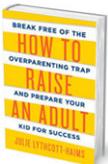
“Pirate Hunters: Treasure, Obsession, and the Search for a Legendary Pirate Ship,” by **ROBERT KURSON '90** (*Random House*).

Kurson recounts the true story of modern-day swashbucklers in search of the ship that proves as elusive in modern times as it was during the golden age of piracy in the 17th century. John Chatterton and John Mattera seek the Golden Fleece, which the author calls the greatest pirate ship that ever sailed. Their quest turns into a quest to understand its captain, Joseph Bannister, a wealthy English gentleman who unaccountably stole the ship for a rogue’s life at sea.



“Car Safety Wars: One Hundred Years of Technology, Politics, and Death,” by **MICHAEL R. LEMOV '59** (*Fairleigh Dickinson*).

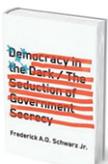
Of course, much has changed about automobiles since they first were introduced at the turn of the 20th century. But perhaps the biggest change is the expectation of their safety, as Lemov details in a book



that covers the progress that has been made in saving lives on the roads—and the people responsible for it—over the years. He writes of safety champions ranging from the little known, like an Indiana state trooper who in 1950 initiated a statewide study of fatal accidents that pointed to faulty equipment as the leading cause, to perhaps the most influential, Ralph Nader '58. Though many people died unnecessarily because of lax safety standards, ultimately the book is a history of triumph, Lemov writes, resulting in a changed public attitude about car safety and cars designed to protect their occupants.

“How to Raise an Adult: Break Free of the Overparenting Trap and Prepare Your Kid for Success,” by **JULIE LYTHCOTT-HAIMS '94** (*Henry Holt*).

The phenomenon of “helicopter parenting” took root in the 1980s, according to Lythcott-Haims, amid fears of child kidnappings and the burgeoning self-esteem movement. She saw it when she was Stanford University’s dean of freshmen, has admittedly lived it as a parent herself and offers a prescription for breaking away from it in a book that examines how overparenting harms not only children but also parents. Among her suggestions: Give children unstructured time; let them chart their own paths; prepare them for hard work (she touts the benefits of chores); and consider a variety of colleges. Parents, she writes, should support children “in being who they are rather than telling them who and what to be.”



“Democracy in the Dark: The Seduction of Government Secrecy,” by **FREDERICK A.O. SCHWARZ JR. '60** (*New Press*).

Informed by his experience as chief counsel for the U.S. Senate’s Church Committee, which 40 years ago investigated secret government activity, Schwarz details “the ways in which its overuse undermines our experiment in democracy.” Secrecy has held a “seductive” power throughout history, he writes, which he demonstrates in cases from America’s founding to present times, particularly in response to the 9/11 attacks. While he acknowledges legitimate uses of secrecy, it is too often used to hide embarrassing or illegal conduct, he writes. The book also explores the role of nonprofit watchdogs and investigative journalism in exposing secrecy, and recommends reforms that Schwarz contends would bring the openness that would strengthen America without compromising security.



IN MEMORIAM

1930-1939

GILBERT HELMAN '39
July 2, 2015

1940-1949

REGINALD H. SMITH JR. '40
Dec. 8, 2013

SAMUEL W. ALLEN '41
June 27, 2015

HOMER H. CLARK '42 LL.M.
'52
March 19, 2015

IRVING M. FANGER '42
Sept. 1, 2015

HENRY P. HOFFSTOT JR. '42
June 29, 2015

GILES R. "SCOF" SCOFIELD
JR. '42
June 12, 2015

ROBERT SHULMAN '42 ('46)
April 6, 2015

DONALD F. POTTER '44 ('47)
Aug. 6, 2015

S. CURTIS DWORREN '44 ('48)
March 21, 2015

DWIGHT D. TAYLOR '44 ('49)
May 18, 2015

SHERWIN GROSSFIELD '45
May 7, 2015

HASKELL M. GOODMAN '47
(48)
April 13, 2015

MITCHELL AARONSON '48
April 28, 2014

CHARLES M. ALLEN '48
March 23, 2015

THEODORE ANASTOS '48
April 6, 2015

JOHN TIMOTHY HARRINGTON
'48
April 25, 2015

HARRY C. MARTIN '48
May 3, 2015

PAUL MISHKIN '48
July 6, 2015

JERROLD SCOUTT JR. '48
Feb. 27, 2015

BENTLEY TOBIN '48
June 1, 2015

RICHARD J. BARTLETT '49
May 6, 2015

THOMAS D. DOLAN '49
May 5, 2015

WILLIAM M. HORNE '49
April 21, 2015

EDWIN S. MCKEOWN '49
June 1, 2015

CYRUS A. NEUMAN '49
March 9, 2015

1950-1959

HANS H. ANGERMUELLER '50
July 11, 2015

ROBERT A. BEHRMAN '50
July 16, 2015

ROBERT E. BRADNEY '50
July 15, 2015

IRVING D. ISKO '50
March 20, 2015

ELLIOT N. MARKELL '50
Jan. 25, 2015

RICHARD L. WELLS '50
May 1, 2015

SAMUEL FREED '51
May 17, 2015

WILLIAM E. LANG '51
June 22, 2015

WARD J. LARSON '51
July 27, 2015

ERWIN MILLIMET '51
July 20, 2015

DONALD SHACK '51
July 12, 2015

LUCIUS H. BIGLOW JR. '52
June 8, 2015

MARCUS "PETE" AARON II '53
May 28, 2015

DAVID M. ATCHESON '53
April 25, 2015

JOSEPH S. BALSAMO LL.M. '53
Feb. 25, 2015

LEWIS T. BOOKER '53
April 4, 2015

EDGAR H. BOOTH '53
Feb. 21, 2015

WILLIAM S. LYNCH '53
July 13, 2015

WILLIAM B. MATTESON '53
May 8, 2015

WILTON B. PERSONS JR. '53
April 3, 2015

FORREST G. SCHAEFFER JR.
'53
June 19, 2015

ALEJANDRO A. LICHAUCO '54
May 22, 2015

H. MARTYN OWEN '54
March 23, 2015

EDWARD G. SPARROW JR. '54
April 23, 2015

ARTHUR A. FRANKL '55
May 30, 2015

HELMUT J.F. FURTH '55
July 14, 2015

PAUL G. "GRIFF" GARLAND '55
March 16, 2015

DANIEL A. GUTTERMAN '55
Sept. 24, 2014

DANIEL ASHLEY JENKS '55
July 15, 2015

SHELDON KARON '55
April 26, 2015

SAMUEL PISAR LL.M. '55
S.J.D. '59
July 27, 2015

DAVID A. PRESSLER '55
June 11, 2015

RENALD A. MANETTI '56
June 22, 2015

PETER W.L. BRAUNS LL.M. '57
March 20, 2014

JORGE L. CORDOVA JR. '57
June 17, 2015

CHARLES DAVENPORT '57
April 15, 2015

JOHN D. ELLIS '57
May 15, 2015

JOHN J. O'GRADY III '57
July 10, 2015

JOHN A. PALLADINO '57
May 17, 2015

ROBIN L. SHARWOOD S.J.D. '57
April 12, 2015

EDWARD M. LEVIN '58
May 3, 2015

PETER M. MEZEY '58
April 16, 2015

RICHARD D. SPIZZIRRI '58
May 12, 2015

JOHN H. WHITE '58
July 28, 2015

KELTON M. BURBANK '59
June 29, 2015

JOHN H. MCCORD '59
May 17, 2015

A. KEITH MCCLUNG JR. '59
May 16, 2015

JAMES H. OLTMAN '59
July 21, 2015

1960-1969

GILBERT E. GOVE '60
July 18, 2015

JOHN W. "BILL" MALONE '60
June 25, 2015

DAVID M. SPECK '60
June 4, 2013

LAURA LOU MEADOWS
TAGGART '60
April 23, 2015

JERRY B. FULMER '61
May 22, 2015

CHARLES A. GOLDSTEIN '61
July 30, 2015

BENJAMIN P. HARRIS III '61
June 28, 2015

JOHN B. JOHNSON JR. LL.M.
'61
May 18, 2015

JEROME A. PACKER '61
July 2, 2015

MAURICE DEG. "MO" FORD '62
April 14, 2015

STEPHEN GURKO '62
Sept. 24, 2014

MAURICE M. HENKELS JR. '62
May 19, 2015

HARVEY MCGREGOR, Q.C.
S.J.D. '62
June 27, 2015

JOHN H.R. PLEWS '62
March 18, 2015

IRVING H. WELFELD '62
Oct. 3, 2014

WILLIAM F. WACHTER '63
June 24, 2014

ALFRED T. MCDONNELL '64
April 18, 2015

GEORGE SZABO-IMREY '64
July 13, 2015

FRANK E. SAMUEL JR. '65
Oct. 20, 2014

THEODORE S. CURTIS JR. '66
April 24, 2015

PAUL M. HAYGOOD '67
June 13, 2015

LEON LETWIN LL.M. '68
July 13, 2015

CHARLES L. HOOD '69
April 11, 2015

JOHN L. WEST '69
June 22, 2015

1970-1979

RICHARD L. BERKMAN '70
Feb. 20, 2015

SANDRA Y. ROSENBLITH '70
May 26, 2015

PETER J. RUBIN '70
April 17, 2015

ANDRE G. SASSOON LL.M. '70
Nov. 16, 2013

GARY BANKS '71
April 27, 2014

TERRY A. BARNETT '71
May 19, 2015

HARVEY J. GOLUBOCK '71
April 27, 2014

PHILIP G. VARGAS '71
Feb. 28, 2015

ELMER W. "TIM" HANAK III
'72 ('74)
April 19, 2015

JOHN QUINN ROUNSAVILLE
JR. '72
April 2, 2015

MARK E. ASHBURN '73
June 3, 2015

PATRICK J. BRUGGEMAN '73
May 14, 2015

ROSCOE TRIMMIER JR. '74
July 30, 2015

STEVEN J. AGRESTA '75
Jan. 2, 2015

GARY P. ENCINAS '75
May 23, 2015

DOUGLAS R. MAXWELL '75
July 3, 2015

DANIEL J. MELTZER '75
May 24, 2015

VICTOR A. VITLIN '77
May 19, 2015

MARC R. POIRIER '78
Aug. 2, 2015

1980-1989

ALAN TALKINGTON '81
Nov. 18, 2014

HELEN DEISS IRVIN '84
June 8, 2015

SHEILA E. VADEN-WILLIAMS
'84
April 19, 2015

MARC J. MAROTTA '87
April 8, 2015

1990-1999

CAREY W. GABAY '97
Sept. 16, 2015

2010-2015

MAYAR DAHABIEH LL.M. '12
March 31, 2015

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Mass. Ave., Cambridge, MA
02138 or to bulletin@law.harvard.edu.

IN MEMORIAM

Harvard Law School lost two beloved professors this year. Story Professor Daniel J. Meltzer '75, a renowned authority on federal courts and criminal procedure, who was a valued legal adviser to President Barack Obama '91, died on May 24. David Abraham Grossman '88, a clinical professor and lawyer who devoted his career to addressing the legal needs of the poor, died on July 12. Here, they are remembered by former students.

DANIEL J. MELTZER '75: 1951-2015

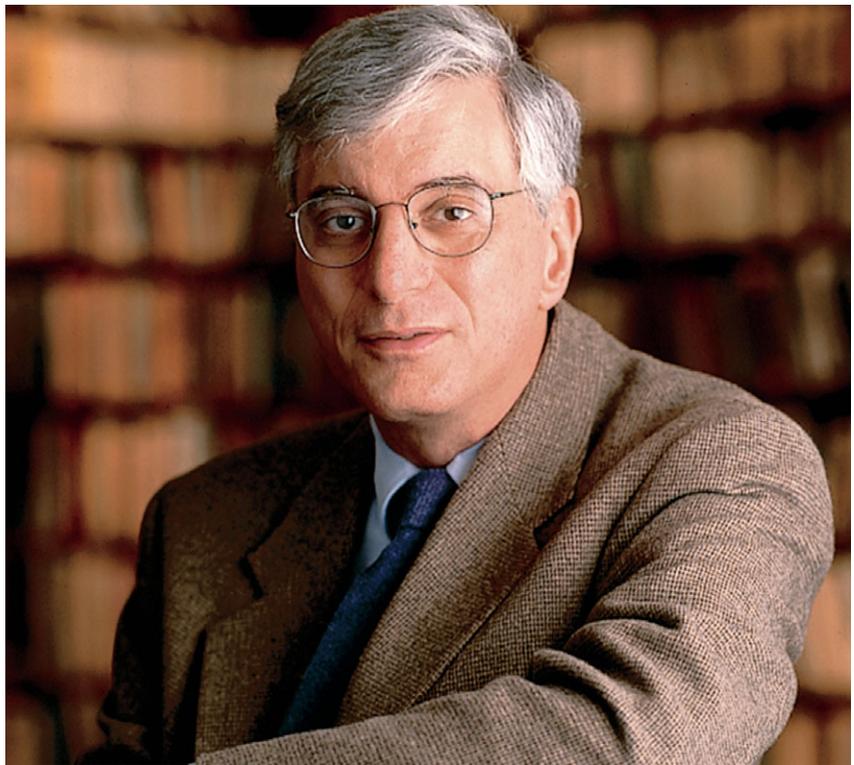
THE GIFT OF IMPOSSIBLY HIGH EXPECTATIONS

By Ernest A. Young

DAN MELTZER WAS MY FAVORITE teacher in law school, and he remains the person I most want to be when I grow up. But I must confess that his class was often one of my more stressful experiences at Harvard. Part of it was that Federal Courts had a reputation as the biggest, baddest course in law school. And it didn't help that, walking into class on the first day, I spied nearly every classmate I had ever worried was smarter than me. But the worst of it, frankly, was Dan. Not because he was mean or overbearing—quite the opposite. Dan's brilliance was obvious, but he paired it with a profound gentleness and an obvious confidence that we were up to the difficult task he set before us. What stressed us out was that we loved Dan from the first day, and nobody wanted to let him down.

In his gentle, unassuming way, Dan offered his students the gift of impossibly high expectations. Contemporary law schools have largely rejected the Kingsfieldian model of terrorizing students, but sometimes intellectual rigor gets thrown out in our rush to make students comfortable. Dan was far too kind a soul to play Kingsfield. But he paid us the compliment of assuming that we were people basically like him—that is, prepared to work as hard and think as deeply as it took to understand a very difficult set of legal problems. We wanted desperately to show that we shared this samurai-style professionalism.

Dan also offered us a way of thinking about the law that, for many of his students, profoundly shaped how



we think about our calling. Harvard expects its students to assimilate vast quantities of doctrinal detail while also rubbing their noses in the law's indeterminacy and frequently political nature. This can be terrifying—it's awfully hard to devote yourself to answering difficult legal questions when you also suspect that those questions may not *have* "one right answer" at all.

Accepting much of that indeterminacy and flux, Dan still insisted that law could resolve disputes in a coherent way. He was not simply our leading Federal Courts scholar; Dan was the best exemplar in his generation of the

Legal Process school of jurisprudence that gave birth to Federal Courts as a distinct field of legal study. That approach coped with widespread disagreement about underlying values—think of disputes about race or abortion—by focusing on legitimate processes for dispute resolution. By opening this line of thought, Dan did more than any other teacher to help me keep believing in the law.

Dan's way of thinking also influenced how we treated one another. Harvard students can be opinionated and prone to self-importance, and the combination produces heated polit-

IN MEMORIAM



Daniel Meltzer first joined the HLS faculty in 1982.

the years he became a wonderful mentor in our shared field. No other figure more profoundly shaped who I am as a lawyer and a scholar. But the best part is that I can claim him as my friend.

Nowadays, the polarization in society at large is creeping into the law, and one despairs that people from different camps can ever persuade one another of much of anything. We need Dan's generosity of spirit, insistence on analytical rigor, and ability to see

the legitimacy of opposing positions now more than ever. His untimely passing leaves a yawning gap in both his scholarly field and the profession at large that can never be filled. But we can still try hard not to let him down.

why I tell my students that "Federal Courts is a way of life." And it is no doubt why Dan was able to befriend so many people whose political views diverged significantly from his own.

Years after graduation, I returned to Harvard as a young scholar to give a Harvard faculty workshop. Dan showed up ahead of time to wish me luck, which surprised me because I had been fairly anonymous in his class. But Dan remembered, and over

Ernest A. Young '93 is the Alston & Bird Professor at Duke Law School.

→ The December issue of the Harvard Law Review will include essays on Meltzer's scholarship.

DAVID GROSSMAN '88: 1957-2015

A PASSION FOR SOCIAL JUSTICE AND FOR MENTORING STUDENTS TO JOIN THE FIGHT

By Marielle Macher

AFTER I LEARNED THAT DAVID Grossman had entered hospice care, I sat at my computer, trying to write a goodbye email, but the words were not coming. I did not know how to express how much Dave's mentorship impacted my life and my career, and I still do not. Eventually, I gushed out how much Dave meant to me and hit "send." Then I pictured him reading it, and smiled, realizing how much he would be teasing me for its sappiness. That was just his nature—he was simultaneous-



Clinical Professor David Grossman was faculty director of the Harvard Legal Aid Bureau.

IN MEMORIAM

ly inspiring, kind, generous, and brilliant while also tough and self-effacing with an irreverent sense of humor.

I had the incredible privilege of being one of Dave's and Pattie Whiting's students in the Harvard Legal Aid Bureau's housing practice from 2009 to 2011. At the Bureau and Housing Court, Dave was truly a hero. During our very first day at Housing Court, Dave rushed from shepherding around his new students to jumping straight into winning motions for low-income tenants he had met in the hallway only minutes beforehand. He never hesitated for a moment to help a client about to lose his or her home.

Dave expected the same fierce determination from his students. He always pushed us to challenge ourselves by taking on more and more cases, by delivering the best possible work for our clients, and by developing new tools for advocating for low-income communities. Many times, especially during my first year at the Bureau, Dave pushed me past what I had thought was (but what was not) my breaking point, helping me see that I was capable of delivering more. I am grateful to Dave for this perhaps more than anything else. Without Dave's pushing and encouragement, I am certain I would not be a legal aid lawyer today.

Dave was not content, however, with simply providing high-quality representation to as many low-income individuals as possible (although he undoubtedly provided



outstanding representation to many). His true passions were using direct representation as a tool to support social justice movements and mentoring his students to join him in the fight. He spent nearly every Tuesday night with his team of students at City Life/Vida Urbana—a community organizing group leading the fight against foreclosure-related displacement—counseling tenants facing potential eviction, and then joining CLVU members in chanting “When we fight, we win!” He then jumped immediately into overseeing his students in preparing for Housing Court on Thursday, where he ensured that every single person facing a foreclosure-related eviction had representation. The week wrapped up with him supervising his students in running a pro se foreclosure

defense clinic on Friday, and then conducting outreach to others facing foreclosure on Saturday.

Despite this demanding pace, Dave never seemed to grow tired. Instead, he seemed to thrive on it, answering emails from his students late into the night and sometimes showing up to Saturday's foreclosure outreach with his children alongside him. Dave's energy ensured that he always had a following of students willing to join him, and helped to spread CLVU and Dave's law and organizing model for fighting foreclosures to cities across the country.

But perhaps what was most amazing about Dave was how, despite mentoring hundreds of students over the course of his career, he managed to have a different relationship with each of us. Indeed, as much as it some-

times drove me crazy, I have found myself missing Dave's intentionally mispronouncing my last name at every possible opportunity (look up “macher” in a Yiddish dictionary) more than his superhuman qualities. I will also always be grateful for how he continued writing to me, as well as so many other students, to offer advice and words of encouragement years after we graduated, even when he was far sicker than I was willing to believe. And although it has been incredibly difficult to find meaning in Dave's untimely passing, there is no doubt that Dave's legacy will live on through his clients, his students and the movement he inspired.

Marielle Macher '11 is a legal aid lawyer with the Community Justice Project in Harrisburg, Pennsylvania.

A Powerful Platform

Salvo Arena on making connections through the HLSA

Halfway into his term as president of the Harvard Law School Association, Salvo Arena LL.M. '00 says one of the questions he hears most often when he meets with other alumni is, What exactly is the HLSA and what does it do?

Part of the answer is logistical: The HLSA is really “like the mother ship,” he explains, overseeing and providing coordination and central services to all HLS clubs and shared interest groups around the world.

Recently, Arena says, it has helped to launch three new shared interest groups: the Private Equity and Venture Capital Network; the In-House Counsel Network and the Entrepreneur’s Network. It also has bolstered the efforts of clubs that have undergone leadership changes.

He is proud of the fact that during his tenure the HLSA has recognized two outstanding HLS professors, William Alford '77 and Charles Ogletree '78, with the association’s highest honor.

He is also proud that the HLSA has enlarged its executive committee. “We have lawyers and judges, as in the past, but we now also have members engaged in the private equity sector, investment bankers, lawyers from the Americas, but also from



“The extraordinary power of the HLSA is people,” says Salvo Arena. “Alumni can help each other in very powerful ways.”

enual and beneficial resources that we can have being part of this community.”

Beyond the details of what has been accomplished, when people ask Arena about what the HLSA does, his answers come down to its potential to connect.

“I do believe that alumni can really help each other in very powerful ways,” he says. “And again, it’s all about the network.

Europe and Asia.”

One of Arena’s goals is to have the HLSA be more connected to the alumni associations of other Harvard schools. He imagines a collaboration with the Harvard Business School Alumni Association, for example, which would lead to a joint leadership forum. “I believe that is the direction we need to go.”

He also wants to focus on improving mentoring activities both on a local basis and on a national basis.

Later this fall, the HLSA will officially launch its new website, which will make it much easier to find events all over the world and “to facilitate the connection of alumni.”

The association has added more content on Linked In, started an Instagram account and improved content on existing social media channels.

“These are all tools,” says Arena, “keys to open the

door. But once you open the door, the extraordinary power of the HLSA is people—it’s the alumni, which is something astonishing. What we are trying to do is make the alumni more and more aware of the phenom-

We are talking about a potential network of 38,000 people. The network is not just your class,” says Arena, an Italian attorney practicing in New York City, “but a global network of all Harvard Law School alumni.”



HLSA AWARD RECIPIENTS

William Alford '77 and Charles Ogletree '78 share a number of HLS milestones. Both graduated from HLS in the '70s, joined the tenured faculty in the '90s and now direct HLS programs. Alford, a Chinese law and legal history scholar and passionate advocate for the disabled, leads the East Asian Legal Studies Program and is chair of the Harvard Law School Project on Disability, and Ogletree, a legal theorist and influential social justice advocate, heads the Charles Hamilton Houston Institute for Race & Justice. This year the longtime friends shared a distinct recognition when each received the HLSA Award in honor of their visionary leadership and commitment to HLS.

A European (Re)Union

Celebrating the HLSA of Europe at 50



FIFTY YEARS AGO, Class of 1963 LL.M. graduates Heinz Bongart (left) and Willem Stevens (right) helped found the Harvard Law School Association of Europe. They served on HLSAE's inaugural board with founding President Jean Pierre LePaulle LL.M. '22 (second from left) and Charles Torem '38.

THIS PAST MAY, HARVARD LAW School Dean Martha Minow joined HLSA President Salvo Arena LL.M. '00 and more than 200 other alumni at a celebration to commemorate the 50th anniversary of the founding of the Harvard Law School Association of Europe, held at the Cercle de l'Union Interalliée in Paris. Among the 200 attending was Willem Stevens LL.M. '63, a Dutch graduate who helped to organize the HLSA of Europe's inaugural meeting some 50 years earlier in the ornate rooms of the same Union Interalliée.

In her opening remarks, Minow praised Stevens, the first secretary of the HLSAE. She also recalled the words of the late Professor Roger D. Fisher '48, who delivered the keynote address at that inaugural gathering in 1966. According to the July 1966 Harvard Law Bulletin, Fisher, a pio-

neer in the field of international law and negotiation, told alumni: "[I]t is not the law school but each alumnus himself who has to bear the ultimate responsibility for legal order in the world."

Minow told this year's attendees: "You bear that responsibility so well. Our alumni are leaders in government and public service, in law and business, throughout the world. We are so proud of what you have accomplished and grateful for your ongoing engagement with, interest in, and support for the law school. We would not be the extraordinary institution we are today without you. And as gatherings like this demonstrate, we are a global community and a global force for justice."

At the May event, HLS Professor William Alford '77, an expert on Chinese law and legal history, addressed alumni, focusing his presentation on "China's Chal-



This past May in Paris, HLSA of Europe President Henrik Rossing Lønberg LL.M. '01, Professor William Alford '77, Dean Martha Minow and HLSA President Salvo Arena LL.M. '00 celebrated the HLSAE's founding.



At the 50th anniversary of the HLSA of Europe, Dean Minow thanked HLSAE alumni for their commitment to HLS: "We are proud of what you have accomplished and grateful for your ongoing engagement with, interest in, and support for the law school. We would not be the extraordinary institution we are today without you."

lenge: Legal Development in the People's Republic of China.”

During the celebration, Alford, vice dean for the Graduate Program and International Legal Studies, received the HLSA Award in recognition of his service to the legal profession and to the HLS community.

During the academic session, Harvard Law Professor Charles Nesson '63, who has taught evidence, criminal law, trial law, torts and ethics, addressed alumni. Nesson designed his talk in the mode of his new online course, JuryX, which explores the art and history of the deliberative process through large-scale online discussions of contemporary issues.

A panel discussion on “Lawyer-ing in the 21st Century” featured panelists Eckart Brödermann LL.M. '83, a partner at Brödermann Jahn in Hamburg, Germany; Willem Stevens LL.M. '63, a tax expert who served as senior partner at Baker & McKenzie, Amsterdam; and Dina Waked

LL.M. '06 S.J.D. '12, an assistant professor in global economic and comparative law at Sciences Po, Paris. Alford and Felicia A. Henderson '97, a leadership consultant and adjunct law lecturer at Sciences Po, Paris, moderated.

The reunion also included a day trip to the Chantilly castle about 25 miles outside the center of Paris and a private tour of the George C. Marshall Center, which is located in the building that was used by the U.S. State Department as headquarters for the administration of the Marshall Plan.

This year's event was organized by Henderson; Roger Benrubi LL.M. '50, senior counsel, Cleary Gottlieb Steen & Hamilton, Paris; Jacques Salès LL.M. '67, partner at Salès, Testu, Hill, and former president of the HLSAE and the HLSA; Anne-Marijke Morgan de Rivery LL.M. '80, general counsel, GE Capital France and former HLSAE president; Nathalie Younan LL.M. '99, partner, Foucaud Tchekhoff Pochet & Associés, Paris, and vice president, HLSAE; and Anne-Caroline Urbain LL.M. '06, associate, Jones Day, Paris, and vice president, HLSAE.

The Power of the Network

Fifteen years ago, Harvard Law School hosted the first Celebration of Black Alumni. Planning is underway for the 2016 Celebration, which will be held Sept. 16-18, 2016, at HLS. To find out ways to get involved, go to: <http://hls.harvard.edu/dept/alumni/reunions/>.



ATLANTIC PHOTOS

→ **Join the Club!**

Be Part of the Global HLS Alumni Network

With a robust network of U.S. and international associations and a growing community of shared interest groups, the Harvard Law School Association offers alumni a variety of networking and professional enrichment possibilities. Take advantage of the global community and join alumni initiatives and events at www.hls.harvard.edu/alumni.

Harvard Law School Association Clubs

UNITED STATES

- California:
 - Los Angeles
 - Northern California
 - Orange County
 - San Diego
- Florida (South)
- Illinois
- Maryland (Baltimore)
- Massachusetts
- Michigan
- Minnesota (Twin Cities)
- New Jersey
- New York City
- Ohio:
 - Cincinnati
 - Cleveland
- Pennsylvania (Philadelphia)
- Rhode Island
- Texas:
 - Dallas
 - Houston
- Utah
- Washington, D.C.



INTERNATIONAL

- Arabia
- Brazil
- Europe
- France
- Germany
- Japan
- Korea
- Mexico
- Philippines
- Turkey
- United Kingdom

Shared Interest Groups

- Asian Pacific American Alumni Network
- Black Alumni Network
- Entrepreneur's Network
- In-House Counsel Network
- Latino Network
- GLBT Alumni Network
- Native American Alumni Network
- Private Equity and Venture Capital Network
- Recent Graduates Network
- Senior Advisory Network
- Women's Alliance Network

As the law school's Campaign for the Third Century kicks off Oct. 23, it finds itself in very able hands: One of its co-chairs is Jim Attwood J.D./M.B.A. '84, a managing director at The Carlyle Group, a global alternative asset manager with \$200 billion under management. Since 2000, Attwood, a member of the HLS Dean's Advisory Board, has directed Carlyle's private equity investments in the global telecommunications and media industries, and more recently in technology as well. After graduating from Harvard Law and Harvard Business schools, he became an investment banker at Goldman, Sachs & Co. He next served as executive vice president for strategy, development and planning at GTE Corp. before assuming a similar role at Verizon Communications. He was a key player in several industry-shaping transactions, including the merger of Bell Atlantic and GTE (creating Verizon) and the creation of Verizon Wireless.

What is your scope at The Carlyle Group?

I direct our firm's private equity investment activities in telecommunications, media and technology. While I'm not practicing law, I certainly use what I learned at HLS.

Why focus on this sector?

I got involved in the telecommunications industry in the 1990s because it was a fascinating area that was undergoing a period of rapid change, both legally and structurally. The Telecommunications Act of 1996 fundamentally changed the rules of the road and created a lot more opportunities for new entrants and investment. That coincided with an explosion in technology in the mid-'90s: The World Wide Web came to be, which created access to the Internet for the masses. That, combined with higher-speed data networks and the increasing ubiquity of mobile devices, created a potent witch's brew that has carried forth to today to create this digital world we now live in. I was involved in the creation of Verizon and Verizon Wireless, and have stayed active in the sector as an investor ever since.

What do you enjoy most about it?

The sector is intellectually

very stimulating. Technology is literally changing the world we live in. I enjoy looking at new investment opportunities, but quite frankly what's most enjoyable and fun is working with our portfolio company management teams to help them improve their businesses and create value.

What do you see coming next in this arena?

I think we'll see change continue to accelerate. We'll also see the further evolution of intelligence in software: It's extraordinary to see what software is now able to accomplish that used to be the province of hardware. Penetration of mobile devices and Internet access will continue to rise. Today there are almost 3 billion Internet users and 7 billion mobile phone users worldwide. More people access the Internet today from their mobile devices than from computers. The number of people connected to the Net globally will be much bigger in five years, particularly in developing countries. Developing countries are leapfrogging what we went through in this country, where it was first fixed line networks, then mobile. In developing countries, it's mobile first.

What is your fondest memory of HLS?

I met my wife, Leslie, at HLS. We were both in the Class of '84, and we were in Bob Clark's ['72] first-year corporations class. She caught my eye: She was the cutest girl in class. Leslie is retired from the law now, but has many interests, particularly in food safety and healthy eating. She is incredibly knowledgeable about this whole area. As an aside, Leslie's third-year paper adviser at HLS was a young professor named Martha Minow.

How was the law school different from Harvard Business School?

The students and environment couldn't have been more different. The law students were generally smarter and had higher IQs, while the business students had higher EQs [emotional quotients]. They were less academic but more socially comfortable, more practical, and networked a lot more.

How has your law degree been helpful to you?

A lot of people say law school taught them to think deductively and logically, taught them to be analytical. As an undergrad at Yale, I majored in applied mathe-

matics, and I have a master's in statistics, so I sort of already had that. I did learn a tremendous amount about society from law school—the rules established by our society and how we use them. My legal education has been incredibly valuable over the course of my career by enabling me to understand what is important and what isn't in a whole host of transactional contexts: contracts, IP, legal proceedings, tax, corporate structure, etc.

Why are you involved in the Campaign for the Third Century?

Harvard Law School is really a unique institution. Obviously, it occupies a rarefied spot in the history of legal education, but beyond that, look at the impact it has had on society at large. I really don't think any other institution comes close to it.

I started to get back involved in the law school when Elena [Kagan '86] was dean. She did a wonderful job of giving the law school a bit more of a soul and bit more of a heart, and I think the school was in need of that. She also led the effort to build the new building, which has had a profound impact on the campus and students. The experience students are having today is fundamentally different from when we were there in the '80s, when I don't think many people were happy as students. Now when I visit HLS, there seem to be a lot more students happy to be there. People used to come to campus, go to classes, then leave. Now they come to campus, go to classes, and stay.



→ “HLS trains you to be more than a lawyer—it trains you to be a leader, a contributing member of society at many levels.”

To me, what’s happened in the last decade or so at HLS is remarkable, and I really want to be part of continuing the journey for the school in a positive way.

What do you hope for the school’s future?

What the school needs to recognize, and they’ve done this to some degree, is that HLS trains you to be more than a lawyer—it trains you to be a leader, a contributing member of society at many levels. Recognizing the broader impact that an HLS education has on society is really important.

Harvard Law School attracts the most extraordinary talent, gives them a great education, and then they go off and do amazing things. It’s important for people to understand contract law and torts but equally important for them to understand how to use the law and the legal process to promote many societal objectives that are outside the strict definition of law. Leslie and I have been supportive of public interest fellowships at HLS and of easing the financial burden for those who want to take the public interest track

after law school. Giving them the ability to do that sooner rather than having to pay back student loans is important.

What do you do in your spare time?

We like to go to Martha’s Vineyard, where we happen to be neighbors of Alan Dershowitz. I am a wine collector, and I love music—all varieties, from classical to jazz, folk and rock.

Who’s your favorite rock band?

I’m a big Grateful Dead fan. Last summer I saw all five of the “Fare Thee Well” shows,

three in Chicago and two in Santa Clara, celebrating the band’s 50th anniversary.

You’re a Deadhead?

[He laughs.] I also chair an important music organization here in New York, Caramoor Center for Music and the Arts. Caramoor was historically oriented toward classical music, but recently we have expanded the programming to include folk, roots and jazz. In fact, we have just begun a collaboration with Jazz at Lincoln Center for our jazz program. It’s all very fun.

A new digital collection reveals Greenleaf's vision of law as a 'moral science'

In September of 1845, Harvard Law School was shaken by the death of Professor Joseph Story (1779-1845). His passing left Simon Greenleaf (1783-1853) the sole teacher at HLS. In the dozen years since Greenleaf's arrival in 1833, he and Story had been equal partners.

Greenleaf, after all, had joined the legendary Story to prop up the ailing law school and bring it back to sturdy life. In 1829, the year Story arrived, HLS—shakily about to enter its third decade—had six students. The coursework was lax, the library scanty; competition was still fierce from traditional apprenticeships and from rising proprietary schools like the one in Litchfield, Connecticut; and Harvard itself was rocked by a financial crisis. By the fall of 1833—with the law school propped up by a benefactor (Nathan Dane) and a new Harvard president (Josiah Quincy)—Greenleaf

Dane Hall was home to Harvard Law when Simon Greenleaf joined Joseph Story in efforts to reinvigorate the school. ▶



Simon Greenleaf viewed the law as a flexible, living social instrument influenced by the currents of an era. ▼



arrived at an HLS that had enrolled a record 56 students. “We have shared the toils together,” Story wrote to Greenleaf in 1842, and “you are in every way entitled to an equal share

(of respect) with myself.”

The recent digitization of the Simon Greenleaf papers—26 boxes of letters, cases, legal opinions, tracts, and complexly layered manuscripts—documents a collaboration between the two men so thorough it included acquiring artwork to decorate the law school. (We learn this from an 1840 letter from Greenleaf and Story to Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court, looking to acquire a bust of Shaw to display in Dane Hall.)

The collection also provides the opportunity for virtual

visitors to acquaint themselves with Greenleaf himself: an unsung “genius,” according to HLS Visiting Professor Daniel R. Coquillette ’71. (Coquillette is co-author of a new history of Harvard Law School. See Page 6.)

Greenleaf's scholarship, he suggests, foreshadowed the case method approach of Christopher Columbus Langdell LL.B. 1854 and the legal realism of Oliver Wendell Holmes Jr. LL.B. 1866.

Visitors to the Greenleaf papers can “open” folder 10 in box 2 and see Greenleaf's inscription on the bound collection of 65

letters from Story. They can look for letters from abolitionist Charles Sumner LL.B. 1834, legal theorist Francis Lieber or the plain-spoken Josiah Quincy. They can see letters and documents related to the Temperance Movement, the American Colonization Society, and Liberia (Greenleaf drafted the original constitution)—interests that reflect the evangelical Christian beliefs that Greenleaf wove into his ideal of how the law should be taught: as a moral science.

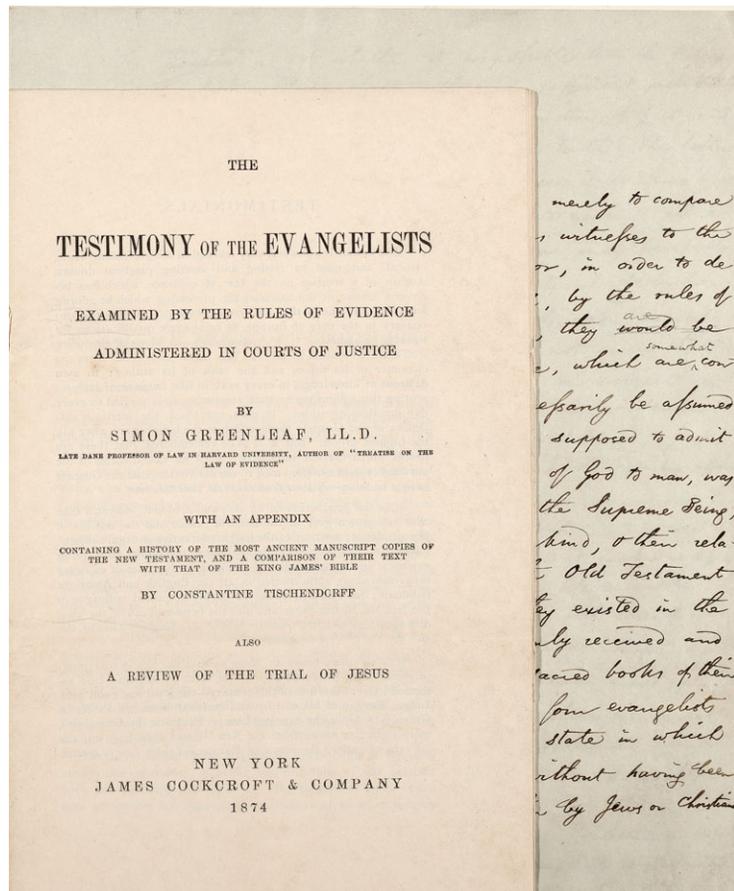
The same visitors might take note of Greenleaf's rapid, right-slanting hand and its generous spacing between words, as if to say—lawyer-like—that each has an intentional, hard-fought meaning. Greenleaf also had an appetite for energetic editing and rewriting. His bound volumes, foldouts, overlays, glued-on new paragraphs and spidery marginalia all made digitizing the papers a challenge.

Within a year, the Greenleaf collection will be online as a

“suite,” searchable by words, dates, names, document types and themes. Meanwhile, visitors can navigate Greenleaf's digital papers to assess his legal reasoning and his deep editing, and even to peruse his clothing bills (always less than he spent at the butcher). They can also find glimpses of the private, scholarly man who helped save Harvard Law School. In one letter, Charles Sumner summed up both Greenleaf and his writing style. “Neat, apt,” he wrote, “polished, lucid.”

—CORYDON IRELAND

Greenleaf and Story set out to acquire artwork depicting great jurists to display in Dane Hall, pictured here in 1880, nearly 30 years after Greenleaf's death. Portraits on display included a painting of John Marshall, the fourth chief justice of the United States. ▶



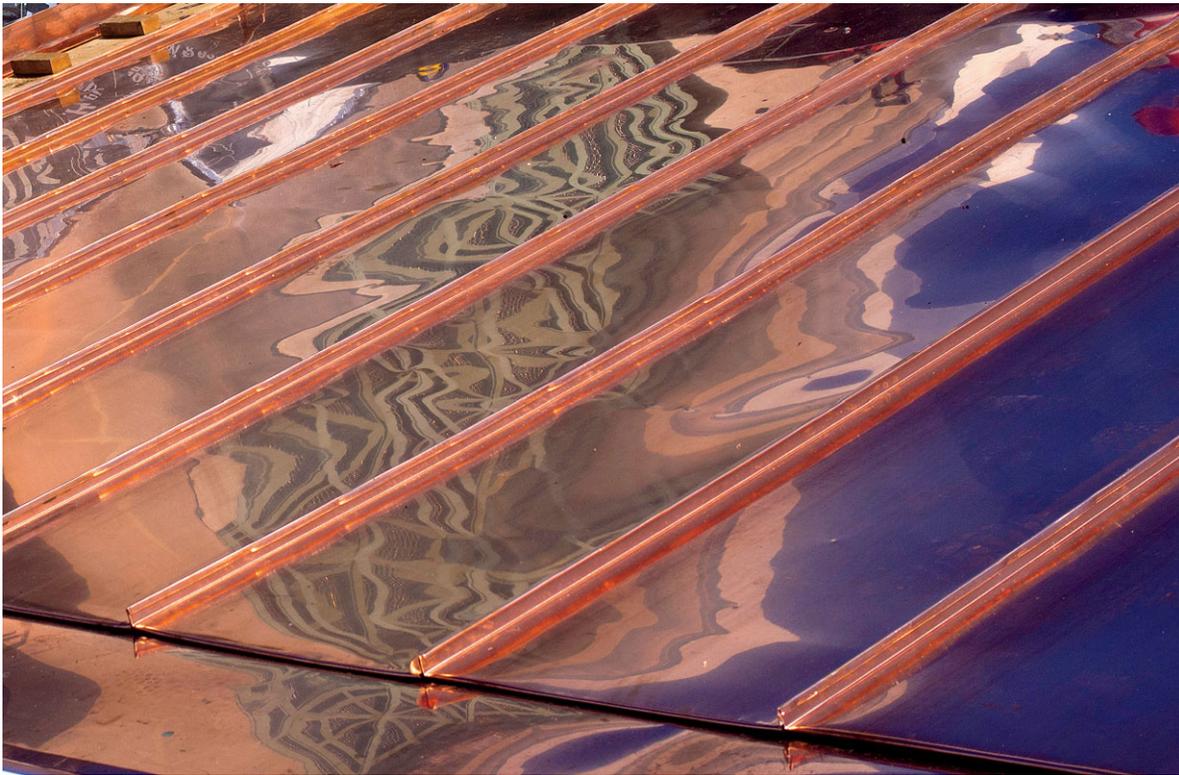
In 1842, Simon Greenleaf published the first volume of his masterwork, “Treatise on the Law of Evidence.” He would go on to write a book that used the rules of evidence, cross-examination, and other legal tools to investigate the Gospel accounts of Jesus, the crucifixion and the resurrection. “The Testimony of the Evangelists,” as it is now known, made him prominent among 19th-century practitioners of Christian apologetics,

the centuries-old use of reason to defend and explain Christianity.

In fact, Greenleaf regarded law school itself as a form of Christian evangelism, wrote Alfred Konefsky in his study “Piety and Profession,” just like the Bible, temperance, colonization and peace movements that drew his lifelong sympathy. A law school graduate, according to Greenleaf, would be humane, legally adept and morally active.



BACK COVER | *Degrees of Verdigris*



LORIN GRANGER

The copper on the roof of Langdell Hall was replaced this summer for the first time in 40 years. The shine will quickly give way to a weathered patina—green, like the ornate metalwork above it.
