

Harvard Law

bulletin

Electing to Serve



➔ FOR THE FIRST TIME in U.S. history, HLS alumni are the presidential standard-bearers of the two major parties.

⌋ **ALSO: Tea Party Testimonial, Frank Finale, Arguing Alien Tort Claims** ⌋

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LAW AND LEADERSHIP

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Why Do Law School Graduates Become Leaders?

-----> *I think that a combination of self-selection, features of the law school experience, and particular elements of law itself contributes to the sizable presence across society of lawyers as leaders—and as effective ones, at that. What are your thoughts about this?*

WHY DO MANY LAW school graduates become leaders? Individuals with legal training lead government, business, civic activities, and nonprofit organizations in the United States and around the world. Of course, leaders of law firms, law schools, and offices of government lawyers have legal training, but often so do leaders of companies, universities and countries. I think that a combination of self-selection, features of the law school experience, and particular elements of law itself contributes to the sizable presence across society of lawyers as leaders—and as effective ones, at that. Does this

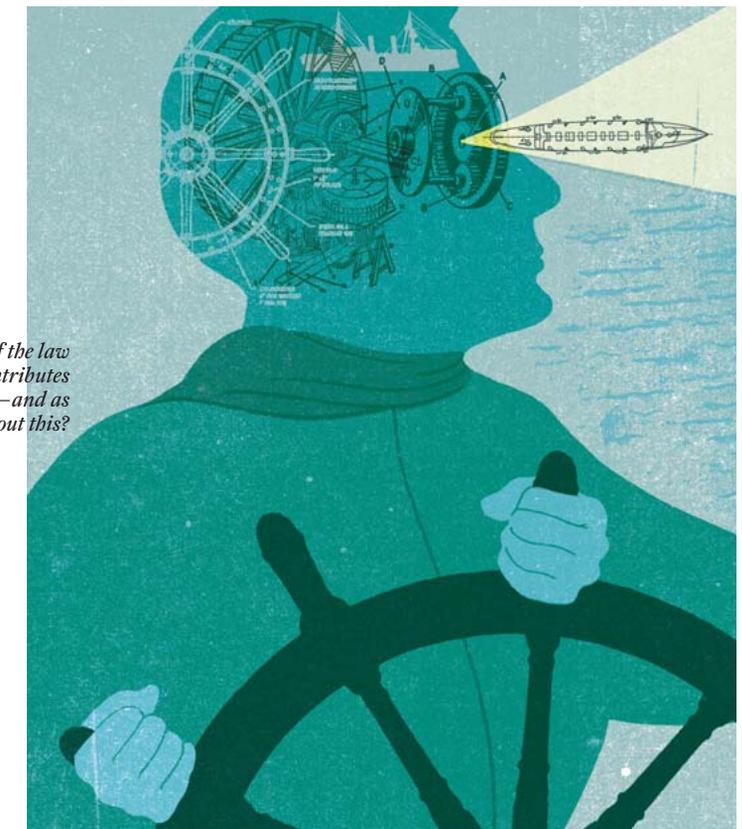


seem right to you? I offer these thoughts in hopes of prompting your suggestions. **SELF-SELECTION.** Many people with aspirations to serve as leaders are drawn to law school. It is a source of pride for Harvard Law School that two of our graduates are currently competing to serve as president of the United States. The commitment to lead, along with crucial talents and tenacity, contributes to the decision by many to pursue legal education. In so doing, students like Barack Obama '91 and Mitt Romney J.D./M.B.A. '75 follow in the paths

traveled by prior leaders. Other notable Harvard Law School alumni include leaders in the United States from both political parties—among them, Dean Acheson '18 (former U.S. secretary of State; instrumental in the creation of the Marshall Plan, NATO, the International Monetary Fund and the World Bank); Michael Chertoff '78 (former secretary of Homeland Security); William T. Coleman Jr. '43 (former secretary of Transportation); Ted Cruz '95, current Republican candidate for the U.S. Senate from

Texas; and Elizabeth Dole '65 (former senator from North Carolina, secretary of Labor and secretary of Transportation). The president of the Republic of China, Ma Ying-jeou S.J.D. '81, and the former president of Ireland, Mary Robinson LL.M. '68, are Harvard Law School graduates. So are the former president of the World Bank, Robert Zoellick '81, and the current United Nations high commissioner for human rights, Navanethem Pillay LL.M. '82 S.J.D. '88.

Perhaps more surprising is the number of lawyers who head companies, universities and nonprofit organizations. Among them are Harvard Law School alums Sumner Redstone '47, chair



of National Amusements and founder and controlling shareholder of Viacom; Roger W. Ferguson Jr. '79, president and CEO of TIAA-CREF; Archibald MacLeish '19, former Librarian of Congress; Regina Montoya '79, CEO of New America Alliance; Gerald Storch J.D./M.B.A. '82, chair and CEO of Toys "R" Us; BET CEO Debra Lee '80; Lloyd Blankfein '78, chair and CEO of Goldman Sachs; former Tufts University President Lawrence Bacow '76; New York University President John Sexton '78; City Year founders Michael Brown '88 and Alan Khazei '87; Sandra Froman '74, past president of the National Rifle Association; and Irene Khan LL.M. '79, former secretary general of Amnesty International and now chancellor of the U.K.'s University of Salford.

One explanation is simply that many people drawn to law school emulate and retrace the careers of leaders—while aiming perhaps

also to meet and connect through school with like-minded people. No wonder even our dropouts are amazing—consider John Negroponte, former U.S. director of national intelligence; Greg Mankiw, chair of Harvard's Economics Department; Jodi Kantor, New York Times correspondent; and Cole Porter, composer.

FEATURES OF THE LAW SCHOOL EXPERIENCE. In conversations with lawyers leading great institutions, I like to ask what they find useful from their law school days. Almost invariably, I hear a version of this response: "I learned to analyze a problem, take it apart, see it from all sides." Central credit goes to the traditional Socratic line of questions around complex judicial cases. As its originator, Christopher Columbus Langdell LL.B. 1854, explained, students would learn through the Socratic **case method** to move from particular contexts to general rules and

from the general to the particular because “to have such a mastery of [principles or doctrines] as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer.”

Some present-day leaders also point to **clinical work and case studies** that helped hone their problem-solving and analytic skills. These activities, important in legal education for the past two decades, help students learn to find—or construct—facts and to navigate more dimensions of a problem than is permitted by the frame of appellate judicial opinions. It is fascinating to see lawyerly analytic skills carry over easily from law to fi-

events, practices and concepts; and through practice, people evaluate the logic, coherence, completeness and flaws of arguments.

Law school classes and study groups deepen reasoning skills while shaping students in other ways relevant to leadership. Law students become adept at taking the perspective of others by devising and responding to arguments from competing points of view, by examining the origins and consequences of particular disputes, and by engaging with diverse fellow students. Legal education increasingly also draws students into generating solutions to problems. Learning to negotiate, law students find, is not simply a matter of emotional tough-

structures for reporting and accountability.

Embedded in legal education is information about regulated markets, dispute resolution systems, the confluence of history and politics, and the relative usefulness of rules and standards—information that assists prospective leaders. I think it turns out to be helpful, too, to understand how a regular process offers value in handling issues and to know a repertoire of formal and informal processes for tackling disputes and formulating policies. As the scholar Warren Bennis notes, “Leadership is the capacity to translate vision into reality.” Legal education provides insights into so many efforts to do just that,

individuals while calmly moving the group forward.

In law school, we learn to see the people we hope to lead as individuals, with minds and spirits, independence and desires: people who experiment, argue and challenge. Legal education models leading by conversing, taking turns asking questions and answering them. We proceed with the knowledge that everyone will not agree. A wise man was asked to define success, and he said, “I do not know how to define success, but I know how to define failure: trying to please everyone.”

One of my students, Peter Cicchino ’92, came to law school following years as a Jesuit, and later became a lawyer and then a law professor. He once told law students: “Take your arrogance and afflict the comfortable. Take your contentiousness and articulate genuine political alternatives. Take your sense of entitlement to act in the world—to run things—and do so: govern, lead.”

Contentiousness and a sense of empowerment, grounded in knowledge and analytic tools—these are great ingredients for leading. In a time when some question the value of legal education, I am proud that so many lawyers become leaders. I look forward to your thoughts about why this is the case.



Martha Minow is dean of Harvard Law School and professor of law

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In a time when some question the value of legal education, I am proud that so many lawyers become leaders.

nance, politics and administration. Alumni tell me how law school equipped them to run institutions focused on science and technology as well as civic and cultural institutions. Why? Because in law school they learned to learn by asking questions; they probed propositions and practices by asking what lies behind, what follows and even what unexpected consequences arise.

Recent research suggests that even studying for the LSAT affects the parts of the brain associated with reasoning. Practice affects the brain. **Practice sharpens the thinking and reasoning** relevant to reading comprehension and inference; practice helps people draw logical implications from the relationships among people,

ness. Negotiation invites the imagination to create new alternatives and allow competing sides to find shared solutions. Law students learn to **expect disagreement and focus on what to do in real time.**

Some of the knowledge conveyed in law school helps people lead nonlegal organizations. Law students learn useful **knowledge of particular institutions**—like corporate firms and international networks. Law school helps people understand the choices and trade-offs involved in designing and operating institutions: the benefits and drawbacks of centralized and decentralized authority, the power and limitations of multi-member decision-making bodies, the utility of varied

along with tools for working with groups to solve problems.

LEADING PEOPLE. As I became dean, I read articles on leadership and particularly searched for advice about “herding cats”—one way to describe leading tenured faculty. Although animal images abound in business and management writings, that particular phrase is not common. The leader presumably is a human, but those to be led are at times cows, bees and sheep. Some see the leader as the Cowboy, who is goal-oriented; others as the Beekeeper, who is systems-oriented, helping self-directed people with resources; and still others as the Shepherd, who is team-oriented, promoting healthy, happy and productive indi-

TRANSFORMATIVE GENERAL COUNSELS ARE NOT NEW

YOUR PIECE IN THE SUMMER 2012 issue titled “In the Driver’s Seat: The changing role of the general counsel” makes the astonishing claim that Distinguished Senior Fellow Benjamin W. Heineman Jr. “[revolutionized] the role of general counsel in major corporations.” Quoting Heineman, “Twenty-five years ago, if you asked an inside lawyer a question, they’d say, ‘Give me two days,’ and they’d call someone outside.” Heineman supposedly solved this bottleneck by hiring “superstars” to answer the questions directly.

Given that thousands of HLS graduates surely worked as inside counsel at major corporations prior to 25 years ago, your version of legal history amounts to turning us all into message takers and transmitters. A good candidate for a truly transformative general counsel a generation earlier would be Howard Aibel [’51], who became general counsel of ITT Corp. in the early 1960s. At ITT, Aibel recruited a very capable legal staff, dominated by HLS graduates, with the goal of participating proactively in all business decisions, as well as providing excellent legal services. I worked for ITT from 1974 to 1987, and I don’t recall one single instance of acting as “go-between” for my ITT client and an outside U.S. counsel. For a number of years, I was a member of ITT’s legal “acquisitions” group. ITT was the pre-eminent conglomerate of the time, with hundreds of separate profit centers, as well as an active acquisition and divestment practice. We handled all of ITT’s worldwide acquisition activities in-house, using outside counsel only in foreign countries for questions of foreign law. ITT in fact exemplified the model of corporate legal practice that you claim Heineman invented for GE 25 years later. I’m confident other

HLS graduates could suggest other companies with similar experiences.

The potentially novel element of Heineman’s initiative seems to have been the recruiting of “superstars.” Since the only objective criterion for identifying and measuring such people is the salary offered to them, the criterion of excellence is thus self-generated and circular. Rather than transformative, it seems illustrative of the steamy economic bubble in which the legal profession has been operating. Now that the legal profession in the U.S. is being forced to adjust to new realities, it seems doubtful that companies will continue to make claims of excellence in their delivery of in-house legal services as measured by the very high salaries and other benefits paid to new recruits.

JOHN IMPERT ’66
Seattle

PROFESSOR DAVID WILKINS ’80

REPLIES: *Mr. Impert makes a valuable point in noting that a few forward-thinking general counsels such as Howard Aibel at ITT helped to pave the way for the transformation in the role that this article documents. My guess is that most of these early pioneers would agree, however, that the reforms that they started have*

accelerated tremendously since the 1980s, resulting in the sea change discussed in the article, with many more corporations hiring outstanding general counsels from government or private practice, upgrading the talent in legal departments, changing the relationship between inside and outside lawyers, and recognizing that the legal function (and the GC) is as important as the finance function (and the CFO). And I think most would agree that Ben Heineman was one of those most responsible for pushing these trends, as Corporate Counsel magazine recognized when it put Mr. Heineman’s picture on the cover with the simple words: “In the Beginning.” Nevertheless, as I know he would be the first to acknowledge, the breadth and durability of these changes are due much more to the growing recognition of the connection between business, law and society, than to the actions of any single individual.

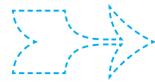
→ WILKINS IS DIRECTOR OF THE HLS PROGRAM ON THE LEGAL PROFESSION.

NATIONAL SECURITY OMISSIONS

GLARINGLY ABSENT FROM “THE Matrix—A sampling of HLS alumni in the national security field since 9/11” (Summer 2012) is the name of Joel Brenner ’75, who served successively during that period → 62

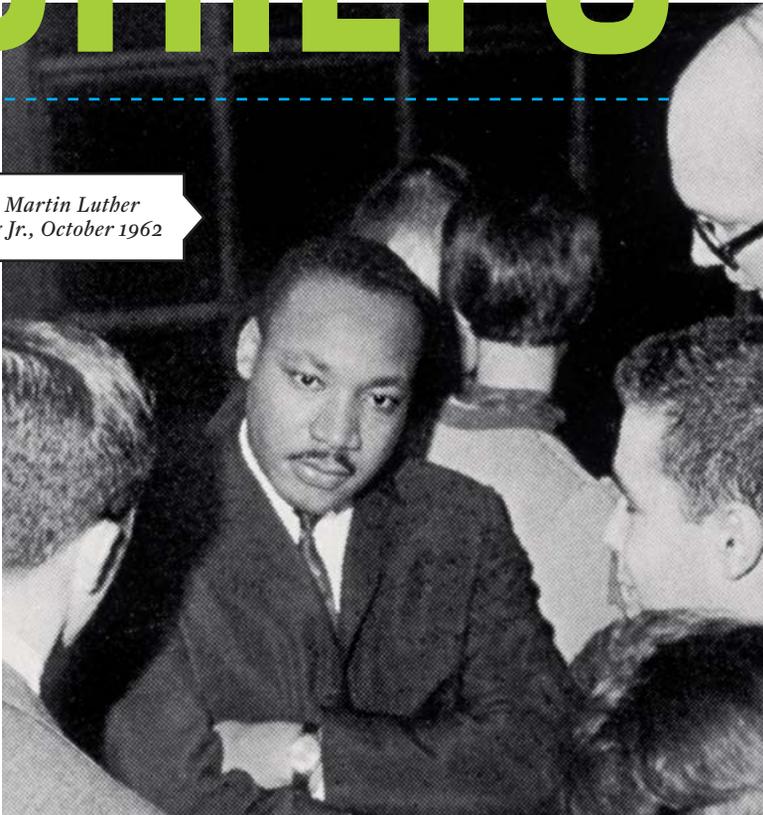


BRIEFS



Some memorable moments, milestones and a Miró

Rev. Martin Luther King Jr., October 1962



HLS FORUM

'Integration is not some lavish dish that the federal government will pass out on a silver platter'

50 YEARS AGO AT THE HLS FORUM

IN OCTOBER 1962, the Rev. Martin Luther King Jr. spoke at Harvard Law School on "The Future of Integration." It was six months before he would be imprisoned in a Birmingham jail, 10 months before the March on Washington, almost two years before the signing of the Civil Rights Act and almost six years before his assassination. He called for strong, forthright civil rights legislation, and refuted what he called the myth that time and edu-

cation were the only ways to bring about change. "It may be that the law cannot make a man love me," he said, "but it can keep him from lynching me."

But he also told the audience, "Integration is not some lavish dish that the federal government will pass out on a silver platter." In addition to working through legislative channels, and through the courts, "the Negro must be willing to engage in nonviolent direct action," he said.

"Even if [the opponent] tries to kill you, you develop the quiet courage of dying, if necessary, without killing," King said.

In 1962, in addition to King, the Harvard Law School Forum, a student-run speaker series, hosted Jimmy Hoffa and Billy Graham. To hear their speeches, go to <http://bit.ly/King1962>.

HLS CITINGS

From Michelman on property to Bebchuk on shareholder power, HLS faculty articles among the most cited



Harvard Law School faculty are among those who have written the most-cited law review articles, according to a recent study in the *Michigan Law Review* by Fred R. Shapiro '80, a librarian at Yale Law School, and Michelle Pearse, a librarian at Harvard Law.

The study includes two lists: a selection of the 100 most-cited articles of all time, and another of the 100 most-cited articles from the last 20 years, because, according to Shapiro, "It takes decades for an article to amass the stratospheric citation count needed to make [the first list]."

Out of 200 articles on both lists, 29—or 15 percent of the total—were written or co-written by current HLS faculty: Lucian Bebchuk LL.M. '80 S.J.D. '84, Yochai Benkler '94, Jody Freeman LL.M. '91 S.J.D. '95, Jack Goldsmith, Louis Kaplow '81, Duncan Kennedy, Reinier Kraakman, Lawrence Lessig, Frank Michelman '60, Dean Martha Minow, Robert Mnookin '68, Mark Roe '75, Cass R. Sunstein '78, Laurence Tribe '66 and Mark Tushnet. Many of these faculty members wrote more than one most-cited article.

HEARD ON CAMPUS

'LOSERS' RULES

THIS SUMMER AT a conference at Harvard Law School, HLS Professor of Practice Nancy Gertner called attention to what she called a “structural” problem that poses daunting challenges for plaintiffs in discrimination cases: The written law is based on what judges have to say when they grant summary judgment—and virtually all parties who move for summary judgment are defendant companies or organizations, not plaintiffs. She called the result “losers’ rules.”

“If case after case recites the facts that do not amount to discrimination,” said Gertner, who retired from the bench



Nancy Gertner at the implicit racial bias conference

last fall after 17 years as a U.S. District Court judge, “it should come as no surprise that the decision-makers at all levels have a hard time envisioning the facts that comprise discrimination.”

Gertner’s remarks were part of “Implicit Racial Bias Across the Law,” a conference that coincided with the publication of a book on the topic co-edited by Justin Levinson LL.M. ’04 and Robert J. Smith ’07, who were among the participants.

To read more about the event or watch video, go to <http://bit.ly/RacialBias>.

ASK THE BULLETIN

ART APPRECIATION

This summer, after Spanish painter Joan Miró’s “Etoile Bleue” sold for \$37 million on auction at Sotheby’s, Arthur Greenbaum ’55 of New York City remembered another Miró—hanging in the Harvard Law School dining hall when he was a student.

Greenbaum says that back then he had little appreciation for the mural’s colorful abstraction, which some have said represents a bullfight: “We thought it looked obscene.”

But as he heard news of the record sale this summer, he recalled the school taking down the artwork, and he called the Bulletin to find out what-ever happened to that mural.

According to a Harvard Crimson article from Nov. 10, 1960, the artwork’s fate was sealed after Miró



HLS HISTORICAL & SPECIAL COLLECTIONS

paid a visit to the school to see the work, which had been commissioned by the building’s architect, Walter Gropius. “The artist himself first observed the deleterious effects which a radiator below the mural had caused.”

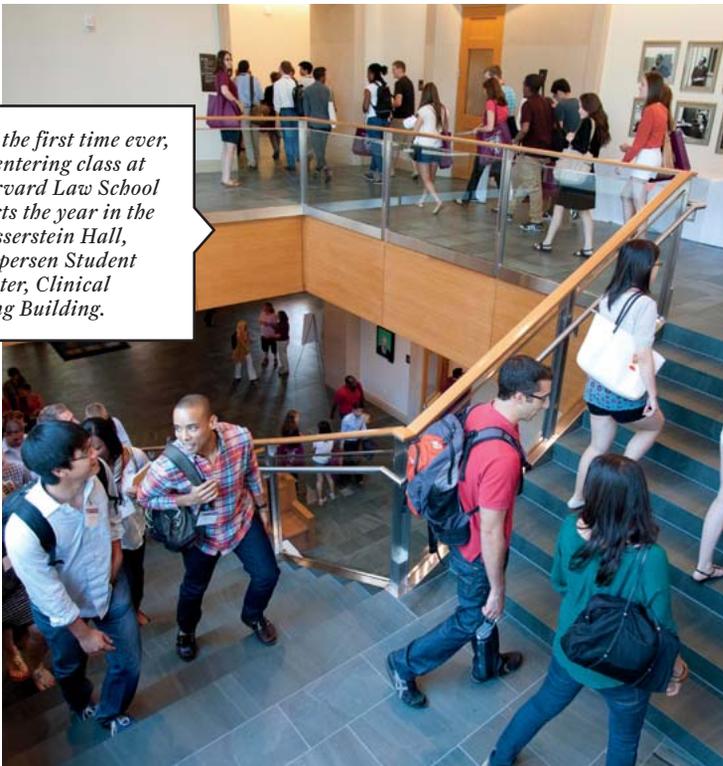
The article suggests that Greenbaum wasn’t the only student who hadn’t appreciated that particular piece of modern art at the time. According to the Crimson, one student described the painting as “appropriate for an evil child’s nursery.”

But by 1960, after the mural was taken down, Miró had created a ceramic replacement, which, after being exhibited in Barcelona, Paris and New York, was installed in 1961 in the Harkness Commons, where it hangs today.

As for the damaged original, it was ultimately acquired by the Museum of Modern Art in New York City—a subway ride away from Mr. Greenbaum.

MILESTONE

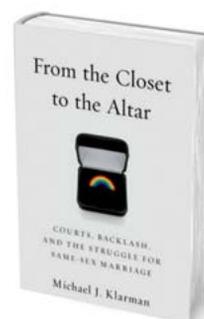
For the first time ever, an entering class at Harvard Law School starts the year in the Wasserstein Hall, Caspersen Student Center, Clinical Wing Building.



TONY RINALDO

The Courts and Public Opinion

Klarman examines *THE LEGAL FIGHT FOR same-sex marriage*



Michael Klarman’s scholarship has focused on the effect that court rulings have on social reform movements. He argues that when courts get ahead of public opinion, political backlash often follows. That’s what he found in an earlier book he wrote on race and the U.S. Supreme Court, and it is a phenomenon he has also observed in cases involving the death penalty and abortion.

In his new book, “From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage” (Oxford), the HLS professor explores whether the same effect has taken place when it comes to same-sex marriage litigation.

He also details the history of the gay rights movement, the emergence of gay marriage as a legal issue, and the costs and benefits of related litigation over the past 20 years.

Soon after the 2003 Massachusetts decision in *Goodridge v. Department of Public Health*, which established full marriage equality for same-sex couples in the commonwealth, Klarman wrote an article describing the political toll of the ruling on 2004 elections across the country, including the presidential contest. Since *Goodridge*, more than 30 states have enacted constitutional bans on gay marriage. Similarly, an earlier marriage equality case in Hawaii (*Baehr v.*

Lewin) led to more than 35 states and Congress enacting defense-of-marriage statutes in the 1990s. In addition, he believes, gay marriage litigation may have distracted attention from other items on the gay rights agenda, such as federal legislation forbidding employment discrimination based on sexual orientation. But Klarman also sees beneficial consequences for the gay rights movement emanating from the litigation, including greater discussion among Americans of “a social reform that previously would have struck many of them as incomprehensible.”

As he began to focus on the pace at which public opinion had changed in recent years, he came to believe that the legalization

of same-sex marriage in all 50 states now appears inevitable in a way that did not seem possible eight years ago. The question, he said, is, “How much of the progress is attributable to the litigation and how much to what you might call the deep background forces that are driving the liberalization of attitudes?” It’s impossible to know for sure, he said, “but it’s possible that the litigation, in addition to producing short-term backlash, also has produced a longer-term advance.”

Klarman noted that it’s been an interesting experience for him, as a legal historian, to write about the present: “When you study things in the distant past, you lose the sense of contingency. Of course, we think, the Civil War had to come out the way it did, because it’s hard to imagine our nation split in two. But when you study events as they unfold, contingency is everywhere. It may mean that you tell more accurate stories when you write about the present because you don’t already know what happens next.”

One development he failed to anticipate was President Obama’s May endorsement of same-sex marriage. Klarman said he is confident the president and his political advisers had looked at the polls and concluded that endorsing gay marriage wouldn’t substantially hurt his re-election prospects. “We want to treat our great presidents as if they

KLARMAN
LOOKS AT THE
POLITICAL
COSTS OF
LITIGATION.



Michael
Klarman

were heroes, who did the right thing regardless of political ramification. But that’s just not the way they behave,” he said. “With Abraham Lincoln and the Emancipation Proclamation, Harry Truman and his executive order desegregating the military, and John F. Kennedy and his famous speech proposing a civil rights bill—they all acted only after dragging their feet for years, and only after public opinion had caught up.”

During an interview with the *Bulletin* in August, Klarman made predictions about gay marriage cases that many believe are headed toward the Supreme Court, including a successful challenge to the federal Defense of Marriage Act in the 1st Circuit. “I could easily imagine the Court’s agreeing with the 1st Circuit that DOMA is unconstitutional. Indeed, I’d go out on a limb and say that’s likelier than not.”

In November, four referendums on same-sex marriage will be on state ballots. Although in the past, voters have uniformly rejected gay marriage at the polls, Klarman believes this year we will likely see a different outcome—in

Maine, Maryland, and Washington state, and conceivably in Minnesota.

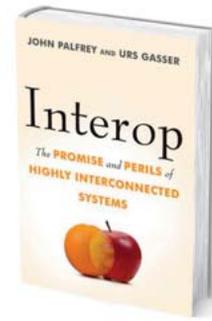
Klarman said it’s been fascinating to see attitudes change during his 25 years as a law professor. When he started teaching at the University of Virginia School of Law in 1987, the Supreme Court had just decided *Bowers v. Hardwick*, rejecting a constitutional challenge to state criminalization of homosexual sodomy between consenting adults. “At least half of my Virginia students back then thought that ruling was right,” he said. Now, by contrast, he can’t even get most of his Harvard Law students to seriously consider the position that same-sex marriage is not a constitutional right.

In our lifetimes, he predicted, “people will cease to understand why gay marriage was ever a controversial issue, and even those who staunchly oppose it today will have figured out ways to normalize it. Otherwise, no one will take them very seriously. ... It happened with race; it happened with women’s equality. It will happen with gay marriage.”

—Emily Newburger

A Theory of Connectivity

Gasser and Palfrey on the opportunities and pitfalls of our *increasingly INTERCONNECTED WORLD*



The highly connected nature of today's world has all sorts of benefits—but all sorts of potential costs as well, from loss of control of private data to a world financial system so intertwined that when one part of it falls, it's hard to keep other parts from toppling along with it. In "Interop: The Promise and Perils of Highly Interconnected Systems," John Palfrey '01 and Urs Gasser LL.M. '03 draw on their work at the HLS Berkman Center for Internet & Society to start developing a "normative theory identifying what we want out of all this connectivity." Gasser, executive director of the Berkman Center, and Palfrey, a former Berkman faculty director and HLS professor (now head of Phillips Academy Andover), spoke with the Bulletin about their book.

Bulletin: You write about interoperability—or interop—at work in everything from compatibility of different email programs to communication between different electrical grids to the linkages of European economies within the EU. How did you first approach this project?

JOHN PALFREY: Urs and I came to the project with a very similar understanding of interoperability as a technical concept, one that has to do with making IT systems work together better. By the end, we came to see interop stories everywhere—it's one of those sleeper topics where you are working on it from one angle and you start to see it in your everyday life in ways that are completely unexpected.

URS GASSER: Working on this project has been an eye-opening experience,

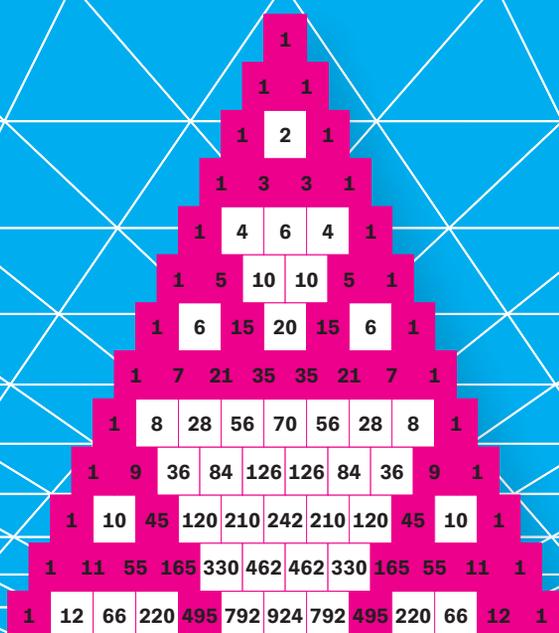
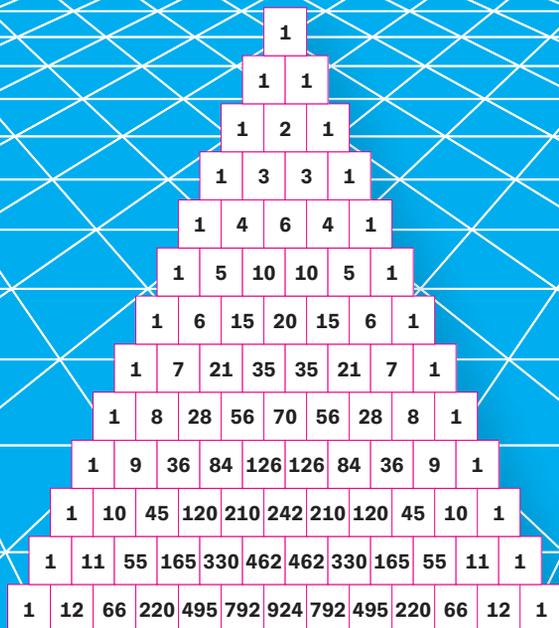
because it's helped me see the many invisible links that connect the different systems I use every day—both personally and professionally. Understanding, let's say, the complexity of a simple trip to Europe—I buy the ticket online, order a cab, go to the airport, board a plane, arrive safely in Zurich—leads to a new level of appreciation. You also start to see the potential points of failure.

Where does the field of law intersect with interop?

PALFREY: One way a law argument is at the core of this book is the extent to which law and interoperability are bidirectional.

Meaning that they can intersect in a couple of different ways?

GASSER: Yes. One example where you see



bidirectionality at work is intellectual property law. Consider a manufacturer of cell phones and a producer of operating systems for cell phones—let’s say Nokia and Microsoft. They may decide to work together very closely. The way they legally form their collaboration is by licensing certain technologies to each other. And this kind of licensing may actually increase interoperability between the players. Now take another example. You see patent wars where it’s exactly about using IP assets or rights to *prevent* competitors from developing interoperable devices or applications—the same body of law can

be used both in favor of interoperability and to hinder it.

How much attention is the U.S. government paying to this issue?

PALFREY: This is a hugely important policy matter in the United States, one that runs across many different topical areas. It’s also a very hard one; it’s an issue where one can see the tension between seeking to have highly interoperable technology systems that will drive innovation on the one hand and those who are concerned with international security and cybersecurity on the other. There are representatives from both sides of that argument, even within the White House. This question of how you get to an optimal level of interoperability is one on which many important topics will turn.

Is there anyone who says, “We don’t need a theory for this; interoperability is just going to happen, and businesses will work it out for themselves”?

PALFREY: There is an argument that the market sorts these kinds of matters effectively and there’s no need to be deliberate about it from a public policy perspective. I think there are a couple ways in which that argument is insufficient. One is, even when the market is determining levels

of interoperability, a lot of design thinking has to go into that. And that design thinking is exactly what we’re calling for in the book, and it does have to be deliberate in order to ensure that broader goals than simply the self-interest of a given company are met. An example would be privacy and security in the computing context. I think we’ve seen consistently in social media in particular that companies that are serving individuals and doing so for free online don’t take privacy into account enough, and we need to be designing more for the long-term implications of giving away so much information about ourselves. That’s a crucial point that the market on its own doesn’t handle.

What sort of impact is the book having?

GASSER: The biggest compliment I’ve heard so far is that the book helps to structure the thinking about these issues. That’s one of the goals of the book: to advance a theory that is useful in practice—both in the executive boardroom and in the administration of governments. I’m hopeful that this theory can be refined and expanded over time. To me, the book is still very much a work in progress. —*Katie Bacon*



Urs Gasser

DANIEL AMMANN

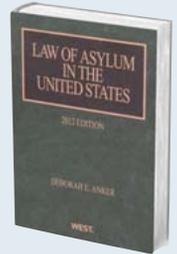


John Palfrey

ASIA KENKA

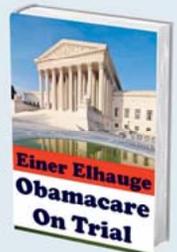
CLINICAL PROFESSOR DEBORAH ANKER LL.M. ’84 is the author of “**Law of Asylum in the United States**”

(Thomson West), a comprehensive resource for scholars and practitioners, describing and interpreting decisions of U.S. tribunals as well as those of other state parties to the U.N. Refugee Convention.



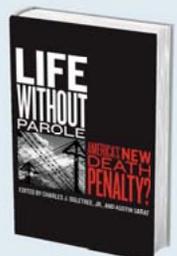
PROFESSOR EINER ELHAUGE ’86 is author of the e-book “**Obamacare On Trial**”

(Edward Elgar), focused on the Patient Protection and Affordable Care Act case decided by the Supreme Court in June. Elhaug raises points that were not aired in the courtroom, including the fact that the constitutional framers themselves had approved mandates to buy health insurance.



Part of the Charles Hamilton Houston Institute Series on Race and Justice, “**Life without Parole: America’s New Death Penalty?**” (NYU), edited by **PROFESSOR CHARLES OGLETTREE ’78**

and Austin Sarat, investigates the social, cultural, political and legal impacts of life in prison without parole.



A No Vote on ID Laws

Racial discrimination vs. *FRAUD at the polls*

Harvard Law School Professor D. James Greiner is co-author of a recent study on the experience of Boston voters in the election of 2008. As another election approaches, we ask Greiner a few questions about his study and the current efforts to pass tougher voter ID laws.

Your article is titled “Can Voter ID Laws Be Administered in a Race-Neutral Manner?” What did you find?

Our study reached some discouraging conclusions. The combination of federal and Massachusetts laws limits the circumstances under which a person approaching a voting location in Boston should be asked for an ID. Despite these limits, far too many white persons

who approached voting locations in the 2008 general election in Boston were asked for an ID. But the problem was even worse for African-American and Hispanic voters. Members of racial minority groups were more likely, more than 10 percentage points more likely in most cases, to be asked for IDs. The disparity among racial/ethnic groups persisted even when we used sophisticated statistical

techniques to control for other things a poll worker was likely to observe when a would-be voter approached a voting area—things like gender, age, educated speech patterns and proficiency with English.

What role can law play in the solution to the discrepancy you found?

That’s the particularly discouraging thing. The “law” (meaning the law written down in the books) seems to have been pretty clear here. [It requires that an ID be requested of voters who registered by mail without including a copy of a valid ID and of those who

are classified as inactive voters.] In fact, election administration officials had gone so far as to print an “I” or an “ID” next to the name of each person who was to be asked for an ID if she approached the polls. In other words, if a person trying to vote had an “I” or an “ID” next to her name, the poll worker was supposed to ask for an ID. If neither of these symbols was present, the poll worker was *not* to ask for an ID. It’s hard to see how the issue could have been made more simple or straightforward. And yet, racial and ethnic disparities occurred.



Other studies have shown that a majority of American voters, including blacks and Hispanics, favor voter ID laws. How does that jibe with your results?

ID laws have a strong intuitive appeal. After all, the argument goes, one has to show not just an ID, but a photo ID (Massachusetts law has never required a photo ID to vote), to board an airplane. Why not require one for voting? It turns out that there are two reasons not to require an ID for voting.

First, there is no evidence (really, none) that the kind of fraud that voter ID laws prevent has ever occurred in the United States on a significant scale. If you think about it, voter ID laws prevent only one kind of fraud: a person showing up at a voting location to impersonate someone else. To pull this off, the impersonator must know the actual voter is still on the voting list, must also know the actual voter's name and address (both of which must be provided in order to vote), and must know that the actual voter has not already voted that day. Realistically, each fraudster could impersonate only one or two voters on a voting day, so there would need to be a coordinated effort involving a lot of advance knowledge and a lot of fraudsters to affect an election. There are so many easier ways to commit fraud (stuffing ballot boxes, misleading potential voters about polling dates

or locations, prematurely purging registration rolls, etc.) that such a coordinated effort is not worth the candle. So basically no one does it. The Bush Justice Department tried (hard) to find examples of this kind of fraud so as to justify voter ID laws, but it found essentially nothing.

Second, there is some evidence (including our study) that voter ID laws disproportionately affect racial and ethnic minorities, the elderly, and the poor. We know that persons with these demographics tend to lean Democrat. That's why Republicans like these laws. Don't get me wrong: If these

.....
**DESPITE THEIR
POPULARITY,
VOTER ID LAWS
DON'T PREVENT
FRAUD.**

laws disproportionately affected Republicans, Democrats would be all for them. But we as citizens shouldn't swallow this kind of garbage.

What is the national import of this study, especially in a year when there have been efforts in states around the country to pass more stringent voter ID laws than the ones that exist in Massachusetts?

It's true that we studied only one jurisdiction, the city of Boston, in one election, the general election in 2008. Nevertheless, this is one of the last places and times one would have expected to observe racial and ethnic discrimination in the administration of voter ID laws. In 2008, the top two elections, for president and U.S. Senate, were expected to be blowouts in Boston and in Massachusetts, and in fact they were blowouts.



MARTHA STEWART

James Greiner

Only one other issue decided that day, a proposal for a statewide ban on dog racing, was remotely close. Fraud is always a concern, but there was little reason to expect Boston election officials to be hypervigilant about fraud that day. Meanwhile, Boston is racially and ethnically diverse, and the Boston Election Department in 2008 had recently made some effort to hire racially/ethnically diverse poll workers. True, Boston has some ugly periods on race relations in its past (but what U.S. jurisdiction has not?), but race relations in Boston are probably better than they are in many other places in the United States. Finally, as noted above, it's hard to see how the law could have placed more limits on the poll workers who administer

these laws. Of course, more investigation is needed before one can draw firm conclusions, but our thought is, If racial disparities occurred in Boston in 2008, it seems pretty likely that they are occurring in other jurisdictions at other times. With all that in mind, one has to ask, Are these laws worth it? —Emily Newburger

“Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008”

(Quarterly Journal of Political Science, 2012)
by Rachael V. Cobb, D. James Greiner and Kevin M. Quinn is available at <http://bit.ly/voteridpaper>.

THE LONG VIEW

As two HLS graduates are vying to lead the United States, we asked legal historians on the faculty to reflect on the connections between legal education and leadership



BRUCE H. MANN



TOMIKO BROWN-NAGIN



KENNETH W. MACK '91



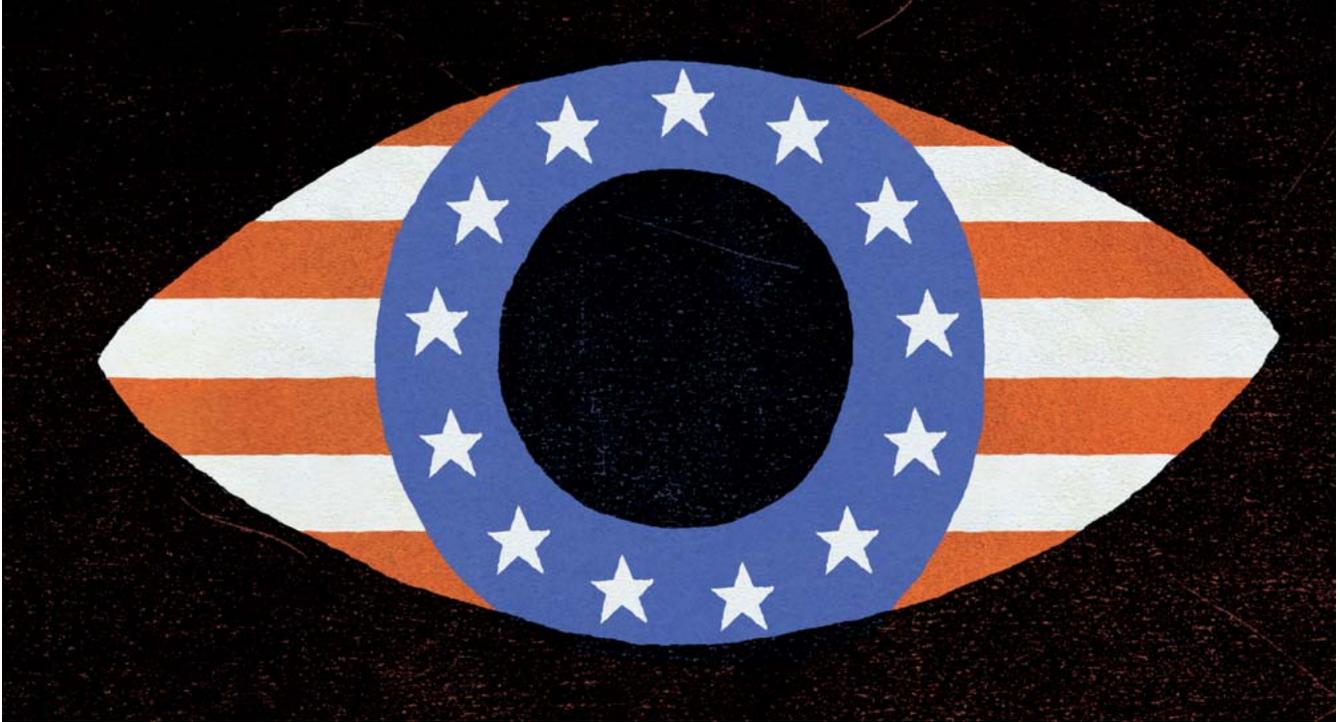
MORTON HORWITZ '67



CHRISTINE DESAN



ANNETTE GORDON-REED '84



<<< LOOKING BACK

BY PROFESSOR BRUCE H. MANN

The American Revolution thrust lawyers to the forefront of public discourse

>>> TO MOVE FORWARD

A DISTINGUISHED HISTORIAN AT Yale—whose father had been an equally distinguished law professor at Harvard—once remarked that before the American Revolution, the leading public figures in America were ministers who thought about theology, while after the Revolution, they were statesmen who thought about politics. Most of them were lawyers. Lawyers furnished the intellectual justifications for independence before the war, wrote the Declaration of Independence during the war, led the diplomatic missions that cultivated allies and negotiated peace, made up 34 of the 55 delegates to the Constitutional Convention, and led the ratification efforts in every state. The Revolution thrust lawyers to the forefront of public discourse, and they remained there. For lawyers, the

founding era is our golden age, and we cling to it (some—originalists, for example—more tightly than others), despite Randall Jarrell’s caution that the problem with golden ages is that the people who live in them complain that everything looks yellow.

In his brief time traveling in the United States just a few decades later, Alexis de Tocqueville observed that law permeated every part of American society. He did not think this a good thing, but it was the role of lawyers that most interested him. The tendency of almost every political question to resolve into a legal question gave lawyers outsized authority, which he feared their common-law training, with its emphasis on tradition and precedent, inclined them to wield conservatively, even anti-democratically. Nonetheless,

remembering the Revolution, he ventured that democratic institutions could not be maintained without them.

Today, it is not just political questions, but social and economic questions as well, that resolve into legal questions. On a wealth of issues from the definition of marriage to financial regulation and beyond, lawyers are at the forefront, and because they are, they can influence more than just law. We still teach students to reason from precedent, but not to tie them to the past. At our very best, we train them to look backward so that they may learn to move forward. And when they do move forward, they can lead.

Mann’s books include “Republic of Debtors: Bankruptcy in the Age of American Independence” (Harvard, 2002).

A SOCIAL PROCESS



LEGAL TRAINING IS enormously helpful to anyone who has an interest in problem-solving, especially in the realms of politics or public policy. The legal profession also has comparative advantages over other high-status occupations that attract smart, ambitious people interested in public life.

Leadership in any profession is a social process: The opportunity for leadership depends, in part, on the historical moment and the cultural context. Many note the preponderance of lawyers in politics. One need think only of the relative dearth of women in politics decades after women began

matriculating at law school in appreciable numbers to understand that correlation is not causation when it comes to law and leadership. Surely there are many women lawyers who would make fine political leaders, yet they never contemplate that path because there is little social expectation of female political leadership. In fact, there are barriers to it.

At the same time, public service by lawyers is a well-known and an honorable tradition. The law attracts many people who are concerned about social, political, and economic problems and who are capable of leadership. Why is that? One answer, I

suspect, is that most areas of law are less technical and more accessible to able students than professions such as medicine or engineering. One cannot be admitted to medical school without having completed coursework in science. By contrast, one can be admitted to law school without any coursework in law or advocacy or any of the other touchstones of the legal profession. The same flexibility pertains to career options available to law graduates. Many students consciously pursue careers in law in hopes of acquiring analytical skills that can be applied to a wide variety of problems and used in many fields.

The lawyer's training makes the pursuit of careers in nonlegal realms feasible, but an individual's talents, personality traits, personal commitments and social networks, among other factors, influence whether an attorney can achieve success outside of law or in areas of the law that require political leadership. Think of Louis Brandeis LL.B. 1877 or Thurgood Marshall. They shared a sense of mission to ameliorate inequality; family and community nurtured those commitments long before these men studied law. Brandeis spoke of the "opportunity in law"; he encouraged attorneys to be statesmen, using their social status and legal training to tackle socioeconomic problems. Marshall seized the opportunity in law and applied it to the problem of racial inequality. The willingness of Brandeis and Marshall to employ new approaches to advocacy powered their success. Such

creativity and conviction are present in leaders, but not necessarily in lawyers.

The success of these leaders also derived in part from interpersonal intelligence. Marshall loved to engage audiences through storytelling about the black experience, including his own. His interpersonal acumen bore no necessary relationship to his legal training, but it influenced his success as a leader and as a lawyer. These personal traits helped Marshall as he sought critical allies in community groups, in civic organizations and in politics. Brandeis not only built alliances with elected officials but also developed connections with labor leaders and women-led civic groups. His ability to form relationships with people from different walks of life facilitated his political and legal objectives.

Over time, through the example of lawyers such as Brandeis and Marshall, the law has acquired a reputation as a profession well-suited to talented individuals who wish to make a social impact. It oversimplifies the lives and work of these men to view legal training as the most likely explanation for their success. Leadership in any realm is more complicated: Structure, personality, social networks, comparative advantages, the zeitgeist and chance all shape a life.

Brown-Nagin is the author of "Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement" (Oxford, 2011). She is now at work on a book about civil rights lawyer Constance Baker Motley.

Illustration by ANDY MARTIN

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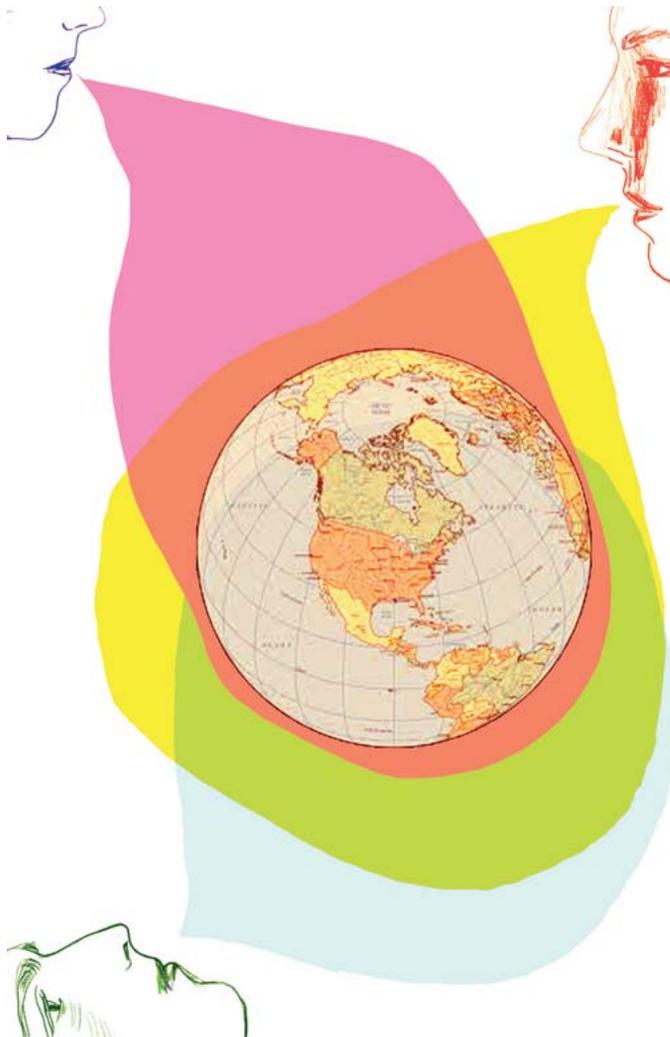
By accident and by design, Harvard Law has had a profound effect on the world beyond the traditional confines of law practice

LONG CONVERSATION

The history of Harvard Law School has seen a long conversation about the relationship between law school training and public life, and both President Obama '91 and Gov. Romney J.D./M.B.A. '75 are part of that conversation. In the early 19th century, Joseph Story helped create a national law school that consciously launched its students into careers in law, business, letters, arts and government. In that era, most lawyers trained for the bar through apprenticeship, and the law school could carve out a distinctive mission for itself in helping to define university-based American legal education. Later, the pendulum swung back as the modern Harvard Law School was founded on the premise that legal training was distinct from other pursuits. In the early 20th century, figures such as Roscoe Pound and Felix Frankfurter LL.B. 1906 pushed many students—among them, future NAACP lawyer Charles Hamilton Houston LL.B. '22 S.J.D. '23—to search out the connections between legal rules and the larger social, economic and political world. That push helped reform American society—shaping both the New Deal and the civil rights movement.

By the time Romney arrived in the 1970s, the school was once again emphasizing the autonomy of law, and Romney, according to my colleague Detlev Vagts '51, did not immerse himself deeply in that core project. Romney apparently found the business school more to his liking than law. Obama, most likely, would have also found the law school of the 1970s to be an off-putting place. However, he was lucky enough to arrive in the late 1980s, when courses with names like “Law and Society” and “Reinventing Democracy” were being offered, reflecting yet another transformation of the school that continues to this day. Both by accident and by design, the law school has had a profound effect on the world beyond the traditional confines of law practice, and the 2012 presidential race is one important episode in a much larger journey.

Mack is the author of “Representing the Race: The Creation of the Civil Rights Lawyer” (Harvard, 2012) and co-editor of “The New Black: What Has Changed—and What Has Not—with Race in America” (The New Press, forthcoming in 2013).

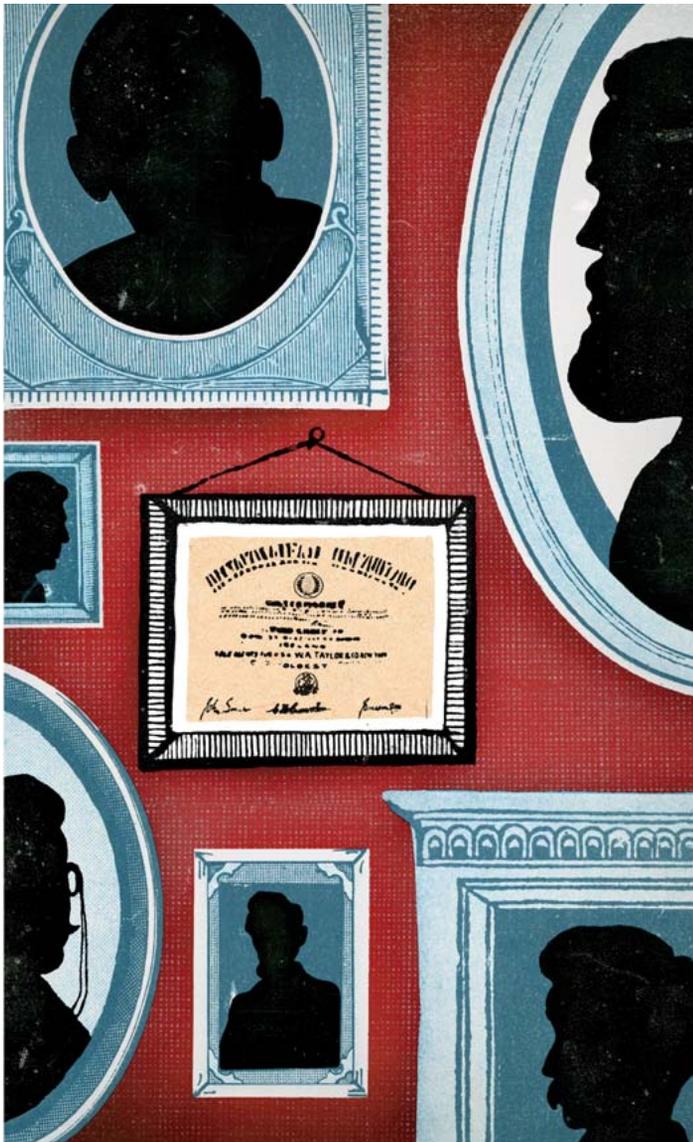


LAW SCHOOL AND

THE

Of the 24 U.S. presidents who served before 1900, 18 were lawyers, but only two attended law school

CHIEF EXECUTIVE



DOES LEGAL TRAINING prepare one for the presidency? The question is quite difficult to answer, given the very different training most lawyers received in the 19th century. The vast majority of 19th-century lawyers studied for admission to the bar on their own, or under the guidance of a mentor, or as an apprentice to a practicing lawyer. Of the 24 chief executives who served before 1900, 18 (75 percent) were lawyers, but only two, Rutherford B. Hayes (Harvard Law School) and William McKinley (Albany Law School), attended law school instead of apprenticing. Until President Barack Obama '91, President Hayes LL.B. 1845 was the only chief executive to have attended HLS.

Since 1900, there has been a dramatic decline in the number of lawyers who ascended to the presidency. Of the 19 presidents who have served since the turn of the century, only eight (about 42 percent) have been lawyers. All but Calvin Coolidge, who

apprenticed, attended law school. Except for President (and future Chief Justice) Taft, who returned home to study at Cincinnati Law School, the remaining lawyer presidents attended national law schools: FDR (Columbia), Nixon (Duke), Ford (Yale), Clinton (Yale) and Obama (Harvard).

Can we compare the lawyer presidents to the nonlawyers who became chief executives? If we consult one ranking of presidents prepared from polling academic historians and political scientists, we learn that three of those ranked in the top 10 (Lincoln, FDR and Jefferson) were lawyers while five of those ranked in the bottom 10 (Buchanan, Pierce, Fillmore, Tyler and Nixon) were lawyers. All but Nixon became lawyers through apprenticeship.

Horwitz's books include "The Warren Court and the Pursuit of Justice" (Hill & Wang, 1998) and "The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy" (Oxford, 1992).

LEADING BY DESIGN

History is bursting with examples of design leadership—from 12th-century treatise writers to the framers of the Constitution



INSTITUTIONAL DESIGN, legal architecture, the procedures and processes of social justice—all are structures that matter enormously. People who think about how to build and operate those structures have great influence in shaping our common space. They are not always lawyers. John Locke, for example, was trained as a medical doctor. But Locke read much constitutional theory—we might even claim him as a self-taught lawyer—and he worked closely with lawyers and legislators. Law training teaches people to think about institutions and processes; it can empower them to lead “by design,” as it were, design of a future world.

History is bursting

with examples of different periods and types. The constitution John Locke drafted for South Carolina never took effect, but it advanced ideas about religious liberty to a greater degree and about suffrage on the basis of lower property requirements than were then common. In England, Locke worked with lawyers like Lord Keeper Somers and members of Parliament to define both trade and monetary policy. Their intervention arguably produced the international regime that became the gold standard.

For a far earlier example of design “leadership” by unsung lawyers, we might look to the treatise writers and common-law judges. The writ of debt that they

defined during the 12th and 13th centuries sent English commercial practice in a different direction from the commercial practice of the Continent. The terms of common-law debt established “nominalism” in early English exchange, a practice of holding valuations constant according to the unit of account used to quote prices. That constancy in turn influenced economic development and the way that English elites and working people bargained over its shape.

The final example is the most familiar to us today: Many of those framing the Constitution were lawyers. John Adams, James Otis, James Madison and Thomas Jefferson

conceived themselves to be actively constructing a republic. The blueprint they produced changed the course of American history. It contained brilliant insights, like the importance of popular sovereignty. It embedded tragic denials of justice, including the enslavement of millions of Americans. In that sense, it demonstrates the power and responsibility that can come with leading by design.

Desan's many articles include “Coin Reconsidered: The Political Alchemy of Commodity Money,” 11 *Theoretical Inquiries in Law* 13 (2010) and “From Blood to Profit: The Transformation of Value in the American Constitutional Tradition,” 20 *Journal of Policy History* 26 (2008).

The study of law has always attracted those who desire to exercise leadership

LAWYERS AND THE LEADERSHIP CLASS

The study of law has always attracted individuals who desire to exercise leadership and influence at all levels of society. That makes sense. Large or small, communities and nations are knit together by laws and rules. Whoever understands the workings of the laws—and how to use them—can make a strong case for his or her right to be in the forefront of the leadership class. The well-known ambivalence that many have about lawyers as practitioners does not prevent people from looking to lawyers to lead in a wide variety of venues outside of the courtroom. Lawyers are seen as problem-solvers. Law school is supposed to teach you approaches to problem-solving, and if one practices—well, you get practice doing that. Learning how to manage the expectations of people is also a big part of a lawyer's job. That's an effective tool if one wants to rise through any ranks.

It does not surprise that two individuals who went to law school would vie for the presidency. Twenty-six presidents were trained as lawyers, and there were other lawyer candidates who did not make the cut. What is unusual is having two candidates who went to the same law school. While others have voiced concerns about this, I have none at all.

Gordon-Reed's books include "Thomas Jefferson and Sally Hemings: An American Controversy" (Virginia, 1997) and "The Heminges of Monticello: An American Family" (Norton, 2008).



MOST

THIS NOVEMBER, FOR the first time in the history of U.S. presidential elections, both candidates of the major parties are graduates of Harvard Law School.

Despite sharp differences in their politics, President Barack Obama '91 and his Republican opponent, Mitt Romney J.D./M.B.A. '75, share the HLS experience, though their times at Harvard were separated by nearly 20 years—and in the case of Romney, they included stints on the other side of the river as part of the joint-degree

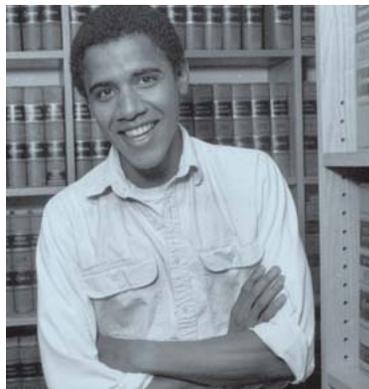
Likely to Succeed?

Alumni remember the two presidential candidates as students

program that had recently been established with Harvard Business School (see story, Page 32).

Very smart, hard-working, decent, likable—many of the words used by their Harvard classmates to describe Obama and Romney are the same. But in other ways, the two are strikingly different, according to friends who knew them when they were students.

How did Harvard influence these two extremely driven and successful politicians? Who were they in school, and how does that compare with the candidates on the world stage today? Their classmates have this to say: ●.....→



JOE WRIN/HARVARD UNIVERSITY NEWS OFFICE



HARVARD BUSINESS SCHOOL ANNUAL REPORT

Likely
to
Succeed?

Mitt Romney

MODEST, unassuming, focused, analytical—for the most part, the Romney you see today is the same friendly but somewhat formal guy who, without fail, was prepared for class and has made great efforts to stay in contact with his friends over the past 40 years.

Mark Mazo '74, a partner with the global law firm Hogan Lovells, met Romney within days of starting HLS in the fall of 1971, and they soon shared a study group of students who were “really smart and also serious,” Mazo says. But Romney had other desirable qualities: “He was a pleasant fellow, fun to be with. There was a

sense, even at that time, that this was a man you could trust, who would work hard, and yet was fun and straightforward.”

Garret Rasmussen '74, a partner with the law firm Orrick, Herrington & Sutcliffe, sat next to Romney in many of their 1L classes. “He was very earnest and very excited and committed to law school, very much involved in the classes,” he says. “He had no objection to the Socratic method and always made an effort, always was prepared, was always eager to participate in class and answer questions, and was focused on doing well.”

Yet, while friendly, Romney—married, with

young children, living in the suburbs—wasn't part of the dominant counterculture at HLS at that time, classmates say. President Nixon was in office, and there was a great deal of anti-war sentiment on campus, Rasmussen notes. Many students voiced skepticism about lawyers selling out to the Establishment. Romney was not among them. In contrast to students in army fatigues and dirty clothes, Romney wasn't rebelling, and “some days he wore a jacket; other days, a nice, ironed shirt,” recalls Rasmussen.

Romney has been described by some of his classmates as showing little

HLS YEARBOOK



“There was a sense, even at that time, that this was a man you could trust.”

Likely
to
Succeed?

Barack Obama

WHILE THEY might not necessarily have predicted that Barack Obama would become president of the United States, his former Harvard Law classmates, no matter their political persuasions, recognized him as especially gifted, and describe him as someone uniformly well-liked and respected, with an unusual maturity and wisdom that made him a natural leader.

Anthony Brown '92, the lieutenant governor of Maryland, recalls that HLS in the early 1990s was a place of turbulence with student sit-ins and rallies protesting the lack of diversity among HLS

faculty. While Obama supported the students, and gave a now famous speech at a rally in 1991, "Barack always had an insightful, reasoned kind of approach and advice," says Brown. "Whenever he spoke, he left a lot of people in awe. We knew that he was going to do big things in his life, [although] I don't know how many of us imagined he'd become president."

Steven M. Dettelbach '91 is the U.S. attorney for the Northern District of Ohio. When asked today if he thought of Obama as headed toward the White House, Dettelbach says, "Of course you never think any real person you

know is going to be the leader of the free world, but, if you went to our class at the time and told them somebody in this class is going to be president, and told them they were each allowed to write two names (and I say it's two names because everyone will write their own name; after all, it's HLS), many, many people would have picked [Obama]. He was always somebody who just had an air about him of being a tremendously special guy."

And because Obama was not full of himself, Dettelbach adds, despite the fact that he "succeeded at everything he did, he was one of

HLS YEARBOOK



"He was always somebody who just had an air about him of being a tremendously special guy."

Mitt Romney

MOST

Likely to Succeed?

continued from page 20

interest in politics during that period. According to Rasmussen, Romney was always very focused on results: “learning as much as he could” and he “wasn’t going to be distracted by any of the political noise going on at the time. ... It was almost as if he was in a different era, in a way, sort of like a Boy Scout. Those Boy Scout qualities, he has all of them—trustworthy, loyal, courteous, kind—

everything you want.” Unlike so many at the time, “he wasn’t critical of anything, wasn’t complaining about anything. ... At law school, he did everything politely,” Rasmussen says, so today’s “negative campaigning is surprising [and] out of character, but that may be beyond his control a little bit.”

In the fall of 1972, after his first year of law school, Romney matriculated at the business school as part of the joint-degree program, which included only a handful of students. HLS Professor Detlev F. Vagts ’51 headed the program and says he got to know the J.D./M.B.A. students better than most law students. Joint-degree students pass two different admissions processes, with the business school placing “a great deal more emphasis on background experience, personality and numerical competence,” Vagts says, while the law school focused primarily on academic record.

Vagts describes Romney as “pleasant, a little formal. People in the joint program tend to fall on one side or the other. ... You could tell he was bottom-line business-oriented.”

Vagts had the most contact with Romney through a seminar he taught for joint-program students, in which Romney wrote a paper about the automobile industry. (Romney’s father had been president of American Motors Corp. and was chief spokesman for the auto manufacturing industry

for years.) “It was quite a good paper,” Vagts recalls, which focused on a federal statute that had

recently been passed by Congress to protect auto distributors from the then oligopoly of the American auto manufacturers. “He wrote about the statute and speculated about how it would be enforced because there was very little experience then [with the new law],” Vagts says. “He tried to figure out how a court would interpret the rules about firing [a distributor], having to be in good faith and so on. So it was a fairly technical, and I thought rather balanced, paper.” He chuckles, and adds, “He didn’t automatically come out for the manufacturers.”

At HLS, Romney graduated with honors although he did not serve on the Law Review. But at the business school he excelled, becoming a Baker Scholar, a prestigious academic honor reserved for the top 5 percent of

“If [Romney] was going to be 100 percent prepared, he expected everyone else to be, too.”

students. The fact that he was one of the smartest students in class became apparent only gradually, says Janice Stewart M.B.A. ’74, since Romney—unlike some others—was “a bit modest about his gifts.”

Romney’s dedication stood out, even within a group of very serious students. “I can tell you there was never a time we got together when he was not prepared,” says Howard Serkin M.B.A. ’74, an investment banker in Jacksonville, Fla., who was in Romney’s core study group. Serkin also emphasizes that Romney “wouldn’t cut anyone else any slack. If he was going to be 100 percent prepared, he expected everyone else to be, too, and he was not bashful about saying that, in a polite but forceful way.”

Howard Brownstein J.D./M.B.A. ’75, president of a crisis management

firm based in Conshohocken, Pa., was one of a small group of students in the joint-degree program with Romney. “The business school had a lot more influence on Mitt than the law school,” Brownstein says. And the HBS case method—in which students study real cases of businesses facing thorny problems they are required to try to solve—exerted enormous influence on all its students, says Brownstein. “The law school doesn’t teach law, per se; it teaches you how to think ... so it’s all a little theoretical. Business school is very different,” he says.

He recognized the HBS emphasis on pragmatism in Romney’s tenure as a Republican governor in Massachusetts, where he had to compromise with his Democratic colleagues. “That’s exactly what the business school education would teach you,” Brownstein says. “The last thing it would teach you is to polarize and be extreme. That won’t get anything done. It’ll keep you pure

but won’t get anything done. So it doesn’t surprise me that parts of the Republican Party have such a problem with him because he’s really not one of them. It wouldn’t surprise me, if he’s elected, that he immediately tells some in his party to pipe down, and reaches across the aisle to get things done.”

Mazo stresses his friend’s genuine decency. “A lot of people in law school and business school, you meet them, and you get the impression they’re kind of looking over their shoulder, [thinking], Who else here can help me in my future? Mitt absolutely was not like that.” Mazo worries that the warmth of Romney’s personality doesn’t come across via mass media: “He looks programmed, and that’s not him. He looks like he’s speaking from PowerPoints, which reflects an intellectual discipline, which he has, but that’s not him as a human being.”

Indeed, despite the intense demands of his professional life, Romney has made real efforts to join his former HBS study group at their five-year reunions. He once stopped in Boston for a dinner with the study group



Mitt Romney with two of his sons and his wife, Ann, in 1973, while he was a student in the Harvard J.D./M.B.A. program

members at one of their favorite Boston restaurants on his journey from Utah to Athens, Greece, when he was heading up the U.S. Olympic Committee prior to the 2002 winter games. “A lot of people get to that level of prominence and blow their friends off, but Mitt Romney doesn’t,” Serkin says. “It was a huge effort to change his plans,” he says, “but it didn’t take much convincing.”

Romney never spoke of his privileged background nor bragged of his famous father, George Romney, the former governor of Michigan and secretary of Housing and Urban Development in Nixon’s Cabinet. “He was one of the guys,” says Ron Naples M.B.A. ’74, another member of the study group. “No one deferred to him, nor did he expect special treatment.” Romney once grabbed a jacket from his closet to walk Mazo and his then fiancée to their car after dinner at the Romneys’ home, and, noticing it

had a Camp David logo, Mazo kidded Romney, who was clearly embarrassed, Mazo recalls. But when Rasmussen worked with Romney on a housing law project at HLS, he remembers that Romney didn’t hesitate to call his father to get some useful statistics. “That shows his level of commitment. He really wanted to do well,” Rasmussen says.

But Romney’s family and church were even more important to him than school, although he never pushed his religion on anyone, classmates say. Mazo, who is Jewish, remembers a long lunch conversation in the Harkness Commons in which he asked Romney probing questions about the Mormon church and got “good, serious, thoughtful responses.” At the end of the conversation, Mazo recalls, “he said in a most kindly way, ‘Mark, if you really want to know more about the religion, I’d be glad to talk to you about it.’ But he was not going to proselytize.”

Romney was “clearly devoted” to his wife, Ann, says Mazo, who recalls a dinner at the couple’s Belmont home where they discussed Romney’s two years of mandatory missionary work, which he spent in the working-class suburbs of Paris. Mazo asked Ann Romney if it was difficult being separated, and she told of getting special permission from the church to see Romney in Paris. Because romantic liaisons were forbidden during the missions, “she had to see him from afar, at an airport,” Mazo recalls. “She was looking at him from 100 yards away, and he was looking at her from 100 yards away. It was a wonderful feeling, she said—such an intimate feeling although they couldn’t touch, embrace, hold hands,” says Mazo. “I remember thinking that was one of the most romantic things I’d ever heard. The image I had was the Humphrey Bogart-Ingrid Bergman scene on the runway in ‘Casablanca.’”

Barack Obama

MOST

Likely to Succeed?

continued from page 21

those people, even with all his success, where you still rooted for the guy.”

HLS Professor Kenneth W. Mack '91 saw Obama almost every day for the three years of law school because they were in the same 1L section and served together on the Law Review for two years. He remembers his first impression of the “tall, African-American guy” from Chicago “with an odd-sounding name.” Says

Mack: “He seemed a bit older and a bit wiser than the rest of us. He was a very, very impressive and singular person, almost from the time you met him—very popular and well-respected in the section.”

When Obama was called on in class, Mack says, “He did very well. It’s a hackneyed expression, but true, that when Barack spoke, people listened. He had a quality that was different than other students; he always said something that was different and usually more considered. ... A lot of people in class were very sharp and could argue about the doctrine and the case, but Barack always thought in broader terms, thought of the implications of what we were talking about in the larger world. That was one reason people really listened to him.”

Mack’s strongest impression of Obama involved a visiting professor who was deemed paternalistic by many in the class and who seemed to have little affection for the students. It was customary before the December break to present 1L professors with a holiday gift, but students were stymied on what to do in this case. “I don’t know who decided Barack should give the gift, but Barack did it, and did it in a very warm way,” Mack recalls. “He expressed such regard for this professor, regard in the respect we had for him as a professor, without downplaying the tension in the room. He turned what could have been a really awkward and somewhat

negative moment into one that everyone could feel good about.”

Brad Berenson '91, a partner at Sidley Austin in Washington, D.C., recalls Obama being elected as president of the Law Review because conservative students threw their support Obama’s way once it was clear a conservative candidate would not be elected. The conservatives saw Obama as more mature than other liberal candidates—a “safer, more trustworthy choice, a more natural leader. The conservatives also felt he was politically open-minded in a way others were not,” Berenson says. And, in Berenson’s opinion, they were right. “I thought he ran Law Review very well,” he says. “He led the group in putting out a quality volume that year, and he was relatively even-handed, politically speaking. He did not discriminate against political conservatives as some

On the basketball court, Obama stepped in when tempers flared, but he would also “bump elbows.”

of the more liberal editors would have liked him to, so I and others among the conservatives appreciated that. He also formed personal relationships with a number of conservatives, which was something the far-left editors were more loath to do.”

Mack agrees with that characterization. “On Law Review we argued, very vociferously, on the personal and the political, and people didn’t like each other. [Obama] was one of the few people who was above all that. ... Everybody understood he was a liberal,” Mack says, “but everyone thought they could talk to him, and he would listen, and there would be places he could find common ground with you.”

Berenson says he always liked Obama on a personal level and always respected his abilities: “I have nothing but nice things to say about

him as a person.” As for what he sees in President Obama, he says, “I think the low-key, mediator style, the deliberativeness, the way he seems to run his White House staff—those all feel familiar.” However, he says, “the high level of partisanship is not familiar, is distinctly different. The themes he ran on in 2008, in which he portrayed himself as more of a post-partisan figure—that felt more familiar and felt truer to the person he seemed like during the Law Review years.”

Anthony Brown has a photograph of Obama and other students sitting in the common room of an off-campus residence hall, relaxing and talking, as they often did. Always welcoming and warm, Obama was never “a self-promoting person,” Brown recalls, adding, “He wasn’t the guy that had to be the smartest in the room—although he was.”

Jason Adkins '91, a plaintiff’s attorney in Boston and one of the student leaders of the diversity protests, says participation by Obama—who had just been elected the first African-American president of the Harvard Law Review—was key, especially when he spoke at the 1991 rally, at which HLS Professor Derrick Bell

famously announced he was taking an unpaid leave of absence to protest the lack of diversity on the faculty. “It lent credibility to the effort because he was president of the Law Review, and it showed it was a cross-campus concern.”

David Deakin '91, assistant district attorney and chief of the Suffolk County (Mass.) DA’s Family Protection and Sexual Assault Bureau, played pickup basketball with Obama during lunchtime. “He’s an outstanding basketball player, he’s very good, he’s very competitive about it,” says Deakin. “At the same time, he was always the one who would step in when tempers flared and remind people that this was a pickup game and not the NBA.” Still, says Deakin, “sometimes he would bump elbows.”

Mack also has a memory of Obama

Barack Obama
in 1990, the year
he was elected
president of the
Harvard Law
Review

HARVARD UNIVERSITY NEWS OFFICE

on the hoops court. “In the intramural league at the law school, there was an A league and a B league, and the Law Review’s team “was on the B league, of course,” says Mack, laughing. For the first game (and the first game only), Mack recalls Obama played on the Law Review team: “It was like Michael

Jordan out there with a college team. You could see it kinda in his body language: ‘I don’t belong out here with these guys.’”

Adkins recalls running into Obama near Austin Hall around the time they were graduating. “I said, ‘What are you doing for the summer?’” Adkins

says. “His response was, ‘I’m going to Mexico to write my autobiography.’ And I chuckled, and think I said something like, ‘You’re kidding me, right? You think you’ve got something to say at 30, 31?’ He said, ‘Yeah, I think I do,’ and off he went. And sure enough, he had plenty to say.” *

EXIT

interview Barney Frank

BY DAVID MCKAY WILSON

BULLETIN: What will you miss most?

FRANK: I'll miss the chance to influence public policy in a very direct way.

What will you be doing?

I'm going to be a public-policy advocate. I'll give lectures and try to run my mouth for money. I hope to teach and have a university affiliation. I'll also write a book or two, and do TV commentary.

You are immortalized in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which brought the most significant changes to financial regulation in decades. Are you pleased with its implementation?

The Obama administration is doing its best, but the Republicans have been cutting funding, and we hadn't anticipated it would be underfunded so badly, so that has caused a slowdown. But the Consumer Financial Protection Bureau is moving ahead. With derivatives regulation in the law, we have two separate entities, but there was no way around that.

Politics is the art of compromise. You often advise advocates that it's better to take half a loaf than hold out for the full loaf.

You do the best you can, and then you can come back and get more. That has been true with gay rights and health care, where you have opposition that's

based on unrealistic fears. By getting part of what you want, it's easier to point out the opposition's baseless fears. Medicare was unpopular when it was enacted in the 1960s.

How did Harvard Law prepare you for elective office?

I started law school at age 34, after working three years in the Boston mayor's office and winning election to the state Legislature. As a legislator, you make laws, write laws and interpret laws, so law school gives you a basis for going forward. People tend to underestimate the substantive part of law school. It teaches you the fundamental principles of laws, and the logic behind them, so then you can better understand how to extend them, or not.

You have remained one of the lone voices in Congress against the continuing rise in military spending. Why has Congress been so reluctant to cut?

There has been a cultural lag. For 50 years, we were afraid of heavily armed people, like Hitler and Stalin. We were spending excessively to counter the Soviet threat, and I understood it. But in the last 22 years, there hasn't been a similar threat to our existence. There is the terrorist threat, but it is not an existential threat. While the terrorists are a group of murderous thugs, they are not armed with a nuclear missile. The time is ripe for a reversal.

What has changed?

Military spending was always seen as a good thing that didn't come at a cost. Today, with our national debt situation, military spending is a zero-sum game. You still have conservatives, though, who don't believe in government spending but become quite Keynesian when it comes to weapons.

You've been critical of the U.S. Supreme Court's *Citizens United* decision, which unleashed the power of corporate influ-

ence in federal elections.

It's a threat to democracy of the worst sort. We have two systems—an economic system, which is based on inequality, and a political system, which is based on equality. *Citizens United* allowed the inequality of the economic system to overwhelm the political system.

You've been known as someone who can make things happen outside of the legislative process, through the power of your office. Housing groups like you.

I've intervened for people whose work I support. I turn down requests, and I don't ask the bureaucracy to do the undoable. The kind of support I've given is an argument against term limits because you get better at doing it. If you have term limits, the only people with experience will be those in the executive branch.

As chair of the Financial Services Committee, you became quite involved in regulating financial markets.

I didn't come to the committee to do that, and I can't wait to stop doing it. I keep getting this song in my head from my days in community activism: "Ain't gonna study derivatives no more." I went there to work on housing and international monetary issues, and then the economy collapsed.

In 1987, you were the first member of Congress to voluntarily declare your sexual orientation. We've sure come a long way.

The evolution has been extraordinary. There's still prejudice, but we are on the verge of having full legal equality in 10 years. There will still be some states where you can't marry, but I predict there will be full federal rights.

How is married life?

It's nice. Life really hasn't changed day to day, but I still feel that afterglow from the ceremony. *



➔ THE NEXT GENERATION

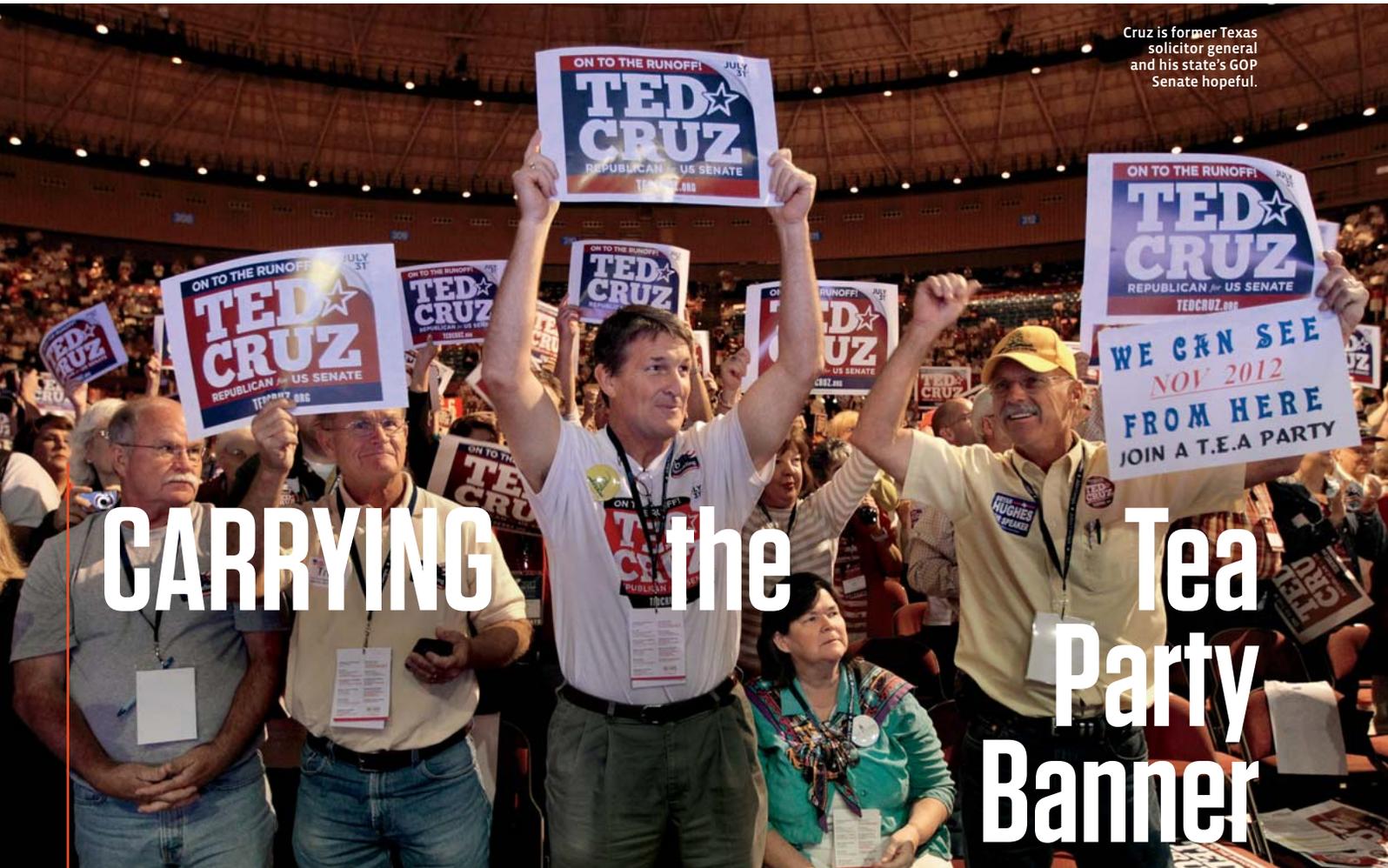
Joseph P. Kennedy III '09 is the Democratic contender for the Massachusetts congressional seat being vacated by Barney Frank.

BOSTON GLOBE VIA GETTY IMAGES

U.S. Rep. Barney Frank '77 (D-Mass.) will retire from the U.S. Congress in December after 32 years in Washington, where he earned a reputation as one of Congress's most progressive members on civil rights, military spending and financial regulation. The Harvard Law Bulletin caught up with Frank in mid-July—not long after his marriage to Jim Ready—as he fought to cut military spending by \$1.1 billion in a budget amendment he'd co-sponsored.



Cruz is former Texas solicitor general and his state's GOP Senate hopeful.



CARRYING the Tea Party Banner

U.S. Senate candidate Ted Cruz calls for a “return to the framers’ vision of a constitutionally limited government”

BY DAVID MCKAY WILSON

WHEN HE ANNOUNCED HIS candidacy for the U.S. Senate in January 2011, Ted Cruz ’95 recalls, only 2 percent of respondents supported him in a Texas poll that had a 3 percentage-point margin of error.

Eighteen months later, Cruz upset GOP establishment candidate Lt. Gov. David Dewhurst in a runoff primary election on July 31, and he will oppose Democrat Paul Sadler in

November. In late August, as he prepared to fly to the Republican National Convention, Cruz reflected on his political journey, and his emergence as a national leader in the conservative Tea Party movement’s bid to shrink the size and power of the federal government.

“We are seeing a great awakening, all across the country, because career politicians have spent us to the verge of bankruptcy,”

said Cruz, 41, who leads the U.S. Supreme Court and appellate litigation practice at Morgan, Lewis & Bockius in Houston. “Millions of Americans are saying, ‘Enough already.’ It’s a message that resonated powerfully in Texas among the Tea Party, Republican women and grassroots activists.”

A founding general editor of the Harvard Latino Law Review, Cruz clerked for

U.S. Supreme Court Chief Justice William Rehnquist. He served as director of the Federal Trade Commission’s Office of Policy Planning and associate deputy attorney general in the U.S. Department of Justice before becoming Texas’ first Hispanic solicitor general in 2003.

Cruz has carried the conservative banner, seeking to restrict abortion rights, bolster the rights

of gun owners, resist what conservatives see as encroachments on religious freedom and defeat gay marriage.

At Harvard Law School, Cruz was a research assistant for Professor David Shapiro '57, who was writing a book on federalism (the topic of Cruz's undergraduate thesis at Princeton). In 2007, when Cruz returned to HLS for a moot court exercise to prepare for an upcoming argument in the U.S. Supreme Court, Shapiro was on the panel.

"We gave him a hard time, and he did very well," said Shapiro. "I remember him as a personable, bright guy. I knew he was more to the right than I am, and he has moved further to right since then."

Cruz often tells the story of his father's immigration to the United States as a way to put flesh on his vision for a reduced role for the federal government. His father was 18 in 1957 when he left Cuba with \$100 sewn into his underwear.

"He had nothing, didn't speak a word of English," said Cruz. "Thank God some well-meaning politician didn't come and say, 'Let me take care of you; let me give you a government check and make you dependent on the federal government, and while I'm at it, don't bother to learn English.' That would have been the most destructive thing. Instead, he worked seven days a week, washing dishes, to put himself through the University of Texas, and eventually start a small business."

While Texas voters have recently come to know Cruz, his prominence in national legal circles has been growing for several years. He has delivered nine oral arguments before the U.S. Supreme Court, winning several of those cases, which included preserving the words "under God" in the Pledge of Allegiance; allowing a statue commemorating the Ten Commandments to stand at the Texas Capitol; and rejecting International Court of Justice jurisdiction in the case of a Mexican on death row in Texas.

In the latter case, *Medellin v. Texas*, the inmate argued that his conviction and sentence were procedurally flawed because he had been denied the assistance of the Mexican consulate—assistance which is guaranteed under the Vienna Convention.

For a list of other HLS alumni running for office in November, go to <http://bit.ly/HLSCongress>.

"This case raised foundational structural issues concerning the Constitution—in particular, the separation of powers, and restraints on unchecked executive authority," Cruz said. President George W. Bush had issued a memorandum, telling state courts to comply with a related World Court ruling. "The question was whether the president of the United States could order a state court to obey the World Court. The Supreme Court agreed with Texas."

Cruz's brief in the Pledge of Allegiance case found support from attorneys general in all 50 states, while his amicus brief defending the federal partial-birth abortion ban represented 13 states.

He now wants to become a member of the conservative wing of the Senate Republicans. He has

made repeal of President Obama's federal health care reform one of his top priorities.

He sees Obamacare as a prime example of federal government intrusion into the lives of Americans and the institutions that serve them, noting the law's attempt to order Catholic charities and hospitals to violate their religious tenets and pay for employee contraception. Cruz, who has served as a senior fellow at the Texas Public Policy Foundation's Center for Tenth Amendment Studies, has proposed that states create interstate health care compacts, which could pre-empt the federal program, if authorized by Congress.

"We need to return to the framers' vision of a constitutionally limited federal government," he said. "Unchecked government power always threatens liberty." *

PHOTOGRAPHS: MCT VIA GETTY IMAGES



Cruz with his wife, Heidi, at the Texas Republican convention



Joe Kearns Goodwin '13

SUMMER

A run for
state office
by a student
committed
to public
service

ON A SATURDAY in mid-July, HLS student Joe Kearns Goodwin '13 wakes up at 4:30 a.m. thinking about the day ahead. (In April, when he first decided to run to be the state senator representing Massachusetts' 3rd Middlesex District, after the incumbent announced her retirement, and before he'd hired a campaign manager, he used to wake up an hour and a half earlier.)

The campaigning begins at 8 a.m. with one of Goodwin's Cup O' Joe events, in a café in Waltham. Potential voters stop by for coffee and a chat with the candidate. One person worries about the future of nearby Hanscom Air Force Base. Another wants to know Goodwin's thoughts on how to push towns and states to mitigate climate change. A third, a former teacher, is concerned about the lack of adequate teacher training in the schools. For Goodwin, it's a chance for real back-and-forth conversation, not a soliloquy, though in each case he ties his answer in with his own experience—serving in Iraq and Afghanistan after 9/11, working for General Electric in their renewable energy division and observing his brother's work as a teacher at Concord-Carlisle public high school, which Goodwin himself attended.

In his campaign office—a storefront right next to the Waltham café—Goodwin

Elective

describes how he grew up in a family that lived and breathed politics: His father, Richard Goodwin '58, worked in the Kennedy and Johnson administrations; his mother, Doris Kearns Goodwin, is a presidential historian. “Growing up in a family like mine,” he says, “it's hard not to feel that a life in public service is as vital as a life could be.” Still, he says, it wasn't until he started law school that he got the idea of running for office.

“So many of the cases I've read at law school are focused on state legislation and the ripple effect it can have on other sectors of society. Everything at the federal level is so gummed up; many of the things we need to accomplish are going to have to happen at the state level,” he says. For Goodwin, issues central to his campaign include improving the public education system (from pre-K to college-level and beyond) and reforming the revenue system for municipalities. He is also concerned about making it easier for veterans to access the military benefits they've earned.

Later in the day, Goodwin meets up with Alan Khazei '87, former U.S. Senate candidate, at a local nonprofit called More Than Words. Khazei, founder of City Year and Be the Change, has just endorsed Goodwin's campaign and he's picked the bookstore as the

place for their first event—so the candidate and volunteers can work at the store and learn about its mission to improve the lives and skills of the at-risk youth who run the business. Goodwin; his wife, Victoria Bonney; and about 30 volunteers and campaign workers sort through the hundreds of books they've collected for the store, designating them for sale or recycle.

Khazei first got a sense of Goodwin and his work when Goodwin was chief of staff for the campaign of Stephen Pagliuca, one of Khazei's rivals in the runoff for Edward Kennedy's Senate seat. When Khazei heard Goodwin was running for state Senate, he approached him to ask how he could help. “When someone like him comes along, you've got to get behind him,” says Khazei. “He's passionate, he cares about the right things, and I admire that he put his life on the line.”

The candidate has several events ahead before ending his day, almost 18 hours after it began. Goodwin calls campaigning “an exhausting but energizing process. You can see why this process is important as a forge to make people into effective legislators—the more you get out there, the more you're able to understand different perspectives on the issues.”

*CODA: As the Bulletin went to press in September, Goodwin lost the Democratic primary by 300 votes. That week, law school classes were “the 50-meter target,” he said. But “looking ahead,” he added, “I know I want to stay involved in the governmental process.”**

JOINTLY



A Harvard
program
immerses
students in legal
and business
training

BY JERI ZEDER

HELD

Gerald Storch J.D./M.B.A. '82 was barely into his first semester of law school when he realized that, for him, something was missing. Storch had majored in government and economics at Harvard College, and he sensed that the court cases he and his classmates were studying had economic underpinnings that were being left largely unexplored. "I started thinking it would be very helpful to being a good lawyer to make sure that I understood the complete economic and business background behind matters that were brought forth," Storch recalls. So, he decided to enroll in the joint J.D./M.B.A. program, which would give him degrees from both Harvard Law School and Harvard Business School.

Today, Storch is chair and CEO of Toys "R" Us, a Fortune 200 company. He says that his ability to think like a lawyer and also like a businessman has served him throughout his career. He describes it this way: Roughly speaking, he deeply analyzes problems with his legal side, and he acts decisively on facts, instinct, and judgment with his business side. "Analytically, I believe that you tend to dig in and hone in more deeply because of the legal background than you would with just a business background," he says.

Since the joint J.D./M.B.A. program's creation 43 years ago, about 450 people in the world have participated, presidential candidate Mitt Romney J.D./M.B.A. '75 among them. Others include criminal defense attorney Ted Wells J.D./M.B.A. '76 and the late in-

vestment banker Bruce Wasserstein J.D./M.B.A. '71.

In 1969, when Harvard Law School Dean Derek Bok '54 initiated a joint-degree program with Harvard Business School, there were no other joint programs available at Harvard. Today there are about 20, about a quarter of them involving HLS. (See sidebar, Page 34.)

According to Professor Emeritus Detlev F. Vagts '51, who ran the program from its inception until 2005, the impetus for the joint J.D./M.B.A. program was to draw the Law School closer to the University, and to help keep the Law School grounded in real-world issues. There was also a growing sense that, in an increasingly complex world, many important issues implicated both law and business questions.

But for some, the idea of a joint degree took some getting used to. Jay W. Lorsch, professor of human relations at the Business School, is now an enthusiastic co-teacher with Law School faculty of courses geared toward both J.D. and M.B.A. students, but in the early days of the J.D./M.B.A. program, he wondered whether students were just hedging their bets. "As I got more experience working with these students and thought about it more, I realized there is a role for people who understand both the law and business," he says. Lorsch approves of interdisciplinary education in general. "The more we work together as a university to help young people to broaden their professional backgrounds," he says, "I think the better it is."

The program's current director, Professor of Law and Business Guhan Subramanian J.D./M.B.A. '98, is himself a graduate of the joint program, and the first person to hold tenured faculty positions at both Harvard schools. "I think that part of my joint appointment was about building better bridges between Harvard Law School and Harvard Business School," he says.

Those bridges span not only the Charles River, which separates the two campuses, but two distinct methodologies. Painting with a broad brush, Subramanian describes the Law School as teaching analytical rigor, and the

Business School as teaching judgment. However, says Subramanian, who teaches negotiations and corporate law at HLS and courses on corporate deal-making and corporate governance at HBS, that distinction has always been blurry, and gets blurrier all the time. “What I think is interesting is that the two schools are converging,” he says. “Judgment is an elusive thing, but Harvard Law School is grappling with how to teach it effectively, and the Business School is moving toward analytical methods in some of its coursework.” Each school, he says, is drawing on the best of the other’s methods.

For students, having feet in both schools means experiencing distinct academic cultures and approaches. Most famously, each school has its own version of the “case method.” At HLS, that means delving into appellate court

The J.D./M.B.A. degree prepares alumni to tackle almost anything they set their sights on.

cases with the strong guiding hand of a Socratic professor. At HBS, it means student-dominated class discussions of case studies—realistic descriptions of

business challenges that real-world executives might face. Other differences: HLS students tend to be younger than HBS students; HBS heavily emphasizes career development, professional networking and social cohesion, whereas HLS emphasizes academic-oriented extracurriculars (law reviews, for example) and experiential learning opportunities. The schools are similar, however, in the enormous wealth of their offerings. “The J.D./M.B.A. program puts into very sharp relief the question, What do you want to do?” says Conor Tochilin J.D./M.B.A. ’13, who is serving

as the 126th president of the Harvard Law Review. “You have to be thoughtful about what classes you take, how you focus academically, how you focus extracurricularly, how you spend your time. There’s a lot of choice.”

Graduates report that there is no job that requires a J.D./M.B.A. But the degree seems to prepare them to tackle almost anything they set their sights on. Alumni have found homes in nonprofits, labor unions, corporate law, banking and investment, private equity, and more. “People have done a range of things with the degrees, including academics, which is, I think, testimony to the value of the joint program,” says Professor of Law Howell Jackson J.D./M.B.A. ’82.

Damon Silvers J.D./M.B.A. ’96 has made his career as a lawyer. He is the policy director and special counsel at the AFL-CIO and special assistant attorney general of New York (pro bono). He has also been, among other things, deputy chair of the Congressional Oversight Panel for TARP, member of the SEC’s investor advisory committee and the labor movement’s chief labor lawyer during the Florida recount in 2000. The degree’s value to him? “In my career, when I’ve been presented with legal problems, I’ve had a sense of what business thinking might have produced them. And when I look at a business problem, I think about what

THE J.D./M.B.A. PROGRAM IN A NUTSHELL

WHEREAS it takes three years to get a J.D. and two years to get an M.B.A., it takes four years to graduate with the joint degree. Students must apply separately to HLS and HBS and then, if accepted at both, apply to the program. In the first two years, students consecutively complete the first full year of law school and the first full year of business school—the order doesn’t matter—and then take a mix of courses from both schools in the final two years. Two seminars are geared specifically toward the J.D./M.B.A. students. One occurs during the first two years to foster early interdisciplinary integration, and the other is meant to be a capstone experience for third- and fourth-year students. **The seminars pull together law and business concepts from across the two schools and engage students in issues faced by corporate and organizational leaders.** In one recent session, for example, Massachusetts Department of Transportation Secretary Richard Davey discussed with 10 first- and second-year students the challenges and opportunities that he faces in his efforts to “reinvent” the Registry of Motor Vehicles.



SCHOOL OF PUBLIC HEALTH



KENNEDY SCHOOL



GRADUATE SCHOOL OF DESIGN



GRADUATE SCHOOL OF ARTS AND SCIENCES

INTERDISCIPLINARY STUDY AT HLS

SINCE initiating the joint J.D./M.B.A., HLS has formed **interdisciplinary programs** with the School of Public Health; in public policy and in public administration in international development with the Kennedy School; and in urban planning with the Graduate School of Design. The Law School also offers a degree program allowing J.D. students to earn Ph.D.s through the Graduate School of Arts and Sciences. Another program lets J.D. students earn degrees from other graduate schools, both at Harvard and elsewhere.

INTERDISCIPLINARY COLLABORATIONS ON THE RISE

are the legal consequences of this behavior,” he says. “I think if you talk to people who have worked with me over the past 15 years, they’ll say that’s what I do.”

Iris Chen J.D./M.B.A. ’02 works in the nonprofit sector. She’s president and CEO of the “I Have a Dream” Foundation, which helps students in low-income communities enter and complete college. She had always wanted to study law. After working at Teach For America in a management role shortly after graduating from college, she added the M.B.A. because she wanted to bring best business practices to the world of nonprofits and education: “It leads to greater options, greater possibilities and smarter solutions.” She feels that her background in both disciplines enhances her ability to connect with a broad range of people and organizations. The joint degree has also proved to be a useful “brand.” “The J.D./M.B.A. serves as a great stamp,” Chen says. “People don’t think you’re a softy. It overcomes whatever stereotypes people have about nonprofits.”

Roy Ben-Dor J.D./M.B.A. ’11, an associate with the global private equity investment firm Warburg Pincus, matches Chen’s enthusiasm for the program, where he says he “met great people and [worked] with great professors,” but has had a different experience with how the credential is received. Ben-Dor found that the law firms he interviewed with unhesitatingly welcomed the M.B.A. In contrast, prospective business employers would question why he went to law school and how his legal education was relevant to the job he was seeking. They also wondered about the degree’s comparative value: “For most business employers, and certainly for the subset I interviewed with, there tend to be targeted types of backgrounds. Generally speaking, J.D./M.B.A.s will have sacrificed on some portion of that background in order to obtain the J.D.,” Ben-Dor says.

Raymond J. McGuire J.D./M.B.A.

SINCE the founding of the joint J.D./M.B.A. program 43 years ago, the boundaries between Harvard Law School and Harvard Business School have grown more porous. Evidence of this is visible in the growing number of courses co-taught by HLS and HBS faculty, in the rise of cross-school course registration by HLS and HBS students, and in the proliferation of HLS/HBS co-sponsored symposia, conferences, and other events. Guhan Subramanian J.D./M.B.A. ’98 and Mihir Desai (Harvard M.B.A. [1993] and Ph.D. [1998] in political economy) hold tenured faculty positions at both schools.

It is also evident in the growth at Harvard in law-and-business scholarship, which often involves cross-school faculty collaborations.

One example is the research Subramanian is doing with HBS Professors Bo Becker and Daniel Bergstresser on the subject of “shareholder proxy access,” a hot topic in corporate governance. Proxy access gives shareholders the right to put their own candidates on a company’s proxy statement. The question is, Is that a good idea? Traditional legal scholarship typically employs qualitative analysis to address the issue. Subramanian, Becker and Bergstresser, in contrast, use econometric models to gather evidence about proxy access and its economic impact. Relying on an example from the securities markets, they estimate that on average, proxy access creates approximately \$80 billion of wealth among the S&P 500 companies. Their findings have been featured in *The Wall Street Journal*, *The New York Times*, *The Huffington Post*, and other mainstream outlets, and are getting notice from shareholder activists who are gearing up for the 2013 proxy season. The research, which will appear in *The Journal of Law and Economics* and in the *Harvard Business Law Review*, not only brings important new information to legal and business analysts, but has also yielded methodological improvements in financial analysis—outcomes that advance the study of both law and business.

The connections between HLS and HBS are part of the larger phenomenon of interdisciplinary work all over campus. And interdisciplinary scholarship is likely to grow as holders of dual and joint degrees continue to enter academia. Expect to see more of that at Harvard Law: “There is definitely an increasing presence of faculty members doing interdisciplinary work, and dual degrees are common,” says HLS Dean Martha Minow.

’84, Citi’s global head of corporate and investment banking, contends that holding a J.D./M.B.A. from Harvard will always put you ahead. “I don’t think there’s ever a disadvantage to being exposed to the best in the world of academics. This program gives you that exposure,” he says. “It will always distinguish those who have done it.” His own J.D./M.B.A. education has given him “a larger mainframe” to access, he says. And for McGuire, another benefit has been the camaraderie that develops when a small group of students go through the rigors of a special program together. “There is a bond that is created as a result of the experience,” he says.

That bond develops at least in part because of the nature of the joint J.D./M.B.A. program, and is nurtured well beyond graduation. Lawrence E. Golub J.D./M.B.A. ’83, CEO of Golub Capital, heads the Harvard J.D.-M.B.A. Alumni Association, which he founded

in 1988. He says, “It takes an unusual sort of person to be qualified for the J.D./M.B.A. program, and it takes an unusual sort of person to want to do it.” Toss those people together in an intensive, stressful, shared experience; take into account that by year four, all the regular business and law students they’ve known have graduated; and they are bound to be close.

Asked what kind of student would benefit most from the J.D./M.B.A., Gerald Storch, the Toys “R” Us CEO, says that the best candidate is someone who loves learning, has a flexible mindset, and looks positively on the disparate cultures and approaches of the Law School and the Business School. “The only other thing I would say,” Storch advises, recalling the wintery walk between the two campuses, “is get a very good coat. I remember freezing as that wind whipped down the frozen Charles and I’d think, I should have brought a hat.” *

A QUESTION OF

It started off with an insult: A French adventurer, standing in the streets of Philadelphia, called the ambassador of France a nasty name. And perhaps if it had ended there, the Alien Tort Statute might never have come to be.

But language was not enough for the Chevalier de Longchamps, who was nursing a grudge. He lunged toward the ambassador. He hit the ambassador's cane with his own. And in assaulting a foreign ambassador, Longchamps committed a violation of the law of nations.

It was 1784. The incident in Philadelphia drew international attention; then condemnation; then ridicule, as the Continental Congress lacked the power to take meaningful action in response.

Five years later, as part of the First Judiciary Act, the founders sent a strong message with what they called the Alien Tort Statute: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

It was an important gesture to the international community—a symbol of solidarity, historians would say: We will open up our new federal court system to victims of violations of the law of nations.

The United States had arrived.

ACCOUNTABILITY

In a Supreme Court case, the International Human Rights Clinic argues that the Alien Tort Statute applies to corporations

BY CARA
SOLOMON



KIOBEL V. ROYAL DUTCH PETROLEUM CO., ONE OF THE HIGHEST-PROFILE HUMAN RIGHTS CASES TO COME BEFORE THE SUPREME COURT IN YEARS, TESTS THE LIMITS OF THE CENTURIES-OLD ALIEN TORT STATUTE.

PART I

On the morning of Feb. 28, 2012, a team from Harvard Law School's International Human Rights Clinic took their seats in the U.S. Supreme Court. Sitting directly behind petitioners' counsel were Clinical Professor Tyler Giannini and Assistant Clinical Professor Susan Farbstain '04, nationally recognized leaders in Alien Tort Statute litigation, and co-directors of the clinic.

They had waited months to hear oral arguments in *Kiobel v. Royal Dutch Petroleum Co.*, a case that

would test the limits of the centuries-old ATS. It was the highest-profile human rights case to come before the Supreme Court in years.

Even before the Court granted certiorari, *Kiobel* had become an international flash point for the debate on corporate accountability, generating nearly 40 amicus briefs analyzing the ATS from every angle—foreign policy, the global economy,

the international human rights movement. HLS staff, students and alumni were involved on both sides of the issue. For its part, the clinic filed a brief on behalf of legal historians, in support of petitioners.

“What’s at stake in *Kiobel* is the future of the ATS itself, and whether it will remain an example of how the United States takes its international legal obligations seriously,” said Farbstain.

Kiobel began like any other ATS case in recent memory—with allegations against a company or an individual for violations of international law. Esther Kiobel and 11 other members of the Ogoni people in Nigeria filed suit against Shell in 2002, alleging crimes against humanity, including complicity in torture and extrajudicial executions. At issue: the company’s actions from 1992 to 1995, when the Ogoni were protesting oil development activities on their land.

Because Shell does much of its business in the United States, the courts agreed to hear the case. But on appeal, the 2nd Circuit turned its attention away from the case and toward the statute itself, dismissing *Kiobel* on the grounds that corporations could not be held liable under the ATS.

For observers of the ATS, this came as a surprise: For years, courts had allowed cases to proceed on the presumption that corporations were as liable as individuals for violations of international law.

“No one had really questioned it,” said Jenny Martinez ’97, a professor at Stanford Law School and one of the amici represented by the clinic. “It did seem rather obvious.”

After the 2nd Circuit’s ruling, other appellate courts went in the opposite direction, finding corporate liability permissible under the ATS—in cases against Exxon Mobil Corp. for violence in Indonesia, the Rio Tinto mining group for violence in Papua New Guinea, and Firestone tire company for child labor in West Africa.

“It was clear from the split in the lower courts that the question in *Kiobel*—whether a corporation could be held liable—was a central and fundamental

ARGUING FOR THE DEFENDANT IN *KIOBEL* ...

... are several HLS faculty and alumni. **KATHLEEN SULLIVAN ’81** is counsel for Shell Oil. **PROFESSOR JACK GOLDSMITH** is author of two amicus briefs on behalf of corporations in support of Shell. In the first brief, Goldsmith argues that most modern ATS litigation violates widely accepted international law rules on jurisdiction. In the second, he makes the case that—based on rules of statutory construction and also on Court precedent—the ATS was never meant to apply to torts committed abroad. In a similar vein, **PAUL CLEMENT ’92** and **JOHN BELLINGER ’86**, authors of a brief on behalf of seven corporations, argue that “the ATS contains no indication at all ... that Congress intended the statute to apply extraterritorially” and that the framers would have wanted the ATS to cause the least amount of “friction” on the international scene. To see all of the amicus briefs submitted in the case, including those involving other alumni, go to <http://bit.ly/kiobelbriefs>. —E.N.



KATHLEEN SULLIVAN '81



HLS PROFESSOR JACK GOLDSMITH



PAUL CLEMENT '92



JOHN BELLINGER '86

threshold question that had to be clarified,” said Giannini.

Sooner or later, he said, the issue was headed to the Supreme Court.

PART II

By any standard, the Alien Tort Statute leaves room for interpretation. It offers guidance on the nature of the violation, the remedy and the victim—but not one word on the nature of the defendant.

In its brief, the clinic argued that the framers were well-acquainted with the corporate form and would never have intended to provide a corporate carve-out under the ATS. They based that argument on a year and a half of research, reviewing 500 years of case law and piecing together the history surrounding the Alien Tort Statute.

“How do you interpret a statute that was passed in 1789?” said Russell Kornblith ’12, a clinical team member. “You look at the way it would have been read in 1789, and then you translate the principles to today.”

At the time, corporations were rare in England and nonexistent in America, where the founders

“HOW DO YOU INTERPRET A STATUTE THAT WAS PASSED IN 1789?” ASKED RUSSELL KORNB�ITH '12, A CLINICAL TEAM MEMBER. “YOU LOOK AT THE WAY IT WOULD HAVE BEEN READ IN 1789, AND THEN YOU TRANSLATE THE PRINCIPLES TO TODAY.”

had a lingering distaste for the British East India Company. Still, the notion of corporate accountability was already taking shape, with England keeping its corporations in close check through royally granted business charters.

“This is not some shocking innovation,” said William Casto, a professor at Texas Tech University School of Law and one of the amici represented by the clinic. “Two hundred years ago, they had similar problems, and they came up with the same solutions.”

Take, for example, *Skinner v. East India Trading Company*. The case is primarily known today for the jurisdictional dispute it caused between the House of Lords and the House of Commons. But in reviewing it again, the clinic found something equally compelling: At its heart, it was the case of a man facing down a monopoly.

In 1657, Thomas Skinner headed out onto the high seas near East Asia, hoping to make his fortune as a merchant. When crews from the East India Company ransacked his ship and seized his land, he sought compensation from the company, to no avail. Finally, he turned to the House of Lords.

The East India Company argued it could not be held liable for the actions of its agents, but the House of Lords rejected that argument and awarded Skinner 5,000 pounds.

PART III After the *Kiobel* oral arguments, the clinical team enjoyed a week of quiet. Then came another twist. In a rare move, the justices requested supplemental briefing on a different question about the statute: Does the ATS apply to acts committed on foreign territory?

Courts have traditionally interpreted the ATS as a broad remedy for victims of violations of international law, no matter where the acts occur.

Still, some have argued that because the framers did not specify otherwise, they intended the ATS to provide a civil remedy for only a limited set of international violations either committed by Americans, or on American soil or the high seas.

In early spring, the clinic began its own research to prepare a second brief on behalf of legal historians, including HLS Professor Charles Donahue. In examining the historical record, it seemed clear to the team that the framers would have understood the word “tort” in terms of the transitory tort doctrine of the day: A tort violation traveled with the violator.

A raid in British-owned Sierra Leone stood out. In a famous 1795 opinion, U.S. Attorney General William Bradford stated he had “no doubt” the ATS could apply as a remedy for British victims of the raid.



From left: Assistant Clinical Professor Susan Farbstein '04, Russell Kornblith '12, Clinical Professor Tyler Giannini and Poppy Alexander '12

But did the raid take place on the high seas, in which case maritime law might apply, or did it take place on the sovereign territory of another country? It was a question that had been debated for years in scholarly circles.

During the earlier round of briefing, the clinic had gone in search of an answer, emailing a group of alumni and students at the School of Oriental and African Studies in London with a request: See if you can find eyewitness accounts of the raid that Bradford references in his opinion.

The clinic had been working all year long with this group, relying on them to find original documents in England's archives. It took a few days, but then, deep in the Foreign Office records of the British National Archives, the London team found what the clinic was looking for: a full accounting of the raid.

The discovery was critical for the briefing on extraterritoriality. The correspondence described attacks on land, including the looting of a British library—proof that Bradford knew the raid had taken place in British sovereign territory when he suggested the ATS would apply.

PART IV Today, the words “Alien Tort Statute” are synonymous with human rights impact litigation. But for centuries, as the law of nations evolved, the statute lay dormant.

During the founders' era, the modern conception of human rights had yet to emerge. The law of nations protected victims of piracy; people whose safe passage came under threat; and foreign ambassadors, who were considered protectors of peace. But principally, the law of nations governed the behavior of states, not individuals.

It was only in the wake of World War II, with the trial of Nazi officials at Nuremberg, that international law expanded and formalized the concept of human rights. And another three decades would pass before Dolly Filártiga brought the first

The clinic argues that the framers were well-acquainted with the corporate form and would never have intended to provide a corporate carve-out under the ATS.

ATS case in U.S. courts, telling the story of how her 17-year-old brother was beaten, tortured and finally killed by a police chief in Paraguay.

Filártiga, then a New York resident, had received a tip that the man who killed her brother Joelito was living in New York. Paraguayan courts had dismissed the case against him; the plaintiff's lawyer had been threatened with death. She turned to U.S. courts for a remedy, bringing claims under the ATS against the police chief for torture, a violation of customary international law. And in 1980, the 2nd Circuit—the same court that would later dismiss *Kiobel*—allowed her case to proceed.

“For purposes of civil liability, the torturer has become—like the pirate and slave trader before him—‘hostis humani generis,’ an enemy of all mankind,” wrote the court.

And so the ATS was reanimated in a different era, under a different body of international law.

That is the history. With the Supreme Court's ruling expected sometime this term, the clinic is now concerned about the future. Ask the team what's at stake, and they will tell you: our ability to protect human rights and our international standing.

For the clinical team, there is also this major consideration: their clients. Dozens of ATS cases are on hold, pending the Court's decision. The clinic has supported plaintiffs in many of them, in charges against former leaders in Bolivia living in the United States; against former Somali officials accused of abusing political opponents; and against multinational companies that built tanks and designed identification cards for the South African government during apartheid.

Poppy Alexander '12 has one man's face in mind—a man she met in South Africa while interviewing survivors of apartheid for one of the clinic's corporate ATS cases.

“I can't even think about him because it's too upsetting,” she says.

All the talk about ships and pirates and corporations and the law of nations—at the end of it all, Alexander is just hoping the Supreme Court's ruling won't leave that man behind. *

Freedom Fighter

STEVEN R. SHAPIRO '75 has been legal director of the American Civil Liberties Union since 1993 and leads a staff of more than 90 lawyers. He has contributed to more than 200 U.S. Supreme Court briefs and has worked on a range of issues and cases, from *Reno v. ACLU*, the first major ruling on the regulation of materials distributed over the Internet, in which the Court ruled that the federal Communications Decency Act was an unconstitutional restriction on free speech, to *Arizona v. United States*, in which the Court this June struck down three of four immigration-enforcement provisions of Arizona's S.B. 1070.

HLS spoke with Shapiro about his time at the 92-year-old ACLU and his take on the state of freedom in the U.S.

What are the most pressing civil liberties issues facing our country?

Government surveillance. The lack of any accountability for torture and human-rights abuses. Race is always an issue in this country, and the economic difficulties we are dealing with accentuate the schism. Immigration. An assault on women and reproductive rights that would have been unimaginable a decade ago. Technological advances and the threat to our privacy.

You grew up in a middle-class New York family with civil servant parents. How did you relate your own reality to those who were marginalized?

My first vivid political memory is the 1960 presidential campaign and Kennedy's election. That is coupled in my memory with the civil rights movement: The Selma march, the March on Washington, the Freedom Riders ... the passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act, the assassinations of John Kennedy, Robert Kennedy, and Martin Luther King—they left a deep and lasting impression on me. They also left me with the belief that law and lawyers could be a force for progressive change. It's not only white adult males who are entitled to rights: Women, lesbian and gay and transgender people, children, prisoners—they all have rights. We all have rights by virtue of being human beings.

How do you deal with frustration when the judicial and political winds don't blow the way of civil liberties?

I do think patience is a function of working at an organization that parallels almost precisely the history of individual rights in this country. Until the early 20th century there was no conception that the rights identified in the Bill of Rights were judicially enforceable. If you take the long view, you can say over time that we are moving in the right direction.

What case gave you the most heartburn?

The work we have done [related to the aftermath of 9/11] has often been stressful because the issues are so fundamental and the stakes are so high.

How did you feel as a native New Yorker working on civil liberties post-9/11?



"THIS IS A CONSERVATIVE SUPREME COURT, BUT THE ISSUES THEY ADDRESS ARE COMPLICATED. IT'S MISLEADING TO TRY TO PIGEONHOLE THEM."

I'm very proud of the way the organization responded to the civil liberties threats that followed 9/11. The issues we were debating truly brought us back to first principles in a way that very few other things do. For somebody whose office was a mile away from ground zero, I never diminished the magnitude of what happened or the seriousness of the threat we faced after. The national security issues were real. But at the end of the day, our national security depends on allegiance to principles that define us as a nation.

What's your take on the current Supreme Court?

This is a conservative Supreme Court, but the issues they address are complicated, and it's misleading to try to pigeonhole them. All we have to do is look at the health care case. It's undeniably true that the federal courts have gotten more conservative over the course of my lifetime; on the other hand, you can't do this kind of work unless you believe the arc of history bends toward freedom.

What has changed since you began at the ACLU that you could not have predicted?

The quality of political and public discussion has declined.

What's the solution?

What the solution always is in a democracy: The people who have the capacity to vote need to vote. We get the democracy we deserve.

If you had the ear of the general U.S. populace, what would you say about civil liberties?

Rights are fragile and can be lost if we do not fight to maintain them.
—NATALIE SINGER

Levin's Crossing

Donna Levin '83 writes that she "abandoned the tranquillity of life as a litigator to join the fast-paced world of crossword construction." This is her first puzzle for the Bulletin, but since 2005, approximately 250 of her puzzles have been published, primarily in the Los Angeles Times, The Washington Post, The New York Times, Newsday and "the late lamented" New York Sun.



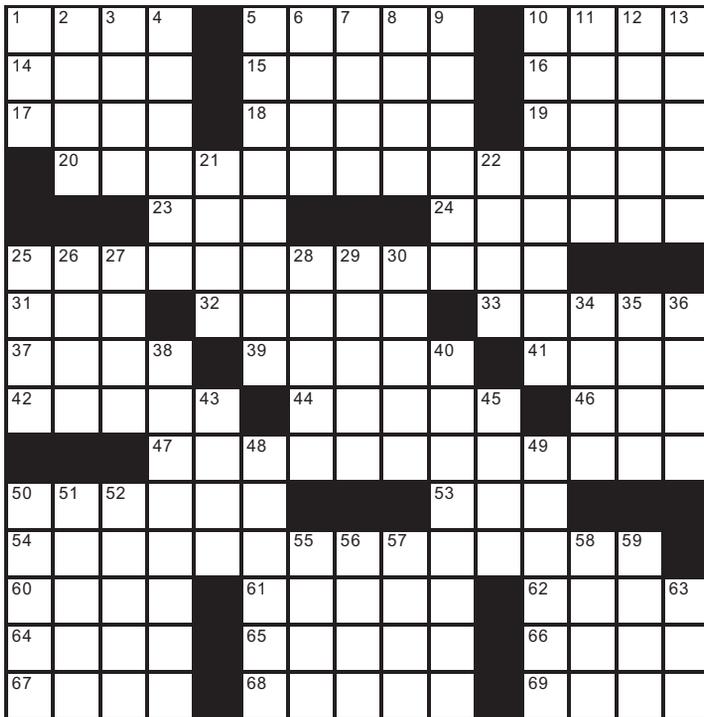
ACROSS

- 1. En ___
- 5. Cry before the dogs of war are let slip
- 10. Actor Omar
- 14. Integral of a curve
- 15. Prince Valiant's spouse
- 16. Come across
- 17. Level
- 18. ___ law (ecclesiastical jurisprudence)
- 19. ___ dixit
- 20. President-wannabe who attended HLS
- 23. "___ Mine" (Beatles song)
- 24. Defendant in an employment discrimination suit, perhaps
- 25. President-wannabe who attended HLS
- 31. Ida's partner in the supermarket
- 32. Alternative to a Harvard Magazine personal ad, for some
- 33. Rustle (up)
- 37. Subject "studied" by an HLS student society whose crest includes a depiction of grain
- 39. Smart as ___
- 41. LSAT, e.g.
- 42. Type of clean energy
- 44. Like some batteries, informally
- 46. Cantab's rival
- 47. President-wannabe

- who attended HLS
- 50. Rosters of the most desirable
- 53. It's what often separates law from order
- 54. President-wannabe who attended HLS
- 60. Suit to ___
- 61. Erstwhile Yankees manager Joe
- 62. On a single occasion
- 64. Requiem Mass word
- 65. What losing arguments often fail to make
- 66. Corp. bigwigs
- 67. Shout from a barista
- 68. Fast German torpedo craft of WWII
- 69. Ululate
- 21. Mus. key with three sharps
- 22. These may conflict at a law firm partnership meeting
- 25. Raison d'être of the HLS Office of Career Services
- 26. Cookie that debuted in 1912
- 27. Lab instruction?
- 28. Breaks, in a way
- 29. Moral standard
- 30. Former Secretary of Labor Robert who taught at Harvard's Kennedy School of Government
- 34. Deep-sixed
- 35. Chest rattle
- 36. Sabah al-Ahmad al-Jaber al-Sabah, for one

DOWN

- 1. Cricket club
- 2. Battle song?
- 3. HLS requirement for financial aid
- 4. Comedian whose seven words led to a criminal prosecution
- 5. Rancher's estate
- 6. "Sad to say ..."
- 7. Air
- 8. Nebraska native
- 9. Oil surface?
- 10. It might be grise
- 11. The "it" in the 1990s slogan "Gotta have it"
- 12. Mexican moola
- 13. It's something that Bill Clinton received two of in one day
- 38. Felon's résumé
- 40. Caged mimic
- 43. Pro ___
- 45. Lady of Lisbon
- 48. Pestilential pest
- 49. Former "judge" on "The People's Court"
- 50. At full tilt
- 51. Petrol purchase unit
- 52. Mountaineer's tool
- 55. Leopold's co-defendant
- 56. Bond villain in a Nehru jacket
- 57. Major constellation?
- 58. Dope
- 59. Flat-bottomed boat
- 63. Common night school subj.



Competing Ambitions

THIS PAST SUMMER, after the release of her article “Why Women Still Can’t Have It All,” Anne-Marie Slaughter '85 was engulfed in what she calls a “tsunami” of her own making. In the article, published in the *Atlantic*, she described her painful realization that working at her dream job as director of policy planning at the State Department made it impossible to spend the time she needed with her two teenage sons. She argued that her experience was part of a larger societal problem—that for many mothers, almost any job with “long hours on someone else’s schedule” creates a tug of war between working and parenting. If women are going to consistently make it to the top levels of their chosen professions, Slaughter wrote, a lot has got to change.

The article almost instantaneously became a cultural touch point, discussed on television, radio, and the Internet, not to mention around boardroom and dining room tables. For Slaughter, who worked her way up to the top of what she calls the “very male world” of foreign policy by focusing on issues like governance, security, and international law and relations, suddenly becoming best known for her views on family life “was like watching a tidal wave wash away your

professional identity.” Yet, as she’s known since she changed career paths after graduating from law school, “It’s fine to have a plan, but don’t expect that your life is going to follow it.”

From a young age—as the daughter of a Belgian mother and an American father, splitting her time between the U.S. and Belgium—Slaughter knew she wanted to go into the world of foreign policy. She expected to follow the typical path at the time, working at a corporate law firm and following a mentor there in and out of government and up the ladder. She accepted an offer from a New York firm but then backed out. “I realized that I couldn’t do that kind of work—I just wasn’t happy in a highly structured environment doing large deals that I didn’t feel connected to,” she says.

Instead, she returned to Cambridge and started working for the international law scholar Abram Chayes '49 and other professors at HLS, including Laurence Tribe '66. After a few years, Chayes suggested she think about teaching.

“I just never thought of myself as living the quieter life of a scholar,” she recalls. But she came to realize—while teaching international law at the University of Chicago, and then for eight years at HLS—that “being a

law professor, you can be both a scholar and really stay very engaged in the world of public policy.”

From Harvard, Slaughter went on to become the first female dean of the Woodrow Wilson School of Public and International Affairs at Princeton, her undergraduate alma mater. While there she also helped to lead the Princeton Project, aimed at developing a bipartisan national security strategy for the country.

Now, after seven years heading the Wilson School and two at the State Department—where she led the first Quadrennial Diplomacy and Development Review, one of Secretary Clinton’s main initiatives, designed to increase the role of development work in foreign policy—Slaughter is back teaching at Princeton and

writing on foreign policy, having altered her career trajectory so she can spend more time with her family. She knows it’s right for her, but still, she feels the upward pull of the ladder. “It’s not always easy to take the advice I give, which is that if you’re really going to, in my case, be the parent I want to be, and the professional I want to be, you’re going to have to move laterally,” she says. “There is nobody who goes to Harvard Law School who is not accustomed to thinking about a straight upward trajectory—that’s what we’re conditioned to

do—and I am basically saying, ‘Stop! No! That’s not going to work.’”

Slaughter is now also at work on a book focused on solutions to the issues she raised in the *Atlantic* article, pointing to companies, industries or countries with policies that help women balance work and family life. For the industry of law, with its focus on billable hours and the partnership track, “these are acute issues,” says Slaughter. “I think law is going to be a real testing ground for how you keep really talented women in the leadership ranks.”

—KATIE BACON



ORISE/APLEWHITE

IF WOMEN ARE GOING TO CONSISTENTLY REACH THE TOP OF THEIR PROFESSIONS, SAYS SLAUGHTER, A LOT MUST CHANGE.

Journeys of Discovery

BRITISH AUTHOR AND barrister Sadakat Kadri LL.M. '89—the son of a Finnish mother and a Pakistani Muslim father—was a resident of New York during the 9/11 attacks. He was a London commuter on what Brits call 7/7—the July 7, 2005, suicide bombings that targeted morning rush hour. And right after his year at Harvard Law School, Kadri was drawn to the political turmoil in Eastern Europe, where the Iron Curtain was turning to glass. “I need to get there,” Kadri thought to himself in the spring of 1989: to Berlin as the wall was falling, and to Czechoslovakia in the midst of its Velvet Revolution. Armed with a contract to write a travel guide, Kadri lived in Prague for most of the next three years.

But it was the terror attacks he witnessed that inspired what is perhaps Kadri’s greatest adventure: four years of research and travel to write the latest of his three books. “Heaven on Earth” (2012) is an exploration of Shariah law that begins with deep history (in ancient Arabia) and closes with contemporary reality: the varieties of present-day Islamic jurisprudence, gleaned from travels to India, Pakistan, Syria, Egypt and Turkey. Kadri, shaken by the attacks and bolstered by his familiarity with Islam, was compelled

to write a grounded, respectful book on Shariah. He observed that in an age of emerging global terror, discussions about traditional Islamic law—both in the West and among Muslims—often shed more heat than light. “Noise, rather than information, was filling a void,” Kadri writes in “Heaven on Earth,” “while critical questions were going not just unanswered but unasked.”

He came to believe during his research that repressive interpretations of Shariah are not immovable ancient dictates. “They are actually a reaction to some thoroughly modern developments,” says Kadri, including the 1948 partition of Palestine and the founding of the modern State of Israel and “coups and revolutions” in the Muslim world beginning four decades ago. By 1979, countries including Pakistan and Iran had firmly embraced the “supposed traditions” of a harsh brand of Shariah, he says, along with “ruthless and retrograde approaches toward enforcement.”

Today, Islamic jurisprudence is still often associated with “punitive, misogynistic and bellicose attitudes,” says Kadri, “but they are a poor reflection of its 1,400-year history.” Most Muslims regard Shariah as a spiritual concept—the path laid

down by God toward salvation,” he says—and that concept is “balanced by long-standing traditions of mercy, tolerance and flexibility.” “Heaven on Earth” is a lawyer’s cautionary plea for understanding, study and mutual respect in a contemporary world of murderous religious divides.

At least part of that plea for understanding—and sensitivity to nations in political turmoil—comes out of Kadri’s Harvard experience.

He had studied history and law at Trinity College, Cambridge, but had never been to the United States before, and “the most humdrum aspects of daily life seemed impossibly exotic,” he says. (Included: American supermarkets and clapboard houses in Cambridge that had “the sinister appeal of half-remembered horror movies.”)

But above all, there was a new intellectual excitement to law studies. “Discussions just flowed in class, the way they never did [at Trinity],” he says. One day, he emerged from constitutional law class with Professor Laurence Tribe ’66 feeling, says Kadri, that “I had done a semester’s worth of work in one hour.” The Harvard interlude “certainly felt seminal,” he adds. “I began to think of legal disputes in terms of



WHETHER LEARNING ABOUT SHARIAH OR NATIONAL REVOLUTIONS, A TRAVELER SEARCHES THE WORLD FOR ANSWERS.

competing narratives—a notion that most lawyers in 1980s England would have thought baffling or laughable. And I was persuaded that legal change can never really be understood without an awareness of its historical and cultural roots.”

Since his 1988-1989 year at HLS, Kadri has worked as a travel writer, trial lawyer, legal scholar, columnist and London-based human rights advocate. He spent a decade of full-time practice in criminal, constitu-

tional, and international law with a London firm specializing in human rights and civil liberties. (He is now an “associate tenant” to concentrate on his writing career.) Kadri maintains a special interest in nations beset by upheaval. He visited Syria in 2011 on behalf of the International Bar Association’s Human Rights Institute, and traveled to Burma in late August with the same group.

And next? “I don’t think my last book has been written,” says Kadri. —CORYDON IRELAND

Prosecutor on the Potomac

JUNE 8, 2012, was a particularly busy day for **Ronald Machen Jr.** '94, U.S. attorney for the District of Columbia. U.S. Attorney General Eric Holder named Machen to oversee investigations into the leaking of national security secrets to the press. In D.C. Superior Court, 71 defendants made their first appearances on charges that ranged from assault with the intent to murder, to sexual abuse and numerous drug crimes. Machen also held a press conference to announce guilty pleas made by former D.C. City Council Chair Kwame Brown, for bank fraud and campaign finance violations.

Brown's conviction was among at least 78 others stemming from Machen's office's investigations of public officials since 2010.

"Corruption happens everywhere, as individuals lose their way, get caught up and make terrible decisions," says Machen, 43, who lives in Washington, D.C., with his wife and three sons, ages 8, 11 and 22. "They let people down and betray their office."

Machen's confirmation by the U.S. Senate in February 2010 brought him back to the office where he got his start as a prosecutor in 1997. He now runs the nation's largest U.S. Attorney's Office, with about 300 attorneys who prosecute

both federal and local crimes and handle a range of civil matters. (In fiscal 2011, the office collected \$138.6 million in civil actions.)

Machen first joined the office after a stint at the D.C. firm Wilmer, Cutler, Pickering, Hale and Dorr and a clerkship on the 6th Circuit. He returned to WilmerHale to build his criminal defense experience, become partner and earn enough money to pay off his law school loans.

When the U.S. attorney's job opened up in 2009, Machen sought the recommendation of Eleanor Holmes Norton, D.C.'s delegate to the House of Representatives, who submitted his name to President Barack Obama '91.

While an assistant U.S. attorney, Machen took pride in being able to prosecute a variety of crimes. As U.S. attorney, he has come to appreciate specialization as a way to build expertise and efficiency.

"I have been a strong advocate of this approach, assigning prosecutors to develop specific areas of expertise, such as investigating matters involving counterespionage, national security leaks, public corruption and health care fraud," he says.

The D.C. corruption cases were among an estimated 20,000 handled annually by Machen's

staff. National security cases have taken his prosecutors to 25 nations, securing indictments involving U.S. exports to Iran, espionage in Cuba and the drug wars in Mexico.

To curb local crime, his office has stepped up prosecution of local gangs, which have terrorized many D.C. neighborhoods. He formed a gang unit within his homicide section, so his office can act expeditiously to stop violence before it escalates.

"Our office needs to understand the D.C. culture, with one gang controlling one block, and another gang controlling the next," he says. "Someone could get

disrespected at a party, and you find yourself in the middle of a gang war. Having our unit puts us in a better position to move quickly."

He and his staff also devote time to community outreach, with Machen hosting an annual youth summit and holding town meetings at local churches. "It helps build credibility and trust among the citizens who we are trying to serve and who we need to make these cases," he says.

Growing up in the Detroit area, Machen arrived at Harvard after graduating from Stanford University, where he played wide receiver for the football team. He

was introduced to the skills of successful trial lawyers in classes taught by Professor Charles Ogletree '78.

"You saw how much skill it took to be persuasive and good on your feet," says Machen. "But I wasn't sure I wanted to be a trial lawyer."

Ogletree, who addressed prosecutors in Machen's office about ethics this summer, says his former student's sense of fairness has served him well.

"It takes brilliance, a thick skin, tolerance, and vision to win cases and do justice," says Ogletree. "Ron has been successful because he has both goals in mind."

—DAVID MCKAY WILSON



A THICK SKIN, A SENSE OF FAIRNESS, AND A VISION TO WIN CASES AND DO JUSTICE HAVE SERVED MACHEN WELL.

Supreme Reporting

NOT EVERY U.S. Supreme Court decision is awaited by a breathless nation. But when an issue strikes fire with the greater populace, those tasked with covering the high court had better get it right.

When the justices ruled on President Obama's health care law this summer, **Greg Stohr** was first, and Greg Stohr was right.

Stohr '95, who covers the Court for Bloomberg, is credited with having delivered the decision to the news wires just 52 seconds after Chief Justice John G. Roberts Jr. '79 began speaking, the equivalent of a gold-medal win in the Olympics of news delivery, made even more impressive because the decision was initially misreported by other outlets, most notably CNN (an epic fail in the Olympics of news delivery).

So how did Stohr beat out everyone else? Foremost, he remained calm.

While the justices took their places in the courtroom on the morning of June 28, "the atmosphere [was] tense with anticipation," reported Tom Goldstein, who teaches at HLS and is publisher of SCOTUSblog, which also covered the decision and later analyzed the timing of media response.

Downstairs in tiny public information room G42, more than a dozen

reporters, including Stohr, stood waiting to receive hard copies of the decision. Television reporters perched outside on the courthouse steps.

The nation's reception of this much-awaited opinion would depend wholly on the journalists' interpretation: For approximately the first half-hour, the Court's own website would crash, and no one outside the Court would have access to the actual opinion for what amounted to eons in news time.

At 10 a.m. in G42, reporters focused on a well-guarded large white box, which held copies of the printed decisions.

"We're pretty collegial," Stohr says. "The competition [usually] has to do with who can write the best story explaining what the Court just did.

... There really are few scoops."

But that day, there was a scoop to be had. While eager to be fast, Stohr was aware of the potential for error in reporting the nuanced opinion, which came after three days of oral arguments in March over challenges to the controversial health care law brought by 26 states and other plaintiffs.

At 10:06:40, the chief justice began delivering the Court's decision by stating, "I have the announcement in ..."

The white box was opened.



A GOLD-MEDAL IN THE OLYMPICS OF NEWS DELIVERY

Six seconds later, at 10:06:46, Bloomberg was the first to publish that a decision had been issued.

That was the easy part, says Stohr. Now the race was on to figure out what the decision was.

Stohr says he tried ahead of time "to think through all the shades of gray that could occur" with the decision, which ultimately proved key because, in the syllabus that dozens of journalists and their teams were frantically scanning, the Court wrote first that the individual mandate was not a valid exercise of Congress's power under

the commerce clause.

"I think everybody's first reaction was, 'Wow, it reads like they struck it down,'" Stohr says.

In fact, as those who kept reading would discover, the syllabus went on to state that the individual mandate was valid under Congress's tax power.

At 10:07:32, 52 seconds after Roberts began to speak and reporters got the paper decision, Stohr had correctly analyzed it and published the headline "Obama's Health-Care Overhaul Upheld by U.S. Supreme Court."

Reuters, AP, Dow

Jones and other outlets followed; Fox and CNN would later have to change course on their initial reports that the mandate had been struck down (at 10:07:39 and 10:07:44, respectively).

For Stohr, who has been covering the Court since 1998 and loves "seeing history firsthand," it was a chance to be part of history—but not in the same way CNN and Fox were.

"We're in a world where people expect to get things immediately," Stohr reflects. "With the health care decision, I was absolutely going to get that out as fast as I could ... but only as soon as I was confident we had the right answer."

—NATALIE SINGER

ALUMNI RESEARCH International Security Interests

LIKE MANY HLS students, **Arvin Abraham '09** took a job as an associate at a law firm after graduating. Yet, he did not leave his law school academic pursuits behind him. Thanks to a collaboration with a former professor, **Lynn LoPucki LL.M. '70**, and a colleague, **Bernd**



Abraham

Delahaye LL.M. '11, he is seeing the topic of his 3L paper expanded into a lengthy law review article to be published this fall.

Scheduled for publication in the Notre Dame Law Review, the article "Optimizing English and American Security Interests" is, according

to Abraham, a first-of-its-kind comparison of the regimes for secured transactions in the United States and England. With more cross-border bankruptcies taking place, he explained that

the topic is particularly relevant now. "It's a very volatile time for the economy, and

companies are getting more multinational," said Abraham. "We're seeing more and more bankruptcies impact multiple jurisdictions.

So I think it's very valuable to have an understanding of these



LoPucki

different systems."

He was inspired to flesh out his 3L paper by LoPucki, who taught his Secured Transactions class at HLS and who also recommended Delahaye, another former student in the same class, to be a co-author.

As it turns out, both of the recent grads are associates at Sullivan & Cromwell: Abraham, whose background is in U.S. law but who also studied English law at University of Cambridge, in the London office, and Delahaye, who studied at

Oxford and has a background in U.K. and European law, in the New York City office.

Their differ-

ent experiences helped bolster the article, said LoPucki, a professor at UCLA School of Law who has been a frequent faculty visitor to HLS. While he understood the American system, he was looking for an entrée into the British system, he said.

"We each had access to different books, different research systems and different areas of expertise," he said. "Yet we all had a common 'systems' perspective on security interests because both had taken my Secured Transactions course and read my casebook co-written with HLS Professor Elizabeth Warren. The project is

one I could not have done alone."

For Abraham, the greatest challenge was delving into a major academic project while practicing as a firm associate. At the same



Delahaye

time, partners in the firm helped by reading the paper and offering comments. He would undertake such a project again in the future, he said.

"It's a nice complement to working as a transactional attorney to be able to explore the law beyond the boundaries of just the deals you're working on," Abraham said.

—LEWIS I. RICE

Startups and Upstarts

ENTREPRENEURS, AS MANAGEMENT guru Peter Drucker has written, “create something new, something different; they change or transmute values.” That’s not easy to do, as two Harvard Law grads—one just embarking on a new startup, the other working to build a business he developed—can attest. But they also can speak to the excitement of seeing a need and seeking to fill it, and doing it in a way that has never been done before.

For **Ben Longoria ’03**, the idea started, as it often does with him, when he tried to make things more efficient. As an associate with Fenwick & West handling mergers and acquisitions, he had to oversee the review of hundreds, sometimes even thousands, of documents to facilitate a deal. Much of the process had to be done by calling or emailing someone and waiting for their reply. It was cumbersome and frustrating, he said, and forced him to devote most of his time to administrative work instead of legal analysis.

“Every other associate in my firm and every firm had the exact same problem,” said Longoria. “It was just that I decided to do something about it.”

Aiding his search for a solution was his longtime passion for technology, nurtured by his single mother, who bought him a Commodore 64 computer when he was 5 years old. While at the firm, he started programming in his spare time, which culminated in an application that digitized and automated the corporate transaction process.

At the same time, his career was progressing at Fenwick & West. His job was stable, the

money was good, and he was on a path that would be considered a dream for many young attorneys. And yet, he couldn’t shake the thought that he should give it all up to start his own company.

“When you get an idea to invent something, it’s like a nagging bug. For the longest time I kept repressing that,” he said. “But something in me kept building, saying, ‘You have to do

“WHEN YOU GET AN IDEA TO INVENT SOMETHING, IT’S LIKE A NAGGING BUG.” —BEN LONGORIA

it; you have to take the chance.’ I remember thinking, If I don’t do this now, I’m never going to do it.”

He left in 2008 to start Wizdocs to offer products that help lawyers manage diligence reviews in M&A transactions as well as organize general legal documents. He now spends much of his time pitching the products to firms, bolstered by his experience as an attorney. The challenge, he said, is that the legal market can be resistant to innovation and reluctant to change (indeed, he quips that the last technological breakthrough at many firms was email). Oftentimes it’s clients wanting law firms to meet a budget who help drive his business because they are—like him—focused on efficiency.

That focus was evident when Longoria was a student at HLS. Working for the Office of Career Services, he found that it offered no materials online and scheduled appointments via a paper binder. He worked with the then new head of Career Services Mark Weber to automate

the office, freeing up counselors and staff to spend more time serving students.

“Ben was instrumental in making a shift in our office in how we did business,” said Weber. “He looks where there is a problem and asks how he can make it better.”

Patrick Ho ’12 also saw a problem to solve, though it’s

not one he or most people in the West experience personally. It began in the fall of 2011, when he took a class at Harvard Business School and was given an assignment to devise a commercial plan for a scientific technology. He and three classmates chose an invention by two Tufts professors designed to stabilize vaccines in silk-based materials, allowing them to be viable at high temperatures and eliminating the need for refrigeration, which is often lacking in poor parts of the world. The self-described “science geek,” who studied physics in college, gravitated toward the idea of changing society through scientific discovery.

“We have what we call a double bottom-line business,” said Ho. “We have something we think could be sustainable as a business and profitable; at the same time we’re really excited about the global health aspects, about the increase in access to vaccines



JOHN T. KINGSTON/IV EWIZDOCS

Ben Longoria '03

that could potentially result.”

When the class ended, their desire to pursue the plan continued, driven by a sense of camaraderie and a common purpose. Their belief in the concept was reinforced when they won the Harvard University President’s Challenge for social entrepreneurship, which came with a \$70,000 grant for the company they are calling Vaxess Technologies (in addition, they also won the Harvard Business School Business Plan Contest). Ho will oversee licensing and regulatory affairs, a complex responsibility because of the medical and international aspects of the company. It’s a daunting challenge for someone who just graduated from law school, he acknowledged. But he is grateful for the chance to start something new in a company that could make a difference to people across the world.

“For me, it was a tremendous stroke of luck in my third year of law school to happen upon something that brought all my interests together,” Ho said.

—LEWIS I. RICE



HARVARD UNIVERSITY NEWS OFFICE

Patrick Ho '12

“Client Science: Advice for Lawyers on Counseling Clients through Bad News and Other Legal Realities,” by **MARJORIE CORMAN AARON '81** (Oxford). No one likes to deliver bad news—attorneys included. But oftentimes providing honest and difficult advice is a crucial part of the job, and Aaron offers her own advice on how best to do it. The former executive director of HLS’s Program on Negotiation and now professor at the University of Cincinnati College of Law shows how to bolster the lawyer-client relationship and ultimately enhance legal practice.

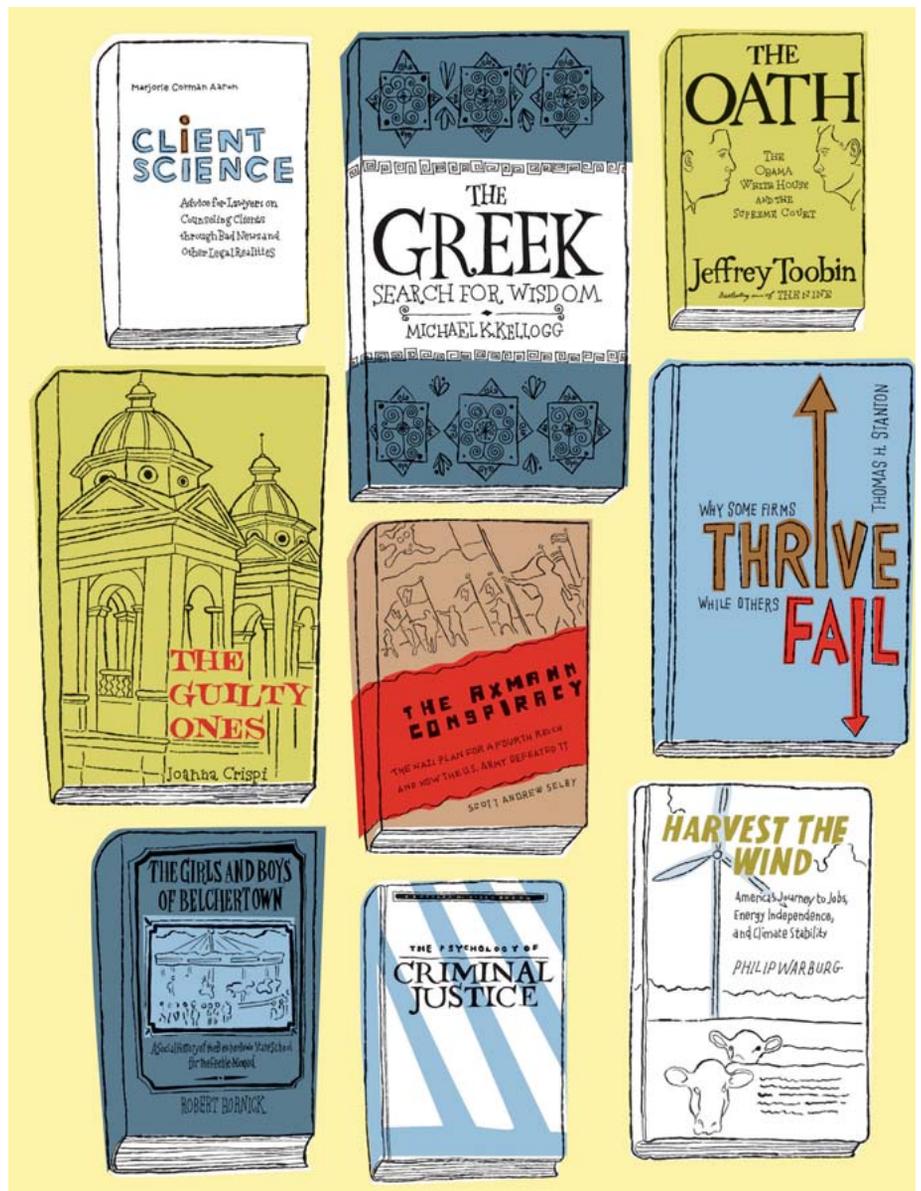
“The Guilty Ones,” by **JOANNA CRISPI '81** (NYQ). In her third novel, Crispi’s experience as a criminal defense attorney informs the tale of an HLS alumna who gives up that career to live abroad with her husband, a Parisian banker, only to be upended by his arrest in a Rome airport. According to the author, the premise of the book stems from the lessons she learned as a young attorney assisting Professor Alan Dershowitz on the Claus von Bulow appeal.

“The Girls and Boys of Belchertown: A Social History of the Belchertown State School for the Feeble-Minded,” by **ROBERT HORNICK '70** (University of Massachusetts Press). Through the story of a state school in Massachusetts, Hornick exposes the history of society’s negligent treatment of people with intellectual disabilities. The Belchertown State School and other such institutions, he writes, served “as venues of quarantine rather than pedagogy” for those whom the state at one time called “the idiots of Massachusetts.” The author recounts the abuses of the residents that took place at the school and its eventual closure in the early 1990s.

“The Greek Search for Wisdom,” by **MICHAEL K. KELLOGG '82** (Prometheus). The author offers a cultural and historical introduction to ancient Greece and devotes chapters to the period’s most compelling authors and their writings. An appreciation of these masterworks, ranging from the epic poetry of Homer to the drama of Sophocles to the philosophy of Plato, enriches our lives

and enlarges our sensibilities, Kellogg writes. His goal is “to take the measure of human wisdom and the highest reaches of the human spirit.”

“The Axmann Conspiracy: The Nazi Plan for a Fourth Reich and How the U.S. Army Defeated It,” by **SCOTT ANDREW SELBY '98** (Berkley). The Nazi threat did not die with Hitler,



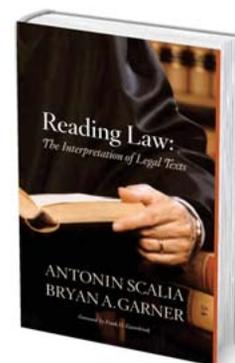
as Selby recounts in this previously untold history of the post-World War II attempt to re-establish Nazi dominance. The book tells the story of Artur Axmann, a member of Hitler's inner circle who re-formed the Nazi party in Allied-occupied Germany, and the undercover work of U.S. Army Counter Intelligence Corps Officer Jack Hunter and other agents who discovered and thwarted the conspiracy.

"In Doubt: The Psychology of the Criminal Justice Process," by **DAN SIMON S.J.D. '94** (Harvard). The professor of law and psychology at the University of Southern California explores the investigative biases that can cause injustice even in seemingly open-and-shut cases. Grounded in a comprehensive review of psychological research, the book shows breakdowns that can occur through faulty evidence collection, coercive interrogations, mistaken eyewitness identifications and jury misunderstanding. Simon proposes reforms that, even in light of imperfect human cognition, he contends will improve the accuracy of verdicts.

"Why Some Firms Thrive While Others Fail: Governance and Management Lessons from the Crisis," by **THOMAS H. STANTON '70** (Oxford). In a twist on Tolstoy, the author contends that when it came to surviving the financial crisis, unsuccessful firms were all alike; every successful firm was successful in its own way. Stanton, who served on the staff of the Financial Crisis Inquiry Commission, outlines how failed concerns like Countrywide neglected to manage risk and calls for leaders to "promote higher quality organizational design and management."

JUDGING THE MEANING OF WORDS

"Reading Law: The Interpretation of Legal Texts," by **ANTONIN SCALIA '60** and **BRYAN A. GARNER** (West). It may seem obvious to declare that words have meaning. But in the view of Supreme Court Justice Scalia and his co-author, known for his writing on language and the law, many judges need to learn that lesson. Describing themselves as textualists, they argue that "the established methods of judicial interpretation, involving scrupulous concern with the language of legal instruments and its meaning, are widely neglected." And the consequences are dire, they write: unequal treatment of litigants, a distortion of governmental checks and balances, and a weakening of democratic processes. Their attempt to clear up confusion in the field of interpretation covers a wide range of language issues, including the use of the word "include" and how punctuation can indicate meaning, as well as an examination of historical cases. In one of them, the decision hinged on making a distinction between the meanings of the words "damage" and "damages," exemplifying, as they write, the importance of "attention to text, and specifically to its original meaning, that we seek here to promote."



"The Oath: The Obama White House and the Supreme Court," by **JEFFREY TOOBIN '86** (Doubleday). On the cover of Toobin's latest book, two of the most prominent HLS grads stand face to face: President Barack Obama '91 and Chief Justice John G. Roberts Jr. '79. When it comes to the Constitution, however, they rarely see eye to eye, as the author outlines in a book that illuminates a battle between two branches of government and two "honorable and intelligent" men. At its root, the conflict pits Roberts' desire to use his position "as an apostle of change" against Obama's determination "to hold on to an older version of the meaning of the Constitution," writes Toobin.

"Harvest the Wind: America's Journey to Jobs, Energy Independence, and Climate Stability," by **PHILIP WARBURG '85** (Beacon). In the face of America's longtime reliance on fossil fuels, Warburg advocates harnessing an abundant alternative energy. The former president of the Conservation Law Foundation travels to places where wind power has thrived, such as Cloud County, Kan., and other rural areas of the Midwest, as well as farther afield to Denmark and China. While acknowledging the downsides of wind power, the author contends that it can help jump-start the economy and address the problem of climate change.

A GRATEFUL PRESIDENT, GIVING BACK

Perito takes the reins of the HLSA with an eye toward mentorship, forging connections

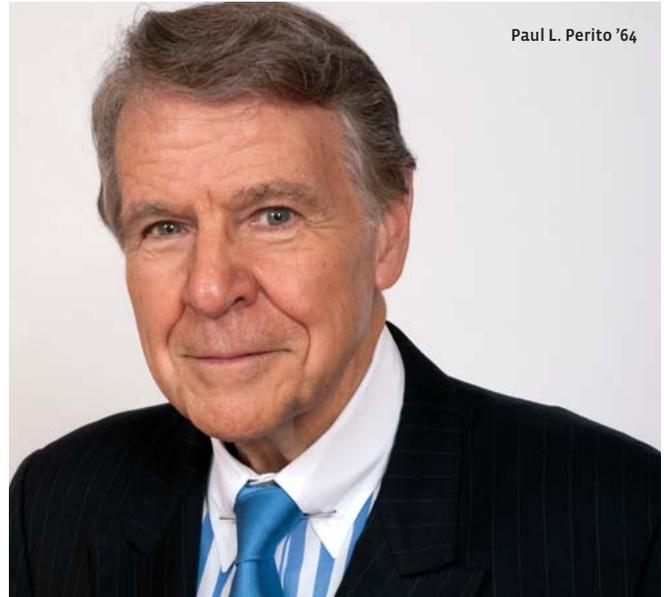
Growing up in the Italian enclave of Boston's North End, where his father owned a small appliance store, and later, in South Medford, [PAUL L. PERITO '64](#), the new president of the Harvard Law School Association, was the first male in his family to finish high school, let alone go to college or attend law school.

After his parents—who gave him “love and focus and the love of learning”—Perito credits HLS as “the singular most transformative educational experience in my life.” A recipient of the Edward John Noble Scholarship, which paid all his HLS expenses for three years, Perito is deeply grateful for the mentorship and rigor of Harvard Law.

“Every day of my life, my HLS education plays a role in my decision-making,” says Perito, chairman, president and chief operating officer of Star Scientific Inc. (NASDAQ: STSI), a company that developed and patented technologies for reducing the major carcinogens in tobacco leaf and smoke and currently is focused on a nutraceutical compound, Anatabloc®, that it believes holds promise for assisting in controlling excessive levels of inflammation that impact a range of autoimmune-related diseases. He says of his training at HLS, “It disciplines me, steels me from being overawed by the complex situations I deal with on a daily basis.”

One such situation came about after he'd graduated and served for four years as an assistant U.S. attorney for the Southern District of New York before becoming chief counsel and staff director to the U.S. House Select Committee on Crime, where he helped draft major anti-drug legislation. Perito remembers the day in 1970 when, out of the blue, he received a phone call from President Nixon's chief of staff, H.R. “Bob” Haldeman, asking him to a meeting at the White House that afternoon. “When I got there, Haldeman and [John] Ehrlichman were in the room with the president, and they said, ‘Dr. Jerome H. Jaffe recommended you to be deputy director of the new drug abuse prevention office,’ which became known as the Drug Czar's Office,” Perito recalls.

“I said, ‘Mr. President, perhaps you are not aware of the fact that I'm not a member of your party,’” he says, adding, with a laugh, “I thought Haldeman and Ehrlichman would come over the table at me. But President Nixon said, ‘Does that make a difference to you?’ I said no, and he said, ‘I have one question for you: Who did you vote for in the 1968 elections?’ I said, ‘Your opponent, Mr. President.’ And Nixon said, ‘I feel like Diogenes with the



Paul L. Perito '64

LESLIE CASHEN

lantern—I've met an honest Democrat in Washington.”

After Perito was nominated by Nixon in early 1972, then HLS Dean Albert M. Sacks '48 and future Dean James Vorenberg '51 immediately telephoned him and offered to testify on his behalf before the U.S. Senate. So did Robert W. Meserve '34 (then president of the ABA and former president of the American College of Trial Lawyers), a mentor and trial instructor at HLS who'd advised Perito that a law degree from Harvard would give him more opportunities to have an impact on the world than his original plan of getting a Ph.D. from Harvard's Graduate School of Public Administration (predecessor of the JFK School of Government).

It's advice that has resonated across his 45-plus-year career, and it's the kind of support for which Perito feels especially grateful. He has eagerly taken the reins of the HLSA to work for the Association with which he's been deeply involved, including 12 years as president of HLSA-DC. Perito, who is quick to laud the work of his HLSA presidential predecessors, including Sharon Jones '82, intends to build on their efforts. He wants the HLSA to continue to expand its services for older alumni and for women and minority graduates, and he plans to strengthen the many Association chapters around the U.S. and the world (it now has 37 chapters in 112 countries, including the U.S.). He also wants to increase the mentoring aspect of the HLSA, “a favorite initiative of Dean Minow's”—by pairing older alumni with more recent graduates—and otherwise encourage recent graduates to remain connected to HLS, a connection that has served him so well for so many years. —ELAINE McARDLE

To share ideas about the HLSA, write to Paul Perito at pperito@starscientific.com.



GLOBAL REACH

A sampling of Harvard Law Schools' alumni clubs—
from Arizona to Peru

Harvard Law Society of Illinois	HLSA of Maryland
HLSA of Arabia	HLSA of Mexico
HLSA of Arizona	HLSA of Michigan
HLSA of Brazil	HLSA of New Jersey
HLSA of Cincinnati	HLSA of New York City
HLSA of Cleveland	HLSA of Northern California
HLSA of Europe	HLSA of Orange County, Calif.
HLSA of France	HLSA of Peru
HLSA of Germany	HLSA of San Diego
HLSA of Greater Philadelphia	HLSA of Southern California
	HLSA of United Kingdom
	HLSA of Washington, D.C.

► For information on local chapters of the HLSA—nearby or far-flung—or on shared-interest groups for alumni, go to www.hlsa.org.

HLSA LAUREATE

JOAQUIN AVILA '73, a nationally recognized expert on Latino voting rights, is the recipient of the Harvard Law School Association Award. He was honored on Sept. 29 at the Harvard Law School Celebration of Latino Alumni. Avila's accomplishments in the legislative arena include the passage of the 2001 California



Voting Rights Act, the only state voting rights act in the nation. He is a distinguished practitioner in residence and director of the National Voting Rights Advocacy Initiative at Seattle University School of Law. Full coverage of the Celebration of Latino Alumni will be posted at <http://www.law.harvard.edu/alumni>.

CONNECTIVITY | How to stay in touch with HLS

HLS CONNECT Share your expertise with students and other grads through the online advising network. You can also take advantage of the online directory and get access to job databases in the public and private sectors: hlsconnect.com.



CLASS NOTES Submit your news for the Harvard Law Bulletin to www.bit.ly/sendyournews.



FACEBOOK Get your news from campus at <http://www.facebook.com/harvardlaw> and follow HLSA events around the world at www.facebook.com/hlsalumni.



TWITTER Receive HLSA announcements or news of the school at <http://twitter.com/hlsa> or http://twitter.com/Harvard_law.



CALENDAR



OCT. 26-28, 2012

Fall Reunions Weekend
Classes of 1952, 1957, 1962, 1967, 1972, 1977 and Emeritus Club
HARVARD LAW SCHOOL

NOV. 8, 2012

HLSA of New Jersey
56th Annual Arthur T. Vanderbilt Lecture
Speaker: The Honorable Stuart J. Rabner '85, chief justice, Supreme Court of New Jersey
THE MANOR, WEST ORANGE

APRIL 19-21, 2013

Spring Reunions Weekend
Classes of 1983, 1988, 1993, 1998, 2003, 2008
HARVARD LAW SCHOOL

SEPT. 26-29, 2013

Celebration 60
In recognition of 60 years of women graduates
HARVARD LAW SCHOOL

OCT. 25-27, 2013

Fall Reunions Weekend
Classes of 1953, 1958, 1963, 1968, 1973, 1978 and Emeritus Club
HARVARD LAW SCHOOL

→ For the latest HLSA events, go to: www.hlsa.org.

as inspector general of the National Security Agency, as the national counterintelligence executive in the office of the director of national intelligence and as senior counsel at the NSA. In 2011, Joel published a groundbreaking wake-up book, "America the Vulnerable" (Penguin), which describes and exposes America's cyberspace risks and details what digital espionage could do to our country. Joel now practices law in Washington, D.C., specializing in such security issues. I am proud to say that my former law firm, Lane and Edson, launched Joel's remarkable legal career after law school.

BRUCE S. LANE '55
Washington, D.C.

EDITOR'S NOTE: Also omitted from this sampling was Kenneth I. Juster J.D./M.P.P. '79, who, as undersecretary of Commerce from 2001 to 2005, was in charge of the Bureau of Industry and Security. In that position, Juster oversaw issues at the intersection of business and national security, including strategic trade controls, imports and foreign investments that affect national security, and, for the first part of his tenure, critical infrastructure assurance,

ON THE BOOKSHELVES

Fear and Loathing
Lessig diagnoses a cancer that has attacked OUR POLITICAL SYSTEM



At a time when Americans are expressing record dissatisfaction with Washington, the publication of this fall of Professor Lawrence Lessig's latest book couldn't be more opportune. "Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It" (Doubleday) is an exhaustively researched and passionately argued indictment of Capitol Hill and the money captured daily between lawmakers and lobbyists.

Lessig, the Roy L. Furman Professor of Law and Leadership at MIT and director of Harvard's Edmond S. Paul Center for Ethics, says that his disgust with Washington's modern operations grew over the course of about 30 years—from the mid-1980s to the mid-2000s—when he was a frequent visitor to the halls of Congress, advocating for reduced restrictions on copyright in the Internet age. His observation that moneyed special interests enjoy special treatment from Congress would hardly seem surprising to the average American. But as Lessig points out, the symbiosis between lobbyist and lawmaker is far cry from a bag of greenbacks buying a favor. The current Congress may be the closest in history, he says, it's just that now the influence of money on government is not in the open, spending in a legal system governed by rules that no contends are dysfunctional.

Lessig recently sat down with the Bulletin to talk about the book.

Is Congress corrupt?
I don't think there's a significant amount of bribery, or that kind of corruption. It's institutional corruption—and by institutional corruption I mean corruption that doesn't involve any illegal activity at all. This is legal corruption. It's members completely, legitimately and openly spending 90 to 95 percent of their time focusing on the task of raising money, diverting the sixth sense about how what they do might affect

their ability to raise money, constantly shape-shifting so that when they walk into that room, the guy with the money will have reasons to give money to that congressman. It's not proven that is corruption, in my view, and that is responsible for the inability of this government to govern.

"I DON'T THINK THERE'S A SIGNIFICANT AMOUNT OF BRIBERY IN CONGRESS... THIS IS LEGAL CORRUPTION"

To what extent do you think the average congressman has qualms about this system?
I think certainly the average congressman hates the



Illustration by ANTHONY MURPHY

until he was involved in the creation of the Department of Homeland Security, which took responsibility for that function.

A FOURTH BRANCH OF GOVERNMENT MAY BE WHAT OUR SYSTEM NEEDS

PROFESSOR LESSIG'S exasperation with the degenerating mechanics of our democracy [On the Bookshelves/"Fear and Loathing," Winter 2012] surely reflects a

widespread sentiment in the American public.

It appears that a core problem is that our three branches of government, for all their mutual checks and balances, still have significant latitude in governing themselves. With the influence of lobbyists, the proliferation of voting restrictions, the overuse of the filibuster and the failure of judges to recuse themselves where appropriate, among other abuses, it may be time to strip our government of its power of self-governance.

A constitutional convention could propose the establishment of a fourth branch of government

that would legislate rules of conduct for the other three. It would require considerable ingenuity to design a fourth branch to prevent its politicization, and also to control abuses at the state level. But a fourth branch might be what our system needs in order to maintain its ability to correct itself.

RON L. MEYERS '98
New York City

Harvard Law School



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April 15, 2012
PHILIP P. ARDERY '38
July 26, 2012
ROBERT J. KELLEHER '38
June 20, 2012
GEORGE J. ANDRESAKES '39
Aug. 4, 2012

1940-1949

MANFRED W. EHRRICH JR. '40
May 15, 2012
HERMAN GROSS '40
June 5, 2011
STANLEY JOHNSON '40
Sept. 15, 2011
WILLIAM S. LEE '40
June 3, 2012
JOHN V. KEAN '41
June 4, 2012
IRVING R. STORCH '41
Dec. 25, 2011
MERRILL R. BRADFORD '42
Aug. 6, 2012
ROBERT T. GANNETT '42
Aug. 26, 2012
EDWARD W. SCHALL '42
July 23, 2012
DANIEL C. DRAPER '43 ('47)
April 8, 2012
IRWIN A. LOWENFELD '43 ('46)
April 8, 2012
SHERMAN ROGAN '43
July 28, 2012
SEYMOUR H. SMITH '43
July 18, 2012
GERARD ROHDE '44 ('47)
Feb. 5, 2012
WALTER H. GLASS '45 ('47)
April 15, 2012
ROBERT B. ATKINSON '48
June 17, 2012
GEORGE H. CAIN '48
April 10, 2012
MARTIN GOLD '48
Aug. 9, 2012
ALAN KAHN '48
May 23, 2009
MARVIN B. MEYER '48
July 16, 2012
SEWARD B. SNELL '48
April 21, 2011
RICHARD D. SOLO '48
March 10, 2012
D.M.M. GOLDIE, Q.C. '49
March 21, 2012

1950-1959

BENJAMIN GRESHIN '50
Aug. 29, 2012
PAUL WEBB JR. '50
April 15, 2012
FRANKLIN L. BASS '51
July 22, 2012
MACDONALD FLINN '51
May 24, 2012
ROBERT L. HALFYARD '51
May 15, 2012

PAUL L. KANE '51
Aug. 15, 2012
JOHN FT. MURRAY '51
Aug. 18, 2012
JOHN ORMASA '51
March 16, 2012
GEORGE R. RUDITZ '51
Aug. 12, 2012
HAVEN E. SIMMONS '51
May 15, 2012
DON S. WILLNER '51
March 27, 2012
ARTHUR H. BERNSTONE '52
Feb. 19, 2012
WILLIAM T. LIFLAND '52
May 3, 2012
CHARLES A. MAPLE '52
April 10, 2012
EDWARD J. MASEK '52
July 4, 2012
RUSSELL R. PEARSON '52
March 24, 2012
WILLIAM O. PETERSEN '52
March 28, 2012
JOSEPH SMUKLER '52
July 13, 2012
ROGER H. SULLIVAN '52
July 9, 2012
ALLAN B. ECKER '53
April 24, 2012
ROBERT H. HAMLIN '53
June 1, 2012
CHARLES EDWARD "NED"
HANSELL '53
July 31, 2012
EUGENE S. LEGGETT JR. '53
June 8, 2012
DONALD J. GOLDBERG '54
April 8, 2012
ROBERT GOLDSCHIEDER '54
July 4, 2012
DAVID G. LUBELL '54
May 11, 2012
FREDERICK S. WYLE '54
March 23, 2012
ROBERT A. BELMONTE '55
June 3, 2012
BOURNE P. DEMPSEY '55
May 5, 2012
VICTOR S. MACKINNON
LL.M. '55 S.J.D. '63
March 9, 2010
SUSAN TRESCHER '55
July 26, 2012
FRANK J. BRAINERD JR. '56
Aug. 2, 2012
JOSEPH T. DYE '56
April 19, 2012
JOSEPH S. IANNUCCI '56
June 15, 2012
FRANCIS J. NICHOLSON
LL.M. '56 S.J.D. '63
Aug. 26, 2011
ANTHONY J. WIENER '56
June 19, 2012
HENRY T. DUNKER '57
June 14, 2012
JAY DUSHOFF '57
March 21, 2012
PETER N. KYROS '57
July 10, 2012



ANTONGRASSL

G. RICHARD MURRAY '57
Aug. 7, 2012
EDWARD S. SCHLESINGER '57
April 24, 2012
ROBERT S. BURNHAM '58
June 16, 2012
DANIEL M. HALL '58
May 25, 2012
MARK L. HELLER '58
April 19, 2012
GERALD H. SHERMAN '58
March 19, 2012
JOSEPH T. SULLIVAN '58
Feb. 9, 2011
ROBERT J. GOLTEN '59
Aug. 15, 2012
SAMUEL H. LINDENBAUM '59
Aug. 17, 2012
RONALD M. LOEB '59
April 14, 2012
ALEXANDER P. MISHEFF '59
Aug. 5, 2012

1960-1969

J. DANFORD ANTHONY JR.
'60
April 1, 2012
WILLIAM H. ECKERT '60
May 26, 2012
JOHN D. FRENCH '60
Aug. 18, 2012
ROBERT E. SULLIVAN '60
July 30, 2012
EDWARD A. MIHALIK '61

Dec. 27, 2011
LAWRENCE C. JENSEN '62
July 26, 2012
CHARLOTTE M. ACQUAVIVA
'63
Aug. 7, 2012
HUGH A. NORTON '63
March 20, 2012
GARY S. BROOKS '65
April 27, 2012
WILLIAM H. SIMPSON '66
May 10, 2012
JEREMY M.J. BURFORD, Q.C.
LL.M. '67
March 10, 2011
ROBERT W. HUFFPHINES
JR. '68
March 20, 2012
MARQUIS C. LANDRUM '68
Aug. 24, 2012
DEAN A. GAVER '69
July 30, 2012
GEORGE L. SELDEN '69
March 31, 2011

1970-1979

CHARLES B. LEVINE '70
June 10, 2012
M. SEAN McMILLAN '70
Aug. 10, 2012
JOHN B. MOORE '71
April 8, 2012

KENNETH R. HEITZ '72
July 9, 2012
DAN S. SHERRILL '72
April 2, 2012
WILLIAM L. NEFF '74
Aug. 4, 2012
DOUGLAS A. HALDANE
LL.M. '76
May 6, 2012
ANN C. SCALES '78
June 24, 2012

1980-1989

ANDREW B. STEINBERG '84
May 20, 2012
DAVID S. SMITH '85
June 16, 2012
ROBERT S. GERBER '88
May 11, 2012

2000-2009

DAMION R. DUNN '08
April 15, 2012

The online version of In Memoriam includes links to newspaper obituaries. Visit www.law.harvard.edu/news/bulletin/ and click on "In Memoriam."

Choosing to Help

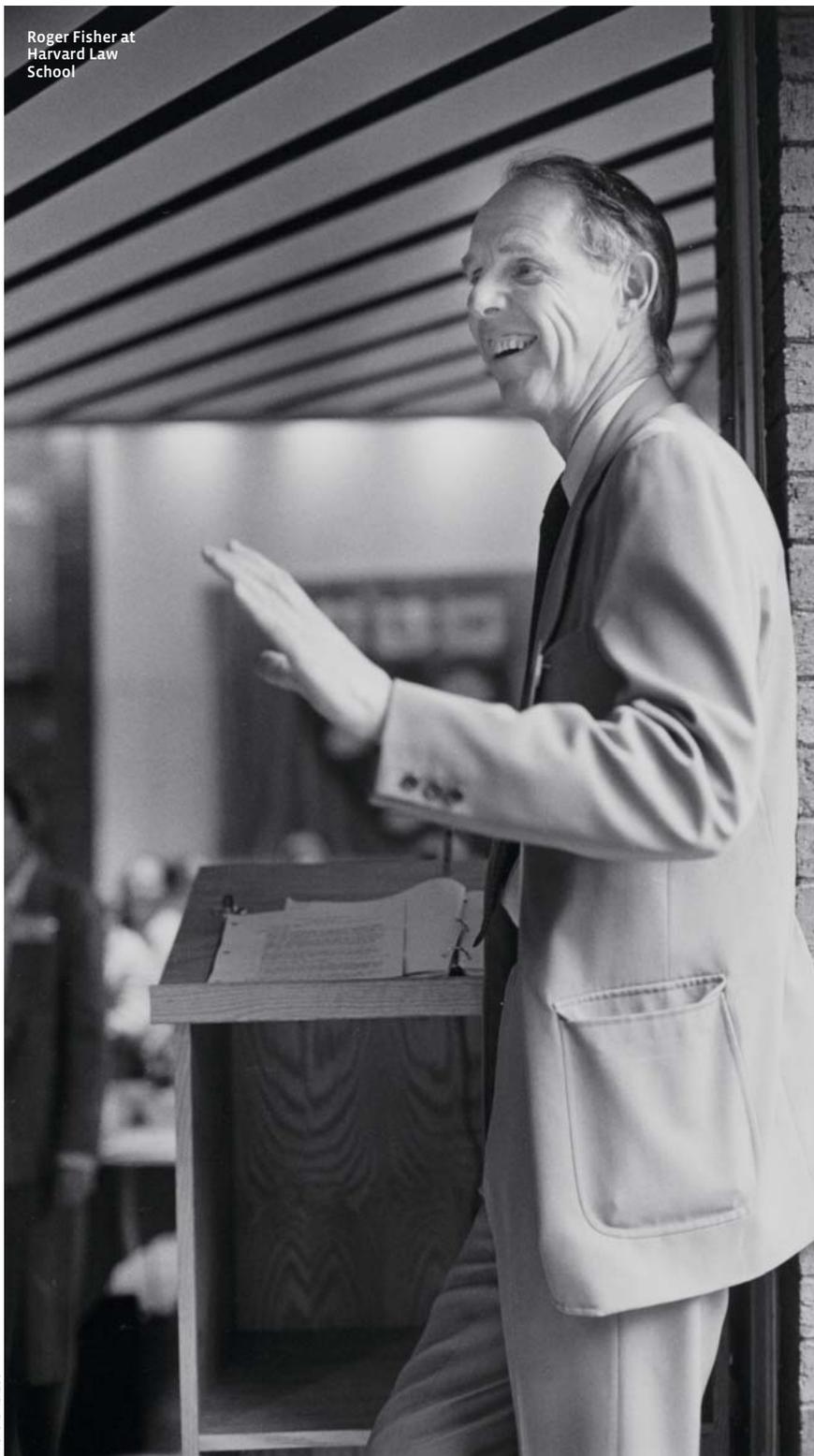
IT IS THE SPRING of 1997 and I am sitting in Pound 107 while Roger Fisher '48, Williston Professor of Law, Emeritus, is telling a story about his serving as a weather reconnaissance pilot in World War II. As a teaching assistant for the Negotiation Workshop, I have heard the story at least a dozen times by now and feel my mind wandering. And yet, against my will, as the story reaches its crescendo and the combination punch line/negotiation lesson flows from Roger's lips, I find myself involuntarily leaning forward and, a second later, helplessly bursting into laughter. The note I jot down to myself is: "All of life is about who tells better stories."

Storytelling was indeed one of Roger's finest talents. His sense of timing, the inflection of his voice and his radiant smile seemed to be perfectly calibrated with his audiences, whether they were law students, diplomats, soldiers or community mediators.

But teaching about "all of life" was Roger's real gift and his ongoing legacy for generations of students and others whom he touched, directly or indirectly, through his work.

In many ways, Roger did not fit in easily at Harvard Law School. In a profession that trains students to identify analytical gaps in others' reasoning and to posit critical arguments for why something—an idea, a vision, a reform—that might seem likely to happen at first glance couldn't, shouldn't or wouldn't happen, Roger took a different tack. His energies seemed ever focused on figuring out how things that seemed unlikely could be made reality. In this way, he unwittingly exposed himself to charges that he was an ivory tower idealist, unaware of the harsh realities of a world filled with malevolence and evil.

But to those who knew him, to those who witnessed his sharp mind in action every day, just the opposite was true. Here was a man who, after serving in Europe in World War II, returned home to learn that his college roommate and two close friends had perished in the conflict; a man who, as a young State Department lawyer, assisted W. Averell Harriman in crafting the Marshall Plan; a man who served as a fierce and partisan advocate for the government in arguments before the U.S. Supreme Court as a young lawyer. Though he had witnessed the consequences and carnage



BRADFORD HERZOG

of violent conflict, Roger somehow chose to see, engage and elicit the best of human potential.

Roger was a master at the art of perspective-taking, of understanding how deep human needs—to be heard, valued, respected, autonomous and safe—when unmet or trampled upon, become seeds of evil and violence, seeds that can cause us to villanize each other, and that motivate us to see the world in stark black-and-white terms. For Roger, the purpose of perspective-taking was never to excuse or justify evil. Rather, it was a way to discover new approaches to diplomacy, to influence and to understanding. These approaches resonated with many because they cut across cultures and appealed to common human needs, which he often termed “interests,” instead of appealing to force, coercion and power. Roger’s revolutionary approach to negotiation, one that

HE WAS A MASTER AT THE ART OF PERSPECTIVE-TAKING—UNDERSTANDING HOW DEEP HUMAN NEEDS, WHEN UNMET, BECOME SEEDS OF EVIL.

typically began by putting the protagonist in the chair of her perceived opponent, giving her a view of the world through her adversary’s eyes, inspired generations of Harvard Law School students to commit themselves to conflict resolution as a career.

Roger’s brilliant and, at times, counter-intuitive, thinking is embodied in a series of best-selling books, articles, and manuscripts spanning the second half of his long and storied career. The most famous of these, “Getting to Yes: Negotiating Agreement Without Giving In,” 3d. (co-written with William Ury and Bruce Patton ’84), has been translated into 36 languages and has sold millions of copies. Though at times dismissed for choosing to write prescriptively and in easily comprehensible terms to a mass audience instead of articulating grand theory for an academic one, Roger nonetheless gave birth to an entirely new field of study within the academy, one that has changed fundamentally the face of graduate school education,

not just in law schools, but in schools of business, public policy, communications and diplomacy.

He used his academic vantage point to tackle real-world problems. His direct interventions and advice advanced negotiations that facilitated the signing of the Camp David Accords in 1979, eased the way for a peaceful transition of power in post-apartheid South Africa in the early 1990s, and promoted the resolution of a border dispute and the signing of a permanent peace treaty between Ecuador and Peru in 1998.

But it is a mistake to think that Roger’s attempts to make a difference were always, or even mostly, successful; I suspect they were not. In my early days teaching at the law school, I can recall venturing into his office on occasion for some counsel or to ask a question. After sharing his thoughts with me, he would motion for me to sit down: “Now, can I ask *you* for *your* advice? I am writing a letter to the secretary of State about X ...” Time and again I was struck, first, by the notion that a professor, senior to me by half a century, valued the input of a 20-something neophyte, and, second, that Roger seemed completely undeterred by the small chance that the secretary of State would read his letter. Always, with Roger, there seemed to be an unrelenting urgency to bring theory to practice, to make a difference on the ground. “The problem,” Roger would say, “is *not* in finding a solution. Lots of smart people discover good solutions all the time. The problem is finding a way to get there.”

Thirty years after Roger first started teaching the Negotiation Workshop at Harvard Law School, the course remains one of the most popular at the school, and the pedagogy it deploys—creative and interdisciplinary—remains a model for others at Harvard and around the world. In designing the course, Roger drew from many academic and pedagogical wells. He experimented with new teaching methods, the use of simulations, and the use of video

and intensive personalized feedback. He looked outside the confines of the law to integrate the work of thinkers like Chris Argyris in action science and Howard Raiffa, a renowned Bayesian decision theorist, to name just a couple. In both its content and its form, even with 20 years of innovation since his retirement, Negotiation Workshop remains one of the enduring gifts that Roger left Harvard Law School.

But there is more than just the concepts, the pedagogy and the form of Negotiation Workshop that I carry with me as a teacher, more than just the course content and delivery style.

For example, I remember Roger, at the end of class each day as students filed out of Pound 107, walking up and down the rows throwing away the empty Coke bottles and candy wrappers students had left at their seats. By the midpoint of the semester, students disposed of their own garbage.

Those of us who had the honor of having Roger as a professor or of working with him in Negotiation Workshop will surely recall similar subtle teaching moments along with his more blunt exhortation, “Choose to help.” In other words: Don’t just do your job well, but be observant; find ways to exert your influence to make a positive difference whenever you can.

As I think about Roger’s career, his many accomplishments and his long life, it seems to me that his admonishment to us embodied his own sense of calling: “Choose to help.”

In a profession where sharp-edged critiques tend to outnumber new ideas, and in a world where threats, whether of lawsuits or of wars, seem to eclipse the voices of engagement and dialogue, Roger’s contributions—his scholarship, his stories, his example and his never-ceasing “choose to help” attitude—are to me as inspiring, fresh and urgent as ever. And I trust they will remain alive in the heart of this student—and in those of so many others—for years to come.

ROBERT C. BORDONE '97 is clinical professor of law and the director of the Harvard Negotiation and Mediation Clinical Program.

To read other tributes to Fisher, go to <http://bit.ly/RogerFisher>.

LEADERSHIP PROFILE AN INTERVIEW WITH BARRY VOLPERT '85



BARRY VOLPERT
*on the balcony at
Crestview Partners
in New York*

→ Contrarian investing as a J.D./M.B.A.

Barry Volpert J.D./M.B.A. '85 is chief executive officer of Crestview Partners, a private equity firm he co-founded in 2004 after retiring from Goldman Sachs, where he was head of the Merchant Banking Division in Europe. Based in New York City, Crestview has about \$4 billion in assets under management. Volpert graduated magna cum laude from HLS, where he was an editor on the Law Review, and he received his M.B.A. from HBS with high distinction and was a Baker Scholar. Volpert has served on the Dean's Advisory Board at HLS for Elena Kagan '86 and Martha Minow.

What has been the value to you of the joint J.D./M.B.A. program at Harvard?

It was critical in my decision to choose a career in private equity and to develop a specialty in bankruptcy and distressed investing, and even to this day it helps me negotiate private equity investments with greater confidence, especially when complex legal judgments are an important aspect of an investment thesis, which is so often the case. For example, in the mid-1990s, when I was working at Goldman Sachs, we were able to structure a “rescue financing” to a mortgage trust that ultimately allowed Goldman Sachs, together with David Rockefeller and other investors, to acquire Rockefeller Center on very advantageous terms. The combination of my legal and business training helped enormously in developing this investment at a time when New York City real estate was deeply depressed, and it turned into one of Goldman's best investments.

Why did you choose to launch your own investment firm?

After nearly 20 years at Goldman Sachs, the last six of which were in London, where I headed their

international private equity business, I felt ready to launch an entrepreneurial venture. As the biggest investment banks and megafunds grew very rapidly, I thought there was a window of opportunity left behind to build an excellent team and focus on generating strong returns in the middle market. Moreover, with all the information available on the Internet and various databases, I also felt that an entrepreneurial boutique, such as Crestview Partners, would have access to all the same information as the bigger firms with fewer headaches, and would be more fun to work at compared with a large organization.

What is different about your firm?

At Crestview, we like to focus on complex and difficult situations that many other private equity firms tend to avoid, with the expectation that periodically the “baby is thrown out with the bath water,” and we can find a great opportunity that has been overlooked. Very few of our investments are plain-vanilla LBOs. And, very importantly, we have a substantial personal investment in each fund, which aligns our interests with

those of our investors. We also have in-house operating and executive expertise that enables us to help improve our portfolio companies' operations, rather than relying on financial engineering to generate our returns.

What do you enjoy about the work?

I enjoy identifying investment opportunities where we think the conventional wisdom is wrong. I enjoy recruiting great people whom I have the privilege of working with every day as members of our firm. And, I also enjoy interacting with our investors and portfolio company executives, who I think are among the brightest in the world of business. Mostly, I enjoy working with our companies to help them succeed, grow and prosper, which, at the end of the day, is why we are in business.

What is your advice to students who want to be entrepreneurs?

Just do it! There is no substitute for the “thrill of victory and agony of defeat” that you feel as an entrepreneur. If I could do it over, I would have launched Crestview sooner.

Also, the most important thing is who your business partners are—investors, colleagues, executives—the people you work with every day. HLS students are smart and motivated, and most will be successful. Looking back, you remember the people more than anything else, even more than the

financial returns. When I am asked for advice by people about to enter the business world, I tell them, try to surround yourself with people you admire and respect and enjoy, and who are intelligent, ethical, motivated, creative, loyal and, very importantly, have a sense of humor.

What do you see when you look at HLS today?

For those alumni from the mid-'80s who were at HLS for the faculty battles and drama, the school is a much different place and a much better place than you can imagine, with great leadership under Martha Minow. It's very exciting to watch. It has smaller sections and more practical training and is more technologically savvy, more focused on exciting new legal frontiers in intellectual property and international law, and more focused on leadership training. It is really an honor for me to be involved in a small way in supporting the growth and success of the law school, and I enjoy contributing an investor's point of view from time to time.

Tell us something about your outside interests or passions.

I do enjoy Burgundy and have a small investment in a winery. It's like “The Producers”—we lose money every year and sell a new share at a higher price to finance the losses when we need to. And I've been pretty active supporting a fellow J.D./M.B.A. running for office this year. *

GALLERY A MAN OF LETTERS: JOSEPH STORY (1779-1845)

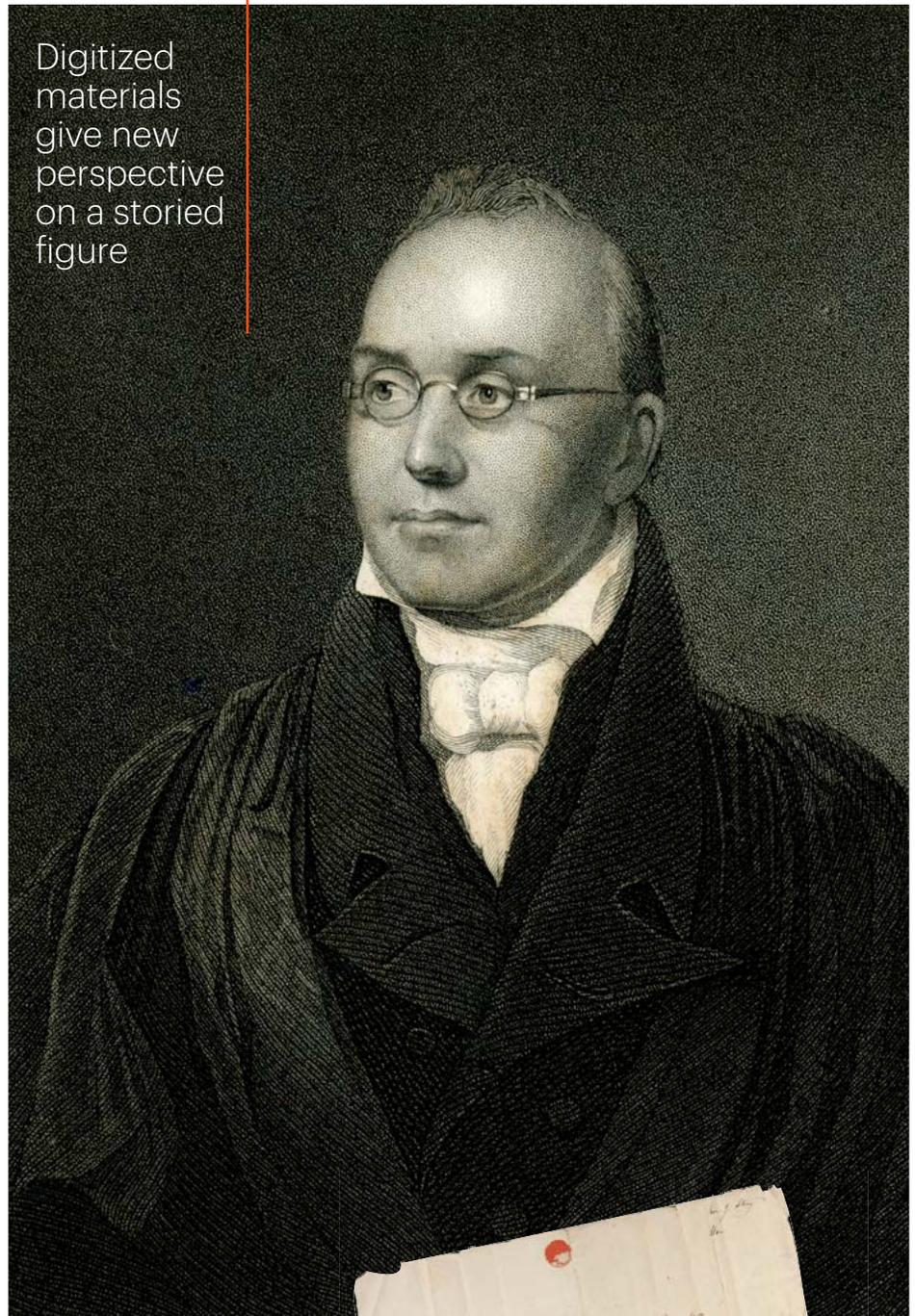
Supreme Court Justice Joseph Story not only became Dane Professor at Harvard Law School while serving on the Court. In addition, like all Supreme Court justices in his era, he also sat on a federal Circuit Court.

Little is known about the relationship between Supreme Court justices and the lower court judges with whom they sat. A series of letters from Story to Judge John Pitman, which has been recently digitized by Harvard Law School, throws light on this subject. The 91 letters are available online as part of a digital suite of Story materials.

The Story-Pitman letters depict Story as a mentor to a young colleague: "As to your studies," he wrote to Pitman in early 1820, "you must read all the public laws of the United States through once. Make a list of references and an Index to all principal provisions which concern crimes, revenue, etc. etc. ... This will be a good winter's work."

They also show him at work on circuit business—from court procedure to doctrinal questions, many of a commercial or maritime nature. Story also wrote candidly about national politics in the 1830s and 1840s and about his growing fear for the future of the Constitu-

Digitized materials give new perspective on a storied figure



The Story-Pitman letters offer a rare glimpse of the relationship between a Supreme Court justice and one of the District Court judges with whom he worked.

One of the 91 letters written by Story, who served on the Supreme Court from 1811 to 1845, to Judge John Pitman of Rhode Island

ON DISPLAY: "A Storied Legacy: Correspondence and Early Writings of Joseph Story," selected original documents from Story's writings and letters, will be on display at the Harvard Law School Library's Caspersen Room through Dec. 7, 2012.

Salem July 12. 1817-

My dear Sir

I have been so entirely & exclusively engaged in attending to business connected with the President's visit, that I have not had one moment to answer your late letter. The President too has been so much engaged in private business, that I have scarcely seen him for a moment, except in public places. So that I have had no opportunity to communicate with him on the subject of the office of District Atty of New Hampshire. It seems to me impossible that during an incumbency of two years he will pledge himself to any appointment, & therefore Mr. H. does not see any reason to believe that the resignation of the District officers of the District will be conclusive. Mr. Plummer has not the slightest pretensions to the office, & I should not hesitate so to state the fact. And in respect to yourself I am entirely at your service, & will recommend you into all the Deal, with a perfect sense of your qualifications as well as my personal friendship require me to do. If therefore Mr. H. contemplates resigning I will join Judge Sherburne in a written recommendation of yourself. If Mr. H. does not intend to resign, I am quite sure that in tender consideration of his age, no removal will take place. I am very truly your obliged friend

John Pitman Esq

Joseph Story

tion and the federal Union.

The letters also reveal a warm friendship. Story ended a letter to Pitman in 1844: "I have not time to say more, but only to add my kindest regards to Mrs. Pitman & the family, & I am most truly and affectionately Yours, ..."

Story's duties required him to hold court twice yearly in each of the states in his judicial circuit—in addition to his regular travel to the Supreme Court in Washington, D.C. This punishing schedule, combined with his law school duties, took a toll on Story's health, a topic frequently referenced in the correspondence.

Only a month before his death, Story was still fully engaged in circuit business, as he remarked in one of his last letters to Pitman. "Nothing on earth but a sense of public duty would now induce me to try the cause after it has been so neglected," he wrote regarding an upcoming trial.

Story died in 1845 at age 65. Pitman's letter to Story's widow, Sarah, attests to the justice's influence and kindness: "I have lost the stay and staff of my age and one to whom I always went nor went in vain for advice and sympathy," Pitman wrote. *



EN SUITE: In addition to Joseph Story's correspondence with Judge John Pitman of the 1st Circuit, a range of Story's writings—including a digest of various court decisions handwritten by him (his attempt to summarize and understand the law) and letters to leading legal and social figures in Massachusetts—and images of Story from the Harvard Law School Library's visual materials collection have been digitized and compiled into a suite of online materials. The Joseph Story Digital Suite can be accessed at <http://library.law.harvard.edu/suites/story/index.php>.



➔ **GETTING ORIENTED**

A beautiful September day, and the latest crop of Harvard Law students begins to get the lay of the land. This year's students include entrepreneurs, veterans and active-duty members of the military, a former police officer, professional actors, musicians, reporters, athletes, community organizers and business owners.

