

**THE VOLCKER RULE / SAFEGUARDS** *for* immigrants  
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CONSTITUTIONAL *Decision-Making / Helping* **ENTREPRENEURS**

# Harvard Law

*bulletin*

# PAY

*for*

# PLAY



Suddenly,  
the N.C.A.A.  
is forced to  
play defense  
in more  
than one  
court

Professor Tomiko Brown-Nagin calls education “the civil rights frontier.”

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## Harvard Law Bulletin

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ROBBIE MCCLARAN



Law increasingly crosses physical borders; legal work undertaken by members of the Harvard Law School community increasingly crosses borders of disciplines and professions. From 1L property law to laws of war, physical boundaries supply both facts significant to law and the metaphor of borders used in defining legal rights and concepts.

Students in the Legal Aid Bureau this spring represented a client who brought her children across the border from Canada following years of sexual and emotional abuse. The advocates built arguments under the Hague Convention on the Civil Aspects of International Child Abduction.

Professor John Coates teamed up with Harvard Business School's Suraj Srinivasan to leverage insights from 120 papers in accounting, finance, and law in a forthcoming article that evaluates the costs and benefits of the Sarbanes-Oxley Act of 2002—the federal law that set new and enhanced standards for all U.S. public company boards, management and public accounting firms.

The Berkman Center for Internet & Society joined with UNICEF in April. They convened leaders from diverse personal, professional and geographical perspectives (40 percent of the participants were from the global South) for “Digitally Connected.” This working conference explored potential actions to improve digital connections for youth around the world. Such work builds on ways to give voice to the disconnected while also supporting young people's participation in creating stories and policies and learning with safety, dignity, and efficiency.

This issue of the Bulletin explores border-crossing in various contexts. Consider constitutional design by crossing the borders into decision theory, game theory, welfare economics, political science and psychology. This is what Professor Adrian Vermeule '93 does in his important new book, “The

Constitution of Risk,” which examines the elements of a constitution in terms of managing political risk.

Professor of Practice Urs Gasser LL.M. '03 and his students cross national and conceptual borders in the seminar Comparative Online Privacy. And in a separate project, Professor Gasser links students from across the university in the Digital Problem Solving Initiative to tackle real challenges, such as how to organize streams of student data from online classes without violating students' privacy rights.



Financial risk regulation under the Volcker Rule affects proprietary trading by banks both in the United States and around the world. Our story crosses national borders and bridges theory and practice as it examines support for and criticism of the rule as expressed by faculty and alumni.

Immigration lawyer Margaret Stock '92, awarded a 2013 MacArthur Foundation “genius” grant, finds unusual opportunities at the intersection of national security and immigration law, involving soldiers who risk their lives for this country without the benefits of citizenship. Debbie Anker LL.M. '84, the HLS clinical professor who introduced Stock to immigration law, founded the school's Immigration and Refugee Clinic, which this year is celebrating its 30th anniversary and its ongoing commitment to help individuals as they cross borders. Another story here follows clinic students to the Arizona-Mexico border, where they examined the journeys taken by undocumented individuals through the desert, border enforcement and

humanitarian aid.

Where is the border between student sports and athletic business? This is the question lying behind two current legal questions: Should labor law regulate intercollegiate sports, and should a student-athlete be viewed as an employee? Our faculty, students and alumni consider what should happen as intercollegiate sports cross the border between education and lucrative entertainment. In addition, HLS Professor I. Glenn Cohen '03 of the HLS Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics crosses the river as part of a new Harvard Medical School initiative funded by the National Football League Players Association; Professor Cohen and the center will lead projects addressing legal and ethical issues influencing football player health and well-being.

Law can serve as a bridge not only to sports but also to artists and the entertainment world. Bert Fields '52, one of the nation's most accomplished entertainment lawyers, shares his insights into fascinating legal work and into his own writing.

Led by Clinical Professor Brian Price, students in our Transactional Law Clinics assist technology and business developers with legal and strategic advice, offering it recently to engineers designing robotic hands, a businessman developing a media hub around barbershops, and low- and middle-income clients enmeshed in dysfunctional condominium associations.

This issue also celebrates the life of John Mansfield '56, our colleague on the HLS faculty who passed away this spring. Professor Mansfield long crossed borders in his work on law and religion, law and scientific evidence, and law in India, and in his constant probing questions, pursuing truth wherever it could be found.

A handwritten signature in black ink that reads "Matthew Minow".

**Late to the feast**

YOUR WINTER 2014 COVER feature titled “Thought for Food” reflects the activities of the HLS Food Law and Policy Clinic and the Food Law Lab. Congratulations. It took HLS a long time to come to the realization that this was an important part of the legal education.

By comparison, back in 1955, as a quizzical 1L, I would ask teachers at HLS why there was no course or seminar on food and the law. “Foood?!” exclaimed one professor in astonishment at the very question. Their replies boiled down to this: Food law had not developed either in a regulatory or judicial sense to a level of sufficient complexity to warrant becoming a sufficient intellectual challenge for the students. “Unlike tax law,” another respondent declared.

Makes us think about what may be missing today from the law school’s curriculum and culture.

**Ralph Nader '58**  
*Washington, D.C.*

**Appreciations**

THANK YOU SO MUCH FOR the Winter 2014 issue of the Harvard Law Bulletin, half a century after I attended Harvard Law School, which enabled me to enter the German Foreign Service with ease. This, in turn, eventually led to my working—for altogether nine years—as ambassador both in Algeria and in Morocco. I was glad to read of the appreciation for Professor [Terry] Fisher [Letters] as well as Professor Yochai Benkler’s defense of and appreciation for Bradley Manning and Edward Snowden [“Blow-



ing—and Twisting—in the Wind”]. The latter, at least, is now considered a hero in Europe. I was sad to learn that my Harvard roommate, Samuel Henes ’62, has passed away.

**Wilfried A. Hofmann LL.M. '60**  
*Bonn, Germany*

**‘Det’ remembered with affection**

I WAS SADDENED TO READ IN the Bulletin that my classmate Professor Detlev Vagts has died. He brought great distinction to HLS and HLS ’51. As a 1L, my seat assignment in Professor Lon Fuller’s Contracts was next to Det. As I struggled to grasp everything Professor Fuller threw at us, Det seemed to know all the right answers! He was one of the brightest, and nicest, people in our class. My son Mark (HLS ’95) was fortunate to have had Det as his adviser for the joint J.D./M.B.A. program.

The law school has lost one of its giants.

**Ed Colodny '51**  
*Chevy Chase, Md.*

**Bringing HLS alive**

I CONGRATULATE YOU ON AN exceptionally fine Winter 2014 issue of the Harvard Law Bulletin. I was particularly interested in your story on Tama Matsuoka Wong [“One Woman’s Weeds”] and her

work on food from “weeds” and her book on “foraging,” written with chef Eddy Leroux.

I would be interested in an article on the methods you use to cover the activities of so many people—law students, faculty, alumni/ae and the dean. I am thousands of miles away and never knew Dean Minow, but your coverage really brings her alive. Your stories remind me of many old acquaintances.

**John B. Barrett '60**  
*Forks, Wash.*

**Good enough to eat**

MY CONGRATULATIONS ON A beautiful winter edition of the Bulletin! The photos were outstanding and the articles concise and interesting. Keep up the good work!

**William C. Murphy '48**  
*Aurora, Ill.*



# Cautious about the Precautionary Principle

In his latest book on constitutional decision-making, Vermeule exposes the risks of risk-aversion

When writing laws, trying to prevent official abuse can actually create or exacerbate the very risks they are intended to avoid, argues Professor Adrian Vermeule '93 in his new book, "The Constitution of Risk."

Vermeule rejects this "precautionary" model of constitutionalism, in which drafters of laws or constitutions seek to avoid altogether "worst-case" risks such as dictatorship. The precautionary model assumes that if it's possible for officials to abuse their powers, then "constitutional rulemakers should act as if those officials will be certain to do so."

Instead, he argues that the better approach is an "optimizing" model in which all potential risks are taken into account "without becoming obsessively focused on one particular risk."

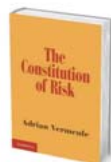
Some official misconduct or corruption may be "the unavoidable byproduct of a regime that optimizes the net overall risks of action and inaction, of abuses and neglect, on the part of both officials and powerful nongovernmental actors," Vermeule writes.

He says "The Constitution of Risk" is part of the "same broad stream of research" as his last book, "The System of the Constitution," in which he also tried to take a "systemic or holistic" approach to thinking about constitutional change.

In his latest book, Vermeule says, he chose to put aside "first-order risks" addressed by health, environmental or consumer product regulation by administrative agencies. Rather, he says he focused on "higher-order risks" arising from institutional failure, which he explores in contexts ranging from separation of powers and the structure of government to free speech and reasonable doubt in criminal law.



→ He argues for a model in which potential risks are taken into account without becoming "obsessively focused" on any one.



Throughout the book, Vermeule explores the recent controversy over recess appointments by President Barack Obama '91 of executive branch nominees previously blocked in the Senate. In a 2013 decision, the U.S. Court of Appeals for the D.C. Circuit narrowly interpreted the president's power to make recess appointments during a session of Congress.

But Vermeule says too narrow an interpretation of the recess appointment, designed as a precaution against the risk of presidential aggrandizement or of despotism, makes it more likely that important offices will go unfilled. And, he argues the holding might actually turn out to be "perverse," by increasing the risk of presidential aggrandizement in the future.

If the Senate continues to be “obstreperous” about appointments, Vermeule says, “the risk is there is so much pent-up frustration about stoppages, that the president offers a more radical reinterpretation that removes the checks altogether.”

In the context of recess appointments, he writes that an optimal solution might be establishing a fixed range of days during which a president can make a recess appointment based on historical practice or tying the appointments to the Adjournments Clause and saying that an adjournment longer than three days counts as a recess.

In general, Vermeule says, he didn’t set out to write specific rules and he doesn’t think he—or anyone else—can quantify optimized solutions.

“In matters of government, we never have scientific precision, and anyone who tells you otherwise is trying to put one over on you,” he says. “There’s a lot of false technocratic precision with respect to constitutional decision-making. I think we can’t do much better than to take a bunch of people who otherwise have sound judgment and get them to express their views and then more or less average their views.”

Eric Posner ’91 of the University of Chicago Law School, who wrote a 2011 book with Vermeule on presidential authority, says Vermeule’s latest book makes the “striking” claim that “much traditional constitutional ... doctrine has a precautionary-principle cast to it.” The book inventively draws on constitutional design analysis of the precautionary principle explored elsewhere, such as in the work of Professor Cass Sunstein in the context of regulating health, safety and business risks. (In this respect, Vermeule crosses the boundary between public and regulatory law, where the principle began.)

Posner wrote on his blog: “The precautionary principle makes little sense ... since there are always risks on all sides, and leads to pretty unattractive outcomes even when it can be applied.” He continued: “It’s as if we should all stay in our basements rather than take the risk that a flower pot will fall on our heads if we go outside.” —SETH STERN ’01

## OTHER RECENT FACULTY BOOKS

“*Why Nudge?: The Politics of Libertarian Paternalism*” (Yale) and “*Conspiracy Theories and Other Dangerous Ideas*” (Simon & Schuster), by Professor CASS R. SUNSTEIN ’78

In two new books, Sunstein, former administrator of the White House Office of Information and Regulatory Affairs, addresses human behavior and how government should best respond to it. As a follow-up to his best-selling “Nudge,” “Why Nudge?” makes the case that oft-maligned government paternalism in many circumstances would make people’s lives better. As behavioral economics affirms, people sometimes make decisions not in their best interests. While protecting freedom of choice, government can—and indeed is morally obligated to—steer them toward the right path for their health, safety and welfare, he argues. In his own experience in government, Sunstein faced blistering criticism for his ideas, including being dubbed “the most dangerous man in America.” Those “dangerous ideas” are compiled in “Conspiracy Theories,” a book of essays covering his views on topics such as same-sex marriage, climate change and animal rights. He points out that in government, a combination of feasibility and common sense constrains what can be accomplished. But in the academic realm, “today’s common sense is yesterday’s wild academic speculation.”



“*The Religion of the Future*,” by Professor ROBERTO M. UNGER LL.M. ’70 S.J.D. ’76 (Harvard)

In this philosophical treatise, Unger proposes a “turn in the religious consciousness of humanity” that would move beyond existing religions’ impulse to console us in the face of human reality. That reality, he writes, lies in the irreparable flaws of the human condition: our mortality, our groundlessness and our insatiability. He calls for a religious revolution that would confront these flaws and ultimately awaken us to a greater life. While past religions focused on the divine, a new religion would turn to the prophetic powers of all living people. He also explores a concept called “deep freedom”—a reshaping of the economy, the state, and civil society in service of “the greatness of the ordinary man and woman.”

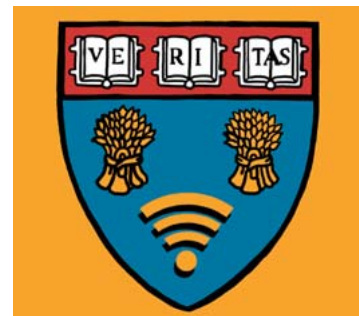


## FACULTY BLOGS

In addition to having their scholarship published in traditional fashion, faculty members are increasingly turning to the Web to convey their ideas on a more immediate basis and to work with students who contribute as writers and editors. Below are two recent additions to the HLS faculty blogosphere.

**OnLabor**, launched by Professors Benjamin Sachs and Jack Goldsmith, examines workers, unions, and their politics. (Goldsmith is also one of the editors of the national security blog Lawfare).

**GAB/The Global Anticorruption Blog**, started by Professor Matthew Stephenson ’03, looks at the causes of, consequences of, and possible remedies for corruption around the world, and provides links to many resources on the subject.



JUSTIN RENTIERA



IN THE CLASSROOM

## Privacy (TBD)

In the online space, what is private may depend on who you are and where you live



As Professor of Practice Urs Gasser LL.M. '03 sets up his PowerPoint and students deploy their notebooks and laptops, a riff of music drifts by. The tune soon reveals itself as a jazz version of the Beatles classic “Here, There and Everywhere”—a title that’s evocative of the global subject covered in this seminar, Comparative Online Privacy.

Urs Gasser asks his students to join him in developing a navigation aid for an emerging field.



Gasser stops the music. He typically starts class by tossing out a “proposition” for discussion. Past classes have explored “You have zero privacy anyway. Get over it”; “The Internet calls for a global digital privacy treaty”; and “Privacy in the online world should be seen as an independent right that deserves legal protection in itself.” Today’s proposition asserts: “Privacy is a generic process that occurs in all cultures.”

Feola Odeyemi '16 speaks up.

Using his native country as an example, he says that unlike their government, the Nigerian people don’t seem especially concerned about online privacy. “People don’t appreciate what a company like Google might gain from the data they collect,” he says, whereas the benefits that Google can provide are much more apparent. Concepts of privacy, he argues, vary “from culture to culture.”

“Your response nicely aligns with a position that sees privacy

as both context- and culture-specific,” Gasser tells Odeyemi. “If you look at privacy as process, it is more likely that you see it as a negotiation between self and society around you.”

With that stage set, Gasser invites his students to compare three different countries’ responses to Google Street View to draw lessons about the impact of culture and of various enforcement models.

The Google program makes street-level views of neighbor-



hoods around the world freely available on the Internet, and in Japan, lawyers and professors objected because it was possible to see inside homes and buildings. After engaging in the typically nonconfrontational style of Japanese problem-solving, Google simply agreed to lower the height of the cameras on its Street View vehicles and then reshot all the photos it had taken in Japan.

In Switzerland, by contrast, a centralized government agency took up the cause in response to citizen complaints. The agency negotiated with and eventually sued Google for insufficiently using blurring technology to preserve privacy. As the matter wended its way through the courts, Google tried to rally public opinion by threatening what the company claimed would be an economically detrimental shutdown of Street View in Switzerland. Ultimately, Google yielded and implemented the privacy protections ordered by the Swiss Federal Supreme Court.

Meanwhile, in the U.S., it was Aaron and Christine Boring, ordinary citizens, who sued Google in federal court for posting a photo of their home on Street View. In the absence of statutory protection, the Borings relied on the torts of intrusion upon seclusion and trespass. The 3rd Circuit found Google liable for the latter, but not the former, and ordered the Internet giant to pay the Borings \$1 in damages. Adding insult to injury, the Borings were treated to the Streisand Effect, so named after the celebrity sued a photographer for posting pictures of her Malibu estate on the Internet. The lawsuit generated publicity that attracted hundreds of thousands of views of the photos, which had been languishing in obscurity.

Comparative Online Privacy

is navigating an emerging field, and for students like Natalie Kim '15, that makes it especially compelling. “The urgency of it and the currentness of the issues are really exciting to me,” she says.

That newness also invites a spirit of pedagogical exploration. “The topic does not lend itself to some sort of comprehensive overview or final description of the state of the knowledge because the knowledge is still in the making,” Gasser says. He wants his students to join him in developing a type of navigation aid or GPS system for approaching the issues. The seminar, therefore, is highly interactive. “Often there are no final answers, so the emphasis needs to be more on learning together and defining together how we best think about the issues,” he says.

Gasser’s reading list reflects his subject’s novelty. “It’s a bit challenging to put together a curriculum in this area,” says his teaching assistant, Lauren Henry '14. Along with court opinions

→ Concepts of privacy, Gasser argues, vary “from culture to culture.”



Clockwise from top left: Feola Odeyemi '16; Rita Resende Soares LL.M. '14, Margaret Lenahan '14; Lauren Henry '14, Mark Verstraete '16 ▲

and law review articles, Gasser assigns FCC and FTC case memoranda, European Commission reports, technology blog entries, and newspaper stories.

The course’s 21 students include a former Facebook employee, a Harvard Medical School student, several LL.M.s from Europe (where Gasser was educated) and a few students with professional experience dealing with privacy issues. Guest speakers address topics like generational attitudes toward privacy, emerging privacy-protecting algorithms and how behavioral science can inform privacy law.

Gasser says his course teaches law students how to approach big societal questions. “Privacy in this online environment is a good placeholder for many other areas of law, areas that have either an international dimension or some cross-disciplinary component,” he says. “I think that the exploratory, almost playful approach that we apply in Comparative Online Privacy is helpful for other conversations, too.” —JERI ZEDER



Elise Young '14, David Gobaud '15 and Lindsay Lin '15; the law student members of Big Data

EXTRACURRICULAR

## Crossing Boundaries to Enforce Boundaries

An interdisciplinary project works to solve Big Data challenges

When Elise Young '14 describes the work she is doing with the Digital Problem Solving Initiative, or DPSI, it almost sounds as if she is telling a joke. Three Harvard Law School students, several computer scientists, a physicist and a design student walk into a room.

But in fact, their mission is quite serious: finding methods for organizing streams of data from students in online classes, without violating the students' privacy rights.

Young, along with David Gobaud '15 and Lindsay Lin '15, is working on "Developing Big Data Analysis Tools,"

aka Big Data, one of five DPSI projects that are bringing together students, researchers, and staff from across Harvard University to focus on the challenges and opportunities posed by technology in educational settings. Housed in the Berkman Center for Internet & Society, the initiative is headed by Professor of Practice Urs Gasser LL.M. '03, and evolved from conversations between Gasser and Dean Martha Minow about the future of education and the role of technology.

The Big Data team, led by Harvard's chief technology officer, Jim Waldo, has been working with edX—the Massive Open Online Course platform founded by Harvard and MIT—to build software that analyzes the massive amount of data gathered by MOOCs on student users.

When students participate in MOOCs, their every keystroke and click are tracked. That information is valuable to educators seeking to improve both educational content and the way they deliver it. But releasing this data could run up against the federal Family Educational Rights and Privacy Act, or FERPA, which protects the privacy of student education records.

Although eliminating obvious identifying factors such as social security numbers is easy, FERPA also requires obscuring information that, put together, could identify an individual. According to Young, this is tougher than it sounds, particularly because the combination of available information and enormous computing power means that even small bits of seemingly unrelated information can eradicate anonymity.

Over the course of the academic year, the students and researchers have been working together to address these issues.

"This is what I imagine it would be like to work for a small company," said Young, who learned about the Big Data project from her involvement with the Harvard Journal of Law & Technology. "What's been really great is having all these programmers ask questions and

having to figure out how to explain [legal and policy issues] to them in a way that makes sense, while getting rid of all the extraneous details."

Young, with the help of Gobaud and Lin, wrote a memo for the general counsel of edX recommending ideal processes for removing identifying markers, processes often used by experts who need to anonymize data. The general counsel relied on the memo to make recommendations to edX's 30 educational partners, and it was a key document at a data conference held in December at Stanford University.

"This has been the most fun thing I've done this year, but I [also] see this having the greatest impact on my career trajectory," said Young. She is working on a paper that she hopes to publish in a Harvard journal arguing that FERPA, which comes into play when federal funding is involved, does not actually apply to institutions like edX that only tangentially receive federal funds and offer classes for free.

Although Young has led the students' policy research, Lin and Gobaud bring a deeper interest in computer science to the team. They recently created an email service called Pluto that lets users "unsend" and edit emails that have already been sent.

Gobaud said he relished the opportunity to work on the Big Data team. "I get to go talk to people who are working in a cutting-edge area, where the Department of Education doesn't really know what to do yet," he said. "There's a chance to really impact policy."

All of the DPSI work will be completed by the end of the semester (go to [bit.ly/Cyberlaw\\_usecases](http://bit.ly/Cyberlaw_usecases) for information on the four other projects). But Gasser hopes the initiative will continue and that he will find new problems to tackle each year.

"The program is an incubator for future ideas," Gasser said. "Linking the formal educational setting with the more informal mode of learning has been working extremely well."

—LANA BIRBRAIR '15

## THE RIGHT STUFF

*Law students and programmers work together on software that can track online students—but not too closely.*



### STEP 1

edX sends information to Big Data in unorganized log files compiling weeks of user activity. Deciding which data can be used and how requires legal insight from the very beginning.



### STEP 2

The engineers take over. Programmers take the raw data and reformat it, fixing bugs and linking disparate data points so that the final product will be useful for researchers.



### STEP 3

edX takes the now-legible data, eliminates key identifiers and sends it back to Big Data. The team then tries to "re-identify" students from the stripped data. If no more than 5 percent of students can be unmasked, the program is a success.

FACULTY VIEWPOINTS

# Unfinished Business in Civil Rights

Opening doors to overlooked students



President Lyndon B. Johnson signed the Civil Rights Act into law on July 2, 1964. While tributes mark the act's 50th anniversary, so does talk of a divided America and the new face of inequality.

Harvard Law Professor Tomiko Brown-Nagin, the author of "Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement" (Oxford, 2011), sees education as the civil rights frontier. A constitutional scholar, historian, and expert in education law and policy, she participated in the University of Chicago Legal Forum's fall 2013 symposium, "The Civil Rights Act at 50," presenting a paper on "Rethinking Proxies for Economic Disadvantage in Higher Education," to be published in the fall. Brown-Nagin spoke with the Bulletin in April.

"The Civil Rights Act and *Brown v. Board of Education* launched a 'movement of movements,'" said Tomiko Brown-Nagin.

**From all the discussion about the Civil Rights Act's first 50 years, what do you think is crucial to carry forward?**

I'm not fond in general of commemorating legislation or judicial decisions. ... I think such occasions tend to celebrate more than reflect and critique—and I like to do the latter! However, there is one aspect of the CRA that I'm pleased to celebrate. We should never forget that the Civil Rights Act and *Brown v. Board of Education* launched a "movement of movements." The civil rights movement shouldn't be understood in isolation, in terms of African-Americans protesting for rights and litigating for rights. The movement not only inspired the black struggle, but also ignited other struggles for in-

clusion—for women, gays, the disabled, and other racial and ethnic groups.

**Are the CRA's gains in fighting inequality in schools being eroded, as some say?**

I think it's important to offer a balanced picture. For a time, the Civil Rights Act was quite meaningful. Consider the Southern states, where K-12 schools and all the flagship universities were desegregated under authority of the act in the 1970s. There was a robust period of activism and inclusion. Before it ended in the 1980s, a generation of black students, Hispanics and others, including many whose parents did not attend college, was able to gain a foothold in American society, to embark



→ “It can be difficult for promising candidates from impoverished backgrounds to compete in today’s admissions environment.”

on the “American dream.”

The judiciary gradually stopped demanding inclusion on the view that once formal equality was established, no more needed to be done. Now there’s resistance to remedying race-based disparities in health and schooling, no matter how obvious. Race-conscious remedies in higher education and employment have been highly controversial for several decades.

**Toward the end of his life, Dr. Martin Luther King Jr. turned his focus to poverty. How does poverty influence equality in education?**

Students disadvantaged by race and class bear the brunt of the unfinished business of civil rights. The Civil Rights Act aided middle-class families who were best positioned under segregation to move forward. Impoverished families furthest from the American mainstream were in the worst position to benefit from the act. Dr. King was working on these issues in the 1960s before he died.



GETTY IMAGES



Protests against the 1978 Supreme Court decision in *University of California v. Bakke*

**Why haven’t judges and legislators done more?**

There are a variety of reasons. One observation I make in my current work is that the legal debate over affirmative action tends to crowd out conversation about the overall direction of higher education and policy and how educational disadvantage fits within it. Courts and legislators moved from talking about “discrimination” and “disadvantage” in higher education during the 1960s to touting “diversity.” Now, diversity is a capacious concept; in theory, it’s wonderful. And it has helped integrate elite colleges and workplaces. But I fear policymakers have grabbed hold of this notion of inclusion on terms that often leave behind the neediest students.

One sees this in the *University of California v. Bakke* [1978] opinion, in Justice Powell’s reasoning about how universities can take account of race [in selecting their incoming classes]. The prevailing understanding is universities can seek out candidates to establish a student body where there are many types of students: football players, math stars, musicians, culturally advantaged and disadvantaged students—in practice, this means universities have a lot of discretion as to whom they can select. In reality, it can be difficult for promising candidates from impoverished backgrounds to compete in today’s admissions environment, even when selective universities claim to seek a diverse student body. The thumb on the scale tends to help students of color from middle-class, well-educated backgrounds. Those students should be included.

My research agenda focuses on the others—talented students from truly disadvantaged backgrounds. Those students exist outside of the social and family networks where knowledge is passed down about how to play the admissions game. That game is played not just by earning good grades and scores but also by building resumes full of accomplishments that make one unique and noticeable. If you’re a smart kid from a poor background,

you need to know how to communicate, “Please look at me.” You need to know what courses to take in middle school, how to form relationships with mentors. The feel-good language of diversity does not speak to any of that.

**What remedies do you suggest?**

The Department of Education should require universities to report on the percentage of first-generation students admitted. I am particularly interested in initiatives to reach bright, first-generation students eligible for Pell Grants [need-based federal funding]. The DOE’s website offers a lot of data, but this data reflects old categories. The face of inequality has changed, and the DOE’s categories have not kept up.

Universities also should select for first-generation Pell Grant applicants in the admissions process and make a special effort to support them once they matriculate. Many universities claim to want these students, but the admissions process is so competitive that they can get lost in the shuffle.

It is also important for universities to collaborate with local schools and create a pipeline to nurture students who would be good candidates. Universities don’t necessarily know where these good candidates are; partnering with community institutions would make it a lot easier to identify them. This summer, I am setting these ideas down in a new book project.

**What sparked your work on equality in education?**

I started off interested in *Brown v. Board of Education* then moved to voting rights and public accommodations issues. But I realized one couldn’t understand *Brown* without understanding the larger context of politics, activism, court rulings. However, K-12 is foundational. Education is the civil rights frontier: You cannot be interested in civil rights and not be interested in equity in education.

Interview conducted by JULIA COLLINS

REASSESSMENTS

# Faculty Sampler

Excerpts from a selection of recent and forthcoming articles

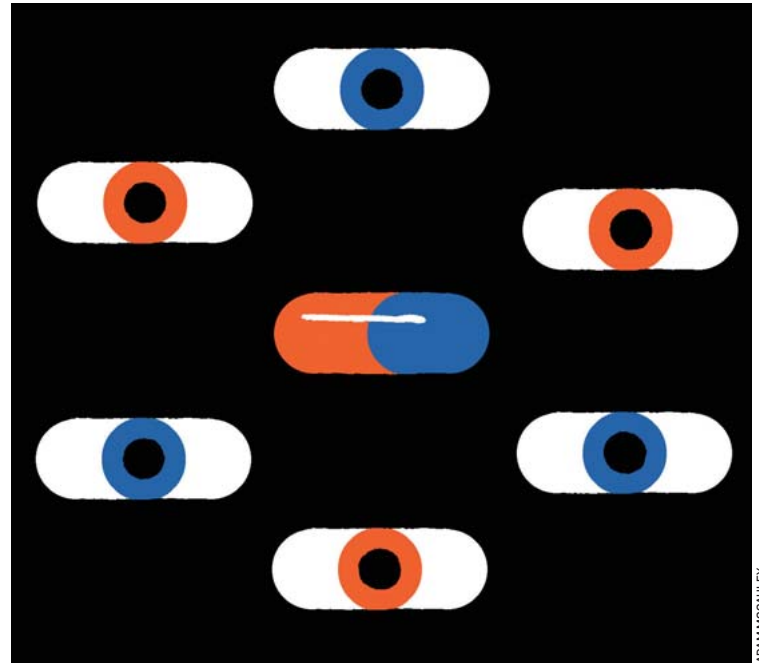
**“TOWARD A CONSTITUTIONAL REVIEW OF THE POISON PILL”**

By Professor Lucian A. Bebchuk LL.M. '80 S.J.D. '84 and Robert J. Jackson Jr. '05

COLUMBIA LAW REVIEW, VOL. 114, 2014, FORTHCOMING

“NEARLY ALL STANDARD CORPORATE-LAW CASEBOOKS include an account of the significant line of cases in which the federal courts reviewed the constitutionality of state antitakeover statutes. These textbooks, however, go on to express the accepted view among researchers and practitioners that these cases are no longer relevant to contemporary corporate law, because a private-law innovation—the poison pill—now dominates the antitakeover influence of state statutes. In this Article, we argue that this widely shared view is mistaken.

“We show that the cases in which the federal courts have evaluated the constitutionality of state antitakeover statutes raise serious questions about the validity of the state-law rules authorizing the use of the poison pill.”



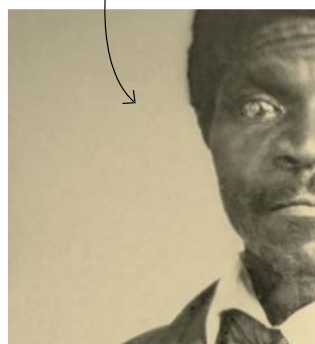
ADAM MCCAULEY

**“FREE AT LAST: REJECTING EQUAL SOVEREIGNTY AND RESTORING THE CONSTITUTIONAL RIGHT TO VOTE: SHELBY COUNTY V. HOLDER”**

By Professor Lani Guinier and James Uriah Blacksher  
 HARVARD LAW & POLICY REVIEW, VOL. 8, NO. 1, 2014

“THE SUPREME COURT’S decision in *Shelby County v. Holder* revitalizes the oldest and most demeaning official insult to African Americans in American constitutional history. Written by Chief Justice Roberts, the majority opinion relies on an unwritten principle that Roberts calls states’ ‘equal sovereignty’ to justify the Court’s decision to topple a

landmark piece of legislation: Section 4 of the Voting Rights Act. Chief Justice Roberts fails, however, to acknowledge the origin story of this ‘equal sovereignty’ principle, which can be traced back to the Court’s infamous decision in *Dred Scott v. Sandford*. *Shelby County* is the first decision since *Dred Scott* to invoke the doctrine of equal sovereignty where the right to vote was involved. And, once again, just as the Court did in *Dred Scott*, the Court



in *Shelby County* held that the ‘equal sovereignty’ of the State of Alabama takes precedence over Congress’s exercise of its explicit constitutional power to enforce the voting rights of the descendants of slaves. ...

“Sadly, the disinterment of *Dred Scott* appears not to be a simple oversight. Revitalizing the equal sovereignty principle—without acknowledging its racially discriminatory pedigree—arguably suggests that the Supreme Court majority is attempting to head off congressional reconsideration of the right to vote as one of the fundamental privileges and immunities endowed by the Constitution on every person who becomes a citizen of the United States.

Such action by Congress—using its enforcement power under Section 5 of the Fourteenth Amendment—could assure African Americans, as well as all whites, Latinos, and other Americans, that threats to their full and free exercise of the franchise, and to their status as equal citizens, can be overcome through national legislation. But unless a social movement of academics, lawyers, and an aroused people emerges to push Congress to recover the Fourteenth Amendment Privileges or Immunities Clause, that Clause—which holds the promise of a fundamental right to vote—shall remain virtually a dead letter in constitutional jurisprudence.”

**“CORPORATE SHORT-TERMISM—IN THE BOARDROOM AND IN THE COURTROOM”**

*By Professor Mark J. Roe '75*

THE BUSINESS LAWYER, VOL. 68, NO. 4, AUGUST 2013

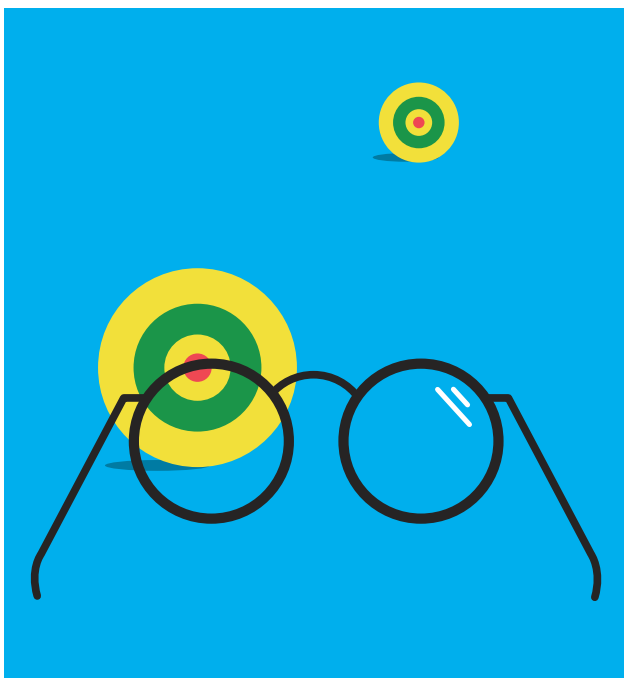
“RECENTLY, LEADING ... corporate law judges have indicated in off-the-bench analyses that [investor] short-termism is something they take seriously. ...

“Here, I evaluate the evidence in favor of [the short-termist] view and find it insufficient to justify insulating boards from markets further. While there is evidence of short-term stock market distortions, the view is countered by several underanalyzed aspects of the American economy, each of which alone could trump a

prescription for more board autonomy. ... First, ... one must evaluate the American economy from a system-wide perspective. As long as venture capital markets, private equity markets, and other conduits mitigate, or reverse, much of any short-term tendencies in public markets, then a potential short-term problem is largely local but not systemic. Second, the evidence that the stock market is, net, short-termist is inconclusive, with considerable evidence that stock market sectors often overvalue the long term. Third, managerial ... compensation packages with a duration that is shorter than typical institutional stock market holdings, and managerial labor markets ... are

important sources of short-term distortions; insulating boards from markets further would exacerbate these managerial short-term-favoring mechanisms. Fourth, courts are not well positioned to make this kind of basic economic policy, which, if determined to be a serious problem, is better addressed with policy tools unavailable to courts. And, fifth, the widely held view that short-term trading has increased dramatically in recent decades over-interprets the data; the duration for holdings of many of the country’s major stockholders, such as mutual funds ... and major pension funds, does not seem to have shortened. Rather, a high-velocity trading fringe has emerged, and its rise affects average holding periods, but not the holding period for the country’s ongoing major stockholding institutions.

“The view that stock market short-termism should affect corporate lawmaking fits snugly with ... other widely supported views. One is that ... employees, customers, and other stakeholders are due more consideration in corporate governance. ... But these stakeholder considerations can be long-term and they can be short-term. ... [T]he pro-stakeholder view must stand or fall on its own.”



OLIVER MUNDAY



GREG MABELY

**“THE NEXT GENERATION OF TRADE AND ENVIRONMENT CONFLICTS: THE RISE OF GREEN INDUSTRIAL POLICY”**

*By Professor Mark Wu and James Salzman '89*

NORTHWESTERN UNIVERSITY LAW REVIEW, VOL. 108, NO. 2, 2014

“A MAJOR SHIFT IS TRANSFORMING the trade and environment field, triggered by governments’ rising use of industrial policies to spark nascent renewable energy industries and to restrict exports of certain minerals, in the face of political economy constraints. While economically distorting, they do produce significant economic and environmental benefits. Yet, at the same time, they often violate WTO rules, leading to harsh conflicts between trading partners.

“This Article presents a comprehensive analysis of these emerging conflicts, arguing that they represent a sharp break from past trade and environment disputes. It examines the causes of the shift and the nature of the industrial policies at issue. The ascendance of these Next Generation conflicts transforms both the international and domestic political economies of trade litigation and environmental policy. It raises implications for the choice of forum for trade litigation, the divide between industrialized and developing countries’ strategic interests, the stability of domestic political alliances, and the availability of WTO legal exceptions for environmental measures.”

# *RULING OUT* **RISK?**

Banks can no longer  
make bets with  
their own money.  
Some say the reform  
makes us safer;  
others say it simply  
transfers the risk

IN 20 YEARS as a bank regulatory lawyer, Robin Maxwell '85 has encountered nothing quite as complicated as the Volcker Rule, the 2010 financial overhaul law provision designed to limit risk-taking on Wall Street.

So when the five U.S. banking regulators approved the final version last December, Maxwell shut the door of her midtown Manhattan office, did her best to ignore the phone and emails, and started to read.

For three days, Maxwell pored over the 71-page rule and nearly 900-page preamble, trying to figure out what was different from an earlier version, which had attracted withering criticism on Wall Street.

"This was just a huge new piece of incredibly





→ Robin Maxwell '85, head of Linklaters' U.S. financial regulation group, has been trying to help her clients comply with the final version of the Volcker Rule. "It's an interesting and challenging time," she says.

important regulation essentially coming down at once," says Maxwell, who heads Linklaters' U.S. financial regulation group. "It's an interesting and challenging time."

Three and a half years after President Barack Obama '91 signed the Dodd-Frank Act into law, directing regulators to develop the Volcker Rule, banks finally had the final language detailing how regulators intended to limit banks' ability to trade on their own money and invest in hedge funds.

But the work was just beginning for banking lawyers such as Maxwell, who estimates she has spent 90 percent of her time since December helping client banks figure out what the final rule means and how to comply with it.

The final rule's release hasn't ended the broader debate over whether the Volcker Rule goes too far—or not far enough—in trying to prevent another financial crisis.

Advocates of the rule—which was originally proposed by Paul Volcker, former chair of the Federal Reserve—argue that barring banks from making risky bets with their own money could help avoid future Wall Street bailouts.

"What will happen is the biggest firms in the country that are literally too dangerous to fail, that are backed by U.S. taxpayers, will not be engaging in the high-risk activities that threaten failure and bailouts," says Dennis M. Kelleher '87, president of Better Markets Inc., a Washington, D.C.-based nonprofit organization that advocates for stricter financial regulations. "It's that simple."

But critics, including Harvard Law School Professor Hal Scott, make the case that proprietary trading by banks didn't cause the 2008 financial crisis and prohibiting it won't necessarily prevent another one.

Nor, Scott says, is it easy to define the borderline between prohibited activity and what should remain permitted, such as placing trades to hedge risk or buying stocks and bonds for customers, known as market-making.

"The division between proprietary trading and market-making or proprietary hedging and hedging is inherently unclear," says Scott, who testified against the Volcker Rule in his capacity as director of the Committee on Capital Markets Regulation, a financial industry-backed group. "These are judgment calls. You can't define them in writing."

While Scott argues that the exemptions weren't broad enough, then Federal Reserve Board Governor Sarah Bloom Raskin '86 voted against a proposed version of the Volcker Rule approved by the Fed because it wasn't strict enough.

"The potential costs associated with permitting hedging and market-making within these exemptions still outweigh the benefits we as a society supposedly receive from permitting these capital-markets activities," Raskin said in a 2012 speech. (She voted in favor of the final rule and has since been confirmed as the deputy secretary of the U.S. Treasury Department.)

The difficulty regulators faced in giving form to the "complicated statutory construct" laid out in the Dodd-Frank Act explains why it took so long to develop the final rule, according to HLS Professor Howell Jackson '82. The rule, he says,



included "lots of categories that were not well-defined."

Complicating the task was the fact that responsibility for drafting the rule was shared by five agencies: the Federal Deposit Insurance Corp., the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency.

These "chronically underfunded" agencies, which were required to implement as many as 200 other major rules under Dodd-Frank, did the best they could, while working under the threat of court intervention and intense opposition from the financial services industry, according to HLS Professor John C. Coates.

One indication of Wall Street concern: the 17,000 public comment letters received after the proposed version of the rule was released in late 2011. And within days of the final vote in December 2013, the American Bankers Association filed suit challenging how the Volcker Rule treated certain debt instruments. In January, regulators announced banks could continue to hold these trust-preferred securities.

"It's just a hard rule to write," says Coates. "My guess will be people will think they did a pretty good job as benchmarked against what they set out to do."

That is a view shared by Lewis B. Kaden '67, a former vice chair of Citigroup Inc. "Everyone can pick at words here and there and specific aspects of the definitions, but on the whole the emerging consensus is it's not so bad," he says. "Major institutions have come to terms with it with a few exceptions and are realigning their strategy to fit the law."

With the final rule now approved, banks must examine their operations at "an extraordinarily granular" level to determine if they are subject to its restrictions, says Arthur S. Long '93, co-chair of Gibson, Dunn & Crutcher's financial institutions group. The next step, he adds, is developing "very onerous compliance regimes to make sure they're not running afoul of the rule."

Already, it's clear there are "a ton of interpretative questions" that remain unanswered even after the release of the final rule, such as what constitutes market-making or the



## MAIN INJUSTICE

Without prosecutions, the risk of another financial crisis is greater, says a prominent federal judge

types of funds that might be covered by the law, according to Maxwell. The multiplicity of regulators means that, unlike with newly promulgated regulations in the past, there isn't one single entity that can provide a definitive answer.

Ralph Nader '58 says he fears big banks and their lawyers will exploit the Volcker Rule's "needless complexity" and regulators won't have the resources to make sure banks comply with its requirements. The longtime consumer advocate wonders if there are "too many cooks spoiling the soup" and not enough auditors "to deal with the compliance."

Even before the final rule was announced, banks had begun the process of shedding desks that engaged in proprietary trading. Going forward, the limitations laid out in the Volcker Rule mean large regulated banks are not likely to be the "dominant players" in new markets, Coates says.

"You're going to have a fragmentation of information and of profit from being invested in trading the kinds of instruments that will emerge in the future," says Coates. "Some of the higher-return activities will not be within the big banks, and therefore they'll have a lower rate of return and it will make them less attractive for both employment and as a matter of return on capital."

The Volcker Rule will cost large national banks as much as \$4.3 billion and reduce the market value of their investments by 5.5 percent, according to an OCC study released in March. But large U.S. banks aren't the only ones trying to figure out how they're affected by the rule.

Foreign banks must determine how it impacts their operations in the U.S. and abroad, says Maxwell. And smaller regional banks are impacted by the restrictions on funds, says Margaret Tahyar, a partner in Davis Polk's financial institutions group, who co-taught a winter-term course on bank regulation at HLS in 2013.

"The Volcker Rule is much more pervasive than people think," Tahyar says.

Scott remains concerned that the rule is likely to make U.S. banks less competitive, particularly since European regulators seem unlikely to enact the same kind of prohibitions. What's more, he worries that rather than eliminating risk, the new regulation will cause risky activities to migrate to less regulated corners of the financial system. "You have to question whether it's better, even if you regard this activity as excessively risky, to keep it in a sector you highly regulate," Scott says.

The only way to ensure that speculative risks that migrate outside the banking system due to the Volcker Rule don't cause future financial crises is to regulate hedge funds and private-equity funds, Nader says. "So all in all, the principles behind it are good, the execution is limited."

Nevertheless, says Jackson, the Volcker Rule could prove beneficial by helping curb "the culture of risk-taking that became part of the culture of commercial banking over time." In his view, the rule could end up reducing the prominence of traders and making it less likely that bank leadership will be drawn from the trading community.

"That could have a very positive effect," he says.

Nothing Judge Jed S. Rakoff '69 writes on the bench this year is likely to get as much attention as his January essay exploring why no high-level executives have been prosecuted for their roles in the 2008 financial crisis.

Rakoff, who has served on the U.S. District Court for the Southern District of New York since 1996, didn't mince words in his New York Review of Books piece. He dismissed as "unconvincing" the "excuses" offered by the U.S. Justice Department for failing to prosecute executives, such as the difficulty of proving fraudulent intent or the potential harm to the economy.

Rakoff (brother of HLS Professor Todd Rakoff '75) blamed prosecutors for emphasizing other priorities, such as insider trading or Ponzi schemes, and for being reluctant to bring cases which might highlight how "deeply involved" the government was in creating conditions that made fraud possible. Most importantly, he said, prosecutors have been too focused on companies rather than individuals.

"[T]he future deterrent value of successfully prosecuting individuals far outweighs the prophylactic benefits of imposing internal compliance measures that are often little more than window-dressing," Rakoff wrote.

The question of who should bear responsibility for Wall Street's failings is one that Rakoff, a former federal prosecutor, has thought a lot about, both on and off the bench. In

recent years, he has blocked settlements between the Securities and Exchange Commission and Bank of America and Citigroup as too lenient.

Having talked about the lack of individual prosecutions in speeches last year, Rakoff said he decided to write the essay in his capacity as "a private citizen" in order to bring the issue to a "wider audience." He said he waited until the five-year statute of limitations ran out to avoid any potential conflict of interest.

Rakoff's essay drew widespread press coverage, including in the Los Angeles Times, where columnist Michael Hiltzik wrote, "You won't find a better, more incisive discussion of the question."

The essay drew less favorable reviews from a trio of attorneys at Ropes & Gray, who suggested in an article for WestlawNext that it will make defendants in cases related to the financial crisis "wary of stepping into his courtroom" while prosecutors may "take harder stances" before him than they otherwise would.

While judges can't talk about pending cases, Rakoff said the public benefits when judges "speak to improvements in the law and matters touching on the business of the courts."

"This notion that judges should be cloistered away is in my view much too narrow, both because the public has a right to know a little bit about their judges but also because judges may have something useful to offer to the great debates that the First Amendment permits," Rakoff said. —SETH STERN '01





**STOCK IN TRADE:**

# *Ingenuity*

An immigration lawyer impresses the MacArthur Foundation (Even the General would have been impressed)

BY KATIE BACON | PHOTOGRAPHS BY ROBBIE McCLARAN

WHEN MARGARET STOCK '92 was young, her great-grandfather, an Army veteran of the Philippine-American War and World War I, lived at her house in Wellesley, Mass. She used to go through his military memorabilia with him—awards, a mirror he'd used in the trenches, and a census record of his unit in the Philippines. This census, which showed that about 15 percent of his unit was from other countries—Russia, Italy, Ireland, Mexico, Germany—would turn out to be a seed for her work on immigration and the military, work that was recently recognized by the MacArthur Foundation with a “genius” grant. “I was struck by the number of immigrants in his unit. It was something I tucked away in the back of my mind,” Stock said, during a phone interview from her office in Anchorage, Alaska.

That piece of knowledge came in handy years later. Five years after 9/11, the U.S. military was fighting two wars and struggling to find qualified recruits, yet was turning away highly qualified immigrants who wanted to join the military as a quicker path to citizenship than the 10- to 15-year wait required to get a green card. Stock was part of the Army Reserve and taught at West Point.

← Margaret Stock '92 received a “genius” grant for her work on immigration policy and national security.



CHRIS MADDALONI/GETTY IMAGES

↑ Stock, a retired lieutenant colonel in the U.S. Army Reserve, testifies regularly before congressional committees on immigration, homeland security and military matters. Here, she speaks with Rep. Joe Wilson, R-S.C., before testifying.

In Alaska, she had built a practice as an immigration lawyer, focusing partly on the effects of immigration law on military personnel. She knew that during times of war, the military was allowed by law to recruit immigrants and had done so for every war up through Vietnam. But everyone seemed to have forgotten about this loophole. “It was almost like everyone had amnesia,” she said. She also knew that the military was particularly desperate for soldiers with certain skills, such as the ability to speak foreign languages fluently, and was spending a lot of money on language training. Yet there was a pool of immigrants with exactly these skills waiting to be recruited. Stock saw the U.S. immigration system as an ever-more-intimidating bureaucracy, more focused on kicking people out of the country than on letting in the many skilled immigrants who want to be here.

STOCK CAME UP WITH THE idea for MAVNI (Military Accessions Vital to the National Interest), a program that would provide an express lane for about a thousand people a year out of the many more caught up in the gridlocked immigration system. In meetings with everyone from the secretary of the Army to a group brought together to think through the crisis in military recruiting, Stock pointed out that the law allowing them to bring immigrants into the military already existed; they just had to dust it off: “Nobody had looked at the law—nobody paid any attention to it—so I’m the one who put the law together and said, ‘Look, here’s the law. You guys can meet this critical shortage. You don’t have to go to Congress. It just takes a memo.’ It just looked blindingly obvious to me.” She recalls that she ran it by a mentor

who had once worked high up at the Pentagon, and he told her it was a great idea, but that the Pentagon “crushes great ideas.” If she managed to get it through at all, he told her, it would take at least five years. Stock got it through in less than 12 months.

RETIRE LT. GEN. BENJAMIN Freakley, who was in charge of military recruiting and worked with Stock on MAVNI, pointed out that Stock had the rare dual ability of conceptualizing a program and planning its implementation from A to Z. “She’s a great leader and a changemaker,” he said. “Often people have a great policy idea, but they don’t know how to get it pushed through. She had the ability to see it through. And she made a cohesive argument because she could see the benefits to the individual, and to the nation.”

The program allows each branch of the military to recruit immigrants who are in the U.S. under temporary visas and who possess essential language or medical skills. The recruits on average score significantly better on tests and have higher levels of educational attainment and much lower attrition rates than their peers outside the MAVNI program. “The quality for this population is off the charts,” Lt. Col. Pete Badoian told *The New York Times* in 2010.

In creating MAVNI, Stock was able to cut through the copious red tape of both the immigration system and the Pentagon to find an elegantly simple solution that hadn’t occurred to anyone else. And she’s found similarly elegant solutions to two other problems at the intersection of immigration and the military. After creating MAVNI, Stock became known as one of the few people within the military who had an in-depth knowledge of immigration law. People would call her, email her, stop by her office, “pleading and begging for help with their cases,” she said. Some were soldiers’ family members, who were not themselves citizens and faced deportation after their spouse or parent

## RECOGNIZED

Emmanuel Alabado had been trying for 10 years to win recognition as a U.S. citizen before Margaret Stock took on his case pro bono and won. Born in the Philippines to an American father, Alabado qualified for citizenship with the passage of the Child Citizenship Act of 2000, but when U.S. immigration authorities incorrectly denied his eligibility, he found himself an illegal resident in his own country.



was deployed. She recognized an unmet need but didn't have the bandwidth to take on the cases herself. So she called the president of the American Immigration Lawyers Association and suggested they start a military assistance program matching lawyers with service members, their families and veterans who need pro bono representation. Since the program's founding in 2008, 375 lawyers have provided counsel in almost 700 immigration cases.

**W**HEN THE DEPARTMENT OF Homeland Security came under fire for the slow pace of military naturalizations, Stock suggested that naturalizations for legal immigrants be integrated into the basic training timetable, speeding up the processing time. The program was implemented in 2009. In a recent interview, Clinical Professor Deborah Anker LL.M. '84, who taught Stock immigration law at Harvard, pointed out that few others share Stock's knowledge of law, immigration and the military, suggesting that this helps her former student see things that others miss: "She has really developed this area of law. She thinks for herself; she does not fit into a mold."

Stock had her first brush with immigration law by chance, while a student at the law school. (She first came to Harvard as an undergraduate. During college, she joined the Reserve Officers' Training Corps, and then served for three years as a military police officer in Fort Richardson, Alaska, before returning to Harvard.) In her third year at HLS, she suddenly had a gap in her schedule after a course was canceled, and she picked a class taught by Anker. She was struck by how passionate Anker was about the subject, but also by how complicated immigration law seemed to be. "It scared me. I was left thinking this was not an area of the law I wanted to practice in," she said.

After graduation, Stock got married; returned to Alaska, where she'd met her husband; and started working for a law firm, planning to focus on tax law. Soon after she arrived, she was asked to take on what she was told would be a 10- to 20-hour pro bono case, involving a green card holder who faced deportation for allegedly smuggling a Russian woman into Alaska. Immigration authorities had seized the man's vehicle and left him by the side of the road to find his way back to Anchorage, hundreds of miles away. As Stock looked into the case, she decided the government had made a mistake and the man had been falsely accused. She became

# 'We need civil *Gideon*'

For three decades, Deborah Anker has encouraged students to pursue a more generous immigration policy

**The Harvard Immigration and Refugee Clinical Program was established by Professor Deborah Anker LL.M. '84 three decades ago. One of the first two immigration law clinics in the country, it is run in partnership with Greater Boston Legal Services. Under Anker's guidance, hundreds of clinical students have helped more than a thousand people gain entry into the United States or avoid deportation. Anker is one of the most widely known asylum scholars and practitioners in the country; her treatise, "Law of Asylum in the United States," is considered a bible in the field. She spoke with Katie Bacon in mid-March.**

## **What first drew you to this area of the law?**

I was very involved in local civil rights work around desegregation. This was my passion. And then I discovered immigration work, and I realized it was an area I had a direct connection to. My grandparents' whole family got wiped out in the Holocaust; a lot of my parents' generation did as well. I thought certainly as a Jew and as a social activist that this was a critical area and something that engaged me deeply.

## **How has the work of your clinic—and the types of cases that come to you—shifted over the years?**

It has both shifted and remained grounded. One of the things that distinguishes our clinic from some others is that we've always been grounded in direct representation of clients. But it's shifted in that we now do a lot of work on LGBT cases, gang cases and gender asylum, which is really an area of law that we created.

## **Margaret Stock singled you out for the passion you display in class and in your work. Is a sense of passion essential if you're going to succeed in the field of immigration law?**

These are really often death-penalty cases, because if people are returned, they're going to get killed. And there are also cases of exile—people who have lived their whole lives here and are suddenly being detained and deported. So there's a lot to feel passionate about. You need to be passionate about it also because you're dealing with very traumatized people, and you're dealing with a difficult bureaucracy. It's very demanding work emotionally, and it's extraordinarily rewarding work emotionally because your clients are heroes and survivors. The



→ Deborah Anker's treatise, "Law of Asylum in the United States," is considered to be a bible in the field of immigration law.

students spend hours and hours interviewing their clients, and they learn about countries and conflicts through their eyes.

**If you could help guide or design immigration reform, what would be your advice?**

Certainly we need to pass immigration reform. I would say my priorities would be protecting refugees, legalizing the status of people who have been here for a long time and reunifying families.

People think we have a very generous immigration policy, but we don't. There's a decade-long backlog, especially in the family-based categories. If you've been here undocumented for even a few months, you can't get your status here and you have to go abroad; and then you may not get a waiver for your unlawful presence. A lot of the discretion that used to exist in immigration law has been formally taken out. Now there's very little that judges can do, other than grant asylum and related protections.

**What is your vision for the clinic and for immigration rights in general?**

We have a relationship now with a clinic at Tel Aviv University where we send students over winter term. They help with individual representation of refugees and research and support in major litigation challenging the asylum policies regarding African refugees in Israel. We'd like to do something similar and help support the development of clinics at law schools in other countries around the world. Right now we are particularly interested in South Africa, which is the second largest receiver of asylum claimants in the world (after Germany).

I think that one of the major problems with the current immigration system is that immigrants are prohibited from getting representation at government expense. These are people who desperately need representation, who are in deportation proceedings or who face persecution. The stakes are so high. We would like to see a publicly funded immigration bar. We need civil *Gideon*.

What I've noticed over the course of 30 years is that there are now so many more students interested in going into immigration and creating institutions that represent people. The students are inspiring, too. It's about justice. It reminds me of [the words of] Martin Luther King Jr.: "The arc of the moral universe is long, but it bends towards justice." The arc of the moral universe may be bending towards justice, but we have to be bending it. It doesn't happen by itself.



UPCOMING EVENT

**"Harvard Immigration & Refugee Clinical Program: 30 Years of Social Change Lawyering"**

*A conference and reception Tuesday, June 17, 2014, Cambridge, Mass.*

KEYNOTE SPEAKER: **JUDGE JOHN THOMAS NOONAN JR. '54** of the U.S. Court of Appeals for the 9th Circuit. Panel participants will include federal court judges, scholars, government officials and practitioners.

→ FOR MORE INFORMATION, GO TO [bit.ly/HIRC30event](http://bit.ly/HIRC30event)

obsessed with the case, spending more than 400 hours on it and suing the government under the Freedom of Information Act to find out what had really happened. By the time the charges were dropped, Stock knew she wanted to be an immigration lawyer.

LOOKING BACK, STOCK REALIZES that immigration law appealed to the side of her that has always identified with the underdog. Her family struggled after her father died when she was a teenager, one of nine children. Stock dropped out of high school at 15, but thanks to high SAT scores and a guidance counselor who fought for her, she was able to go to college. These days, she is an attorney at Cascadia CrossBorder Law Group in Anchorage, where she works on a wide variety of immigration cases, from helping foreign executives acquire visas to representing “banished” veterans—former service members who have been deported. Stock has always done pro bono work, but the MacArthur grant has freed her up to do even more. Recently she won a case for a man who had been trying for 10 years to get recognized as a citizen. (He was born in the Philippines to a father who was a U.S. citizen, and came to live with him in the U.S. as a teenager. After the Child Citizenship Act of 2000, he became a U.S. citizen automatically, but immigration authorities incorrectly denied his citizenship because he’d been born out of wedlock.) “This is a guy who is working a minimum-wage job with two kids,” Stock said. “And he couldn’t get his own government to recognize that he’s an American.”

Stock has been spending time in Washington, D.C., advocating for legislation that would repair and simplify U.S. immigration policies as a whole. And she travels around the country giving presentations, based on her experience with MAVNI.

“Nobody can get green cards anymore,” she said, “so these smart, highly educated people, people with Harvard and MIT degrees, [are] saying, ‘I’ll serve in the Army for four years, because then I’ll get American citizenship. Otherwise, I’m looking at a 20-year track.’”

The “genius” of the program, she said, “is that it capitalizes on the dysfunction of the legal immigration system.” But what Stock argues for above all is creating a functional system in the United States that will benefit immigrants as well as the country where they’re hoping to bring their talents.

# ON THE Border

Students witness  
the journey of the  
undocumented

FOR SPRING BREAK THIS YEAR, six students from the law school headed south—not to the beaches of Mexico, but to the desert along the Arizona-Mexico border, where they worked with the organization No More Deaths, which provides humanitarian aid to migrants trying to make the crossing into the United States. The trip was led by Emily Leung and Phil Torrey of the Harvard Immigration and Refugee Clinic.

The group set up camp five miles from the border in the Coronado National Forest, an area where many migrants slip through the barbed-wire fence marking the border and attempt the five-day to two-week journey to safer ground, outside the area that is patrolled, up near Tucson. Over the past 14 years, more than 2,600 migrants have died along the border. The area has steep, dangerous terrain that is home to rattlesnakes, tarantulas and scorpions. Another hazard to migrants is Border Patrol. “I expected the desert aspect to be challenging. What I didn’t expect was how militarized the area was going to be,” said Emma Scott ’16. The agents carry assault rifles and rely on drones, radar surveillance, helicopters, and infrared sensors. Those migrants who are caught are put in a “cage” in the back of a pickup truck and brought to detention.

Each day, the volunteers left caches of water jugs, food, socks and blankets at strategic locations. They also walked the terrain themselves, trying to identify migrant routes and gauging how actively traveled they were based on the litter and personal property left behind. One day, they came upon a pot of beans next to the trail, still warm. They speculated that the migrants had heard them coming and fled.

Leung, a fellow at the clinic, and Torrey, a lecturer and clinical instructor, have worked with many clients who have made this journey. “To be there and actually walking the same trails and wondering if the only reason your client made it here is because of a water drop that No



In March, six HLS students led by members of the Harvard Immigration and Refugee Clinic worked with the humanitarian organization No More Deaths along the Arizona-Mexico border, where more than 2,600 migrants have died since 2000.



More Deaths did, or because they ran into somebody who was able to give medical aid, was a really powerful experience,” Torrey said.

At the end of their week, the group went up to a courthouse in Tucson to observe what happens to the migrants who are caught and then prosecuted through Operation Streamline, a program implemented in three border states starting in 2005. They watched as 70 immigrants filed through in shackles, going up in front of the judge in groups of eight. Each was charged with two federal crimes: illegal entry, a misdemeanor, and illegal re-entry, a felony. In the span of minutes, all eight pleaded guilty to the lesser charge and were sentenced to jail for up to six months. Once they’re released, they will be dropped off at the Mexican border for deportation. Some of them will turn around and attempt the journey again.


Watching the proceedings gave Sima Atri '15 a more personal perspective on the contentious immigration issue in the U.S., which has deported 2 million people since 2008: “A lot of the people [who go through the Tucson court] had been living in the U.S. for dozens of years and were trying to return to their families. A lot of them could be applying for asylum status, but it’s not even possible in this context. Seeing how limited people’s choices are and what they are made to go through to get across humanized this debate for me.”

→ “One night as we sat around the campfire, a volunteer shared that on her hike that day she found a Bible that contained a personal poem titled ‘Cansado de Camino’—Tired of the Walk. The exhaustion we felt at the end of each day couldn’t approach that felt by those who walk for days and weeks at a time. Those making the trip must have powerful forces pushing them forward. Their courage is unparalleled.”

—SIMA ATRI '15 AND EMMA SCOTT '16, “Confronting unjust immigration and border policies in the Arizona desert,” *Harvard Law Record*, March 27

BY ELAINE McARDLE  
*Illustration by Javier Jaén*

# PAY FOR PLAY

 SUDDENLY,  
THE  
N.C.A.A. IS  
FORCED  
TO PLAY  
DEFENSE  
IN MORE  
THAN ONE  
COURT



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HAT DO YOU CALL IT WHEN an organization makes more than a billion dollars in a single month using unpaid labor? Some call it exploitation; others, opportunity—but most of the nation calls it March Madness.

In 2013, the national men's college basketball tournament, held each March, raked in \$1 billion in television ad revenue alone for the National Collegiate Athletic Association, the nonprofit organization that governs college sports. Sports—particularly the big-ticket draws of football and men's basketball—is a \$12 billion-a-year industry for colleges, universities, and the N.C.A.A., through TV revenue, endorsements, and merchandising of everything from jerseys to video games featuring star players, never mind increased alumni donations and ticket sales prompted by winning teams.

→ Peter Carfagna '79, director of the HLS Sports Law Clinic, believes that a series of current legal efforts may forever change the face of college sports.

And while the schools, coaches and N.C.A.A. take in millions—University of Alabama football coach Nick Saban will earn \$7 million this year—the players responsible for this cash cow are banned from sharing in the bounty. Many get scholarships that may pay for most—but not all—of their college costs, but in return, sports take up at least 40 hours a week, the players often miss classes for games, and they take courses tailored to keep them eligible to play rather than to position them for career success. With the N.C.A.A.'s near-monopoly on students' path to the pros (only three U.S.-born players have made it to the NBA or NFL without the benefit of the college draft since 2006), if student-athletes get hurt, can't make the required grades, or violate N.C.A.A. rules—say, by accepting a free dinner from a graduate—they lose not only their scholarships but the chance for a professional career.

Yet neither the N.C.A.A. nor any given school is on the hook for a student's medical or other expenses if he's injured; indeed, the concept of amateurism was promoted by the N.C.A.A. specifically to protect itself from liability, according to Peter Carfagna '79, a Covington and Burling Distinguished Visitor at HLS, where he teaches several courses on sports law and is director of the popular Sports Law Clinic.

"You're an amateur athlete, which means you are not an employee, which means you're not entitled to workers' comp or other benefits if you get a concussion," says Carfagna, whose clinic has

placed more than 100 HLS students in externships with major league sports teams, professional players unions and sports agencies since being launched in 2007. "So you get a scholarship—and you take your chances."

But now a series of major legal efforts—including a number of lawsuits and an effort to unionize college players—may forever change the face of college sports. "They haven't quite gotten into the Alamo," Carfagna says of those challenging the status quo, "but they're scaling the walls, and the walls are partially coming down."


The week that March Madness began this year, high-profile sports attorney Jeffrey Kessler filed a federal lawsuit against the N.C.A.A. and the five largest college conferences on behalf of a group of college football and basketball players, claiming that capping their compensation at the value of a scholarship violates antitrust laws. In essence, the suit seeks to allow student-athletes to be paid. Another suit had been filed just a few weeks earlier by a former college football player, seeking full compensation for the cost of attending college, since athletic scholarships don't cover all expenses.

Billions in licensing fees and TV revenue are at stake in *O'Bannon v. the N.C.A.A.*, an antitrust class-action lawsuit in which former Division I football and basketball players seek financial compensation for the ongoing commercial use of their images once they've graduated. The plaintiffs constitute a star-studded roster

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**BILLIONS IN  
LICENSING  
FEES AND  
TV REVENUE  
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STAKE IN  
O'BANNON V.  
THE N.C.A.A.**



 Benjamin I. Sachs, HLS labor law professor, believes that there is significant popular support for college athletes' unionization efforts.

including former UCLA supernova Ed O'Bannon and 12-time NBA All-Star Oscar Robertson, whose popularity has earned millions for the N.C.A.A. and its schools for decades. "Is a scholarship grant sufficient consideration for an athlete, in perpetuity, in exchange for his publicity rights and/or the waiver of any benefits that an employee would otherwise get?" asks Carfagna.

**T**HE CASE IS SO POTENTIALLY groundbreaking that Carfagna is spending more and more time on it, both in his sports law classes and in his own practice as a sports lawyer. And the success of the

case so far—it withstood a motion to dismiss—has emboldened others, says Michael McCann LL.M. '05, a professor and director of the Sports and Entertainment Law Institute at the University of New Hampshire School of Law. "Lawyers are now thinking about the N.C.A.A. and how different areas of law intersect with N.C.A.A. business practices, which has likely given rise to these other legal attempts to force the N.C.A.A. to compensate student-athletes and former student-athletes with more," says McCann, who is the legal analyst for Sports Illustrated and the on-air legal analyst for NBA TV.

Then, in late March, in a seismic decision, a regional director of the National Labor Relations Board ruled that football players at Northwestern University are employees with the right to unionize. While Northwestern is appealing to the full NLRB in Washington, D.C., the decision is a once-unthinkable breach in the previously impervious control that colleges and the N.C.A.A. (which isn't a party to the action) have held over student-athletes. Among other demands, the Northwestern students want independent concussion experts present during games, funds to cover sports-related medical costs, and educational support to help former players graduate.

HLS Professor Benjamin I. Sachs, an expert on labor law and unions, who predicted the Northwestern players would prevail at the regional level, believes they have "a very good chance" to win—because, as critics have long insisted, student-athletes are primarily at school to play ball. Many schools have abysmally low graduation rates for their student-athletes: At top-ranked Syracuse, for example, only 45 percent of young men recruited to play basketball graduate; at the

University of Connecticut, it's 8 percent.

"It's a farce to say student-athletes are being compensated with education when so many of them don't graduate," says Jimmie Strong '14, who plans to become a sports agent and chose HLS in part because of its sports law program. "They're in school to put their talents on display." The N.C.A.A. wants professional-caliber athletes in school because they make the organization a lot of money, he adds, and pro teams want them there "because collegiate competition provides opportunities to compare high school stars with players of comparable talent and skill."

Most gifted players are drafted into the NBA after just one year of college (there's a required one-year gap between high school and pro basketball, three years for football), but "they don't learn anything in one year of college, especially when they spend most of that year playing basketball," continues Strong. "For many future professionals, after March Madness ends, so does class attendance."

Even at Brown University, where athletic scholarships aren't offered and sports are a dramatically different experience from that at a Big Ten school, "the fact I was a football player ruled every single thing I did in my life for four years," says Nick Hartigan '09, who holds the Ivy League record in career rushing touchdowns. "It really is a full-time job while you're there."

With ample evidence of the primacy of sports in student-athletes' lives, Sachs says, "My analysis is there's a very good chance that under the [NLRB's] existing standards, these players will be considered employees. The relationship between the athletes and the universities is not a primarily educational one—it appears to be primarily economic, and if that's the case, then under existing federal labor law, what we have are employees entitled to unionize." There's significant popular support for the students' unionization effort that's "deeper, broader and stronger than the kind of support you see for other union efforts," Sachs notes. "I think this comes from a perception that student-athletes are getting a raw deal, and from the fact that colleges and universities are making an incredible amount of money and not treating the student-athletes fairly."

But while the broad issue is framed as a financial one, many believe it's equally important that student players finally get a voice in shaping their college experiences. "When I was going to school, I was told which [courses] I couldn't take because they would conflict with my [practice] schedule,"

**MANY  
SCHOOLS  
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GRADUATION  
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FOR THEIR  
STUDENT-  
ATHLETES**





→ Jimmie Strong '14, who plans to become a sports agent, wants young athletes to have viable alternatives to N.C.A.A. competition.

**COLLEGE  
PLAYERS  
RECEIVE NO  
COMPENSA-  
TION,  
MEDICAL  
CARE OR  
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THEY ARE  
INJURED**

says Domonique Foxworth HBS '15, a former NFL player and former president of the NFL Players Association, who has spoken to sports law classes at HLS. Since 98 percent of college hoops and football players never make it to the pros, he notes, "You're forcing me to make decisions that will affect the rest of my life based on how it affects you."

Meanwhile, a growing awareness of the terrible injuries many players suffer, especially concussive head injuries, has prompted at least two lawsuits. One is against the N.C.A.A. on a claim it fails to protect students or provide them redress. The other pits 4,800 former football players against the NFL; in January, the judge rejected the \$765 million settlement agreement, fearing it's not enough money to compensate everyone.

Unlike professional football and basketball players, college players receive no compensation, medical care or pension if they are injured. Getting hurt can mean getting tossed. "For many college athletes, medical injuries, including concussions, are a serious problem that can not only cause athletes to potentially lose their scholarships, but the injuries can also cause long-term health problems," says Laura Lorenz '14, who, through the HLS Sports Law Clinic, worked as an intern for the Sports Legacy Institute, a Boston-based nonprofit dedicated to solving the crisis of brain trauma in sports.

Yet with the N.C.A.A. holding all the cards, athletes often are afraid to protest. "There are definitely elements of servitude, when [players] have no control or power," Foxworth says. "Often, especially in Big Sports, the kids are disproportionately black and from low-income families, and have even less opportunity than anyone else, so it's not like they'll say, 'I'll leave and go home and get a job.' You're taking advantage of a population."

That's why the system carries "the unmistakable whiff of the plantation," writes Pulitzer Prize-winning author

Taylor Branch, who also has spoken in Carfagna's classes. In his new e-book about the N.C.A.A., "The Cartel," Branch vilifies what he sees as the greed and hypocrisy that reward just about everyone in college sports except the players. And in a new documentary, "Schooled: The Price of College Sports," produced by Foxworth, such sports luminaries as Frank Deford and Bob Costas are strongly critical of the system, insisting it must be reimagined so that players get a better deal.

Ultimately, if the NLRB decides that student-athletes are employees within the meaning of the law, the decision would apply to similarly situated athletes at other private schools and would require those schools to collectively bargain if the athletes vote to unionize, Sachs says. (The Northwestern players cast secret ballots in late April on whether to unionize; results won't be released until after the full NLRB rules.)

By contrast, at public schools, where most of the really big sports programs are found, state

→ Laura Lorenz '14 worked as an intern at the Sports Legacy Institute, dedicated to solving the crisis of brain trauma in sports.





law governs. In some states, public employees have no right to unionize, but other jurisdictions have union-friendly labor laws that might give student-athletes an even better chance to organize than under federal law, Sachs explains.

**W**ITH ALL THESE ATTACKS ON its once-impregnable control over college sports, the N.C.A.A. may, in the not-so-distant future, be irrelevant, according to Carfagna. For one thing, he says, no matter what happens with the lawsuits and unionization efforts, Big Sports schools with lots of money in their athletics programs may decide to defect from the N.C.A.A. and pay their players. “This could be the beginning of the end, where the big schools say, ‘We don’t need the N.C.A.A. anymore,’” he says. While he doesn’t expect them necessarily to pay athletes a salary, they might at least cover the full cost of their attendance. “They’re paying their coaches millions, so what’s a few million more?” he says.

Predicts McCann: “I think we’ll see student-athletes, especially those generating a lot of revenue, receive more compensation. It may not be money—it could be in deferred payment or a fund to pay student-athletes after they leave

college—but I think there will be significant structural change between college students and their colleges when they play a sport.”

As he thinks ahead to representing clients, Strong is already coming up with creative recruiting alternatives to the college route, such as getting budding stars to play overseas during high school, which would allow them to be drafted into the NBA without having to sit out or attend college for a year.

“It’s essential for me to make sure people realize this is not just about money—it’s about giving young athletes the same opportunities that other young professionals enjoy, providing them with a plethora of viable alterna-

tives to N.C.A.A. competition, which is an almost mandatory track for even the best of prospects,” says Strong. “For the most promising youngsters, mandatory tracks of this sort are unheard-of in most fields of human endeavor. The N.C.A.A. will be incentivized to give its student-athletes a seat at the bargaining table only if they have a variety of viable alternatives to collegiate competition—alternatives that prevent the N.C.A.A. from holding student-athletes’ hopes and dreams hostage.”

All of these efforts to challenge the current state of college sports can only benefit the 450,000 young people who participate each year, and who deserve, at the very least, a good education in exchange, critics say. “What I most hope would come out of these types of efforts is a much higher focus on graduation rates and preparedness for careers in the working world,” says Hartigan, an associate at a law firm in Washington, D.C.

“The N.C.A.A.’s goal shouldn’t just be making a bunch of money or making sure people aren’t doing random recruiting violations,” he continues. “Every student-athlete should feel fortunate to have gone to college; thousands of kids are striving to play in college. Your life should be better because you were able to achieve that goal—and I don’t think the system right now is structured in a manner where that is the case.”

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#### HLS TO LEAD LAW AND ETHICS PROJECT ON HEALTH OF NFL PLAYERS

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A Harvard Medical School research study funded by the NFL Players Association will focus on identifying new approaches to diagnosing, treating and preventing injuries and illness in football players. As part of that initiative, Harvard Law School’s Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics will lead a number of projects aimed at addressing legal and ethical issues influencing player health and well-being. They will be headed by HLS Professor I. Glenn Cohen ’03, faculty co-director of the center, and Executive Director Holly Fernandez Lynch.

# Taking Care — of — Business

(AND NONPROFITS, TOO)

by

JERI ZEDER



PHOTOGRAPHS BY BOB O'CONNOR

WE FOLLOW  
⑤ CLINICAL  
STUDENTS INTO THE  
LAB, THE BARBERSHOP  
AND THE  
LABYRINTH OF  
CONDOMINIUM  
GOVERNANCE

TakkTile  
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Project  
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BULLETIN  
Summer 2014

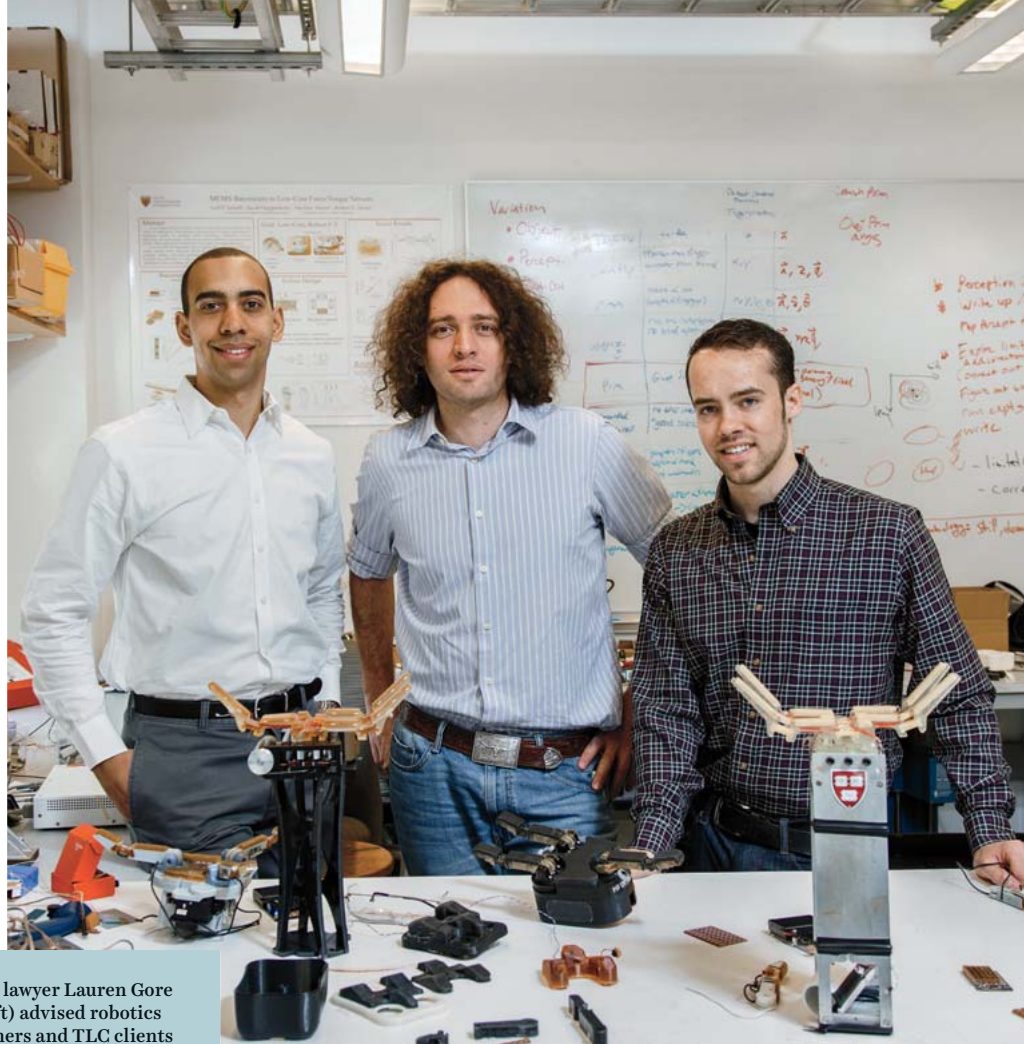
## ① A LIGHT TOUCH

IN 2010, THE DEFENSE ADVANCED Research Projects Agency—DARPA—put out a challenge. The government agency, which creates national security technologies for the United States, called on researchers across the country to figure out how to improve robotic hands. At Harvard Biorobotics Lab, Leif Jentoft, a Ph.D. candidate, and Yaroslav Tenzer, a postdoctoral researcher, got to work—and started a journey that would include assistance from student lawyer Lauren Gore '15 through the Transactional Law Clinics of Harvard Law School. The clinics serve community development organizations, low- and moderate-income clients, and campus-grown innovators, such as Jentoft and Tenzer, with business, nonprofit, real estate, and entertainment law needs.

Answering DARPA's challenge, the two engineers sought to create a tactile sensor that was low-cost, highly robust and exquisitely sensitive. Cost, in particular, was an issue because the typical \$16,000 price tag on existing sensors severely limited their use.

Jentoft and Tenzer hit pay dirt when they took an array of tiny barometer chips and encased them in a rubbery plastic covering, laying the groundwork for a new tactile sensor that is affordable and resilient, and detects the slightest brush of a finger.

"We saw it as a huge breakthrough for robotic grasping," says Jentoft. As word traveled, Tenzer says, it became clear that people wanted to try the sensors, and for uses that went beyond



Student lawyer Lauren Gore '15 (left) advised robotics researchers and TLC clients Yaroslav Tenzer (center) and Leif Jentoft.

robotics: "People started approaching us and saying, 'Where can we buy it? How can we try it?'"

They soon realized they needed legal help. In 2013, they started TakkTile, and became clients of TLC after being referred through the Harvard Innovation Lab, or i-lab. TLC and i-lab are among a number of resources that Harvard makes available to help turn a business or socially beneficial idea into a product or service that is marketable and capable of sale or distribution.

Gore says he enjoyed counseling Jentoft and Tenzer. "I actually got to sit down with TakkTile's founders and talk to them about their interests, concerns, and aspirations for the

business," he says. Gore drafted TakkTile's operating agreement and also documents for securing independent contractors.

Before law school, Gore, a graduate of West Point, was a company executive officer in Iraq, and his brigade worked on projects to establish the country's legal infrastructure. Gore says he saw firsthand how people's acceptance of law had a positive effect on their local, daily business dealings. His experiences with TLC reinforced the excitement he felt for the law when he was in Iraq.

"I'm a very strong proponent of the clinical experience, because I believe it helped ground my understanding of the true power of the law," he says. He also wonders whether his clients' sensing devices will one day be used in prosthetic devices worn by soldiers injured in combat.

"TLC is a community institution that can provide the legal component to bring entrepreneurs one step closer to making their business ideas come alive," Gore says. "I think TakkTile is a great example of that."

→ "We have a wide variety of matters and a mix of clients covering all different sorts of fact patterns, all sorts of industries, and the students learn principles that are applicable across transaction types and contexts."

CLINICAL PROFESSOR BRIAN PRICE  
*founding director of the Transactional Law Clinics,  
which assist hundreds of clients every year*

## ② THE MEDIA MOGUL OF MATTAPAN

EUAN (PRONOUNCED IAN) DAVIS, A 41-year-old barber, has known that barbershops serve as community hubs, almost as long as he has been cutting hair. And around 10 years ago, Davis, the owner of Biz Barbershop in the Boston neighborhood of Mattapan, decided to pursue a related business idea that would eventually lead him to cross paths with TLC and student lawyer Javier Oliver-Keymorth '15.

Davis developed BarberTime based on the idea that barbershops have fulfilled the role of social media, since long before social media existed. Patrons argue politics, talk fashion—even mobilize movements.

“It was time for the barbershop to get more recognized,” Davis says. “We’re very important to the people that we deal with, and so many of them confide in us for so much, from buying cars, to children, to who they marry.”

His concept includes a website, a radio station, television programming and a magazine—all designed for display or broadcast in barbershops. Potentially, BarberTime could reach the clientele of hundreds of shops, with profits coming from advertising.

In 2004, Davis was approached by the Massachusetts Department of Public Health, which sought to raise awareness for WIC, the supplemental nutrition program for women, infants and children. He enlisted about a hundred shops and salons to promote the program within their establishments and through BarberTime’s media offerings. It was a big, multiyear project. “That allowed us to know that we can start whole campaigns based on shops being media sources,” says Davis.

Davis now wants to take BarberTime to the next level. “What I’m trying to be is a media giant,” he says. BarberTime has minority partners and is set up as an LLC, and Davis wants to shore up his business structure before seek-

ing investors. That’s where the HLS clinics and Oliver-Keymorth come in.

He says that working with Davis is helping him better understand how to use the law to set up a complicated business idea for future success. “For me, it’s about learning how companies operate, what documents and forms are legally necessary to file, and learning how to sort out the legal intricacies of such a complex business plan,” he says. “For Euan, it’s about putting the pieces together in a way that wouldn’t be possible if it weren’t for the clinics.”

“TLC offers students an incredible chance to gain hands-on experience in particular areas of law while providing a great service to the community and increasing Harvard Law’s presence and good will around the city.”

AMANDA KOOL  
TLC attorney and clinical fellow

Javier Oliver-Keymorth '15 (left) advised Euan Davis, developer of BarberTime, a media platform for barbershops.



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③ CONDO

## CONFIDENTIAL

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IN HIS FIRST TWO SEMESTERS IN TLC, Joshua Wackerly '14 encountered three low- to middle-income clients with a similar problem: They were living in affordable condominiums and wanted to sell their units and move—but they couldn't. Their condo associations were dysfunctional, and banks and buyers wouldn't touch the properties.

"After researching the problem and speaking with a few different people involved in affordable housing, it became apparent that this is a very common problem in Boston," Wackerly says.

It was an issue tailor-made for the TLC's Community Enterprise Project, which encourages students to identify community needs that emerge from their representation of individuals or interactions with local organizations, and devise broad-based strategies for addressing them.

Seventy-nine percent of Boston's 7,400 residential condo associations are tiny—fewer than five units—and many are too often run at low levels of professionalism that can result in underinsured properties, poor conflict resolution, and inadequate reserves, causing banks and buyers to shy away from their properties. With condos making up about 21 percent of Boston's housing stock, a widespread logjam on condo sales can drag on the economy. For individual owners with assets tied up in their condos, the results can be devastating.

To see how TLC might help, Wackerly reached out to Bob Credle, director of community programs at Urban Edge, a local community development corporation. After consulting with colleagues and with the city's Department of Neighborhood Development, Credle suggested the idea of a manual for condo owners explaining their rights and responsibilities. Wackerly led a team of two other students, Faith Alexander '15 and Sarah Weiner '15, to



Joshua Wackerly '14, Faith Alexander '15 and Sarah Weiner '15 (not pictured) have created a manual for condo owners explaining their rights and responsibilities.

create the manual.

Among the major groups that assisted with the manual's development is the Citizens' Housing and Planning Association. Karen Wiener, the organization's deputy director, says, "The students are helping us to see what are the bigger issues that can be addressed more globally." She continues, "Particularly for a nonprofit organization like ours, where we're always trying to do too much without enough staff and enough resources, it's just wonderful that this kind of resource exists."

The manual is available online ([bit.ly/Condotools](http://bit.ly/Condotools)), and Wackerly's team

distributed printed copies to area housing organizations. In April, they presented a class, with CHAPA and the Department of Neighborhood Development, at a public library branch in Dorchester.

As Wackerly prepares to graduate this year, he hopes to set the stage for future action on the Healthy Condos Project by proposing a project for establishing accessible alternative dispute resolution mechanisms for condo owners. "My hope is that our team will have some time to start researching and drafting these proposals so that students next semester can pick up where we left off," he says.

# USING BOTH HIS HEAD AND HIS HEART

For this great negotiator, it comes naturally

In April 1992, in Rio de Janeiro, Brazil, representatives from more than 100 nations gathered under the aegis of the United Nations to discuss highly contentious issues related to the environment and development. During the final session of the preparatory committee working on the draft of what came to be known as the Rio Declaration of Principles, talks stalled when the group of developing countries lost confidence in the impartiality of the chairman.

All of the parties agreed that **TOMMY KOH LL.M. '64** should take over—and two days later, the declaration was hammered out.

Koh had agreed to lead the negotiations under two conditions: First, discussion would continue with much smaller groups of representatives from both the developed world and the developing countries. Second, Koh insisted the meeting take place behind closed doors, with no observers.

After 48 hours of intensive, around-the-clock meetings—and some good luck and good timing, he insists—Koh brokered an agreement.

“To be a good negotiator, you have to master your brief,” says Koh, whose career includes serving 13 years as Singapore’s representative to the U.N. and six as its ambassador to the U.S. “You should put yourself in the shoes of your negotiating partners and understand their national interests.”

And, continues Koh, as well-known for his ever-present smile as for his prodigious intellect, “To be a good negotiator, you should try to think with both your head and your heart.”

On April 10, Koh received the Great Negotiator Award, given



jointly this year by the Program on Negotiation, an interuniversity consortium based at HLS, and the Harvard Kennedy School. The award recognized his work as chief negotiator for the U.S.-Singapore Free Trade Agreement, his chairmanship of the negotiations that produced a charter for the Association of Southeast Asian Nations, and key actions that resolved territorial and humanitarian disputes in the Baltics and Asia. He was also recognized for successfully leading two unprecedented global megaconferences: the U.N.’s Rio Earth Summit and the Third U.N. Conference on the Law of the Sea, which produced the 1982 Convention on the Law of the Sea, regarded by many as one of the U.N.’s most important contributions to the rule of law in the world.

“My wife [physician Siew Aing]

has asked me why this award is special,” says Koh. “My answer is that it is from my alma mater. This is also the 50th anniversary of my graduation from Harvard Law School!” The most important thing he learned at HLS, he says, “was to be passionate about the law and to believe that the law should always be used to render justice and not injustice.”

In November, Koh, chair of the Centre for International Law at the National University of Singapore, published “The Tommy Koh Reader” (World Scientific). It combines memories of his parents (his mother was an actress and dancer from Shanghai before marrying his father, a businessman from Singapore) with recollections of HLS and descriptions of his role at the center of some of recent history’s most challenging negotiations.

Tommy Koh back at Harvard Law School, 50 years after he graduated

“I am a born optimist,” says Koh, who, in addition to HLS, holds degrees from the National University of Singapore and the University of Cambridge. “I believe that most people are rational most of the time. I therefore believe that, given good will, most problems can be solved. I also believe that kindness begets kindness.”

But success at the bargaining table requires a clear-eyed realism. He describes himself as a “pragmatic idealist,” a term he borrowed from the third secretary-general of the U.N., U Thant of Myanmar. “I am realistic about the obstacles and challenges we face. At the same time, I am determined to change the world and not to accept reality in a fatalistic manner.”

Koh, 76, now ambassador-at-large at the Ministry of Foreign Affairs for Singapore, has been outspoken about his concern for the poorest residents in his nation, and worries that the growing wealth disparity threatens the cohesion of Singapore. “My goals in the remaining years of my life are to persuade Asia to embrace sustainable development; to strengthen the rule of law in the world, especially in Asia; and to fight for a more just and more equal world,” he says.

And he has a more personal goal as well, he adds: “To remember my grandmother’s teaching, to be modest and humble in the face of temptations (such as receiving an award from Harvard).”

—ELAINE McARDLE



# SIBLINGS IN THE STRUGGLE

Inspired by legendary lawyers, a brother and sister set out to change the world

The summer before he went to Harvard Law School, **BISHOP HOLIFIELD '69** protested outside Tallahassee City Hall with his sister, **MARILYN HOLIFIELD '72**, to persuade the city to reopen swimming pools it had decided to close rather than integrate.

Marilyn picketed City Hall with a sign that read “My bathtub isn’t big enough,” and Bishop organized volunteers to make phone calls to registered voters. Their concerted efforts paid off when the city voted to open the pools to all.

Since then, the siblings have pursued separate paths toward justice but have carried with them their common experiences of living in the South during the civil rights movement. In honor of their social justice work and pioneering spirits, they were recently awarded the Gertrude E. Rush Award from the National Bar Association.

Years before the Holifields worked to open integrated pools, they were influenced by stories of lawyers who had fought for social justice. One day in the spring of 1963, their mother took the day off from work to see Constance Baker Motley argue a school desegregation case before a U.S. District Court.

“My mother came home and told us about this remarkable black female lawyer,” Marilyn said. Not long after the ruling, Marilyn would be among the first three black students at a previously all-white high school.

“It was a very hostile environment from the day I got there to the day I left,” she remembered. “I became very familiar with the N-word.” It had been her choice to attend the school, but she had no sense of

Marilyn Holifield '72, one of three black students to attend Leon High School in 1963, with classmate Harold Knowles →



↑ Bishop Holifield '69 speaking at HLS, after the assassination of Dr. Martin Luther King Jr. → Bishop and Marilyn Holifield in 2012



COURTESY OF HAROLD KNOWLES



the danger she faced.

“It was the epitome of a one-person civil rights movement,” she said with a laugh.

Though it was difficult, Marilyn was glad she went to Leon High School. “It brought out a spirit of tenacity and determination to push forward,” she said. They are qualities that have contributed to her considerable success as one of few black students at Harvard Law in the early '70s and, in 1986, as the first black woman to become partner in any major Florida law firm.

Her firm, Holland & Knight, had never hired a black lawyer before she joined them in Tampa in 1981, she said. “It was more as if large, white law firms were clubs for white lawyers.” She felt the isolation but not the hostility she felt in high school—nevertheless, it fostered in her the same determination to succeed.

Her main focus at Holland & Knight is business litigation. She has also done pro bono work, including representing plaintiffs in a

class-action suit against a housing complex that discriminated against minorities, landing them a multimillion-dollar settlement.

This type of case wasn’t new to Marilyn. Right out of HLS, where she was one of the editors of the Harvard Civil Rights-Civil Liberties Law Review, she took a job with the NAACP Legal Defense Fund. There she worked to integrate a prison in Georgia where black inmates were being abused, and to stop a manufacturing company from assigning the least desirable jobs to African-American workers.

When Bishop was a 1L, he urged his sister to apply to law school. He had wanted to work in civil rights law ever since he read a biography of Clarence Darrow.

While at Harvard, Bishop co-founded the Harvard Black Law Students Association, which helped address the underrepresentation of black students and the absence of black professors. They also worked to influence what the school taught.

“We tried to make the

curriculum more relevant for what people who weren’t going to practice on Wall Street might need,” Bishop said. For example, instead of teaching only creditors’ rights, the association lobbied for an emphasis on debtors’ rights.

He saw such issues as civil rights matters. “It became clear to me that the civil rights struggle transformed itself from being able to eat at a lunch counter to a struggle to have economic opportunities, health care and educational opportunities.”

Bishop dedicated much of his career to these efforts. As general counsel for Florida A&M University, where he worked from the mid-1970s until his retirement in 2002, he fought to get the state to return a law school it had taken from FAMU, a largely black institution, and given in 1968 to Florida State University, a largely white school.

He began this effort in 1985 and prevailed in 2000. “This was really a monumental success against overwhelming odds,” Marilyn said. “A struggle Bishop led for 15 years against an entrenched establishment.”

Bishop said much remains to be done. He’s troubled by rising economic inequality, voting rights violations, health care deficiencies, the school-to-prison pipeline, and the state’s notorious Stand Your Ground law—issues that have replaced the discrimination at swimming pools and factories against which the siblings first fought.

“I think our generation felt that we could change the world,” Marilyn said, and then paused. “In some respects, we did.”

—KIM ASHTON

## A VISIBLE DIFFERENCE

In a transition from corporate law, an attorney focuses on increasing opportunities for women

When **MARISSA WESELY '79** was first up for partner at Simpson Thacher & Bartlett, she didn't make it. When she asked why, the managing partner told her: "You are just not visible enough."

Since then, Wesely has raised not only her own visibility but that of countless others, particularly women, who, as she notes, often have to work the hardest to "find a way to take a seat at the table."

In her career, she has sometimes been the only woman in the room, advising on high-stakes private-equity and bank finance transactions—work leading her to be named the 2013 Finance Lawyer of the Year by Chambers USA. While practicing at Simpson Thacher, where she did become partner and later served in a management role, she supported professional women to achieve more prominent positions of leadership in law firms and on corporate boards as well as women around the world seeking a better way of life and equal opportunity. Those efforts led to her latest honor, the ABA's 2014 Margaret Brent Women Lawyers of Achievement Award, for "women lawyers who have excelled in their field and have paved the way to success for other women lawyers."

Now Wesely is making a transition that aligns with her passionate commitment to women's rights. This year, she is a fellow at the Harvard Advanced Leadership Initiative. And she is using the experience to build a foundation for her next stage, which she said will involve bridging the corporate sector and international women's rights organizations.

She believes that increasingly, corporations are seeing the



Marissa Wesely '79 received the ABA's 2014 Margaret Brent Women Lawyers of Achievement Award in recognition of her mentorship of other women lawyers.

value of engaging with women. "If you actually fund women, you drive better health and education outcomes not only for them but for their families and communities," Wesely said. "There's a lot of focus on women as drivers of transformative change."

While a partner with her firm (she is now of counsel), Wesely always stayed connected to women's issues and organizations. She has served on the boards of the Global Fund for Women, which offers grants to support international women's rights groups; Legal Momentum, a U.S. organization advancing women's rights; and DirectWomen, which seeks to increase the number of women lawyers on corporate boards. This academic year, she also was co-chair of Celebration 60, an event honoring women graduates from HLS.

Her awareness of women's issues worldwide started early. In

the early 1970s at the age of 16, she traveled to Africa for a summer with her father, who was then the chair of CARE, a humanitarian organization fighting poverty worldwide with a special focus on women. The young woman from the suburbs of New York City witnessed a way of life for many struggling people that has stayed with her to this day.

"You go to a place where people with almost nothing are creatively solving problems," she recalled. "The women were some of the most resourceful people. Even in very traditional societies, they played very critical roles."

By the time she graduated from law school, she joked, she thought all problems women faced had been solved. But as she made her way in the law firm environment, she soon realized that change was not happening at the pace she expected. Even after she made partner, in her first partner meet-

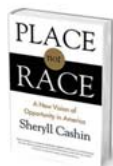
ing only a handful of women were dotted among a roomful of men. Since then, she has advocated for more women in leadership positions at her firm and elsewhere.

Drawing from her own experience, Wesely also has advised young women both in speeches and informally about ways to overcome the still large shortfall of women at the table: Part of it is being more visible—doing good work in your office is not enough. Part of it is finding your passion. She did that; even though she never planned for a career in finance, it has allowed her to work on international and development issues that have always interested her. Part of it is making connections. And part of it is speaking up. She is working to ensure that the voices of women—from U.S. boardrooms to small businesses blooming in developing countries—are heard. —LEWIS I. RICE



“Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power,” by **CHRISTOPHER M. BRUNER '01** (*Cambridge*)

Although common-law jurisdictions have the same legal origins, in practice they exhibit major differences from one another as shown by varied corporate governance systems, according to Bruner. The professor at Washington and Lee University School of Law examines the power of shareholders in public companies, emphasizing that those in the United States have less influence than those in places such as the United Kingdom and Australia. He explores the reasons for the differences and how law and public policy affect corporate governance.



“Place, Not Race: A New Vision of Opportunity in America,” by **SHERYLL CASHIN '89** (*Beacon Press*)

Aiming to create a “politics of fairness,” the professor at Georgetown Law proposes a new form of affirmative action called “diversity practice,” whose focus is on high-poverty neighborhoods and schools, not skin color. Such a plan will foster more social cohesion, Cashin writes, as well as help those racial minorities who have been disadvantaged by segregation. Drawing on social science research, she points to effective ways to develop multiracial coalitions, rather than focusing on the resentment often fueled by traditional affirmative action programs. “When the values of



whites and people of color converge,” she writes, “and real efforts are made to build alliances among them, transformative change ensues.”

“My Fight for a New Taiwan: One Woman's Journey from Prison to Power,” by **LU HSIU-LIEN LL.M. '78** and Ashley Esarey (*University of Washington*)

The first woman to serve as vice president of Taiwan, Lu recounts an unlikely life journey, in which she experienced a poverty-stricken upbringing, a cancer diagnosis, Harvard Law School, a fight for democracy, and a long prison term in her native land, and which culminated in her winning one of its highest offices (and, while in office, surviving an assassination attempt). Taking positions once considered radical—from her belief that her country should be independent from the People's Republic of China to her campaign for women's empowerment in a traditionally patriarchal society—Lu tells a dramatic story that continues in her post-political career, as she advocates for international human rights.

“Originalism and the Good Constitution,” by **JOHN O. MCGINNIS '83** and Michael B. Rappaport (*Harvard*)

While promoting the theory of constitutional originalism, the authors also acknowledge—and, in many ways, agree with—several objections to it. Indeed, McGinnis, a professor at Northwestern Law, and Rappaport say that originalism is not justified by arguments that the constitutional

enactors were originalists, that it comports with democracy or that it offers clearer rules to constrain judges. Rather, they argue, originalism has value “because it promotes constitutional interpretations that are likely to have better consequences today than those of nonoriginalist theories.” They also note the importance of the supermajority process that produced the Constitution, citing it as a distinctly American feature of constitutionalism that is worth preserving.

“The Letters of Arthur Schlesinger, Jr.,” edited by **STEPHEN SCHLESINGER '68** and Andrew Schlesinger (*Random House*)

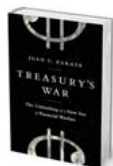
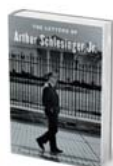
Arthur Schlesinger Jr. served as President John F. Kennedy's special assistant and wrote “A Thousand Days,” the definitive account of the administration. Fifty years after Kennedy's death, Andrew and Stephen Schlesinger published their father's letters to that president and other luminaries, including Harry Truman, Bill Clinton, Robert Kennedy, and Henry Kissinger. The letters, written from 1945 to 2006, shortly before Arthur's death, reflect a history of liberalism, which he championed. They are also pointedly honest and respectful, regardless of the stature and political leanings of the recipients, note the brothers (Stephen would follow in his father's footsteps as a writer and political adviser). “This book,” they write, “is a testament to Schlesinger's unvarnished, elegant, and provocative correspondence over a six-decade period.”

“Perfecting Your Pitch: How to Succeed in Business and in Life by Finding Words That Work,” by **RONALD M. SHAPIRO '67** with Jeff Barker (*Hudson Street Press*)

Life is filled with moments when we wish we could come up with the right words. Shapiro, a best-selling author and experienced negotiator, has devised a way to do that based on a method he calls scripting. While many people “wing it” when it comes to important conversations, the author advises that they instead remember the “Three D's”: drafting what you wish to say beforehand, seeking a devil's advocate to critique your argument and preparing for your delivery. He outlines many common scenarios, including from his own personal experiences, where this system leads to a desired result.

“Treasury's War: The Unleashing of a New Era of Financial Warfare,” by **JUAN C. ZARATE '97** (*PublicAffairs*)

Following the Sept. 11 terrorist attacks, the world's focus understandably turned to the U.S. military response. But in the aftermath of the attacks, the country also devised very different techniques to fight terrorists—techniques which Zarate writes have “increasingly become the national security tools of choice for the hard international security issues facing the United States.” The author should know, as one who served as the first assistant secretary of the Treasury for terrorist financing and financial crimes. In his book,



## The Lives Behind the Walls

ON PUNISHMENT AND HEALING

"Inferno: An Anatomy of American Punishment,"

by [Robert A. Ferguson '68](#)  
(Harvard)

"Letters to an Incarcerated Brother: Encouragement, Hope, and Healing for Inmates and Their Loved Ones,"

by [Hill Harper '92](#)  
(Gotham Books)

both seek to raise consciousness on a subject literally hidden away and, they say, too easily ignored.

A law professor at Columbia, Ferguson draws on philosophy, history and literature to explore "why the desire to punish has become so strong in American culture," considering thinkers on the subject such as Jeremy Bentham and works of fiction by Kafka, Dostoevsky, and Hugo. In addition, he explores the plight of prisoners, decrying their living conditions and the violence to which they are subject. Finally, he offers ideas for reform, including establishing an incentive system that encourages constructive behavior and shifting penal policy in ways that will reduce overcrowding. "The dignity of every life," he writes, "has to mean more than someone else's indifferent, much less vindictive, control over it."

Affirming the dignity and worth of prisoners' lives is also at the heart of Harper's book. Author of "Letters to a Young Brother" (2007), which offers advice to young men, the actor and activist received many letters from men in prison after that book's release. His new book seeks to engage, inspire, and sometimes cajole often hopeless people with the goals of restoring their self-worth and facilitating their self-improvement. He also offers practical advice on issues ranging from educational opportunities to parenting to job searches, showing that a pathway to success can be achieved even for those facing the obstacles of what he calls the prison industrial complex. "I want us all to blueprint the steps leading from whatever burdens we may be living with to a successful life as equal Americans," he writes.



ELLEN WEINSTEIN

As America's prison population has grown dramatically in the past decades, many observers have questioned what effects such mass incarceration has on our society and on the individuals and families who live with its consequences. Now, two HLS alumni have written books that explore the issue. One taps scholarship to address the nature of punishment while the other speaks directly to those imprisoned to humanize the people behind the statistics. In light of a U.S. incarceration rate that is the highest in the world,

Zarate, a lecturer on law at Harvard Law School and a senior adviser at the Center for Strategic and International Studies, details the "hidden war" involving the expansion of the international anti-money laundering regime; financial tools and intelligence focused on national security;

and a relationship with private-sector banks to help isolate rogue entities. Zarate also tells the story of his colleagues who have fought the financial war wearing gray suits instead of camo fatigues. In particular, he describes actions against regimes like Iran, North Korea, and Syria as well as nonstate actors

like Al Qaeda, including locating and recovering Saddam Hussein's hidden assets in Iraq and abroad, and targeting a bank helping North Korea evade sanctions and conduct illicit financial activity. In addition, Zarate writes on the coming financial wars, including how the U.S. system may itself be vul-

nerable. Because the tools and strategies of financial warfare may be appropriated by others around the world, he writes, "The United States must begin to play a new and distinctly financial game of geopolitical competition to ensure its security and to seize emerging opportunities."

# IN MEMORIAM

## JOHN MANSFIELD '56: 1928–2014

OF THE OLD SCHOOL AND ON THE CUTTING EDGE



LEAH FASTEN

*“As a scholar, he relentlessly searched for truth.”*

John Howard Mansfield, the John H. Watson, Jr. Professor of Law, Emeritus, and scholar of the First Amendment, died on April 10, 2014, at the age of 85.

He joined the faculty of Harvard Law School in 1958 and was known for his courses and scholarship in constitutional law, evidence, and issues of church and state.

Harvard Law School Dean

Martha Minow said: “John devoted his professional life to Harvard Law School. He was a good friend and a mentor to many of us, as well as to so many students. He will be greatly missed.”

Mansfield was a demanding yet warm teacher who embodied the “education by expectation” that he so admired in his hero, U.S. Supreme Court Justice Felix Frankfurter LL.B. 1906, whom he honored in a 1965 Harvard Law Review tribute.

“As generations of Harvard students can testify, John Mansfield relentlessly adhered to and expected the highest standards of excellence in his classrooms, in and out of season,” said HLS Professor Mary Ann Glendon. “As a scholar, he relentlessly searched for truth, unafraid of where his quest would lead him. As a colleague, he was kind and generous. It was a privilege to have known him.”

In a tribute to Mansfield published in the Fall 2008 issue of this magazine, James Sonne '97 wrote that his former professor was “among the most engaging, and engaged, men I’ve ever known.” Sonne continued: “All his work shows the dexterity of mind and clarity of thought of a true teacher-scholar.”

Mansfield’s research interests were in the areas of comparative and constitutional law, as well as the law of evidence. In his scholarship, he wrote landmark works on the jury system, scientific evidence, law and religion, legal history, and the law of India.

He was author of the book “Evidence: Cases and Materials, with 2005 Supplement” and several shorter works



John Mansfield joined the HLS faculty in 1958.

JOHN CHAPIN

and articles. His article “The Religion Clauses of the First Amendment and Foreign Relations,” published in 1986 in the DePaul Law Review, has been cited as the first scholarly work to consider the First Amendment’s Establishment Clause abroad, five years before a court had ever considered the issue and 15 years before 9/11.

After graduating from Harvard College and HLS, Mansfield served as clerk for Justice Roger Traynor of the Supreme Court of California and then for Justice Frankfurter on the Supreme Court.

In July 2008, Mansfield retired from Harvard Law School. In the Bulletin tribute written for that occasion, Sonne wrote: “He is one of the last of a great generation, having shared the joys and struggles that marked the times with dearly departed friends and colleagues such as Mark Howe, Phillip Areeda and David Westfall. In many ways, he is a man of ‘the old school’ who believes, as Professor David Rosenberg once observed, that ‘one good question is better than 10 good answers.’ At the same time, his work in comparative and interdisciplinary areas exemplifies the cutting edge of legal thought.”

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**IN MEMORIAM**  
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**1930-1939**

MORRIS GAMM '33  
*Feb. 3, 2014*

JOHN B. DOLAN '36  
*Feb. 15, 2014*

WALTER D. HARRIS '39  
*Feb. 5, 2014*

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**1940-1949**

ROBERT F. CLARY JR. '40  
*Feb. 15, 2014*

J. CHRYS DOUGHERTY III '40  
*Feb. 20, 2014*

H.W. WILLIAM GAMING '41  
*Jan. 24, 2014*

NATHAN FISHMAN '41  
*Nov. 10, 2013*

MARVIN MICHAEL '41  
*Aug. 31, 2013*

ROBERT B. TRAINER '41  
*Dec. 23, 2013*

IRVING D. GOODSTEIN '42  
*July 14, 2011*

THOMAS R. MOUNTAIN '42  
*Dec. 5, 2013*

MARVIN W. REIDER '42  
*Feb. 18, 2010*

FREDERIC K. UPTON '42  
*Dec. 2, 2013*

MAX THELEN JR. '43  
*Feb. 13, 2014*

CLYDE E. WILLIAMS JR. '45  
*March 7, 2014*

ZAKI HASHEM '45-'46  
*Feb. 5, 2014*

R. DONALD REICH '46 ('48)  
*Feb. 3, 2014*

WILLIAM J. BRUCKEL '48  
*March 20, 2014*

LEO J. BUCHIGNANI '48  
*Nov. 1, 2013*

RAYMOND C. GUTH '48  
*Nov. 8, 2013*

CHARLES W. "BILL" LEAPHART JR. '48  
*Dec. 18, 2013*

CALEB LORING JR. '48  
*Nov. 24, 2013*

GEORGE W. MCMANUS JR. '48  
*Nov. 3, 2013*

ARTHUR MEDOW '48  
*Jan. 13, 2014*

ALBERT H. REES JR. '48  
*April 5, 2014*

SYDNEY L. ROBINS LL.M. '48  
*Jan. 10, 2014*

KARL F. SCHMIDT '48  
*Feb. 22, 2014*

SYLVANUS ARNOLD ZIMMERMAN III '48  
*Nov. 11, 2013*

LEON M. COOPER '49  
*Dec. 1, 2013*

DAVID L. FREEMAN '49  
*Jan. 24, 2014*

EDWARD J. MURTAUGH '49  
*Jan. 3, 2014*

KLYDE ROBINSON '49  
*March 24, 2014*

ROBERT B. ROSS '49 ('50)  
*Jan. 31, 2014*

MARTIN H. SCHNEIDER '49  
*Dec. 13, 2013*

RICHARD B. SHEFFIELD '49  
*Jan. 13, 2014*

ROSS E. TRAPHAGEN JR. '49  
*March 4, 2014*

LEO W. "WARREN" TUCKER '49  
*Dec. 7, 2013*

MILES G. WEDEMAN '49  
*Oct. 24, 2013*

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**1950-1959**

PAT BEARD '50  
*Nov. 30, 2013*

WALTER J. BRISTOW JR. LL.M. '50  
*Nov. 30, 2013*

STANLEY S. BROTMAN '50  
*Feb. 21, 2014*

GEORGE I. BUCKLER '50  
*Jan. 25, 2014*

CHARLES M. CAHN JR. '50  
*Feb. 10, 2014*

WILLIAM K. GLIKBARG '50  
*Dec. 4, 2013*

EDWARD J. GREENSPAN '50  
*Feb. 16, 2014*

NORMAN W. LOVELESS '50  
*March 23, 2013*

GERALD E. MASLON '50  
*Nov. 15, 2013*

RUSSELL H. PECK '50  
*Nov. 18, 2013*

BENJAMIN PHELOSOF '50  
*March 26, 2014*

GEORGE W. SCHMIDT '50  
*Nov. 26, 2013*

DAVID K. (WAER) WENTWORTH '50  
*March 12, 2014*

EUGENE WOLLAN '50  
*Feb. 2, 2014*

ROBERT N. ZARICK '50  
*Oct. 28, 2013*

MARVIN CHERNER '51  
*Feb. 28, 2014*

MILTON H. ELLERIN '51  
*March 19, 2014*

JEROME FISCH '51  
*Dec. 3, 2013*

ARTHUR J. FLAMM '51  
*Feb. 19, 2014*

JOHN J. HANSON '51  
*Nov. 12, 2013*

HARMON G. LEWIS '51  
*Jan. 23, 2014*

HENRY W. MINOT JR. '51  
*March 30, 2014*

JOHN F. MONROE JR. '51  
*Feb. 22, 2014*

MELVIN M. PRAGUE '51  
*Aug. 24, 2013*

IRA S. SIEGLER '51  
*Nov. 28, 2013*

HOWARD P. BUEHLER '52  
*July 4, 2013*

RICHARD E. DILL '52  
*Jan. 14, 2014*

WILLIAM M. EVARTS JR. '52  
*Nov. 11, 2013*

EUGENE FELDMAN '52  
*Jan. 31, 2014*

ANDREW B. KIRKPATRICK JR. '52 ('54)  
*Jan. 18, 2014*

RODNEY W. LOEB '52 LL.M. '57  
*Dec. 30, 2013*

EDWARD C. MENDLER '52  
*Dec. 30, 2013*

MARK P. O'NEILL '52  
*Feb. 18, 2014*

WILLIAM PRICKETT '52 ('54)  
*Jan. 30, 2014*

GEORGE N. BUFFINGTON '53  
*Nov. 9, 2013*

JOHN J. MCLEAN JR. '53  
*Dec. 24, 2013*

GEORGE CHIMPLES '54  
*March 18, 2014*

JOEL A. KOZOL '54  
*Feb. 12, 2014*

BERNARD G. "BEN" SYKES '54  
*April 3, 2014*

MORTON B. BROWN '55  
*Jan. 18, 2014*

HARRY W. GILL JR. '55  
*Oct. 28, 2013*

ROBERT HENIGSON '55  
*Jan. 28, 2014*

HERBERT C. KANTOR '55  
*Feb. 18, 2014*

EVERETT H. PARKER '55  
*April 11, 2014*

ROBERT H. QUINN '55  
*Jan. 12, 2014*

WILLIAM D. WALSH '55  
*Nov. 16, 2013*

MAURICE C. "MIKE" INMAN JR. '56  
*Nov. 26, 2013*

MORRIS J. LEVIN LL.M. '56  
*March 28, 2014*

CARLTON TRONOLONE '56  
*Dec. 29, 2012*

GEORGE WALDSTEIN '56  
*March 12, 2014*

ENNO W. ERCKLENTZ JR. '57  
*Jan. 24, 2014*

JOHN M. GRADWOHL LL.M. '57  
*Feb. 2, 2014*

RICHARD R. HADDEN '57  
*Nov. 23, 2013*

JOHN S.C. HARVEY III '57  
*May 21, 2013*

JOHN C. HOWELL '57  
*Jan. 3, 2014*

JASON R. NATHAN '57  
*Dec. 17, 2013*

HERBERT P. GLEASON '58  
*Dec. 9, 2013*

ROBERT E. LASKOW '58  
*Dec. 21, 2013*

ROBERT S. LEVY '58  
*April 5, 2014*

ROBERT S. MAGRUDER '58  
*Jan. 11, 2014*

WILLIAM L. MORRISON '58  
*Dec. 4, 2013*

JAMES W. STOREY '58  
*Jan. 2, 2014*

FREDERIC K. BECKER '59  
*Jan. 15, 2014*

CARLO S. FOWLER '59  
*Dec. 6, 2013*

GORDON B. GREER '59  
*Nov. 5, 2013*

DOUGLAS H. HICKLING '59  
*March 4, 2014*

RALPH H. LANE '59  
*Feb. 6, 2014*

JOSEPH G. PRONE '59  
*Dec. 25, 2013*

WILTON S. SOGG '59  
*Oct. 27, 2013*

WILLIAM C. WEITZEL JR. '59  
*Jan. 20, 2014*

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**1960-1969**

PERRY C. AUSBROOK '60  
*Jan. 10, 2013*

ELTON E. ENGSTROM JR. '60  
*Nov. 6, 2013*

CHARLES J. "JACK" HAHN '60  
*Feb. 24, 2014*

DEAN E. MILLER '60  
*Dec. 3, 2013*

JOEL L. SCHEINERT '60  
*Jan. 4, 2014*

ROY A. SCHOTLAND '60  
*Jan. 26, 2014*

EDWIN H. BAKER '61  
*Feb. 10, 2014*

LEON R. GOODRICH '61  
*Feb. 17, 2014*

ELISE B. HEINZ '61  
*Jan. 19, 2014*

RICHARD E. SMITH '61  
*Dec. 27, 2013*

ROBERT L. MENNELL '62  
*Dec. 12, 2013*

MALCOLM G. SMITH '62  
*Dec. 18, 2013*

JOHN T. DEALY '63  
*Jan. 8, 2014*

ANDREW J. HASWELL JR. '63  
*March 16, 2014*

JAY F. LEARY '63  
*Oct. 17, 2010*

WILLIAM F. MANLEY '63  
*Jan. 15, 2014*

ERNEST "TONY" WINSOR '63  
*Nov. 4, 2013*

ARTHUR M. SCHNEIDER '64  
*Jan. 20, 2013*

PETER VAN NUYS '64  
*Dec. 13, 2013*

ROBERT D. WACHS '64  
*Dec. 2, 2013*

RONALD H. ALENSTEIN '65  
*March 8, 2014*

PETER BARNES '65  
*Jan. 3, 2014*

A. THOMAS HUNT '65  
*Jan. 1, 2014*

ROBERT NORDVALL '65  
*Jan. 2, 2014*

RICKARD T. O'NEIL '65  
*Jan. 3, 2014*

KAY S. CORNABY '66  
*Nov. 25, 2013*

GLEN E. HESS '67  
*Dec. 20, 2013*

JEFFREY C. POND '68  
*Sept. 2, 2012*

DANIEL L. TAYLOR '68  
*Dec. 25, 2013*

MILES M. GERSH '69  
*Jan. 22, 2014*

WILLIAM T. STEPHENS '69  
*Dec. 9, 2013*

**1970-1979**

W. ANDREW MACKAY LL.M. '70  
*Jan. 12, 2013*

EDWIN R. RENDER LL.M. '70  
*Jan. 4, 2014*

MANUEL J. RODRIGUEZ '70  
*March 4, 2014*

WILLIAM C. TYSON '70  
*Dec. 15, 2013*

ROGER J. MAGNUSON '71  
*Nov. 30, 2013*

DAVID H. MURPHREE '73  
*Dec. 23, 2013*

WILLIAM B. STOEBUCK S.J.D. '73  
*Nov. 18, 2012*

DENIS E. KELLMAN '75  
*Jan. 15, 2014*

GREGORY A. MADERA '75  
*March 22, 2014*

FREDERICK W. ROCKWOOD '75  
*March 3, 2014*

TIMOTHY J. WARFEL '77  
*April 6, 2014*

PHILIP M. CHIAPPONE '78  
*June 1, 2010*

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**1980-1989**

JOHN C. PALENBERG '81 ('82)  
*Jan. 6, 2014*

WILLIE J. WASHINGTON '81  
*March 10, 2013*

CHRISTOPHER P. HOLSING '82  
*Feb. 13, 2014*

RICHARD S. WEISMAN '82  
*Feb. 9, 2014*

JOSEPH M. FELLER '84  
*April 8, 2013*

MICHAEL WEINER '86  
*Nov. 21, 2013*

RONALD A. BORDEAUX '87  
*Jan. 15, 2014*

THOMAS M. HINES '88  
*Dec. 11, 2013*

LEONARD A. COHEN '89  
*Aug. 25, 2013*

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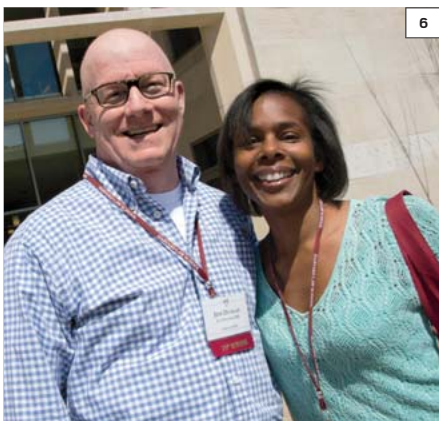
→ Visit the *In Memoriam* section online at [today.law.harvard.edu/bulletin](http://today.law.harvard.edu/bulletin) for links to available obituaries.

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**OBITUARY INFORMATION**

→ Notices may be sent to Harvard Law Bulletin, 1563 Mass. Ave., Cambridge, MA 02138 or to [bulletin@law.harvard.edu](mailto:bulletin@law.harvard.edu).

*Connecting with old friends, new ideas—and the occasional soccer ball*

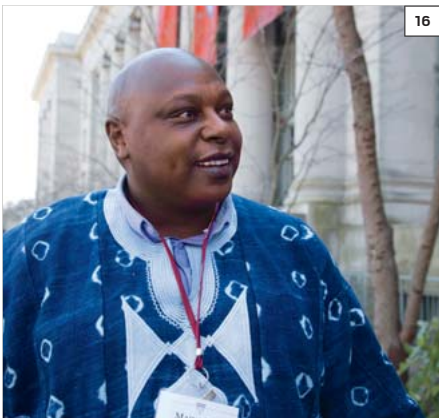
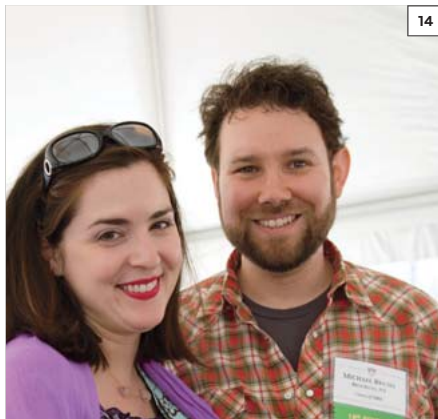
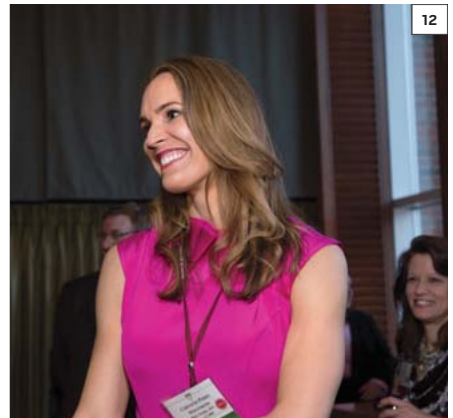


**1.** 1989 classmates Debra Osofsky, Susan D. Page **2.** 1989 classmates Karen Konigsberg, Gil Soffer **3.** Sajid Sharif '09 **4.** Bekhzod Abdurazzakov LL.M. '04 and his daughter Sanam **5.** 2009 LL.M. classmates Diora Ziyaeva, Mariela Aisenstein **6.** 1989 classmates Jeff Dunlap, Kim Boras **7.** 1999 LL.M. classmates Nathalie Younan, Erica Wiking Häger **8.** 2004 LL.M. classmates Harold Brunink (Netherlands), Dimitar Stefanov (Bulgaria), Donal McElwee (Ireland), João Falcão (Brazil) **9.** Annette Gordon-Reed '84, Morgan Chu '76 **10.** 2009 LL.M. classmates Amanda Spaner Åkerman, Fabio Saccone, Sabrina Costanzo, David Singer and Singer's girlfriend, Caterina Panarello **11.** 2004 LL.M. classmates Dipa Swaminathan, Nagako Oe **12.** Chrystie Perry Holmstrom '04 **13.** Joe Olivieri '84 and his wife, Carol Olivieri **14.** Michael Brusco '04 and his wife, Kelley, and daughter Lily **15.** Nygina Tenay Mills '94 and her son Brantley Giliard **16.** Maina Kiai LL.M. '89 **17.** Dean Martha Minow, Lyon Roth LL.M. '89

*Photographs by Martha Stewart*



*Classes of  
1984, 1989,  
1994, 1999,  
2004, 2009  
(and 2039?)*





THERE IS NO ONE IN HOLLYWOOD—indeed, throughout the entire entertainment industry—who doesn't know the name Bert Fields.

A self-described “kid from the beach in California” when he matriculated at Harvard Law School in 1949, Fields has established himself over the past six decades as one of the nation's most renowned and successful entertainment lawyers. His star-studded roster of clients includes the Beatles, Tom Cruise, Warren Beatty, Dustin Hoffman, and James Cameron, as well as DreamWorks, MGM, United Artists, and the Weinstein Company. He's represented such major authors as Mario Puzo, James Clavell, Tom Clancy, Clive Cussler, and Richard Bach, as well as Arizona cotton farmers, Las Vegas hotels and casinos, clothing designers, boxing promoters, and a Japanese bank.

A former editor of the Harvard Law Review, Fields speaks each year to HLS students in entertainment law classes, and he teaches entertainment law at Stanford Law School. He is the author, under a pseudonym, of two novels, and has written two nonfiction books under his name, a work on Richard III and an analysis of the Shakespeare authorship question, both published by ReganBooks/HarperCollins. He has been profiled in *The New Yorker*, *The New York Times*, *London's Sunday Times* and *Vanity Fair*.

In March, Harvard Law School announced that Fields, a partner with Greenberg Glusker in Los Angeles, had made a gift of \$5 million to the school to endow the Bertram Fields Professorship of Law.

#### Why did you choose to endow the Bertram Fields Professorship of Law at HLS?

Harvard changed my life dramatically and had a really fundamental impact on me and my career. It exposed me to all kinds of things I'd never been exposed to before. It is an institution that over the centuries has contributed enormously to American thought, especially judicial thought. I was in a position to help out, and so I did.

#### What did you find most inspiring at HLS?

The student body was amazing—it was people at the top of their class from all over the country and world—and the faculty was beyond my imagination. It taught me to think, and, basically through the experience on the Law Review, it taught me to be a writer.

#### Do you have a particular memory of HLS that comes to mind?

I have so many good memories. I remember [Professor] Paul Freund ['31 S.J.D. '32] with great fondness. Professor [W. Barton] Leach ['24] gave me my highest grade and wrote me a letter congratulating me on my final exam. It was such a lovely thing to do. The letter arrived before my grades. I had no idea whether I'd flunked out or done well. It's one of my prized possessions.

#### Is Hollywood scarier than HLS?

After that first year of law school, nothing was scary.

#### Do you think your Harvard credential carries weight among your Hollywood clients?

I think it does, in two ways: I think it offers a kind of aura that many practitioners do not have, and it gave me the skills I think others may not have, so the combination of aura and the skills is a good thing.

#### Why did you choose to go into entertainment law?

I didn't! After I got out of law school, I was in the Korean War, in the Air Force for two years, and tried innumerable courts-martial. I began to think I was a star litigator, and when I got out I wanted to try cases, so that's what I started doing, for young actors and young writers. As they became successful, they'd ask me to represent them in contract and other matters. It just gradually developed.

#### So many law students today want to go into entertainment law. What exactly is it?

In one sense, there really isn't anything called entertainment law—it's really just torts, contracts, applied to a particular industry. We have the same

arguments one would have about any contract and how to construe it.

#### People say Hollywood is a very tough place to make it. What is your advice to young lawyers who want to follow in your footsteps?

I speak at both HLS and Stanford Law School, and I tell the students it's extremely tough. Most young people want to get into entertainment law because it's fun—the people you meet and deal with are fun, the issues are interesting—but it's very, very hard. There are far fewer jobs than people who want them. One thing I say, if you want to go into a particular law firm, and you can't be in the entertainment department: Be a litigator because it will teach you to think, to speak and write with clarity, and those are skills you'll be able to use when you get into entertainment, if you ultimately do—so don't give up.

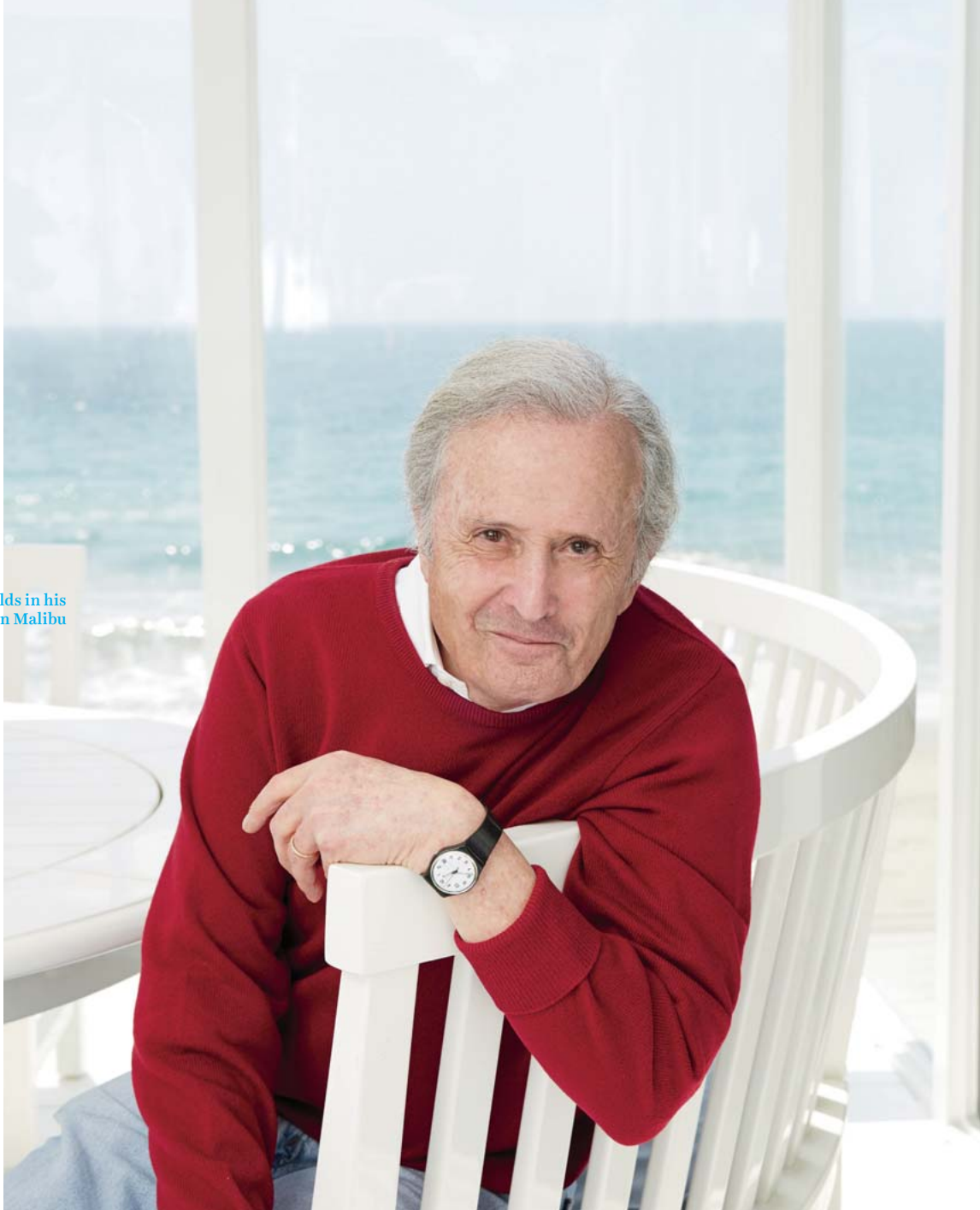
#### You also manage to find time to write books.

I write them primarily on weekends and vacation, so it takes me about nine years to write a book, so I will never have a huge body of work. But I get a great kick out of it, and, again, I attribute that, at least at its inception, to the work I did on the Law Review, and those marvelous people who helped me hone those skills. Years ago, I had a case for Mario Puzo, who wrote “*The Godfather*,” and I wrote a brief in his case. He said, “Hey, you write well. You really ought to write books.” So I went home and wrote a novel. It's written under a pseudonym because it's really a sex novel.

#### Do you have favorite clients?

I can talk about cases I liked better than others. I represented the Beatles and that was marvelous. They sued over “Beatlemania” [a musical revue]. The Beatles felt it was a rip-off of their concerts, and [the defendants] claimed it was free speech protected by the First Amendment. I won. I was a huge fan and that case was great fun. I have had a lot of them like that.

Bert Fields in his home in Malibu



—→ An Entertaining Life in the Law: When Mario Puzo says you should be a writer, it's like an offer you can't refuse

**Can you share a story about a celebrity client?**

I think probably the most difficult situation I ever had was a case I tried for the greatest Broadway impresario, David Merrick, who produced “42nd Street” and many, many other shows. David was not the best witness in the world, but I felt I had to put him on the stand. My opponent asked him a couple of questions, like, “What is your name, sir?” and then, “What is

your occupation?” Merrick, who had a temper problem, turned bright red, stood up and said, “I don’t have to take this s\*\*t!” and walked out of the courtroom. What could I say? I said, “Your honor, he feels so deeply about this matter, he couldn’t restrain himself. I apologize.” Actually, we had a very strong case and the other side had a terribly weak case, and that night the lawyer for the other side called me and said, “Look, if you’ll waive costs, we’ll

drop the lawsuit.” I called David and said, “Great news, great news! They’ve decided to call the case off if we waive costs.” He said, “Bert, I told you I know how to deal with these people.”

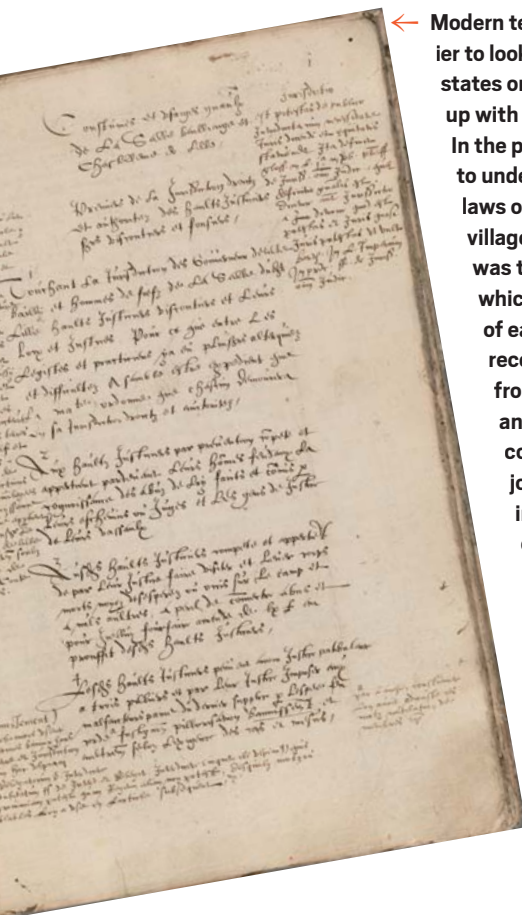
**Was he right?**

Of course not! It damn near cost him the case. I have lots of stories like that. When one spends all of these years doing this, there is an accumulation of stories.

## GALLERY | *Of Sammelbands, Coutumes and Broadsides*

The HLS Library's Historical & Special Collections department is always in search of material that shows how people thought about and understood the law throughout recorded history. A current exhibit highlights some new and unusual acquisitions, many of which were meant to be accessible to people untrained in the law. They tell a story, through words and illustrations, of the sometimes cumbersome, sometimes harsh ways justice was executed in different societies and eras.

### The HLS Library showcases unusual and telling works on the law



← Modern technology makes it easier to look up laws from different states or countries—and to keep up with ever-changing laws. In the past in France, the way to understand the disparate laws of regions or even small villages across the country was to turn to coutumes, which offer a written record of early French law. HLS has recently acquired its 24th from the city of Lille alone, and this one from 1579, covered with annotations, joins hundreds of others in the collection from other parts of France. An abundance of coutumes were needed, as Voltaire once quipped, because travelers across the country were forced to change laws as often as they did horses.



An arbitration treatise bound with a medical remedies text illustrates early legal and medical “self-help.”

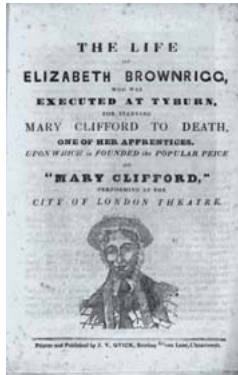
MANY ATTORNEYS WORK hard to make sure cases don't go to trial—but not always successfully. That practical reality was apparent in one early French arbitration treatise from 1668 that can be translated as “Charitable arbitration to avoid trial and quarrels, or at least to end them quickly, without



penalty and fees.” That treatise is part of a bound collection of separate works, called a *sammelband*, which also includes a volume that catalogs “Remedies for the poor people in the countryside.” Apparently, the bound books were used by the same person, who practiced legal as well as medical triage. They include engravings guiding the viewer on practices from how to stand during arbitration to how to properly bandage wounds. And in a bit of French *égalité*, the author, Alexandre de La Roche, suggests that the qualities necessary for a good arbitrator, such as probity, patience and good will, may be found in women.

The account of Elizabeth Brownrigg, executed after she was found guilty of causing the death of a servant she had been torturing

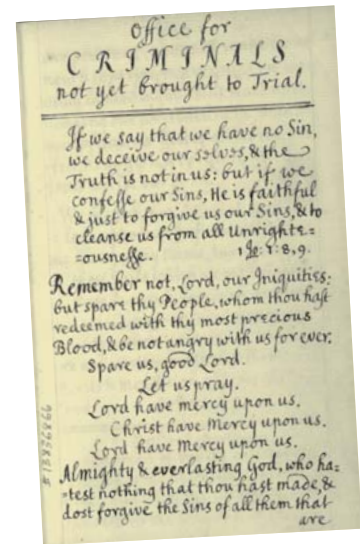
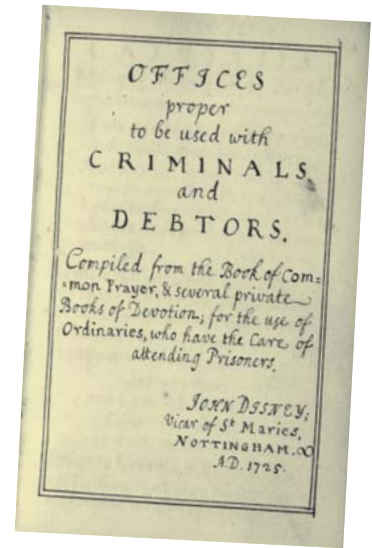
While modern-day true crime accounts may seem lurid, these tales that can shock and titillate have a long history. The HLS Library has a robust collection of Anglo-American “trials and broadsides” which often present sensational details of crime and punishment (broadsides are typically a single page while trials are more often booklets or pamphlets). They include stories of murders and executions, such as the case of Elizabeth Brownrigg, an 18th-century woman who was executed for torturing and starving several of her apprentice servants. The sensational story was so well-known that it was made into a drama, which was performed



on the London stage.

A different kind of treatment of the help was uncovered in a pamphlet about an adultery trial of a man who sued his wife for divorce because of her alleged infidelity with a servant. A booklet written by a police reporter—which serves as a catalog of a career criminal’s decade-long

misdeeds until his execution in 1863—also features engravings and illustrations where one can see, for example, the subject setting fire to a house or a “widow’s daughter” escaping from his clutches. Another broadside focused on Richard Bishop, who, while facing execution, was reported to offer these words of regret: “In Maidstone Gaol, I am lamenting, I am borne down with grief and pain, I for my deeds am now repenting, I shall Sydenham [his hometown] never see again.” The doomed man would become one of the last people to be executed publicly before that practice was banned in Great Britain in 1868.



An interesting scene from the Popular Drama of Mary Clifford, as performed at the City of London Theatre.

Brownrigg’s mistreatment of her servant Mary Clifford was so notorious, it became the subject of a stage drama.

THE LEGENDARY SHERIFF OF NOTTINGHAM was famously obsessed with outlaws like Robin Hood. It turns out the vicar of Nottingham also thought a lot about outlaws. That’s evident in the 1725 manuscript “Offices proper to be used with criminals and debtors” from John Disney, the vicar of St. Mary’s in Nottingham, which details how to minister to prisoners.

A former law student who entered the priesthood in 1722, Disney offers prayers for criminals “hardened and impenitent” and lessons for “true contrition” and “forgiveness of sin.” He also offers special prayers for prisoners who were transported to serve their sentences, asking God to “be gracious to those that are to be sent abroad,” and, for those facing the ultimate sentence, prayers on “preparation for death” and “with criminals at execution.” —LEWIS I. RICE

OPENING DOORS | *for clients and students*



Harvard Law School's Transactional Law Clinics pair up clients such as Mattapan-based entrepreneur Euan Davis (left) with students like Javier Oliver-Keymorth '15. Davis has launched BarberTime, a media platform for barbershops, and he is trying to take the enterprise to the next level. Oliver-Keymorth is learning how to use the law to set up a complicated business idea for future success.

→ SEE PAGE 34