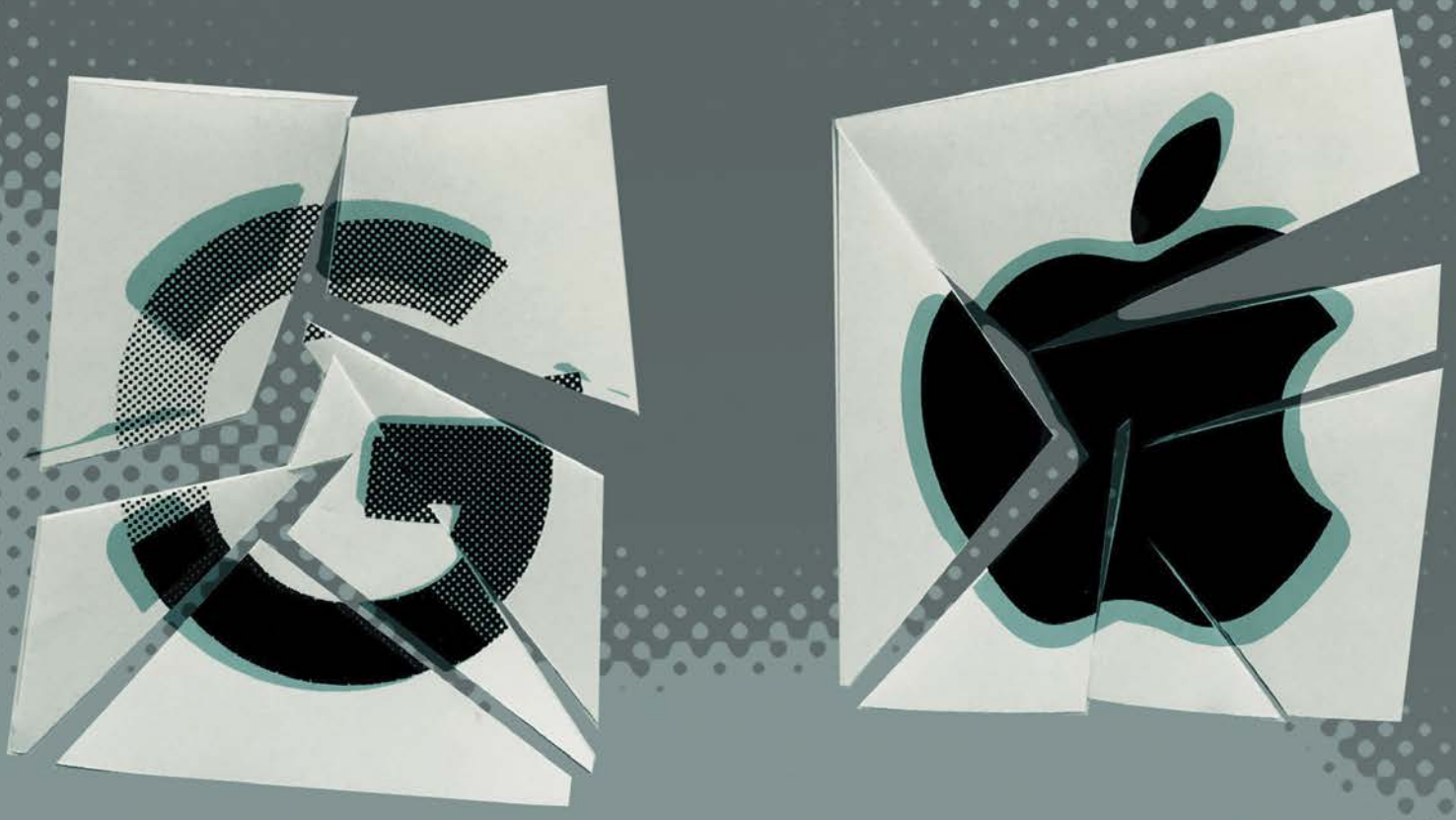
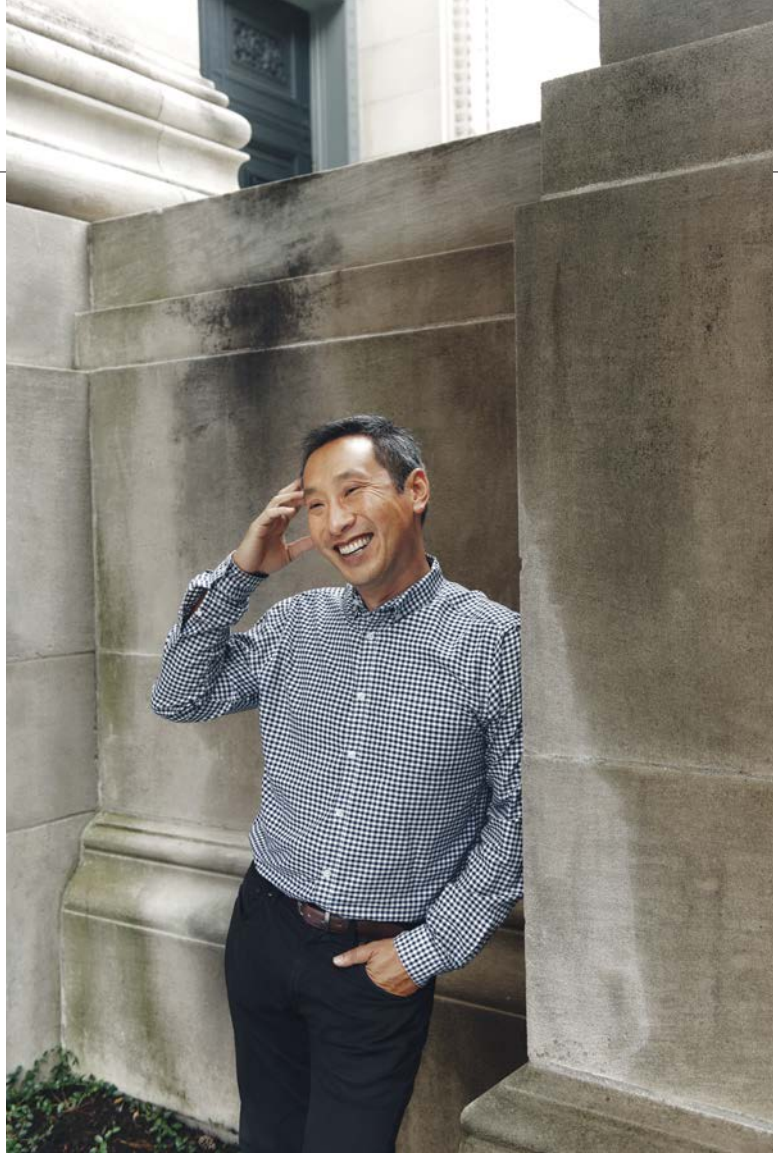
Harvard Law
bulletin
FALL 2024

Big Tech Under Fire

Antitrust Lawsuits Shake Up the Digital Landscape



Ruth Greenwood, director of the Harvard Election Law Clinic, says a goal of their work is to foster a democracy that is truly representative of its people.



Mark Wu shines a light on the world of international trade while mentoring the next generation.

Evita Grant is building a global trading network for African small businesses.

OPPOSITE PAGE: JESSICA SCRANTON; RIGHT: COURTESY OF EVITA GRANT; TOP RIGHT: TONY LUONG

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'A Commitment to Academic Excellence, Innovation, and Culture of Free, Open, and Respectful Discourse'

John Manning appointed provost of Harvard University

In August, John F. Manning '85, a renowned scholar of administrative law, legislation, and federal courts and dean of Harvard Law School since 2017, was appointed provost of Harvard University, the school's chief academic officer. His responsibilities now include working with academic and administrative leaders to foster collaboration across all the schools, to advance innovations in teaching and learning, and to promote academic excellence and the free exchange of ideas.

"He is the right person for the moment in which we find ourselves, motivated by love for and service to the institution that raised his own sights, and eager to make it possible for all members of our university to thrive," said President Alan M. Garber. Manning, who served as interim provost from March to August, brings many perspectives to his new role — as an alumnus of Harvard College and Harvard Law School, as a professor, and as dean of the law school.

Manning first set foot on campus in the fall of 1978. As a first-generation student, he recalls being initially nervous and uncertain, but his lasting memories are of his enthusiasm and enduring gratitude for his undergraduate experience. He said, "Every class I took was mind-opening and exciting. Especially coming to Harvard College as a first-gen student, you get to feel the sensation of your life changing in real time."

After graduating in 1982, Manning enrolled in the law school, where he was an editor on the Harvard Law Review. He went on to clerk for U.S. Supreme Court Justice Antonin Scalia '60 and Judge Robert Bork on the U.S. Court of Appeals for the D.C. Circuit. In 2004, after serving in the U.S. Department of Justice, in both the Office of Legal Counsel and the Solicitor General's Office, and as a professor at Columbia Law School for 10 years, Manning returned to Cambridge to join the Harvard Law faculty.

Provost John Manning

As dean, Manning launched a number of initiatives to nurture the free exchange of ideas and a culture of generous listening. These include a greater variety of faculty workshops in which colleagues could exchange ideas about important issues in real time, new orientation programming for incoming students on how to have difficult conversations, and the Rappaport Forum, in which experts from different perspectives model respectful debate about some of society's most challenging issues.

He also worked to reduce barriers to legal education. In addition to increasing spending on financial aid grants, last February he announced the launch of the Opportunity Fund, which enables J.D. students with the highest financial need to attend Harvard Law tuition-free for all three years. Under Manning's leadership, the school also bolstered its Low-Income Protection Plan and launched a new Public Service Loan Forgiveness program.

A new first-year Constitutional Law course, a new legal writing requirement, and a required course in negotiation and leadership, which focuses on listening actively and generously to opposing viewpoints, are among the many curricular reforms Manning instituted to respond to the changing legal profession.

Dean Manning with six U.S. Supreme Court justices during the 2017 HLS Bicentennial celebration

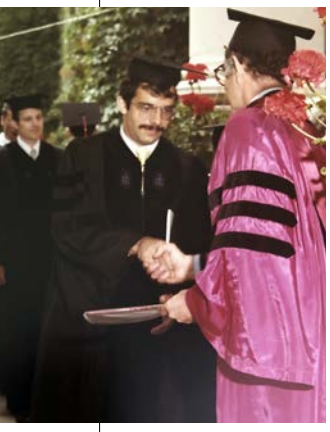
P. 2 TOP: STEPHANIE MITCHELL/HARVARD STAFF PHOTOGRAPHER; BOTTOM: MARTHA STEWART; P. 3 COURTESY OF JOHN MANNING; MARTHA STEWART

Manning also drove the creation of Zero-L, a new, self-paced online course designed to prepare all incoming students for law school on day one, which has now been used by thousands of law students across the country. He spearheaded the creation of Harvard Law School Online, a strategic initiative designed to bring the expertise of the school's faculty to new learners around the world. Manning also oversaw the launch of Future Leaders in Law, a yearlong pre-law pipeline program to help prepare students to apply for admission to law schools around the nation.

As interim provost, Manning played a central role in advancing several key university-wide initiatives — among them, the Open Inquiry and Constructive Dialogue Working Group and the Institutional Voice Working Group. Both brought together faculty from across Harvard to examine important questions — how to foster open inquiry on campus and when the university should speak on public issues — both of which address the way the university fulfills its mission of research, teaching, learning, and service.

Among his duties as provost, Manning oversees university-wide offices dedicated to advances in learning, faculty development, research, international affairs, technology development, trademark, student affairs, and gender equity, as well as the work of the Harvard Library. He also has responsibility for cultural and artistic units, such as the Harvard University Native American Program, Harvard Art Museums, and the American Repertory Theater. He supports the university's important work addressing its legacy of slavery, guided by the recommendations and findings of the Presidential Committee on Harvard & the Legacy of Slavery.

"I love the alma mater and am grateful for the opportunity to serve."



Manning graduating from Harvard Law School in 1985

Reflecting on his new role, Manning said, "I am grateful every day to be here. Harvard has enabled me as a student, as a teacher, as an administrator to learn and grow and to live a life of professional fulfillment that I could not have imagined as a child. Even on the hardest days, I love the alma mater and am grateful for the opportunity to serve."

This piece is based on an article in the Harvard Gazette: bit.ly/JManning.

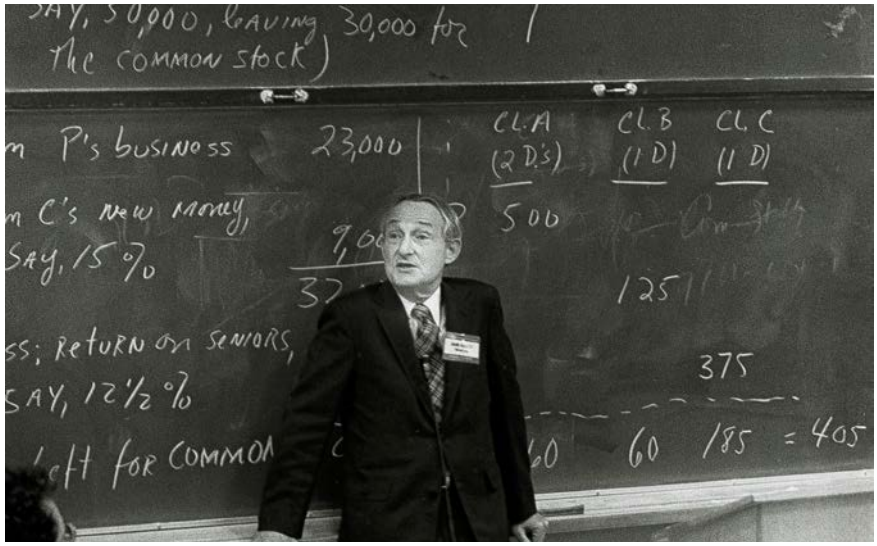
John Goldberg Continues as Interim Dean

JOHN GOLDBERG

The search for Manning's successor as Harvard Law dean will launch this fall. In the meantime, John C.P. Goldberg, Carter Professor of General Jurisprudence, who was previously deputy dean, will continue to serve as interim dean.

Goldberg, a leading scholar in tort law, private law, and legal theory, has been a member of the law faculty since 2008. In that time, he has taught numerous courses, including Constitutional Law, Criminal Law, and Torts. Before joining the Harvard faculty, he taught and served as associate dean for research at Vanderbilt Law School. In addition to his previous Harvard service, including as a member of the Provost's Advisory Committee, Goldberg was the first chair of the university's Electronic Communications Policy Oversight Committee.

Beyond Harvard, he is an associate reporter for the American Law Institute's Fourth Restatement of Property, an adviser to the Third Restatement of Torts, a co-editor-in-chief of the Journal of Legal Analysis, and a member of the editorial boards of the Journal of Tort Law and the journal, Legal Theory. He clerked for Judge Jack Weinstein of the Eastern District of New York and for U.S. Supreme Court Justice Byron White. He earned a B.A. from Wesleyan, an M.Phil. in politics from Oxford, an M.A. in politics from Princeton, and a J.D. from New York University School of Law, where he served as editor-in-chief of the NYU Law Review.



David Herwitz teaching at Harvard Law in 1988

ABSOLUTELY BRILLIANT BUT FREE OF INTELLECTUAL ARROGANCE

I am saddened to read of the death of Professor David Herwitz '49. I had the good fortune to be in his Business Planning class during the 1961-1962 academic year. The passage of 62 years has not dulled my memory, admiration, and appreciation of Professor Herwitz. The photos of him in the Bulletin's obit [Spring 2024 issue] are richly evocative and are characteristic of just the way he was.

He was absolutely brilliant — a great scholar, but free of intellectual arrogance. His modesty was always evident.

He related well to his students. His teaching was magnetic. I can still see him walking back and forth across the front of those vast Langdell lecture halls of yesteryear (135-student capacity), compelling student attention by his incisiveness, eloquence, and humor. His love of the law was apparent.

I profited immensely from his teachings during the 41 years that I practiced law. He taught us both substantive law and, often more important, how to think about a law problem.

Shortly before my 50th Reunion (10 ½ years ago), I realized that it would be good to reconnect with Professor Herwitz. And I and my wife did so, and with his equally brilliant spouse, Carla '55. That led to dinners with them in Swampscott and Palm Beach. The conversations were always lively, and it was a special joy and privilege for me to be in his presence again.

He will be missed but fondly remembered and deeply appreciated.

HENRY S. STOLAR '63
Miami Beach, Florida

HOW FORTUNATE TO EXPERIENCE SUCH A GREAT TEACHER

I read with interest the last and excellent Bulletin and with regret the obituary for David Herwitz. I was in the Class of '53 and practiced law for over four years before becoming a teaching fellow at the school in 1957. In addition to my teaching fellow duties, I was approached by Professor Herwitz and asked if I would be willing to participate in teaching a seminar which he and Abe Chayes ['49] had just started on Business Planning. The seminar eventually evolved into David's book on that subject.

The Business Planning seminar was great fun. David devised an actual business situation in New York involving the creation of a partnership to make gloves. I have not forgotten my experience with David now over 60 years ago. How fortunate I was to have that experience with such a great teacher.

JOSEPH GUTTENTAG '53
South Bristol, Maine

KUDOS

I just wanted to drop you a note to congratulate you all on a terrific upgrade to the Bulletin's format (shorter, more trenchant articles) and design. Really a pleasure to read now.

JAMES L. CARNEY '66
Madison, Wisconsin

THAT WAY LIES CHAOS

I enjoyed Jeff Neal's article ("Breyer for the Defense") in your Spring 2024 issue. Professor Breyer was one of my favorite professors (Antitrust) at the law school.

Professor Breyer argues for liberalizing views of constitutionality, at least in cases where a statute can be viewed as "necessary and proper" or sufficiently "pragmatic" to meet modern conditions. He is, I believe, a policy liberal. Does he think his liberal methodology will produce only results he supports? A conservative justice will have her own opinions of what is necessary, proper and pragmatic. Do we thereby become more a government of men/women not of laws? That way lies chaos.

RAUER MEYER '73
Los Angeles

BRADFORD HERZOG/HARVARD LAW SCHOOL HISTORICAL & SPECIAL COLLECTIONS

Taking the Long View

David Wilkins, part of the core research team that launched a longitudinal study on lawyers' lives, describes what's changed and — despite best intentions — what hasn't in the past 20 years / By Elaine McArdle

People often assume that the advantages of attending an elite law school evaporate over the course of a lawyer's career, because the quality of the work lawyers produce becomes more important than academic credentials. But on the contrary, the benefits of going to a top-ranked law school actually increase over the course of a lawyer's career in terms of income, opportunities for prestigious jobs, and the ability to repay law school debt, according to the findings of a 20-year longitudinal study of the careers of lawyers.

This and many other myth-busting conclusions are the result of "After the JD," a quantitative and qualitative analysis that includes more than 5,000 law graduates who entered the bar in 2000. It is the most comprehensive dataset ever collected about lawyers' professional lives.

Launched in 2000 by a research team that included David Wilkins '80, Lester Kissel Professor and faculty director of the Harvard Law School Center on the Legal Profession, the project tracked the careers of graduates from nearly every law school in the country, including unaccredited schools. These graduates were surveyed three times over the course of the project — in 2002-2003, 2007, and 2012-2013, with career tracking through LinkedIn and other sources through 2019 — with 2,035 respondents answering all three

Continued on next page →

A new book on the lives of lawyers draws on decades of data to present myth-busting conclusions.

ILLUSTRATION BY ADAM MCCAULEY

surveys. Many were further interviewed by researchers.

The result is a trove of data on everything from whether lawyers are satisfied in their careers — they generally are, despite widespread perceptions that they are unhappy — to how factors including gender, race, socioeconomic class, and law school status affect their professional development. The study was conducted in partnership with the National Association for Law Placement and the American Bar Foundation.

The project's conclusions are now available in a book, "The Making of Lawyers' Careers: Inequality and Opportunity in the American Legal Profession" (University of Chicago Press, 2023), written by Wilkins and Robert L. Nelson, Ronit Dinovitzer, Bryant G. Garth, Joyce S. Sterling, Meghan Dawe, and Ethan Michelson, with contributions from many others. "The book's combination of quantitative, qualitative, and public records data provides a unique lens through which to consider the American legal profession," the authors write.

Wilkins says the authors hope the abundance of "rich data" the book offers will be useful to three groups in particular: law students as they consider what they want from their careers; law schools as they design curricula to best serve students; and the public, because, he says, "What the profession looks like, who has access to it, and what the structures of opportunity are, are matters of interest and importance and concern far beyond the legal profession to our society as a whole."

"I'm glad I did it, but if I'd had any idea how long it would take me, I'm not sure I would have entered into this project," Wilkins adds, with a chuckle.

Here, Wilkins touches on a few key takeaways:

Professor David Wilkins, faculty director of the Harvard Law School Center on the Legal Profession

What are some of the surprising findings about the profession today versus 20 years ago, when the study started?

While there have been some tremendous changes, there is also remarkable continuity when we look at many of the structures beneath the surface of how the bar and the legal profession are organized, how careers operate, and who tends to end up in the most prestigious, high-paying positions. The people who are doing the best are white men with children. They were doing the best when we started the study, they were doing the best for the 50 years or 100 years before we started the study, and they still are doing the

PHOTOGRAPH BY LORIN GRANGER

best, notwithstanding all the changes [in the profession]. That doesn't mean every white man with children succeeds — or that every woman or person of color doesn't — but on average [that's what the study found].

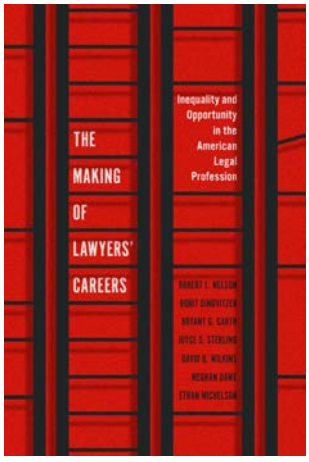
The book says that "racialization is a design feature baked into law firms." How did that conclusion emerge from the data?

There's a chapter in the book about how the ways in which law firms hire, develop, and promote people, and the culture of law firms, still today reinforce a view of who the right kind of lawyer is — what the fit of that lawyer is, what that lawyer looks like, and where that lawyer comes from. And that reinforces the inequalities of that process, even in the absence of intentional discrimination. It's not that there isn't racism in law; it would be foolish to think that there isn't. … But if you ask me, Do I think that's the main reason why we haven't made nearly as much progress as we would have liked? No, I don't think that, and in fact, quite the opposite.

The book includes a trove of data on how gender, race, and class affect lawyers' professional development.

Firms have spent tens of millions of dollars, probably collectively even more, promoting diversity. And yet, if you look at the partnership ranks in law firms … Black lawyers still constitute maybe 3% of the partners. And if you look at the equity partners that have power in these organizations, it would be an even smaller percentage. There are a lot more Black partners than there ever were before, but I don't think anybody is satisfied or should be satisfied.

And we need to understand the underlying structures. That despite our best intentions — and I really do think that people have good intentions — we are still unable to make progress. And that's what that chapter is about. That's what most of my work is about.



The book looks at the professional lives of small–firm and solo lawyers, a group often overlooked, especially at elite law schools, though they make up the majority of the bar. What did you find?

We tell the stories of solo and small-firm practitioners who are extremely happy and successful at what they do. They feel like they have control and autonomy over their practices; they feel like they're really helping their clients. And they're making a good living — not on average what they might have made if they had one day become a partner in a major law firm, but they're much happier, or at least, they think of themselves as much happier. So, there are success stories at every level.

Given the legal profession's resistance to change, can you make predictions for the next 20 years?

There are huge projections of change for the legal profession in the next six months, let alone in the next five years, 10 or 20 years. … But what the book should make us cautious about is expecting that these changes will fundamentally alter the social structure of the bar or the big structural aspects of how law and careers in the legal profession work in this country. Because many of the things that come along as disruptions can be absorbed into existing hierarchies without changing them.

And there are lots of good reasons why lawyers put a brake on change. As much as things are changing with globalization, technology, the rise of sophisticated consumers exercising power over producers, if the last few years have taught us anything, it's that there are a lot of things that should not change, like democracy, rule of law, individual freedom, and liberty. And lawyers are incredibly important to preserving these critical values — although, sadly, lawyers have sometimes played a role in undermining them too, something that the Center on the Legal Profession and its research partners are studying here in the United States and around the world. One factor that underlies both the positive and the negative roles that lawyers play in society is that "thinking like a lawyer" often means raising challenges or questions about change. At a societal level, this tendency toward conservatism in the classic sense can be helpful in understanding the value of traditional legal institutions and beliefs. But when lawyers turn that lens on their own professional institutions and values, it can lead to a kind of inertia and resistance to doing anything new, because it's not the way we've always done it. I'm hoping that a young and energetic team of socio-legal researchers will decide to study how the interplay of these forces shape lawyers' careers over the next 20 years!

For more on "The Making of Lawyers' Careers," see the latest issue of The Practice, the magazine of the Center on the Legal Profession, at bit.ly/buildinglawyerscareers.

Shine On

A catalog of takedown requests helps to illuminate efforts to shape the internet through means fair and foul / By Julia Hanna

In 2021, journalist Aroon Deep broke a story on Medianama, a tech and policy news site, detailing how the Indian government had requested the removal of hundreds of tweets critical of Prime Minister Narendra Modi's handling of the COVID-19 crisis. The story made global news, driving a new wave of requests for access to Lumen — the internet takedown request database housed at Harvard Law School, which Deep had used to uncover the Modi administration's efforts to silence its critics. "The [takedown] notices made available on Lumen have stand-alone value," Deep said at the time. "More often than not, they are the genesis of our stories about censorship."

In the 22 years since Lumen's founding, its impact has grown at an accelerated pace alongside the scope of the internet itself. Like so many start-ups, it began in a very different place and time. Back in 1998, the internet was beginning to flex, find form, and take off. Peer-to-peer file-sharing platforms sprouted like mushrooms, making it possible to enjoy music and other creative content without paying for it. Copyright holders were freaking out.

Lumen's goal is to bring transparency to what information is available online, or not, and why.

In response, President Bill Clinton signed the Digital Millennium Copyright Act, or DMCA, in October 1998. The act offers legal recourse when copyright is violated online and creates a safe harbor for the platforms and internet service providers hosting the material in question. The holder simply files a takedown notice with the provider, requiring the material in question to be removed from the internet. Problem solved. Big exhale.

Or not. Soon, a new problem emerged: There is little incentive for hosts — Google, for example, or YouTube — to question the validity of the takedown notice. From a legal perspective, it is in their best interest to simply remove the material on behalf of the party making the claim. Yes, they enjoy a safe harbor — but only if they abide by existing laws. And investigating the legitimacy of every claim would take time and money from other, potentially more lucrative, projects. For companies, it was simply safer and less costly to hit the delete button. (Over the course of its history, Google has received more than 9 billion takedown notices related to copyright alone.)

In time, that reality opened the Clinton-era copyright law to abuse. If someone didn't like what they saw, it was easy enough to claim copyright infringement, file a takedown notice, and have the material removed.

The year the DMCA passed, Wendy Seltzer '99 was a student in Jonathan Zittrain's new course, Internet & Society. "There are ways in which law shapes behavior, even if it never sees the inside of a courtroom," Zittrain '95, George Bemis Professor of International Law, says of the law. "Those takedown requests have an impact, and if there's no court case, there's no means of tracking that effect." During a classic water cooler conversation in Pound Hall between Zittrain and Seltzer, a seed was planted: What if there were a neutral, centralized, searchable database of takedown notices to address the information gap?

The seed of that idea wouldn't germinate until 2002, when Seltzer returned to Harvard Law as a fellow at what is now known as the Berkman Klein Center for Internet & Society, which Zittrain helped found. The resulting project, now called Lumen, has since collected approximately 35 million takedown notices and counting. This year, the database is on track to receive some 8 million notices, according to Adam Holland, Lumen's project manager since 2012.

"Lumen's goal is to bring transparency and knowledge to what information is available online, or not, and why," Holland says. "We don't have a policy stance; we simply believe that good data makes good policy, and therefore what we *are* strongly in favor of is the idea that takedown notices should be studied."

UNCOVERING DIRTY DEEDS DONE DIRT CHEAP

Christopher Bavitz, WilmerHale Clinical Professor of Law, supports Lumen's work as principal investigator. He also uses the database for his own research in IP and media law. Before coming to Harvard Law in 2008, Bavitz served as senior director of legal affairs

ILLUSTRATION BY JAMES YANG

Lumen, an internet takedown request database, contains over 35 million notices. Its users include researchers and journalists from around the world.

for EMI Music North America.

"We couldn't have a user-generated content internet without the DMCA," he comments. "Some copyright holders might say that would be a great thing, but I think on balance we want to allow people to express themselves by uploading material to these platforms — and we also want to respect the rights of copyright owners who can send these notices." Lumen, he says, brings clarity and neutrality to that process.

Wendy Seltzer founded Lumen as a fellow at Berkman Klein.

Researchers come to the database with a range of questions. For example, a researcher might want to analyze how takedown notices originating in Brazil impact the revenue of that country's music industry. A broader agenda — with eye-opening results — might examine how many notices are fraudulent.

In 2016, research by Professor Eugene Volokh of the UCLA School of Law leveraged Lumen's database to reveal that over a four-year period, nearly 200 out of 700 court orders submitted to Google were highly suspect, with 80 confirmed as forgeries. The forgeries ranged from amateur Photoshop jobs to alter the names on real court documents to a company whose entire business model was built on creating fake court orders. The company was later prosecuted by the Texas attorney general as a result of Volokh's research.

Research has also revealed tactics exploiting the DMCA itself. In 2020, a Wall Street Journal article uncovered hundreds of instances of fraudulent filers plagiarizing material from the post they wanted removed and publishing it on a different site, backdated — thus opening the door to a seemingly valid allegation of copyright infringement and a swift removal of the material.

Jonathan Zittrain helped Seltzer get the project off the ground.

Christopher Bavitz uses Lumen for his own work in IP and media law.

In one example, a Colorado woman's long-abandoned LiveJournal site was commandeered to publish backdated Russian-language posts about a businessman with alleged ties to organized crime. Those fake posts were then used as the basis for a takedown notice for a valid investigative piece about the businessman published by a Ukrainian affiliate of the Global Investigative Journalism Network. (Google restored 52,000 deleted links after the Journal shared its findings.)

Without Lumen, it's highly unlikely that any such malfeasance would have been discovered. Yet, smoking out illegal activity was not part of the project's original intention. At its launch in 2002, the database was called Chilling Effects, reflecting the potential negative impact on freedom of expression caused by overzealous copyright enforcement. Seltzer, who had just taught herself to code, built a site with an FAQ section and annotated examples of cease-and-desist letters to help people better understand their rights relative to the law.

Submission of takedown notices to Lumen is voluntary in the United States. Yet, as word of the database spread, the number of takedown notices the site received grew, and other institutions and companies got involved. Seltzer cites Professors Laura Quilter and Jennifer Urban, both graduates of UC Berkeley Law, for their role in connecting Google with Chilling Effects.

"After we started getting notices from Google, and then a bit later from Twitter, the project started to feel almost infrastructural — that this was something that helps the internet work better," Seltzer says. Thanks to Lumen, a user's Google search might now include a message noting that one or more results have been removed due to a complaint received under the DMCA, with a link back to the complaint in the Lumen database.

By 2015, the project's evolution and growing prominence required a new name: "We wanted to move from the unstated implication that many of these requests had the effect of chilling legitimate speech to a more neutral suggestion of illumination," says Seltzer. (The new name also made more sense to non-native English speakers, an important consideration, given the database's global reach.) Today, Lumen's roster of participating companies has expanded to include a host of household names, including Reddit, Medium, Wikipedia, GitHub, Vimeo, and WordPress.

"It's in everyone's interest to be part of something larger," says Holland. "YouTube no doubt has internal analytics on takedown notices, but with group participation, you get the benefit of network effects and a much richer, more complex picture."

FROM TOP: COURTESY OF WENDY SELTZER; JON CHASE; MARTHA STEWART

Trading Places

Mark Wu uses his varied academic and professional experiences and interests to help shine a light on the fraught world of international trade while mentoring the next generation / By Colleen Walsh

It's not always easy to catch up with Mark Wu. He's often on the road, attending seminars around the globe to discuss international trade policy. When not traveling, he is busy teaching and researching the subject.

Trade policy may not sound like a flashy topic, but for Wu, it's endlessly fascinating, greatly affecting how the world operates (a fact many experienced with the now-infamous "supply chain disruptions" of the COVID-19 pandemic) and how, he insists, it might operate better. Wu's approach to his favorite subject is always the same. Whether it's in an academic paper or a classroom debate, he brings his years of work and training and his interest in history, sociology, economics, and the law to bear on the complexities and impacts of international trade.

"I see my intellectual work as fostering an open dialogue that helps people understand that international trade is not nearly as simple as some of the economic models might lead us to believe," said Wu, Henry L. Stimson Professor of Law, faculty director for Harvard's Fairbank Center for Chinese Studies, and faculty co-director of the Berkman Klein Center for Internet & Society. Nor, he says, is an exclusive focus on efficiency necessarily the best lens through which to view the subject.

Which way to proceed is not always clear, even to Wu. But he knows that getting people talking and asking questions are critical

"I have always believed I live in an exciting but messy, turbulent time," says Mark Wu.

PHOTOGRAPH BY TONY LUONG

first steps. At Harvard Law School he teaches International Trade Law, International Business Law, and China and the International Legal Order, among other classes, pressing his students to consider alternative points of view.

Similarly, Wu's research is filled with insightful queries that often predict the future. A 2014 article he co-wrote, titled "The Next Generation of Trade and Environment Conflicts: The Rise of Green Industrial Policy," accurately predicted the growth of international trade disputes as national governments increasingly turned to industrial policy to spur green industry, often in violation of international trade rules. Less than a decade later, the Biden administration spearheaded passage of the Inflation Reduction Act, launching a host of new government economic and trade policies to promote, among other things, domestic green energy production and use.

Wu hopes his work will help people see that international trade is not as simple as some economic models suggest.

In a 2016 paper, Wu warned that China's economic structure was fundamentally different from that of other economies and could pose a serious threat to global trade governance if trade rules didn't adapt accordingly. Two years later, a trade war between the United States and China erupted when then-President Donald Trump levied tariffs on Chinese imports. That war has only escalated as the Biden administration has continued to add sanctions.

For Wu personally, the end goal has always been to make a difference. It's the common thread that weaves through his time as an undergraduate and graduate student, as well as his work for the World Trade Organization, the Office of the United States Trade Representative, the Biden-Harris transition team, and Harvard Law School.

"I've always believed I live in an exciting but messy, turbulent time regarding shifts in global economic trends, technological innovation, and conflicts across political systems," said Wu, fresh from a trip abroad for a Taylor Swift-related jaunt to England (he's been a big Swiftie for over 15 years) followed by a visit to Switzerland to attend back-to-back conferences. "I think the common trend in my work is trying to find ways to make a difference in helping others both understand what is happening and think about how to stand up for what you think is the right way for societies to manage these turbulent times."

In a way, Wu's international focus comes naturally. As a child of immigrants, he was drawn to learning about China from an early age and spent his college years at Harvard helping plan and take part in conferences in different countries as part of the school's Project for Asian and International Relations. While an undergraduate, he also took a gap year away from Cambridge to study in Japan.

After graduation, Wu was on the move again, first to Oxford as a Rhodes Scholar to immerse himself more fully in development economics. The work included time in Namibia, the focus of his thesis, which explored gender, health, and social development in the country.

Next up was a job with the World Bank in China. It was 1998 and a heady time for international money matters. The Asian financial crises, triggered in 1997 by financial imbalances and overvalued currencies, had plunged several countries in the region into recession. Simultaneously, China was negotiating to join the WTO. There was plenty to keep Wu busy, but he wasn't content simply crunching numbers at a desk.

"I was very conscious of the fact that many economists churn through datasets and spend most of their time in the capital working with the finance ministry," Wu said, "so I asked if I could also have an operational role on actual lending projects that were taking place elsewhere in China just to help me understand the complexity of the country."

The fieldwork took him to some of the nation's poorest and most underserved regions, where he observed officials helping locals bring running water into area homes for the first time or expanding a single-pit outhouse to a two-pit outhouse. He also signed on to projects tackling air pollution and sewage in major cities.

"It gave me a really good base for understanding just how diverse and complicated China is," said Wu, "and the political system through which decisions affecting everyday lives were made."

But it was a stint with the consulting firm McKinsey in San Francisco in the early 2000s that helped Wu really narrow his focus. He was studying the global semiconductor industry and its development in China when he had an epiphany.

"I realized that while I was fluent and interested in the business end, what was actually going to impact decisions around how this industry was going to evolve was on the trade policy and regulatory end, and that I wanted to make a career helping shape the development of those policies and rules, and how we navigate the different types of challenges that arise, given that there are really different competing interests at stake."

Wu joined the Office of the U.S. Trade Representative, where he served as director for intellectual

property and was the lead negotiator for the intellectual property chapters of several U.S. free trade agreements. But over time, he realized he needed a law degree to fully understand his chosen field. So, he left the job to attend Yale Law School. Soon after, he made the jump to academia.

Mark Wu joined the Harvard Law faculty in 2010.

"Teaching had always been among the options that I had considered," said Wu. "Some of my closest friends are legal academics who had always encouraged me to pursue this type of path."

It's a path he is clearly well suited for. Wu is a past recipient of the Sacks-Freund Award for Teaching Excellence and the law school's Student Government Teaching & Advising Award. In the classroom, he loves nothing more than to encourage his students to challenge their own perspectives. Wu said he has always been interested in understanding "why people see the world so differently and have such different desires for what they want this world to be."

At Harvard, he is passing on that curiosity to his students. "I want them not to just be able to make arguments from two different sides," he said, "but to understand what is really behind that argument that motivates people to have that point of view."

He also embraces his role as a mentor to the next generation of leaders. Wu likes to think he is continuing in the tradition of one of his most important Harvard mentors, Archie Epps, the college's former longtime dean of students. As a kid from a different socioeconomic background from that of many of his classmates, Wu says he often found himself struggling with a sense of belonging in his early Harvard years. But where Wu felt doubt, Epps, he recalls, saw his potential.

"I think he saw more in me than I saw in myself," said Wu. "And he pushed you, not to just push yourself but to think about that in terms of service to others."

Today, Wu considers being a mentor central to his Harvard role, helping students who may feel out of place or uncertain figure out how to navigate the system and take their next steps.

"If there is a small way I can help pay it forward for somebody else during my years here," he said, "that's an incredibly worthwhile thing."

PHOTOGRAPH BY TONY LUONG

In the shadow of a weakened Voting Rights Act, the Harvard Election Law Clinic helps harness state power to protect the franchise

STATE OF DEMOCRACY

By Rachel Reed

Sergio Serratto and Silvana Tapia are two of the four Latino residents of Mount Pleasant, New York, who are suing the town under the state's voting rights act, claiming that they are disenfranchised by the at-large voting system. They are represented by the Harvard Election Law Clinic.

PHOTOGRAPHS BY GREGG VIGLIOTTI/THE NEW YORK TIMES/REDUX

A few dozen miles north of New York City on the Hudson River lies the picturesque town of Mount Pleasant. The town is made up of six small villages, and its population has grown to more than 44,000 in recent years. It has also become more diverse, with 19% of its residents now identifying as Latino. But despite its changing demographics, it appears that no person of color has ever been elected to the town board, voting rights advocates say.

In addition, because of the town's at-large voting system, Latinos have routinely been denied the ability to elect a candidate of their choice, which violates their rights — and prevents them from having a voice in their own community, a lawsuit filed by four Hispanic residents alleges.

Before 2022, the group might have been out of luck: Under federal law, it is difficult to prevail on a claim of "vote dilution" such as this one, and recent Supreme Court decisions have made it even more challenging. But today, armed with New York's John R. Lewis Voting Rights Advancement Act, and representation from the Harvard Election Law Clinic, Latino residents of Mount Pleasant may yet have a chance to flex their electoral power — and help determine the future of their town.

The lawsuit is one of the Election Law Clinic's major efforts to support state voting rights acts, as they seek to reinstate — and even expand on — protections once granted under the federal Voting Rights Act, which have been pared back in recent years by a string of court rulings.

"Justice Marshall acknowledged over 40 years ago that an election system that prevents politically powerless groups from electing candidates of their choice provides nothing more than the right to cast meaningless ballots. The clinic seeks to promote the right to a meaningful vote for everyone," says Ruth Greenwood, the clinic's director.

As part of the clinic's work to foster a robust and inclusive democracy, Greenwood's students work with local and national groups to research, write, and promote state voting rights acts. And, in places where the bills become law, the clinic represents clients hoping to invoke their right to vote — and have it count.

VOTING RIGHTS THEN AND NOW

Before President Lyndon B. Johnson signed one of the most significant pieces of civil rights legislation of the 20th century, he paused to acknowledge what the Voting Rights Act of 1965 would mean to millions of people, particularly Black Americans, who had long fought — and died — to exercise their right to the ballot box. The law, Johnson promised, would be "monumental."

"Today is a triumph for freedom as huge as any victory that has ever been won on any battlefield," he added.

In 2024, the battlefield analogy might be more relevant than ever, as key parts of the Voting Rights Act have been rendered ineffective by recent Supreme Court decisions, while many new challenges percolate in the nation's district and appeals courts.

A huge blow to the cause of broad federal voting rights protections came in the 2013 case *Shelby County v. Holder*, in which local government officials in Alabama sued the U.S. attorney general to prevent federal intervention in proposed changes to local voting laws. In a decision written by Chief Justice John G. Roberts '79 and joined by Justices Antonin Scalia '60, Anthony Kennedy '61, Clarence Thomas, and Samuel Alito, the Court struck down Section 5 of the historic law — the so-called "preclearance" rule — which had required certain states and districts with a track record of racially discriminatory voting practices to obtain federal permission before making changes to their election laws or procedures.

Then, three years ago, the Court decided a case

Ruth Greenwood, director of the Harvard Election Law Clinic, says state voting rights acts can reinstate and expand on voter protections that have been weakened by court rulings.

called *Brnovich v. Democratic National Committee*, a ruling that voting rights advocates say ultimately made it more difficult to prove that a group's right to vote has been denied or abridged under federal law. The decision was written by Alito and joined by Roberts and Thomas, as well as by the Court's three newest members, Neil Gorsuch '91, Brett Kavanaugh, and Amy Coney Barrett.

BOLSTERING STATE-LEVEL VOTING RIGHTS

Alongside — and partly in response to — the weakening of federal rights granted by the Voting Rights Act, a parallel movement has taken shape to bolster the franchise at the state level. Beginning with California in 2001, and more recently in Washington, Oregon, Virginia, New York, Connecticut, and Minnesota, legislatures have passed state voting rights acts into law. Many other states — including Michigan, Maryland, and New Jersey — are considering doing so as well.

Greenwood says the wave of interest in state voting rights acts traces in part to their ability to reinstate protections from the original federal legislation, and even add to them. The possibilities for creative and customized voter protections — and the ability for local groups to drive the legislation — are central reasons for the Harvard Law clinic's involvement.

"One of the things we seek to do is build power for marginalized communities, and the federal Voting Rights Act has historically been the way we do that," Greenwood says. "But as that law has been increasingly diminished by the Supreme Court, we think this is an opportunity to continue that important work."

Fostering a democracy that is truly representative of its people is the goal of Harvard's Election Law Clinic.

Greenwood's students work on state voting rights acts from multiple angles, always in collaboration with local advocates, she says. When groups are interested in working on a bill in their state, the clinic and its students partner to research and draft language for the bill, fortify the legislation against legal challenges, build coalitions, and support public education efforts, says Greenwood. Then, once the bill is signed, she and her students represent clients hoping to vindicate their rights under the law.

The clinic can already claim several victories. In addition to being part of a coalition that helped pass a voting rights act in Connecticut in 2023, it is also a member of the team that introduced a similar bill in New Jersey this year. It submitted an amicus brief to the Washington Supreme Court defending the state's voting rights act — and was even cited by the court in its decision to uphold the law. Greenwood's students have been invited to offer input, testimony, and support for bills pending before other state legislatures as well. And in February, the clinic joined Abrams Fensterman, a New York firm, to sue the town of Mount Pleasant — one of the first lawsuits filed under that state's voting rights law.

The goal of all this, Greenwood says, is to foster a democracy that is truly representative of its people. "And I'm talking about democracy at all levels, from the library board up to the members of Congress," she says.

CREATIVE AND CUSTOMIZABLE

In New Jersey, nearly a third of residents speak a language other than English. Regina Fairfax '24, who worked with the clinic as a student, points to facts like this to show how voting rights acts might be tailored to protect the unique needs of voters in each state.

Federal law mandates that if 5% of voting-age citizens in a jurisdiction speak one of a limited number of languages other than English, election materials must also be offered in that language. But in a very diverse state like New Jersey, there are many groups that do not quite meet the federal threshold yet would still benefit from translated materials, says Fairfax. "That is a huge barrier to accessing the vote, and one of the major reasons for the disparities we see in voting," she says.

PHOTOGRAPH BY JESSICA SCRANTON

Fairfax, who worked on a white paper to help residents and legislators understand the proposed bill in New Jersey, says that the law, if passed, could help remove those hurdles. "New Jersey's voting rights act focuses on empowering individual citizens to help vindicate and defend their right to vote by creating rights of action that allow private citizens to sue for violations, by making the process a lot easier, and by making it a lot simpler for everyday individuals to understand," she says.

Of course, no two states are the same. And so, naturally, "No two state voting rights acts are the same," says Kunal Dixit '24, who co-wrote the clinic's successful brief for the case before the Washington Supreme Court. But Dixit adds that voting rights laws generally focus on three distinct areas: denial of the right to vote, vote dilution — where voters do not have an equal opportunity to elect a candidate of their choice — and additional remedies for those whose rights have been violated.

Students in the clinic help draft the bills, but Marisa Wright '24 says that partners on the ground in each state determine priorities. "They're the ones that know what the issues are in their state, and they understand the possible barriers for voters," she says.

EMPOWERING VOTERS WHILE AVOIDING LITIGATION

In many cases, states are looking to shore up voting rights while limiting the need for litigation, says Lucas Rodriguez '24, who worked with national partners to formulate a model voting rights act and provided testimony on the laws to legislators in two states.

"Litigation is expensive, and it takes a long time," he says. "If you can nip the problem in the bud, it's better for everyone."

One way state voting rights acts can help with that, Rodriguez says, is to institute preclearance.

Federal Voting Rights Act preclearance requirements — the ones struck down in *Shelby County* — addressed historic electoral discrimination in minority communities and did not always reflect the diversity of modern-day America. And they did not address other kinds of inequities that contribute to or are exacerbated by disparities in electoral participation. Dixit says, "States are looking at discrimination more broadly than just the elections context, to criminal justice statistics and a municipality's past violations of other civil rights laws, including discrimination in employment and public housing."

Here, too, the clinic has been a source of support, says Rodriguez. "We help think through which kinds of governments should be covered by a preclearance regime, and what the standards for approval should be for changes."

State voting rights acts can also use other tools to incentivize the resolution of problems outside of courts, says Kelly Murphy '24. In some states, such as California and New York, potential plaintiffs must send a notice letter to the city, town, or political subdivision they claim is violating the law before filing a lawsuit, giving the entity a fair chance to address the issue.

In Murphy's view, this "safe harbor" provision "puts power back in the political subdivision's hands, which is more democratic than having a judge immediately decide how to resolve the issue."

But when a city isn't able — or willing — to change its electoral processes or procedures, state voting rights acts can also make it easier for plaintiffs to prove that their vote has been denied or diluted.

"We have seen the ways in which it can be very difficult to litigate a lawsuit under the federal Voting Rights Act and the ways that it does not address all kinds of voting harm," says Rodriguez, adding that state ballot access law can include process-oriented specifications for the courts, such as evidentiary guidelines on how to assess claims of racially

Clinic students work on state voting right acts from multiple angles, always in collaboration with local advocates.

Harvard Election Law Clinic alumni Lucas Rodriguez, Marisa Wright, Kelly Murphy, Kunal Dixit, and Regina Fairfax

polarized voting. Some bills even require the state to maintain databases to track demographics and voting patterns, which can help advocates evaluate the law's efficacy, he says.

THE LAWSUIT

Murphy is one of several students who has worked on *Serratto v. Town of Mount Pleasant*, the clinic's vote dilution lawsuit. She says that it has been exciting to strategize with the plaintiffs and co-counsel, particularly because a decision in the case could shape the outcome of future litigation under New York's voting rights act.

"It's been interesting to examine the possibilities under this law," she says. "It's uncharted waters."

Although the suit is only in its infancy, Greenwood and her students have cause to be optimistic.

Litigating in state court can be better for plaintiffs for a host of reasons, including lower costs and greater accessibility, Murphy says. But New York's voting rights act also contains a "democracy canon," which she says requires courts to resolve disputes over the statute's meaning in favor of the interpretation that is more enfranchising.

"It's a built-in mechanism to encourage judges to be more protective" of citizens' voting rights, says Murphy.

And should the plaintiffs prevail in the case, a wider menu of options would be available to rectify the problem. Whereas the federal Voting Rights Act contains a limited number of remedies — such as prohibiting an offending practice or redrawing electoral maps — state laws can get creative there, too.

In the Mount Pleasant case, the court could require single-member districts, for example, or it could implement proportional ranked-choice voting. For other kinds of lawsuits, "there are things like adding additional voting hours or days, additional polling locations, requiring more days for voter registration, and much more," says Murphy.

She is confident about the future of the case, but she says that no matter what happens, "our hope is that the Hispanic community can finally have their voice be heard."

BETTER VOTING LAWS AND BETTER LAWYERS

Greenwood's students cite different reasons for their interest in election law, but all of them say that their experiences in the clinic magnified the importance of the right to vote — and made them better lawyers, too.

"I gained hard legal skills, of course," says Wright, "but I also gained softer skills, such as working with co-counsel, communicating with clients, and maintaining confidentiality, along with learning how the lawmaking and litigation processes work."

It also affirmed her decision to pursue public interest work. "It showed me how I can use my work as a lawyer to promote change that aligns with my values," says Wright, who, along with Dixit, continues to work on state voting rights acts as a fellow at the Campaign Legal Center, a voter advocacy nonprofit.

To Fairfax, the rapid pace of the work — there is always an election coming up — coupled with its collaborative nature helped her hone her research, writing, and advocacy skills. "It was kind of amazing to see just how much I learned in such a short period of time," she says.

But the biggest reward, the students agree, has been to see their efforts turn into real legislation with a real impact on voters.

"From a pure policy perspective, I think these laws help lower disparities in voter turnout, and they help create more diverse and representative local governments," says Rodriguez. "And ultimately, in doing so, they make local governments more responsive to people's needs."

In an ideal world, says Wright, "everyone would have strong voting rights protections." Until then, the federal Voting Rights Act may be embattled, but the fight for access to the ballot box continues — state by state, person by person — thanks in part to the Harvard Election Law Clinic.

PHOTOGRAPH BY JESSICA SCRANTON

(Anti) Trust Issues

The Biden administration is cracking down on Big Tech. But will Amazon, Apple, Google, and Meta go the way of Standard Oil?

By Elaine McArdle
Illustrations by Andy Martin

When

Timothy Wu '98 first learned this spring that the Harvard Law Bulletin was writing about the current wave of antitrust lawsuits against Big Tech, he was delighted — and a bit surprised.

The aggressive new crackdown on four internet giants, which Wu helped engineer, has received insufficient coverage in the media, he believes, considering its potential impact on consumer prices, wealth inequality, the development of artificial intelligence, and even the health of American democracy.

"I deeply appreciate you paying attention to these questions. I think they can be kind of swept aside," says Wu, a former federal official who has helped spur this renaissance of antitrust enforcement actions. While other social and political issues are taking center stage at the moment, "I think these fundamental economic questions matter more in the long run," says Wu, a professor at Columbia Law School.

After a long dry spell in antitrust prosecution — the last major case was against Microsoft in the late 1990s — the federal government is suing Apple, Amazon, Meta (Facebook's parent company), and Google for allegedly constructing illegal monopolies that harm consumers and choke innovation. The companies deny the allegations and have been defending themselves vigorously. But in August, in the first case to go to trial, Judge Amit P. Mehta of U.S. District Court for the District of Columbia ruled that Google maintained an illegal monopoly in online search. It's a landmark decision that could influence the other lawsuits, including a second case against Google alleging it has an illegal monopoly in online advertising, which went to trial in September.

According to Wu, this wave of litigation marks a return to the origins of antitrust law, and a possible end to the dominance over the past 40 years of the Chicago school, an economic theory championed by its well-known proponents Milton Friedman and Robert Bork. In the antitrust realm, the Chicago school argues that if prices are low, and markets are efficient and offer many products, consumers are protected even when monopolies prevail. Due in part to heavy lobbying by well-funded interest groups, this "consumer welfare" approach grew in popularity among judges and regulators from the late 1970s on, explains John Coates, the John F. Cogan, Jr. Professor of Law and Economics at Harvard Law School.

UNPARALLELED NETWORK EFFECTS

But the network features of online tech companies were unimaginable when the Chicago school gained prominence, let alone when antitrust law first developed with the passage of the Sherman Antitrust Act of 1890 and the Clayton Act of 1914, and the creation of the Federal Trade Commission in 1914, all designed to outlaw unfair competition and curb the power of railroad, steel, and other monopolies.

Timothy Wu served as special assistant to the president for technology and competition policy during the Biden administration.

VALERIE CHANG/REDUX

A social media platform like Facebook is inherently more valuable the more people who use it, so there's enormous incentive to corner the market. "Built into the very nature of the product is a form of economies of scale that makes it very difficult for others to compete," Coates explains. The Chicago school's "overall framework had nothing to say about networks. It views markets independently … and didn't think about the way in which the network features of a service or device would provide barriers to entry that are different from traditional ones."

"At a very high level, the Biden administration is the first administration to take that seriously," Coates says. "That's why these cases are happening now."

It's almost impossible to imagine society today without the internet. For buying and selling goods and services, and for accessing the vast accumulated wealth of human knowledge — from the works of Plato to the best way to decorate a child's birthday cake — parents, hospitals, schools, governments, private businesses, and individuals around the world rely on internet access that's affordable, competitive, and widely available.

While the Big Tech companies play a central role in providing the infrastructure for this digital marketplace, over the past 15 to 20 years the online economy has become controlled by a handful that function as "gatekeepers" that dictate how goods, services, and information are distributed, according to a 2020 report, "Investigation of Competition in Digital Markets," by the House Committee on the Judiciary, through its Subcommittee on Antitrust, Commercial and Administrative Law.

"Over the past decade, the digital economy has become highly concentrated and prone to monopolization," the subcommittee

> The lawsuits are driven by concerns about wealth inequality, limited consumer choice, privacy risks, and the stifling of competition in the digital marketplace.


CHOICE

found. Big companies have acquired hundreds of smaller ones, including potential competitors — in some cases to simply shut them down. As a result, creativity and entrepreneurship are squelched, consumer product choice is limited, privacy is endangered, and the media is less robust and less diverse, the report states.

OIL BARONS OF A NEW GILDED AGE?

Moreover, the most successful online brands can accumulate massive amounts of data about consumer preferences, which they can use to continuously improve their own products, promote themselves over other companies, and squeeze out newcomers, critics maintain. According to the pending FTC lawsuit, Amazon, the once novel and niche online bookseller, has grown into a huge illegal monopoly by boosting its own products over competitors' in its online marketplace, promoting its products in ways that are sometimes hard to recognize as ads, and effectively blocking retailers who use its site from selling their products cheaper elsewhere.

"To put it simply, companies that were once scrappy, underdog start-ups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons," according to the House report.

Fifteen years ago, attempts to rein in the market power of Big Tech faltered, but there's a different attitude now, says Elettra Bietti LL.M. '12 S.J.D. '22, a faculty associate at Harvard's Berkman Klein Center for Internet & Society and an assistant professor at Northeastern University School of Law. "It's very clear these actors have a lot of power over our lives," she says, which has spurred "an appetite for new solutions."

In 2017, while still a student at Yale Law School, Lina Khan — now chair of the Federal Trade Commission — wrote a groundbreaking article, "Amazon's Antitrust Paradox," that shook up antitrust thinking. Khan argued that Big Tech has such enormous power over every aspect of our lives that the Chicago school analysis is outdated and harmful.

Khan, Wu, and other so-called New Brandeisians follow the economic philosophy of the early 20th-century U.S. Supreme Court Justice Louis Brandeis LL.B. 1877, who saw monopolies and concentrated private power as dangerous to economic and political stability. Khan's article "argued that by taking efficiency or consumer welfare as the primary standard for whether or not to pursue an antitrust case, we were letting a company like Amazon basically operate unchecked in ways that actually hampered market dynamics," explains Bietti, "because, structurally, we were allowing one player to take over the entire economy."

The article went, well, viral. "And after that," Bietti adds, "a lot of things happened."

WEALTH INEQUALITY AND THE RISE OF THE NEW BRANDEISIANS

Although the lawsuits are new, the issues driving them have been percolating for years. During the later years of the administration of President Barack Obama '91, economics officials and expert observers began to express a growing concern about the power of Big Tech and how it contributed to wealth inequality, says Wu, who served as a senior adviser at the Federal Trade Commission and as a National Economic Council official at that time.

John Coates, the John F. Cogan, Jr. Professor of Law and Economics at Harvard Law School

"Antitrust law, in a way, was born almost as a companion to the Constitution. In the sense that the Constitution is a check on public power, the antitrust laws are a backstop or a limit on corporate and private power," says Wu, adding that they were very aggressively enforced "over the early 20th century, resulting in the breakup of most of the major monopolies in the U.S. economy at that time," including Standard Oil and the American Tobacco Co.

More than a century after the Supreme Court ordered Standard Oil to be split into 34 different entities, several tech giants have cornered various aspects of the online market. For instance, Meta dominates social media, according to the FTC lawsuit against it. Google controls 90% of the internet search business in the U.S. In a survey of 2,000 consumers last year, 75% of respondents indicated they check prices and product reviews on Amazon before making a purchase. And in addition to its many other products and services, Apple led all other producers in global smartphone sales last year.

Critics contend that this situation, a dream scenario for the four tech giants, is a nightmare for shoppers. The companies are fiercely defending themselves, arguing that they are not violating antitrust laws, that they invest in innovation that benefits consumers, and that they are not stifling competition. Amazon, for one,

> Companies like Amazon, which now controls nearly 40% of sales in the U.S., have been compared to the kind of monopolies seen in the era of the oil barons.

P. 24 MARTHA STEWART; P. 25 JOE RAEDLE/ GETTY IMAGES

calls the antitrust lawsuit against it a "fundamental misunderstanding of retail" and warns that if the FTC wins, product prices may rise and its popular Prime shipping option may be slower and more expensive.

Yet, according to Wu, "It's clear that they're holding back innovation that could benefit consumers. Amazon began as the price cutter but now seems to be preventing people from getting cheaper prices on other platforms, which contributes to inflation. A company like Apple is doing a good job of preventing rival luxury phones from being legitimate competitors."

In that way, "I think we've replicated some of the conditions of the Gilded Age," says Wu, whose 2018 book, "The Curse of Bigness: Antitrust in the New Gilded Age," argues that today's rise of populism and strongman politicians can be traced to the rise of concentrated corporate power and resulting wealth disparities. "By no coincidence, we've also seen a replication of this sense of unfairness and inequality," Wu adds. Within the Obama White House, "We started to think that the antitrust law had just gone way too far in one direction."

The companies are fiercely defending themselves. Amazon calls the suit against it "a fundamental misunderstanding of retail."

The Trump administration, too, was skeptical of Big Tech market dominance. In 2019, it launched antitrust investigations against Apple, Amazon, Google, and Meta. When Biden

was elected in 2020, his administration took an even more aggressive stance. He appointed Wu as special assistant to the president for technology and competition policy; appointed Khan as chair of the FTC; and tapped Jonathan Kanter, another New Brandeisian, to head the antitrust division of the Department of Justice.

In the past several years, the FTC and DOJ, along with many state attorneys general, have filed five lawsuits against the four tech giants on different claims of antitrust violations (see Page 29). While they are "good companies" that have made positive contributions, Wu says, "they've been around for a while." The Biden administration believes that "shaking up tech could be important and essential to our leadership in technology, in the tech industries globally," he adds, through an effort "to prune the giant tree so that small things can grow."

Given that Google paid Apple $18 billion in 2021 to make Google the default search engine on Apple products, even a fellow behemoth like Microsoft can't compete.

The twin goals are fostering innovation, so that the U.S. maintains a competitive advantage in global markets, and lowering prices through healthy competition. Unlike many other examples of government regulation, the cases against Big Tech enjoy bipartisan support, Wu emphasizes, including from Republican state attorneys general. "In some ways, the red states are even more intense about this campaign," he adds.

Given how much power leading tech companies have over every aspect of modern life — including access to massive amounts of private information — it's unsurprising that most Americans express concern about them, according to polls.

"One way to understand this new movement in antitrust is to see it as a check on the power of private companies to control our economy," says Bietti, "and, more broadly, life in the 21st century."

THE BATTLE TO DOMINATE IN AI

The AI revolution is revolutionizing our lives, for better or worse. Today's antitrust lawsuits offer hints regarding who will dominate in the burgeoning field and what's coming next, Wu says.

"What you find about big antitrust suits is that while everybody's fighting about one thing at the time, the effects tend to be for the future," he says. The most important consequence of the antitrust case against AT&T and its national monopoly over telephone service, which resulted in the company's breakup in 1984, "was opening up the markets for companies that ended up being the first internet providers," which "ended up being way more important over the long run" than the government's original goal: lowering the cost of long-distance phone calls.

In the same way, today's battles over search engine dominance or Amazon's online platform are a peek into the future. "Ten or 15 years from now, we'll realize it was all about who's going to control artificial intelligence," Wu says, "and whether you make room for a new generation of actors, or whether Google and Microsoft just get to take over AI."

This was clear in the Google search engine bench trial, decided in August. During the trial, Microsoft CEO Satya Nadella testified that the breathtaking trove of consumer data that Google amasses through its dominant search engine enables it to train its AI models to perform better than anyone else's.

Lina Khan, chair of the Federal Trade Commission

TING SHEN/BLOOMBERG VIA GETTY IMAGES

In January, the FTC launched an investigation into five corporations — including Google's parent company, Alphabet; Amazon; and Microsoft — regarding their investments in and partnerships with generative AI companies and cloud service providers. In an interview in February with Harvard Law Today, FTC Chair Khan said that the AI space "is so fast moving. And so, we really want to make sure that the opportunity for competition and the potential for disruption are preserved, rather than this moment being co-opted by some of the existing dominant firms to double down on their dominance."

Explains Bietti: "The more you have control over clouds, databases, computing power, eyeballs, and data, the more you're going to have an advantage on AI. So, it's really unlikely that we're going to see many players that are not Big Tech players taking over the world in AI. What we're going to see a lot is, maybe, many smaller start-ups being acquired by larger Big Tech players. So, then the question of mergers and acquisitions, and making it harder for bigger players to acquire smaller players … becomes really important.

"We'll see if the FTC and DOJ start successful cases there, and if a potential Trump administration takes them on," she adds. "But it's certainly something that is ripe for scrutiny and will determine the next potentially 10 years of tech regulation."

CAN THE GOVERNMENT KEEP WINNING?

Given the victory in the Google search engine case, does Wu believe the government can continue to win? "The advantage that these suits have is that most Americans, including most judges, see a company like Google and don't really

doubt that it's a monopoly, and don't doubt that it's powerful," he says. "Obviously, it depends on the company, but I think the winds are blowing in a different direction than they were certainly even 10 years ago … [when] a company like Facebook seemed like a new, up-and-coming company."

Moreover, the business models of networked companies are better understood now, in part because academic research into them is stronger. Prosecutors in the Google search engine trial, for example, relied heavily on experts in behavioral economics who testified against Google's contention that equipping devices such as iPhones with a particular search engine as its default doesn't lock consumers into using that engine because users have the ability to switch.

The Google trial included testimony from executives at smaller search engine companies like DuckDuckGo, who said they can't compete with Google's market dominance (not every company's primary product blossoms from a mere noun into full-fledged verb, after all). Indeed, given that Google paid Apple $18 billion in 2021 alone to make Google the default search engine on Apple products, even a fellow behemoth like Microsoft can't compete, according to testimony by its CEO.

"Google should have seen the antitrust verdict against them coming," says Bietti, noting that the company will appeal. The DOJ introduced evidence of "a lot of very problematic agreements between Google and Apple as well as other browser and device manufacturers. It was quite clear from the start that these agreements entrenched Google's default search engine position on approximately 80% of browsers and devices in the U.S., which is extremely problematic from a competition perspective."

Moreover, she notes, "The judge also made some interesting remarks about Google's obfuscating and judgment-delaying tactics, stating, for example, that 'the court is taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants.'" Remedies will be litigated in a separate trial and could lead to the breakup of Google into different business segments, she explains, adding, "Imagine Gmail separated from Google Maps, Google Search, and YouTube."

As for the antitrust movement as a whole, Wu is very optimistic. He describes Kanter and Khan, who lead the prosecutions for the DOJ and FTC, respectively, as "very talented and very aggressive. I think they're there to win. I wouldn't bet against them."

Are there downsides to these prosecutions? For one thing, they're expensive. Wu worries the FTC and DOJ could run out of money, and even though they are independent agencies, Congress has some control of their purse strings.

And what will happen to this litigation if former President Trump is elected this fall? Wu predicts the lawsuits will continue because they have bipartisan support, and he believes Trump has more important priorities than limiting the power of Big Tech, such as immigration.

Elettra Bietti, assistant professor at Northeastern University School of Law

Bietti disagrees. "If Trump wins, things will change significantly," she predicts. "For a long time, conservatives, particularly populist conservatives like Trump, sided with the New Brandeisians because they thought it was cool to side with them, and because they wanted to disrupt the economy and fight corrupt powers in the market. But now they're primarily being elected by certain elite interests." Coates also thinks the lawsuits will collapse. If someone other than Trump were the Republican presidential nominee, Coates would expect the FTC and DOJ, as independent agencies, to continue the antitrust assault, he says; however, if Trump wins, "I can't imagine the cases continuing."

"I can see him sending a memo to the DOJ saying to drop the cases, although that would be an incredibly harmful action," Coates says. "I have no reason to think he wouldn't do that … and he would probably brag about it: 'I made money stopping rule of law.' I know I sound alarmist, but this is where I am."

For now, these cases may be winding through the courts in relative obscurity — or at least without the attention that Wu believes they deserve, or that the Microsoft case received decades ago. Yet the stakes are extraordinarily high, for Big Tech and its competitors, of course, but also for the rest of us, who live in a world where the technology these companies create and control increasingly defines the shape of our lives.

Today's antitrust lawsuits offer a peek into the future, according to Tim Wu. "Ten or 15 years from now, we'll realize it was all about who's going to control artificial intelligence."

P. 28 ALYSSA STONE/NORTHEASTERN UNIVERSITY; P. 29 LIU JIE/ XINHUA NEWS AGENCY VIA GETTY IMAGES

Antitrust Cases Against **the Big Four**

GOOGLE: Search Engine In the first Big Tech antitrust case to go to trial, Judge Amit P. Mehta of the U.S. District Court for the District of Columbia ruled on Aug. 5, 2024, that Google maintains an illegal monopoly in online search. The judge will next decide on remedies, which could include forcing Google to sell off parts of the company. Filed by the Department of Justice in 2020 — and joined by a nearly identical suit filed by a group of state attorneys general — the case alleged that Google's search engine monopoly harms consumers and stifles innovation. Testimony at trial revealed that Google has exclusivity agreements with device makers such as Apple and web browsers such as Mozilla, and that Google paid $26.3 billion to various companies in 2021 to ensure it's the default search engine the companies offer consumers. Google — which controls 90% of the search engine market — argued it is popular because it's so good, and that it's easy for people to switch the default search engine if they want. Google has stated it will appeal the ruling. The landmark decision, if it holds, is an enormous blow to Big Tech that's likely to influence the other pending antitrust suits.

GOOGLE: Online Advertising In January 2023, Google was sued again by the DOJ, along with eight states, in federal court in Virginia. The lawsuit alleges that Google has achieved a monopoly in digital advertising by forcing publishers and advertisers to use its ad technology, and that buying out potential competitors is an illegally anticompetitive tactic intended to stifle competition. Google moved to dismiss the case, claiming that the market is competitive, that Google is innovative, and that if the government wins, businesses that use Google's advertising tool will be harmed. The case went to trial this September.

META: Social Media The lawsuit by the Federal Trade Commission and 40 states was filed in December 2020 in federal court in the District of Columbia. It claims that Meta, owner of Facebook, purchased Instagram and WhatsApp over 10 years ago in order to keep any competition for social media dominance within the company. Meta denies that motivation for acquiring the companies. After being dismissed for failure to adequately define the market, the case was reinstated. But Meta filed another motion to dismiss in April of this year, arguing that the government still hasn't stated a supportable case.

APPLE: Online Devices and Services In March, the DOJ along with 16 states and the District of Columbia filed suit in federal court in New Jersey, claiming Apple violates antitrust laws to protect market dominance of the iPhone and other products in the Apple ecosystem. The government claims that, among other things, Apple blocks the use of third-party apps that might compete with Apple equivalents and makes functioning between Apple and non-Apple devices lower quality. According to the lawsuit, this practice squelches innovation and competition, and keeps prices artificially high. In response, Apple said it does not violate antitrust laws and that the lawsuit sets "a dangerous precedent, empowering government to take a heavy hand in designing people's technology."

AMAZON: Online Market for Goods and Services Amazon controls nearly 40% of online sales in the U.S. The FTC and 17 state attorneys general filed suit in September 2023 in federal court in Washington state, claiming Amazon's market dominance results in artificially high prices for consumers. Among other things, the government claims Amazon promotes its own products over those of the millions of third-party sellers who have little real choice other than to use the massive e-commerce site to reach buyers around the world, even though Amazon will privilege its own brands over their products. Moreover, sellers aren't allowed to sell their products cheaper on other online sites. Amazon moved to dismiss the case, arguing that if the government prevails, it will harm both consumers and sellers. The trial is set for October 2026.

LONE WOLF NO MORE

Five decades in, the Endangered Species Act remains one of the country's most muscular environmental laws – and, despite its popularity, a continued target

BY RACHEL REED

THE RAVENOUS FIEND who gobbles up Little Red Riding Hood. The big bad wolf who aims to destroy the homes of the three little pigs. From Aesop's fables to the Grimms' fairy tales, Western storybooks are replete with negative depictions of wolves, the wilder cousin of the domesticated dog.

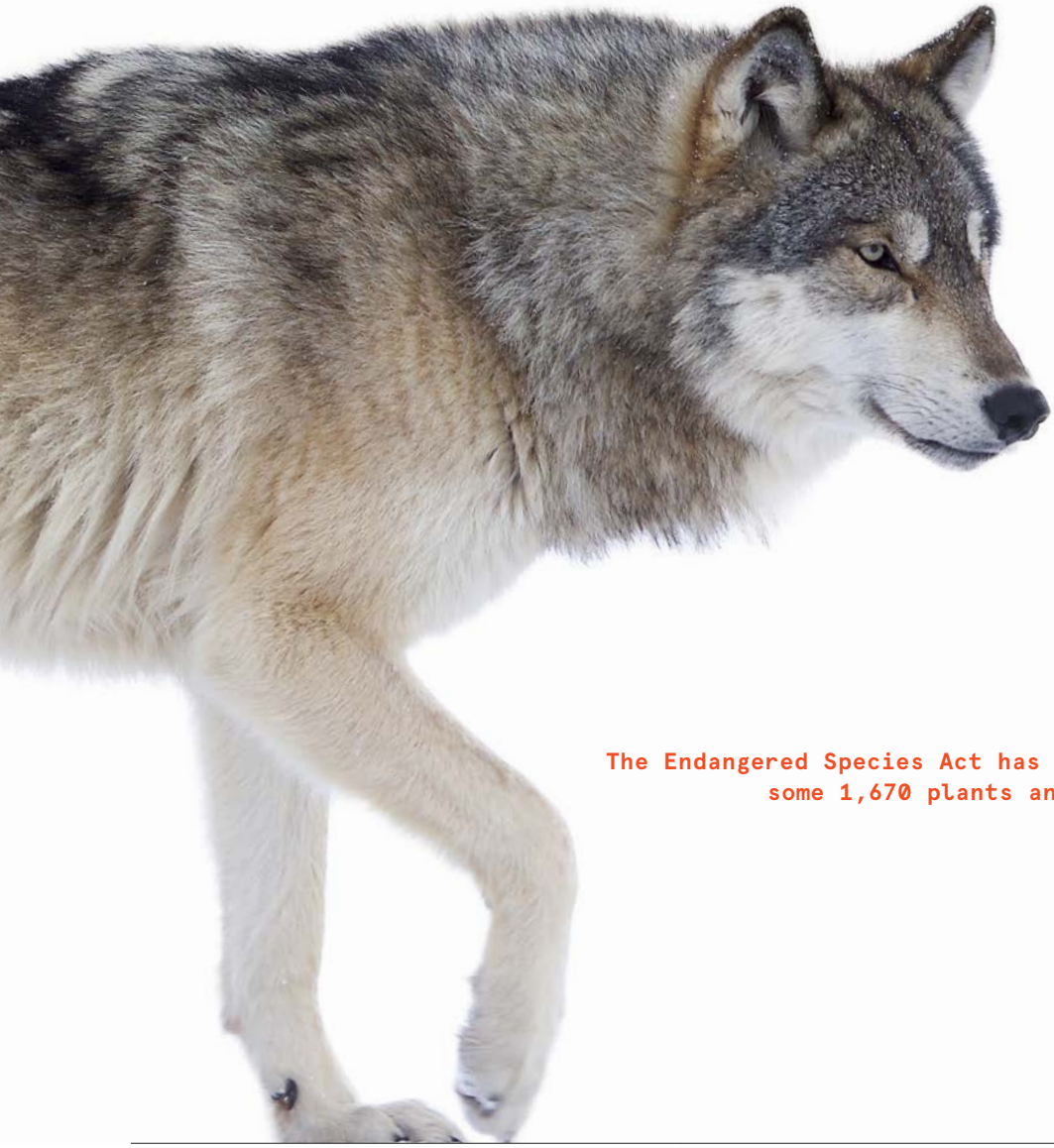
Fear of these predators may explain why the estimated population of 2 million wolves that once roamed the American continent from Alaska to Mexico dwindled to almost nothing. Although revered by many Native American tribes, wolves were hunted or harassed to near extinction by the early 20th century by European colonists and settlers,

who worried the animals would destroy their livestock and property.

Today, however, it is not uncommon for tourists to spy Canis lupus on a trip to the Lamar Valley in Wyoming or on the craggy shores of Michigan's Pictured Rocks. In fact, wolves, which serve an important role in the ecosystems they dominate, now number around 7,500 across the continental United States.

The charismatic mammal's comeback story is a bright spot in American environmental history — the result of a bill that attracted little attention when it was signed, but has since become one of the most powerful laws of its kind in the U.S.

That law — the Endangered Species Act of 1973 — recently



The Endangered Species Act has saved some 1,670 plants and animals from extinction.

PREVIOUS SPREAD, ALAMY: P. 33–34 ANDY SKILLEN/GETTY IMAGES

celebrated 50 years in action and is now responsible for keeping around 1,670 plants and animals from disappearing from the earth forever. But it is not without its controversies.

For one, say Mary Hollingsworth and Andrew Mergen, faculty directors of Harvard Law School's Animal Law & Policy Clinic and Emmett Environmental Law and Policy Clinic, respectively, the law is activated only when a plant or animal is highly at risk or on the brink of extinction — making a full recovery for the species exceedingly difficult.

And then there are the concerns of landowners and their associates, including developers, ranchers, and miners, who say the law is sometimes applied in ways that violate their property rights or interfere with the realization of other important priorities, such as new housing, food production, and mineral extraction.

Some critics of the law have argued that the ESA unfairly protects plants and animals at the expense of people.

Prior to his role at Harvard, Mergen served as chief of the Appellate Section of the Environment and Natural Resources Division at the Department of Justice, where he supervised the litigation of ESA-related cases. He says these fights — about the limits of federalism, the power of government agencies, and public control of private land — mirror many of the biggest debates in American law and society today.

As advocates reflect on half a century of protection for threatened and endangered wildlife, wolves serve as an avatar for the law's successes — and illustrate how it will continue to be challenged. As we look to the next era of the Endangered Species Act, could the law that protects threatened wildlife itself be under threat?

QUIET BEGINNINGS

The Endangered Species Act was born in the midst of a budding environmental movement and a spate of other federal laws aimed at protecting America's water, air, and wildlife. Passed by a bipartisan coalition in Congress and signed by President Richard Nixon on Dec. 28, 1973, it attracted only modest publicity at the time, says Richard J. Lazarus '79, the Charles Stebbins Fairchild Professor of Law at Harvard.

"If you look at The New York Times on the days following the signing, there is a front-page article saying 'President signs manpower bill,' which was a job training law. You have to jump to the next page, nearly to the last paragraph of that article, to find a mention of him also signing the Endangered Species Act," says Lazarus.

But the law nonetheless promised new tools to protect flora and fauna from untrammeled economic growth and unimpeded encroachment.

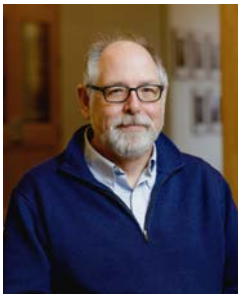
"The beauty of the law is that it's not concerned about economic activity," says Lazarus. "It's concerned about species, whether or not they have an economic value. It's a law which recognizes the responsibility that humankind has to all species on our planet."

It does so in a few important ways, says Hollingsworth, who, before coming to Harvard, spent more than a decade as a trial attorney in the Department of Justice's Wildlife Environment and Natural Resources Division in the Marine Resources Section, where she defended challenges to rules listing species and designating critical habitat, and enforced the ESA against repeat violators, such as zookeeper Jeff Lowe, who was featured in the Netflix show "Tiger King."

Hollingsworth points first to Section 4 of the law, which creates listing requirements and empowers all citizens to petition the U.S. Fish & Wildlife Service or National Marine Fisheries Service to designate a species as threatened or endangered. Once a species is listed, the agency must also come up with a recovery plan for the plant or animal.

Another key element of the ESA, Hollingsworth says, prohibits the "taking" — meaning killing, maiming, harassing, harming, or even destroying the habitat — of listed species by anyone, including individuals on private land. And there is Section 7, which bars any actions approved, made, or funded by the federal government that could jeopardize the existence of threatened or endangered species. Finally, Section 10 allows for the reintroduction of "experimental populations" of species — such as wolves — in parts of the country where the plant or animal had once thrived but can no longer be found.

This piece of the law reflects a recognition that recovery of species will require cooperation and collaboration with local governments and private citizens, says Hollingsworth. "Section 10(j) gives the agencies flexibility both to take the steps necessary to conserve



Andrew Mergen and Richard Lazarus

species, in this case reintroducing certain populations of the protected species, as well as to develop management programs that consider the concerns of local communities."

ESA AT THE SUPREME COURT

According to Lazarus, the Supreme Court has decided a handful of cases involving the ESA over the years, but two in particular cemented the law's broad reach.

In *Tennessee Valley Authority v. Hill*, decided in 1978, the Court heard a challenge by farmers and environmentalists to the construction of a multi-million-dollar dam — which had been supported by Congress and was, in fact, already mostly built — due to the existential threat it posed to a subspecies of the snail darter, a small freshwater fish. In a move that shocked many of the dam's supporters, the 6th Circuit Court of Appeals, noting Section 7's unequivocal language, issued an injunction preventing the project from being completed.

Despite initial skepticism, even outrage, from some members of the Supreme Court, the majority nonetheless agreed — the law was clear, they said. "When the justices actually read the briefs and looked at the statute — in other words, didn't just think about it impulsively based on their instinct — they affirmed, 6 to 3," Lazarus says. "The opinion was written by none other than Chief Justice Warren Burger, a conservative."

The Court's decision showed that the ESA was "a serious law that has some very important overriding purposes," Lazarus adds.

But the win also came with an asterisk attached. After the decision was issued, hoping to reclaim some power, Congress created a committee of seven senior administrators (six from the federal government) — dubbed the "God Squad" — who may, by a super-majority vote, exempt projects from the requirements of the law. Still, Lazarus says, the decision was "a huge victory."

The other key case was 1995's *Babbitt v. Sweet Home Chapter, Communities for a Great Oregon*, involving Section 9 of the law, the one that prevents the taking of an endangered species. A group of landowners sued after the Department of the Interior further interpreted "harm" to an at-risk species to include material changes to its habitat that kill or injure it.

Here, again, the Court sided with environmentalists, holding that habitat destruction could legitimately be considered harm under the act. The decision was "fighting words" to some, Lazarus says, because it applies to, and thus can significantly limit, landowners' use of their private property.

"As more species have been protected, and there is more understanding about the relationship of habitat to species survival, the more powerful economic interests find themselves restricted by the law," he says.

WOLVES AND THE ESA

Just days after Nixon signed the Endangered Species Act, the U.S. Fish & Wildlife Service added the gray wolf to the endangered list and began working on a recovery plan that would eventually involve the animal's reintroduction to areas where it had once thrived.

John Leshy '69 was serving as the Department of the Interior's top attorney in the mid-1990s, when the agency prepared to release wolves into Yellowstone National Park for the first time.

"Number one, they're so iconic," says Leshy of the reasons behind the bold move. "They are also a keystone species, and biologists at that time understood that reintroducing them would be restorative of the entire ecosystem in fundamental ways."

Because the wolf had been eliminated from the region decades before, the agency chose to reintroduce the animals as an experimental population under Section 10 of the ESA. But the provision also required the agency to prove that wolves had, in fact, been extirpated from the area.

"That was one of the many issues that were litigated before the reintroduction," says Leshy.

Next, the agency had to contend with ranchers, who feared that the animals would prey on their livestock, and who wielded considerable political power in Wyoming, Montana, and Idaho. These tensions between state fish and game agencies and the federal government are common in the Endangered Species Act context, Leshy says.

To win over state governments and their constituents, the federal agency decided to use the flexibility granted by the law to extend protection to wolves only while they remained within the park's boundaries — meaning that animals that wandered off public land could be removed or even killed.

"I think most people knew that there would be wolves shot, and there were," Leshy says. "But that was the price you paid to get this thing off the ground. It was a big concession."

TOP, LEFT TO RIGHT: LORIN GRANGER. DANA SMITH

Wolves were introduced into Yellowstone in 1995 under the ESA after having been eliminated from the region.

The concession was also challenged, this time by environmentalists, who believed the agency wasn't going far enough to safeguard the species. But Leshy's team won these lawsuits, too, and in January 1995, the first eight gray wolves were finally released into the 2.2-million-acre park.

It was a historic moment, and one that proved significant for the animal and the law itself, says Leshy.

"Since then, wolves have expanded across the West," he says. "We now have wolves in the northern Sierra Nevada Mountains, and in Washington and Oregon, due to natural in-migration. In a way, it's a harbinger of a broader ecological movement."

The wolves also helped restore the habitat in Yellowstone. "Previously, the elk population had expanded because they had no predators. The elk ate small plants and trees, reducing vegetation and changing the ecosystem," Leshy says. "When the wolves returned, the elk numbers plummeted, and the riparian areas came back."

And wolves have benefited local communities around the park, bringing in revenue from tourists hoping to spot one in the wild, Leshy says. Without question, the efforts were a success, he concludes.

"The more wolves dispersed around the West, the more people became accustomed to it," Leshy contends. "Now they understand that wolves are not really a threat to ranching, and they are no threat to people. We won the lawsuits, and I think we also won the war in terms of persuading the public of the importance of this law."

THE FIGHT CONTINUES

In fact, Fish & Wildlife's plan to protect wolves has been so impactful over the years that, in 2020, the agency decided to remove the gray wolf from its endangered list entirely, pointing to the animal's robust populations in the Northern Rocky Mountains and Great Lakes regions.

But advocates at organizations like the Natural Resources Defense Council pushed back, worried that once federal protections ended, the wolf's recovery would be stopped in its tracks. In a lawsuit against the Fish & Wildlife Service, the NRDC argued that, among other concerns, the agency had failed to consider the wolf's historic range, says Frank Sturges '20.

"The Endangered Species Act doesn't require looking across all of the range where a species used to be," says Sturges, who represented the NRDC before the district court. "But it does require looking at what the impact of losing that range has on a species."

Once wolves were delisted, management fell to the states in which they resided, opening the possibility that many would be killed, Sturges says. He points to examples such as Wisconsin, where more than 200 wolves were hunted in a three-day season opened after federal protections ended.

These types of activities, he adds, "could have a devastating impact on the population in that area and could also impact wolves more broadly."

That's because wolves need to be able to move freely to maintain healthy populations, he says. "It's important in the wolf's life cycle to have dispersal and to go establish new packs, to ensure genetic diversity by moving between packs."

Sturges says that the NRDC's suit offered copious evidence about the importance of a large range to the animal. "We dug into the record looking at the scientific studies to make sure our arguments were all grounded in the science, which I think is very important to Endangered Species Act cases."

The district court sided with Sturges and the NRDC — restoring federal protections for the gray wolf in the lower 48 states.

That was good news for wolves, Sturges says, pointing as proof to a surprising development during litigation. "We found one wolf who was being tracked by radio collar that made it further south in California than any wolf had been in 100 years," he says. "It's such a tangible example of what federal protection for



John Leshy, Frank Sturges, and Mary Hollingsworth

a species does, allowing for movement that is important for recovery and especially important for species like wolves."

TRADE-OFFS

Still, some worry that the ESA unfairly protects plants and animals at the expense of people, including landowners who find endangered species on their property.

"The ESA is used primarily as a means of 'free' land-use control by federal agencies, rather than as a means of protecting and reviving endangered species," argued a 1998 report from the conservative think tank the Heritage Foundation, which also suggested that Congress create a comprehensive system to reimburse property owners whose rights have been affected by the law.

And, in the case of wolves, livestock owners are also impacted. According to Colorado State University Extension, it can be difficult to calculate the number of farm animals maimed or killed by wolves each year, but the financial toll can be damaging for individual ranchers. As Rep. Cliff Bentz of Oregon recently wrote in a letter asking the Fish & Wildlife Service to again delist gray wolves in the West, "Ranchers … must be able to protect their livestock," he argued. "They should not continue to be hamstrung by unnecessary regulations that over-protect a species that is thriving."

But while Mergen acknowledges that wolves do kill sheep, cattle, and other animals, he adds that compensation programs exist to pay ranchers for these types of losses.

"There are trade-offs, for sure," he says. "But I think they are modest."

ESA AT HARVARD

Hoping to defend and strengthen the law's protections, two clinics at Harvard are working on ESA-related issues.

In her prior role at the DOJ, Hollingsworth led the first civil enforcement actions brought by the U.S. against people harming captive endangered and threatened species. Now, at the helm of the Animal Law & Policy Clinic, she says she plans to bring that experience to help more at-risk animals in captivity.

"For many years, the Fish & Wildlife Service was solely focused on protecting wild populations of ESA-protected species, and only recently acknowledged that the law provides equal protections to captive animals," she says. "As just one example, there are as many captive tigers in the U.S. as there are tigers in the wild. But when people see these animals at roadside zoos, they are desensitized to the species' plight. It also contributed to a market to trade in these animals, which is detrimental to a species."

One issue the Animal Law & Policy Clinic has taken on is what Hollingsworth calls "split listings," where the agency has protected an animal in the wild but not in captivity. Last semester, her clinic submitted a letter to the the Fish & Wildlife Service to prompt it to respond to a petition to protect all Canada lynx — including those kept in captivity.

"As the clinic explained in its petition to end the disparate treatment of captive Canada lynx under the ESA, protecting captive members of vulnerable species is just as important as protecting wild members," says Rebecca Garverman '21, a former staff attorney at the clinic. "In this regard, the law is an invaluable tool for advocates to prevent bad actors from harming endangered species."

Hollingsworth says she and her students will also work to engage other government agencies, such as the Department of Agriculture — which, she adds, is positioned to spot violations of the act in the course of its regular business — to help enforce the law.

"The clinic will look for ways to encourage agencies to educate their employees on Endangered Species Act protections, to improve communications between federal agencies on ESA matters, and to fulfill their responsibility to carry out programs for the conservation of ESA-protected species," she says.

To that end, environmental law clinic student Adam Schneider J.D./M.P.P. '25 spent a semester studying a lesser-known provision of the ESA that could help do just that.

"When people talk about Section 7, 99% of the time, they're talking about the requirement that agencies don't do anything that could jeopardize the survival of species," Schneider says. "But I was looking at another part — Section 7(a)(1) — that essentially directs all federal agencies to use the powers they have toward the purpose of preserving and recovering endangered species."

In other words, Schneider adds, the provision is an affirmative requirement, one that is "open and broad" — but one that is "undefined and therefore has seldom been used."

P. 36 MANUEL ROMARIS/GETTY IMAGES; P. 37 UC HASTINGS COLLEGE OF LAW; NADIA ZHENG; LOREN GRANGER

Because Schneider could find evidence of only around a dozen instances where agencies have proactively created conservation programs under the provision, and because there is little litigation about the issue, he says there could be untapped potential in the provision. "As a clinic, we wanted to examine what kind of support and guidance we can provide to federal agencies so that they have more inclination and ability to take the powers they have and pursue these types of programs."

LOOKING TO THE FUTURE

Despite the Endangered Species Act's success in the courts over the decades, some, citing the Supreme Court's shifting views on constitutional law and statutory interpretation, sense fresh danger ahead.

Particularly concerning to advocates are attacks on the law's constitutionality under the Commerce Clause, which gives Congress power to regulate interstate economic activity and ostensibly underpinned its authority to pass the ESA.

"This is the question of, Do you even have the power to protect these species?" says Mergen.

Lazarus says that the more than half a dozen circuit courts that have considered this question over the years have upheld the law based on an "aggregation theory," or the idea that even if one individual species does not impact the economy, all endangered species taken together do.

But there is some uncertainty about what the Supreme Court might do if a conflict among the circuits emerges. In a concurring opinion last year in *Sackett v. Environmental Protection Agency*, Justice Clarence Thomas, joined by Justice Neil Gorsuch '91, decried what he saw as an overly expansive view of the Commerce Clause, specifically calling out the Endangered Species Act as one such example.

Hollingsworth says that the constitutionality of the ESA will depend on whether the Supreme Court continues to buy into the aggregation theory. "If it doesn't, over a half of currently protected species could lose ESA protection," she warns.

"There is a visceral, human instinct to protect creation," says John Leshy.

Rebecca Garverman and Adam Schneider

Mergen himself successfully defended the constitutionality of the ESA under the Commerce Clause in a 2000 case involving red wolves in North Carolina. He believes the act has a clear nexus to interstate commerce.

"The whole reason that people normally want to get rid of wolves, for example, is because they have farm animals they're worried about. That's economic activity," he says. "And often, when we protect these species, there is commerce in the money generated by tourists and those coming to see and experience these animals. That's also economic activity."

Advocates also fret about how the Court's recent decision in *Loper Bright Enterprises v. Raimondo*, which overturned the longstanding legal doctrine known as *Chevron* deference, could impact how courts interpret the ESA. In that case, the Court curtailed some of the leeway previously enjoyed by federal agencies in interpreting the statutes they administer.

The holding suggests that if *Babbitt* — the case involving construction of the word "harm" — were heard today, the Court might decide it differently, says Lazarus.

But he is optimistic that the 1995 decision will likely stand. "Chief Justice John Roberts ['79] made clear in his opinion in *Loper Bright* that they weren't applying the decision retroactively, so cases that relied on *Chevron* in the past would not be disturbed."

That said, *Loper Bright* could impact future litigation, Lazarus acknowledges. "If there are other aspects of the ESA which had not previously been subject to Supreme Court review and stare decisis, such as the word 'species,' the Court won't give deference to the agency."

Even so, Lazarus says that agencies are still entitled to the same deference they have always had in decisions involving the application of law to facts, such as a determination of whether a particular species is endangered or not.

In Mergen's view, "There shouldn't be chaos" after *Loper Bright*. "But the reality is that *Chevron* has been deployed a lot in the Endangered Species Act context because there are a lot of terms in the statute that require technical expertise to interpret."

VILLAINS NO MORE

Thanks to the Endangered Species Act, and with help from Homo sapiens, wolves are now returning to places from which they had long ago disappeared, from the mountains of California to the marshlands of North Carolina. Some states, with their residents' approval, have even voluntarily released wolves on public lands, as Colorado did in 2023. And the animal itself has experienced a stunning PR reversal. No longer the storybook villain, wolves are now viewed positively among 61% of Americans, according to a 2014 study.

The Endangered Species Act has fared even better. In fact, conserving species may be one of the few issues that can unite the two sides of the political aisle: A 2018 survey found that four in five Americans supported the law, with 74% of conservatives and 90% of liberals in favor.

"There are challenges with administering the act," says Leshy. "But it's also incredibly popular. And I think that's because there is a visceral, human instinct to protect creation."

Lazarus believes the law has been enormously successful — but he, like Mergen, has a significant reservation. "It does a very good job doing what Congress designed it to do, which is protect species that are threatened or in jeopardy of extinction. But that protection is triggered a little late."

"Waiting until a species is threatened before providing protections does make full recovery challenging," Hollingsworth agrees. But she says that "the statute can nonetheless be viewed as successful in light of the relatively few threatened and endangered species that have gone extinct after receiving federal protection."

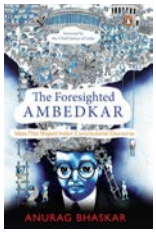
Lazarus adds that, because the law protects only species at existential risk, "it necessarily has to be very demanding and uncompromising." What if, instead, the law could act sooner, and therefore impose less draconian measures, he wonders. Could this be a boon for environmentalists and property owners alike?

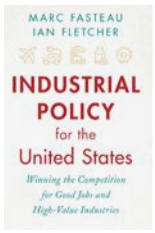
But until Congress — or the courts — chooses to act, fundamental tensions around the law will remain. What should we protect, and who is responsible for doing so? How do we balance property rights with our desire to protect the plants and animals that depend on that land?

The answers may be once again in flux. But what is certain is that, for the time being at least, the Endangered Species Act is here to stay. And so, it seems, are the wolves.

P. 38 KEN CANNING/GETTY IMAGES; P. 39 COURTESY OF R. GAVERMAN, A. SCHNEIDER

A Selection of Recent Alumni Books





"Who Owns This Sentence?: A History of Copyrights and Wrongs," *by David Bellos and Alexandre Montagu '91 (Norton)*

Much of contemporary culture, ranging from cartoons to computer software to costumes, is subject to copyright. And most copyrights of commercial value belong to corporations, not creators — a recent development, according to David Bellos and Alexandre Montagu, who trace the history of copyright beginning with its origins in 18th-century England to current developments such as ownership of artificial intelligence creations. The authors cover how the duration and scope of copyright have expanded through the years and the implications for its concentration today in the hands of a few giant entities. While copyright was initially designed to bring a more equitable balance of power between creators and distributors, it has turned into an engine of inequality, they argue.

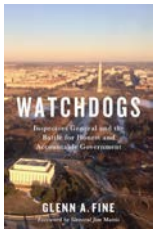
"The Foresighted Ambedkar: Ideas That Shaped Indian Constitutional Discourse," *by Anurag Bhaskar LL.M. '19 (Viking)*

Anurag Bhaskar, deputy registrar of the Supreme Court of India, offers a comprehensive account of the life and work of Bhimrao Ramji Ambedkar, a jurist, academic, and political leader who was the only person involved in every stage of drafting the Indian Constitution starting in 1919. Bhaskar covers topics such as Ambedkar's influence on constitutional discourse and his opposition to the system classifying people as "untouchable," as outlined in his book "Annihilation of Caste." In his vision of the constitution as the basis for anti-caste and democratic politics, Bhaskar writes, Ambedkar provides insight into how to address contemporary challenges. The book includes a foreword by Dhananjaya Y. Chandrachud LL.M. '83 S.J.D. '86, chief justice of the Supreme Court of India.

"The Child Catcher: A Fight for Justice and Truth," *by Andrew Bridge '89 (Regalo Press)*

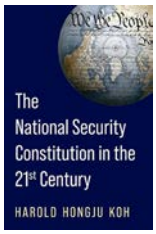
After writing about his own experience as a foster child confined to an abusive institution in his memoir, "Hope's Boy," Andrew Bridge recounts his legal advocacy on behalf of children who were similarly mistreated. While serving as an attorney for the Bazelon Center for Mental Health Law shortly after graduating from Harvard Law School, Bridge represented children residing in the Eufaula Adolescent Center, then Alabama's largest youth mental institution, which he describes as having practiced harsh punishment while providing scant treatment. He shares the stories of the residents and parents he encountered during the lawsuit, and of the state authorities who fought his efforts to investigate the conditions his clients faced. The book culminates in a trial, highlighted by dramatic testimony from one of Eufaula's youngest residents, that would determine the institution's future.

ILLUSTRATION BY ANTONIO GIOVANNI PINNA



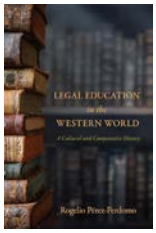
"Industrial Policy for the United States: Winning the Competition for Good Jobs and High–Value Industries," *by Marc Fasteau '69 and Ian Fletcher (Cambridge University Press)*

Industrial policy, the planned governmental support of industries, has long been dismissed in the United States as an ill-advised and inefficient intervention in free markets, write Marc Fasteau and Ian Fletcher. It shouldn't be, contend the authors, who call for a "coherent, integrated, and continuing response at the highest levels of government" to bolster struggling U.S. industries. The book offers case studies of other countries, such as Germany and Japan, that have introduced successful industrial policies. The authors also explore industrial policy's history in the United States and its implementation in the automotive and robotics industries, among others. Their recommendations include the expansion of programs to support manufacturing, tariffs to protect industries, and policies to deny adversaries key technologies.



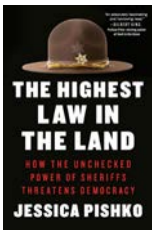
"Watchdogs: Inspectors General and the Battle for Honest and Accountable Government," *by Glenn A. Fine '85 (University of Virginia Press)*

Glenn Fine recounts his experiences serving as the former inspector general of the U.S. Departments of Justice and Defense, in a role he sees as essential in the struggle "to keep government officials honest and accountable and to improve government operations." He details investigations conducted by those departments' IG offices — including of the FBI's missed opportunities to deter the Sept. 11 attacks and of what he refers to as "the worst corruption scandal in U.S. Navy history," involving a defense contractor known as "Fat Leonard." Fine also provides recommendations for strengthening the system of oversight. In addition, he outlines how his longtime tenure as an IG ended with his dismissal by President Donald Trump during a period when the president fired five IGs, a moment referred to by The Washington Post as the "massacre of inspectors general."



"The National Security Constitution in the 21st Century," *by Harold Hongju Koh '80 (Yale University Press)*

Harold Koh contends, in this substantially updated edition of his 1990 book, that an erosion of constitutional norms over the past few decades has brought increasingly unchecked power to the presidency in national security policy. The author, who served four U.S. presidents in the Justice and State departments as a policymaker and lawyer, describes how the erosion occurred and what can be done to restore a balance of power, offering reforms that would redefine the role the three branches of government play in the national security system. While Koh favors strong presidential leadership, an unencumbered executive can result in abuses and in threats to national security, he writes.

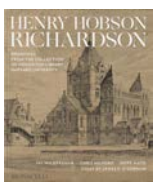


"Legal Education in the Western World: A Cultural and Comparative History," *by Rogelio Pérez-Perdomo LL.M. '72 (Stanford University Press)*

While legal education's major purpose is to prepare people to work in the field of law, its overall impact on society is much greater, according to Rogelio Pérez-Perdomo, a professor and former law dean at Universidad Metropolitana in Venezuela. "Legal education is linked to the law as a way of ordering society and to the conceptualization of the law itself," he writes. The author examines the civil law tradition, focusing on law teaching in Europe and Latin America, and offers a historical analysis of the transformation of legal education in England and the U.S. since the 19th century. In addition, he considers the impact of transnationalization and globalization on law schools and the law.

"The Highest Law in the Land: How the Unchecked Power of Sheriffs Threatens Democracy," *by Jessica Pishko '02 (Dutton)*

Through on-the-ground reporting and research, Jessica Pishko explores the problematic role in society played by local sheriffs, who she contends often adhere to far-right, anti-government, and white supremacist ideologies. She covers "constitutional" sheriffs, who claim that they, rather than the federal or state government, have ultimate authority in their county and how their influence was bolstered by a backlash against COVID-19 shutdowns. Other topics include sheriffs' ties to militia groups, gun rights, and MAGA movements and their efforts to stem immigration. Operating with limited accountability and resisting reforms to their offices, many local sheriffs engage in racist and sexist policing and are not responsive to community safety needs, argues Pishko, who concludes that the county sheriff as an institution should be eliminated.



"Henry Hobson Richardson: Drawings from the Collection of Houghton Library, Harvard University," *by Jay Wickersham '94, Chris Milford, and Hope Mayo (Monacelli Press)*

The book presents more than 400 drawings from the Harvard collection by Henry Richardson, considered the greatest American architect of the 19th century, and offers insight into his design process. The drawings, reflecting "one of the most recognizable styles of any architect who has ever practiced," showcase landmarks such as Boston's Trinity Church, Chicago's Marshall Field's store, among an array of houses, churches, libraries, and government buildings. Notably, the book features an extensive look into the design of Austin Hall at Harvard Law, which was designed specifically to support the case study teaching method. Co-author Jay Wickersham, who took classes in Austin, is a founding partner of Noble, Wickersham & Heart, which focuses on architectural and environmental law.

Class Notes

"Bungee jumping from a plane might push my comfort zone more than what I'm doing, but not by much." — DANIEL WOLF '86

ILLUSTRATION BY MARC ROSENTHAL

1957

SANFORD M. JAFFE was inspired by the Class Notes submission of **GIOVANNI VERUSIO LL.M. '56** in the last Bulletin to share some of his own story and the impact his HLS education had on him. Jaffe writes that early in his career he was an assistant prosecutor in Essex County, New Jersey; chief of the Criminal Division for the U.S. attorney for New Jersey (Robert Kennedy was then AG); and special assistant to the U.S. attorney general. He was later appointed executive director of the New Jersey Commission charged with investigating the causes of civil disorders that occurred in Newark and other cities in New Jersey and making recommendations for dealing with them. "The recommendations," he writes, "some of which were adopted and implemented, had far-reaching impacts, and others, remarkably, are still being weighed."

Jaffe went on to serve as officer-in-charge at the Ford Foundation, where he headed the law and government section for more than a decade, "funding many of the public interest law firms that were created during the tumultuous period of the 1960s and later." He left Ford to create and direct the Center for Negotiation and Conflict Resolution at Rutgers, the State University of New Jersey, where he had been an undergraduate. "Primarily motivated to find alternatives to litigation as paths to justice," he writes, "I realized, with my colleague, that individuals, institutions, and organizations needed more than legal remedies to manage conflicts, particularly those that occur in public domains. We raised funds to support [the center] — it's still operating now — and we taught for several decades while also mediating large-scale disputes that involved public agencies.

Today, Jaffe remains at Rutgers as a senior policy fellow in the Bloustein School of Planning and Public Policy. He writes, "All of the above, and then some, I attribute in large measure to the great education I received at Harvard Law School."

1959

PETER BARTON HUTT was recently profiled in The Wall Street Journal: "The Father of Nutrition Labels Doesn't Count Calories and Loves Ice Cream." The article recounts his contributions in the field of food and drugs, including the introduction of the nutrition label: "The labels have appeared on hundreds of millions — billions, maybe — of consumer products in the five decades since he wrote the rules for the Food and Drug Administration." Hutt was the FDA's chief counsel from 1971 to 1975 and has gone on to practice food and drug law at Covington & Burling ever since. He has taught a course on food and drug law at Harvard Law School for over 30 years in the winter term (read more at bit.ly/4ddKfPl). According to the WSJ article, he still works a 12-hour day. And every day he eats an average of one scoop of his favorite food: vanilla ice cream.

1966

In the spring, **KENT BISHOP** wrote: "As an 84-year-old grad, I give thanks each morning for the present day. I have a third-year paper on file in Langdell, four books in Widener, one at home in process. I play tennis, golf and swim, bike, run frequently. I work part time as a starter at a golf course and occasionally do a bit of law. I have four children and six grandchildren and, alas, need a good wife."

1970

ALFRED DE ZAYAS, a former U.N. independent expert, writes that he briefed the U.N. Security Council during an Arria formula meeting in March on "unilateral coercive measures, which some countries want to call 'sanctions,' although they actually constitute unlawful 'use of force' in contravention of the U.N. Charter, specifically article 2, paragraph 4." His statement was published on the World Beyond War site (bit.ly/Worldbeyondwar). Zayas' most recent book is "The Human Rights Industry: Reflections of a Veteran Human Rights Defender."

Was recently profiled in The Wall Street Journal: "The Father of Nutrition Labels Doesn't Count Calories and Loves Ice Cream."

He adds that in June he traveled to the Hermann Hesse Tage at Sils Maria in the canton of Grisons in Switzerland, where he spoke about his translation of 220 Hesse poems from the cycle "Das Lied des Lebens."

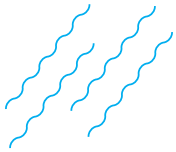
DAVID HERZER, of counsel at Wickens Herzer Panza in Avon, Ohio, writes, "I was recently elected to the Lorain, Ohio, Schools Alumni Hall of Fame (graduated in 1963 from Lorain High School)."

1971

HARVEY J. KIRSH LL.M. has been awarded the Governor General of Canada's Medal for Meritorious Service for achievements in the development of the field of construction law in Canada. He was recognized for demonstrating exemplary leadership as a construction arbitrator, mediator, referee, author, counsel, and advocate, and as the founding president of the Canadian College of Construction Lawyers. The presentation ceremony by the governor general will take place at Ottawa this fall.

1974

STEPHEN B. YOUNG published "Kissinger's Betrayal: How America Lost the Vietnam War" with RealClear Publishing. Young wrote in June that his book includes replicas of documents "which reveal Henry Kissinger on his own in early 1971, without authorization from President Nixon, proposing to the Communist leaders in Moscow, Beijing, and Hanoi that, in return for a peace treaty, the United States would abandon its ally, the Republic of Vietnam." His book, he wrote, also includes "English translations of the November 1960 directives from Hanoi to its followers in South Vietnam to organize the National Front for the Liberation of South Vietnam (the NLF or Viet Cong) and begin a war against the South Vietnamese government." Young added that in April 1975, he "took the lead in proposing a refugee resettlement program for Vietnamese



nationalists as Hanoi brought to a violent end the 'Decent Interval' which Kissinger had secretly negotiated for South Vietnam in 1971."

1975

RICHARD A. MESERVE is the recipient of the Lauristan S. Taylor medal from the National Council on Radiation Protection and Measurements. The citation states that the award is "in recognition of lifetime achievement in radiation science." At the award event, Meserve, who served as chairman of the United States Nuclear Regulatory Commission from 1999 to 2003, presented a lecture titled "Lessons from the Fukushima Daiichi Accident." He is senior of counsel at Covington & Burling in Falls Church, Virginia.

1976

JAMES D. ADDUCCI, formerly general counsel of The Firm of John Dickinson Schneider Inc., has now assumed the position of general counsel *emeritus*. JDS is the parent company of Hollister Incorporated, a global provider of health care products and services, and several service companies across the United States and Europe. Adducci continues to serve on the board of directors of JDS.

1977

OLUFUNKE ADEKOYA LL.M. writes: "A group of international students who met and became friends while attending the Harvard Law School LL.M. program in 1977 decided to mark their 45th reunion (albeit a year late due to COVID travel restrictions) at the end of September 2023 by meeting in Italy. Our reunion showcased the international friendships forged during the LL.M. program as participants hailed from Australia, Belgium, Iran, Italy, Austria, Nigeria, Canada, France, England, Germany, the Netherlands, and the United States. ... Many thanks to **STEFANO BURCHI LL.M.** and **SIETZE HEPKEMA LL.M.**, who organized the event." The reunion included a stay in the town of Bolsena, and a highlight, according to Adekoya, was the boat ride to Bisentina Island, in the heart of Lake Bolsena. "Here's to the new memories made, the friendships renewed, and the anticipation of future reunions. Until we meet again!" she concluded.

Recipient of the Lauristan S. Taylor medal from the National Council on Radiation Protection and Measurements. The citation states that the award is "in recognition of lifetime achievement in radiation science."

1979

ARTHUR BRYANT writes: "I am joining the San Francisco office of Clarkson (clarksonlawfirm.com), a fast-growing, forward-thinking, 25-lawyer public interest law firm headquartered in Malibu, California. I will continue litigating cutting-edge Title IX cases, lawsuits against social media companies, and other groundbreaking class-action, mass-action, and individual lawsuits and appeals. The firm is heavily involved in AI and privacy, consumer protection, employment, environmental, fertility negligence, sexual assault, and appellate litigation nationwide."

The Trustees of Minnesota State Colleges and Universities elected **GEORGE SOULE** to serve as board chair for a two-year term. He has served on the board of trustees since 2017. Minnesota State's 26 community and technical colleges and seven universities serve over 300,000 students per year. A graduate of Minnesota State University Moorhead (formerly Moorhead State University), Soule is a partner at Soule & Stull in Minneapolis.

1980

Duquesne University President **KEN GORMLEY** shared that 13 HLS classmates gathered in May at Duquesne's commencement in Pittsburgh to celebrate as classmate U.S. Sen. **MARK WARNER** (D-Va.) served as a keynote speaker and received an honorary Doctor of Humane Letters degree at this year's ceremonies. Warner, who was Gormley's HLS roommate in a house in Somerville, Massachusetts, now chairs the Select Committee on Intelligence and is a member of the Senate Finance, Banking, Budget, and Rules Committees. He was honored by Duquesne for working with senators and leaders of all political stripes, and demonstrating the virtues of civil discourse, which Gormley has emphasized with students throughout his presidency. The group of HLS friends, who have kept in touch since graduating from the law school, included **LISA HEMMER** and **CHRIS SAVAGE**, **BETSY MERRITT**, **MARC SILVERSTEIN**, **HOWARD GUTMAN**, **JOEL PELZ**, **RUSS DAGGATT**, **MARLA WILLIAMS**, **ERIKA FINE**, **JORIE ROBERTS**, **TOM LUCERO**, and multiple spouses, including Laura Gormley and Lisa Collis, Warner's wife. Many members of this group met the first week of law school, wrote Gormley, and went on to found "The Somerville Bar Review, a large group of 1Ls who gained notoriety by meeting every Thursday night to take a break from their studies and to review dive bars in and around Somerville." The classmates continue to gather regularly to celebrate each other's milestones and successes. Gormley told Warner during the ceremony, when bestowing upon him the honorary degree: "This is even a bigger deal than being elected governor or U.S. senator."

1986

"Bungee jumping from a plane might push my comfort zone more than what I'm doing, but not by much," wrote **DANIEL WOLF** in mid-June. "With collaborators I have written a practical plan for reconstruction of Gaza, one that creates a foundation for peaceful coexistence. I'm pushing it out to responsible officials as well as protesters; last week I met the president of the U.N. General Assembly. It differs from innumerable other peace plans in that it provides a detailed path to a prosperous state for Palestinians and long-term security for Israel. (See www.tinyurl.com/gaza-2050-summary.) Echoes of my international law studies with Abe Chayes and Dean Smith can be heard if you read closely." Wolf has also restarted his first tech company, Terra Segura, which is working to develop an affordable landmine clearing technology for Ukraine

and beyond. And he is continuing with Democracy Counts, which develops software and processes that empower Americans to conduct legitimate near-real-time audit checks on their local election machinery. "My election audit work," he added, "traces back to my time at HLS, when in 1984 Dean Frederick Snyder suggested I research Nicaragua's electoral system to prepare an observers' mission to the Nicaraguan presidential elections that November. I ended up writing the world's first country-specific election observers' manual. If we succeed in saving American democracy, you can blame Fred Snyder."

1987

In the spring, **SHAUN McELHATTON** wrote: "I am honored to be featured in two new books: 'Enlightened Self-Interest: Individualism, Community, and the Common Good,' by Thomas Bussen, and 'La Via Francigena, Passo Dopo Passo: 2200 km da Canterbury a Roma' (The Via Francigena, Step by Step: 2200 km from Canterbury to Rome), by Alberto Foppa Vicenzini." The first profiles McElhatton, focusing, in particular, on what led him in his late 50s to volunteer in Kyrgyzstan through the Peace Corps for two years. The second was written by a fellow trekker who encountered McElhatton on the ancient pilgrimage route, which McElhatton and his wife traversed over a summer.

1989

BETH-ANN KRIMSKY, a partner and the national litigation division chair at Greenspoon Marder in Fort Lauderdale, Florida, was selected as the winner of ALM's Florida Legal Awards "Attorney of the Year." This recognition honors an attorney who has made a distinct impact in the field of law. Krimsky recently secured and had confirmed two arbitration awards exceeding $100 million for clients. She also holds leadership roles (and is set to become chair in January 2025) on the boards of the Memorial Regional Hospital and Joe DiMaggio Children's Hospital Foundations.

Revisiting a 'Trial of the Century'

Three law school classmates play key roles in reenactment of notorious Lindbergh baby kidnapping and murder case

RICHARD HOFFMAN '70 wrote that he and two classmates participated in a reenactment of the 1935 trial of Bruno Richard Hauptmann for the murder of celebrated aviator Charles Lindbergh's infant son, in the Marin County Superior Court in San Rafael, California, last May. **NOAH GRIFFIN '70**, of Tiburon, California, a historian who served as vice mayor of Tiburon, organized the mock trial with retired California Judge Lise Pearlman, who has written a book about the case and suggests that Lindbergh himself might have played a role in his child's death. The prosecutor in the reenactment was played by **PETER BUCHSBAUM '70** of Stockton, New Jersey, a retired judge of the New Jersey Superior Court, where Hauptmann had been tried. Buchsbaum recalled the label affixed to a seat in that courtroom that read, "This chair was sat in by Bruno Hauptmann." Buchsbaum commented: "It was spooky sitting right in front of that seat, and now here I am all these years later doing this mock trial. I didn't come away from today convinced that Hauptmann was innocent, but I do think it is worth looking into."

COURTESY OF RICHARD HOFFMAN

Richard Hoffman

Hoffman, who served as clerk of the D.C. Court of Appeals and executive director of the National Prison Rape Elimination Commission, appeared as a "wood expert" witness from the U.S. Department of Agriculture's Forest Service. He testified to the strength of the wooden ladder that Hauptmann allegedly used to carry out the kidnapping of Charles A. Lindbergh Jr. from the second-floor nursery in the family home in Hopewell, New Jersey. During the reenactment, amidst testimony from the trial, a current-day public defender pointed out many seeming errors that undermine the state's case, including withheld facts related to the ladder.

"It's strange to deliver testimony that has now been deemed totally unreliable."

"It's strange to deliver testimony that has now been deemed totally unreliable in our age of DNA evidence," Hoffman noted, "and also that just about all of this witness's testimony regarding the ladder has been shown to be based on sloppy investigation and failure to establish chain of custody."

Those present at the reenactment — observers, law students, and participants, who included many public defenders, prosecutors, and court staff, among them bailiffs provided by the Sheriff's Office — voted 38-5 in favor of a new trial for Hauptmann.

He is also advising states in other ICJ cases dealing with climate change.

ANDREAS ZIMMERMANN LL.M., a professor at the University of Potsdam in Germany, wrote in May that he'd recently "acted as counsel in a high-profile case before the International Court of Justice, namely this time in the advisory proceedings concerning Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem." He added that he is also advising states in other ICJ cases dealing with climate change, state immunities (Germany versus Italy), and a boundary dispute between two Latin American states (Guyana versus Venezuela).

1992

This summer **TED CHIAPPARI**, partner at Duane Morris, was named chair of the immigration division of the firm's employment, labor, benefits, and immigration practice group. Chiappari practices in the area of business immigration, and his work includes representing companies seeking to acquire temporary work permits or permanent resident status for their foreign employees, and also representing individuals on maintenance of U.S. resident status while abroad and on citizenship matters.

Trial attorney **MANDY NATHAN** has joined Reynolds Frizzell as of counsel. She helps guide legal strategies as she develops arguments for motions, briefs, and trials. Prior to focusing her practice on litigation research and writing, Nathan represented plaintiffs and defendants in complex commercial litigation matters related to contracts, partnership agreements, business torts, and professional liability disputes, among others.

1993

ED DUCAYET writes: "While not technically practicing law, I've found some interesting work to do both in the Dallas Police Department and the Navy conducting investigations and occasionally impacting policy. Remember all my classmates fondly, esp. the Drama Society crew! Living in Dallas but commuting to Chicago area and occasionally Europe for the Navy (for now)."

1995

ANDREA "ANDIE" DAVIS writes: "I'm thrilled to announce that my debut novel, 'Let Me Liberate You,' is out in the world! It's the story of a New York artist who returns to Barbados searching for purpose, only to end up setting off a workers' revolt that brings the island to its knees. It's a satire of privilege, class struggle, performative activism in the age of social media, and growing distrust in legacy institutions."

1996

LOUIS LOPEZ joined AARP Foundation as vice president for litigation. His portfolio includes economic justice, labor and employment, and consumer protection. Lopez also was appointed chair of the American Bar Association's Commission on Hispanic Legal Rights and Responsibilities, and he serves as a board member of the Harvard Law School Association of Washington, D.C.

Earlier this year, **MIKE McNAMARA** joined Baretz+Brunelle, a growth advisory firm to businesses in the legal industry, as the firm's first chief executive officer. He was previously managing partner and then CEO of Dentons US, where he also served on the global management committee and the global board.

GAYLE WEISWASSER writes: "I have realized a lifelong dream and opened an independent bookstore in Bethesda, Maryland, selling new books for readers of every age. Come visit Wonderland Books (wonderlandbooks.com) if you're in town!"

2000

In August, **DANIEL ABEBE** became the 16th dean of Columbia Law School and the school's Lucy G. Moses Professor of Law. He previously served as vice provost for academic affairs and governance at the University of Chicago and as Harold J. and Marion F. Green Professor of Law at the University of Chicago Law School, where he was deputy dean from 2016 to 2018.

GAIA BERNSTEIN LL.M., professor at Seton Hall University School of Law, writes that she delivered a TEDx Talk based on her book "Unwired: Gaining Control over Addictive Technologies." (tinyurl.com/5n94av97.)

SCOTT CLAASSEN has returned to Stinson in the Kansas City, Missouri, office after spending four years in-house as general counsel for a NASDAQ-listed global financial transactions services corporation. His practice focuses on representing clients in mergers and acquisitions, corporate governance, and securities law compliance.

2001

PATRICK KASSEN has joined Greenberg Traurig as a shareholder in the corporate, investment management, and financial regulatory and compliance practices in New York. He focuses on the private equity and real estate sectors. Kassen was previously at Blackstone, where he had most recently served as general counsel of their portfolio company Link Logistics and previously served as managing director and chief compliance officer of Blackstone Real Estate.

2002

SANKET J. BULSARA was nominated and confirmed as a federal district judge for the Eastern District of New York. He begins his new role in December. He has served on that court as a federal magistrate judge since 2017. He writes that classmates are encouraged to visit his chambers when they are in New York, including to see the court's weekly naturalization ceremonies.

2004

UCLA Professor of Law **ANNA SPAIN BRADLEY** writes that she was appointed

by President Biden as one of four U.S. delegate members to the International Centre for Settlement of Investment Disputes Panel of Conciliators at the World Bank. She joined UCLA Law in 2020 and previously served as the university's vice chancellor for equity, diversity, and inclusion. Spain Bradley has also been a U.S. delegate to the U.N., an attorney-adviser for the United States before the Iran-U.S. Claims Tribunal, and legal counsel for nations before the Permanent Court of Arbitration. Founding member and former board member of Mediators Beyond Borders International, she has also been vice president and an executive council member of the American Society of International Law. She is author of the book "Human Choice in International Law" and is currently writing another, titled "Global Racism."

2005

YONI ROSENZWEIG was appointed co-head of the antitrust group at Davis Wright Tremaine, a national law firm headquartered in Seattle with over 600 attorneys. His practice focuses on antitrust litigation, disputes, and counseling, and his clients are drawn from sectors including real estate, computer technology, gaming, retail, and finance. Prior to his move to Davis Wright Tremaine, Rosenzweig practiced at Katten Muchin Rosenman and at Quinn Emanuel Urquhart & Sullivan.

In July, **STACY STITHAM** became managing partner of Maine-based Brann & Isaacson, where she was previously a partner. A board member of the Maine Justice Foundation and Foxcroft Academy, she recently served as president of the Maine State Bar Association.

2008

In April, **ANTÓNIO LEITÃO AMARO LL.M.** was appointed to the cabinet of the new government of Portugal. He writes that he serves as minister of the presidency, in charge of the executive's legislative activity, political coordination and communications, and migrations policy. In addition, he notes, he is the fourth in the ranking of the Portuguese national executive branch.

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2009

JENNIFER RICHNAFSKY has joined the Pittsburgh office of Steptoe & Johnson and is of counsel in the firm's labor and employment department. She counsels employers on issues such as breach of contract, employment agreements, employee benefits plans, and the Fair Labor Standards Act.

2010

JEREMY LEONG LL.M. has written a book on cross-border commercial law titled "Commercial Agreements: Principles and Practice" (available from Edward Elgar Publishing), which presents a fresh conceptual framework for interpreting and improving commercial agreements drawing on the philosophy of language. The book offers strategies for negotiating, drafting, advising on, and litigating supply, licensing, franchising, and other agreements. Leong is the founder and managing director of Acton Law, a boutique corporate and commercial law firm in Singapore, and he teaches international business transactions/international financial law as an adjunct at the Fletcher School at Tufts University.

2011

KENNETH GRAD LL.M. has been appointed assistant professor at the Faculty of Law, University of Manitoba, where he teaches criminal law and evidence.

2013

JAMIE KAPALKO has been named vice president and general counsel of Jersey Mike's Subs. She joined Jersey Mike's in 2015 and most recently served as deputy general counsel. She is now responsible for overseeing all legal affairs including corporate contracts and regulatory compliance.

2014

YUAN LIANG has joined the IP group at Ambrose, Mills & Lazarow, a boutique law firm that focuses on corporate and intellectual property law, as a partner. He previously practiced at Sterne Kessler, where he was a counsel.

EMILY MARTINEZ LIEBAN is a partner in Holland & Knight's San Francisco office and a member of the firm's West Coast land use and environment group. She was recently named one of San Francisco Business Times' 40 Under 40. Lieban helps natural resources, manufacturing, and energy clients manage environmental challenges that arise in project development, regulatory compliance, and litigation.

2016

ALEXANDER SIMMONDS has joined Cadeler A/S as chief legal officer. "Headquartered in Copenhagen, Denmark, and listed in New York and Oslo, Cadeler owns and operates a fleet of specialist jack-up vessels for the transportation, installation, and maintenance of offshore wind turbines," Simmonds writes. He previously was counsel at Davis Polk & Wardwell, where he practiced in both the New York and London offices.

2022

SEUN MATILUKO LL.M., a British-Nigerian journalist, released a new podcast series in February with the BBC called Seun's Talking Drum: bit.ly/Seunstalkingdrum. She writes: "The series focuses on Britain's largest African group — West Africans! It asks whether it's possible to authentically be both British and West African. How authentic can your British identity be when you're raised in a very West African household? And how West African can you truly feel when you have little idea of what day-to-day realities are like in your heritage country, beyond what relatives send you in 'forwarded many times' WhatsApp videos?"

Mona Susan Power's fiction reflects the trauma, joy, and resilience of Native American life

'I'm All About Hope'

BY RACHEL REED

For writer **Mona Susan Power '86**, her Harvard Law School experience was perfect foreshadowing. Indeed, to use a legal term, perhaps her destiny was foreseeable.

"I had a blast," Power says of her time as a student. During her first year, she was part of an experimental section that tried to blur the traditional boundaries between different black letter law courses. She enjoyed constitutional law with Professor Laurence Tribe '66 and Alan Dershowitz's criminal law class. She studied American Indian law and participated in the Native American student organization.

But it was during the future author's involvement with the Harvard Law School Drama Society that she truly flourished, acting in and producing around a dozen shows with the group by the time she was a third-year student. Power even penned the spring musical one year — a parody called "Alice in Wonderlaw."

There were other hints of her creative fate: In a course on Dickens and the law, Power fell in love with the Victorian author's serial "Bleak House." And when her Evidence professor assigned a take-home final that asked her to analyze the legal tactics in a popular French film, she may have been one of the few students who relished the opportunity.

It might not come as much of a surprise, then, that not long after commencement, Power traded casebooks for fiction books — and is today the bestselling, critically acclaimed author of four books of fiction, including her most recent, "A Council of Dolls."

Inspiration for her work sometimes occurs as a waking vision, says writer Mona Susan Power, presenting a kind of puzzle to be solved.

"I don't think it's a coincidence that two of my favorite classes featured connections to art," she says.

Power, a member of the Standing Rock Sioux Tribe, grew up singing, dancing, acting, and writing.

But after she graduated from Harvard College, her mother encouraged her to study law, fearing that her daughter would be unable to make a living in the arts. Although Power ultimately decided not to pursue a legal career, she insists that the arts and the law have things in common.

"Language is such a fundamental aspect of law," she says. "The best lawyers learn to use language in ways that are either carefully specific or purposefully vague. Lawyers also need to be good storytellers in order to make a compelling case, whether in front of a jury, before the Supreme Court, or in their legal briefs."

After Harvard Law, Power attended the Iowa Writers' Workshop, and it was then that she began to work on her first novel, "The Grass Dancer," which received the prestigious PEN/Hemingway Award for Debut Novel in 1995.

Power says her law degree gave her a kind of unfair credibility once it was published, credibility that would otherwise have shamefully been denied her as a Native writer.

"I was told explicitly by one publishing insider that he sighed when he saw my novel, thinking, Oh, another Indian book," she says, "at a time when there were very few Native American authors being published. But he went on to say that in reading my bio, he noted I had a Harvard Law degree. So, he read the book and loved it! I don't even recall what I said in response. I was so angry and pained by his racist ignorance."

Power says that, unlike some writers who collect ideas for their books long before they put pen to paper, for her, inspiration often occurs spontaneously, and sometimes in surprising ways. "My mother would say it was ancestors bringing forward inspiration, which could very well be," she says. "Sometimes I'm given a waking vision, like a film playing out unexpectedly in my head. The vision presents a kind of puzzle. I want to understand it. The pursuit of understanding launches a novel."

"A Council of Dolls," her latest novel, is told through the interconnected stories of three generations of Native girls, each of whom has a special relationship to a cherished doll. The toys are more than playthings — they serve as friends, confidants, and even protectors as the girls endure trials from their families and the wider world, which has tried to mold and even erase their identities as Indigenous people.

"In 2019, I sat down to write a short story about a little girl very much like me — the girl version of myself I'm still so closely in touch with, given all the healing work I've been doing — and she just led me where she wanted to go," Power says. "I also didn't consciously choose to write the book in the present tense. It was gut instinct. After the fact, it made sense to me, because what that 'choice' is telling me is that the past is never really past. We carry it with us in each moment."

Power's current project centers on five Native students at Harvard College.

Power adds that the book was influenced in part by her own history, and her grappling with the wounds of her youth, including the sudden violent death of her father when she was 11 years old.

"When I thought about the appearance of dolls and how they ultimately served the story, I realized that they were a reflection of my own survival strategy as a child," she says. "I turned to art to express myself when I wasn't allowed to work through my pain and frustration, sometimes rage, in any other way. I wasn't allowed a counselor to help me process things. Creativity saved me, and it saves the girls in this novel, too, because their own imaginative impulses manifest the allies they need to survive."

Finding a way to work through discomfort and suffering informs Power's current project, too, a novel she began in 2014. With an intriguing and enigmatic working title — "Harvard Indian Séance at the Lizzie Borden Bed & Breakfast" — the book centers on five Native students at Harvard College who decide to stay at the eponymous B&B for one last adventure together before graduation, and wind up stirring up ghosts of another kind.

"Each of them has a problem in their past that they haven't addressed, and certainly not healed," she says. "They bring all of that to the house, which is already a troubled place."

Like her other works, this novel will explore traumas imparted by colonialism and racism, and the ways pain is passed down through families, among other themes. But Power's books also shimmer with a quiet hope, reflecting the joys and beauty of life, and of Native culture, identity, and history. This may not be a conscious choice, but Power says it is no accident.

Despite having dealt with depression for much of her life, Power says she has nonetheless always maintained a sense of optimism — and a wicked sense of humor. "I'm all about hope," she says. "What else is there for us to do in the midst of such horrors going on in our world? Horrors in our past? If we allow ourselves to be swallowed up by anger, fear, despair, then we're lost."

Her work channels that philosophy. "The best thing I know how to do is to pick myself up and start over, try again. Make myself laugh. Believe in miracles," Power says. "I've definitely been granted a few."

COURTESY OF SUSAN POWER

At TecHustle, CEO and founder Evita Grant is building a global trading network for African small businesses

Open Market

BY JULIA HANNA

Growing up in Accra, **Evita Grant '16** loved playing games with her cousins in the backyard and eating the fresh mango, coconut, and watermelon that were so plentiful in Ghana. But she also loved traveling and seeing the differences in other African countries. In neighboring Côte d'Ivoire, she was struck by the chic fashions in vivid prints.

One year, the family went to Niger for Christmas: "Niger is very much a desert climate," says Grant. "But that was the first time I ate cantaloupe. I learned there was a whole variety of agricultural products being grown there — it wasn't just sand and desert."

Those and many other experiences were formative for Grant, whose perspective was also broadened by attending Ghana International School. In high school, she focused on math, physics, and chemistry, and was accepted to MIT.

She majored in chemical engineering, thinking it would be a useful foundation for a career in manufacturing back home: "My North Star when it comes to my education/career has always been contributing to the economic development of Africa and its global diaspora."

At MIT, exposure to the medical engineering space made Grant wonder if that could be an

area of impact. After graduating in 2006, she enrolled in a joint Harvard-MIT program in health sciences and technology, where she worked on HIV vaccine development and received a Ph.D. in medical engineering and medical physics in 2011.

About halfway through her doctoral thesis, however, Grant realized the high-level medical research she was conducting would be difficult to pull off back home; there wasn't the necessary infrastructure. In addition, Grant was overqualified for research jobs in Big Pharma yet underqualified for management roles. Despite her high level of education, she needed an additional area of expertise.

A mentor from MIT suggested she consider law — specifically, intellectual property law. Grant got her feet wet by working as a science adviser at a Boston-area firm for a year, then applied to Harvard Law School.

"Law school helped me realize I'd been in a STEM bubble," she says. "Discussing social issues in the classroom gave a bit of balance to the engineer and scientist in me." New options began to percolate in Grant's head; when she spoke to Professor Ruth Okediji LL.M. '91 S.J.D. '96 about her background and desire to make a difference in the African economy, Okediji recommended Professor Mark Wu's International Trade Law course. Grant loved it.

Wu's class, when coupled with Grant's memories of the rich diversity of African goods she experienced when traveling the continent, planted a seed. After receiving her J.D., she moved to Silicon Valley, joining Wilson Sonsini Goodrich & Rosati as a patent attorney focused on innovations in the life sciences; she also performed due diligence for investors.

Evita Grant is founder of TecHustle, a winner of the 2024 Harvard President's Innovation Challenge.

Immersed in the start-up culture, Grant began to think about a new venture of her own. Like all entrepreneurs, she saw a pain point: the lack of an ecosystem to support African small businesses looking to export their goods.

"I knew there were so many amazing, high-quality African products — but you don't often see them outside the countries where they're made," she says.

There's a reason for that. Regulatory hurdles make it difficult and expensive to send payments out of African countries, Grant explains; intermediaries often provide this service, but at a cost, and wire transfers are inefficient and pricey. (Grant once paid $400 for a transfer from Ghana to the United States that took nearly three weeks.) As a result, small-business owners often travel directly to the countries where they hope to do business with large quantities of cash — also quite inefficient, to say nothing of the risk involved.

Making a difference in Africa's future is her North Star.

In response, Grant founded TecHustle, a start-up providing financial and technology services to streamline trade for African small businesses. While she incorporated the venture in 2017, Grant continued to research and refine the model for a few more years before leaving her job late in 2020 to work on it full time, launching TecHustle's payment platform, AFi, in 2022. An online marketplace, Mansa Market, is currently in development, building a roster of merchants selling everything from mango preserves to women's clothing.

Currently licensed in Ghana and Togo with plans to expand within West Africa and beyond, TecHustle, with a team of eight employees, has already processed well over $3 million in payments. A winner of the 2024 Harvard President's Innovation Challenge in the Alumni and Affiliates Open Track category, the company has raised $1 million from angel investors, with plans underway for an additional $2 million seed round.

To illustrate TecHustle's impact, Grant cites a client who grows and dries peppers to sell to spice manufacturers. "He uses our platform to collect short-term debt financing from investors, to pay other farmers for their peppers, and to help his business grow. And as we expand to the United States and Europe, he's looking forward to collecting payment for his goods back in Ghana. That one client is a local economic engine. He's employing farmers, farmhands, workers who package the product ... his success uplifts so many people in the community."

Acknowledging the 24/7 nature of scaling a new venture, Grant draws on advice from an investor and mentor: It's a marathon, not a sprint.

"I understand the challenges," she says. "There are unknowns. But I think it's people like me, who are passionate about Africa's future, who need to lean in to build and develop the continent to its full potential."

COURTESY OF EVITA GRANT

Kentucky Secretary of State Michael Adams wins award for his bipartisan efforts to expand voting rights in the face of fierce opposition

Election Defender

Michael Adams, Kentucky's secretary of state

BY LEWIS I. RICE

By the time he decided to run for secretary of state in his native Kentucky, **Michael Adams '01** had spent much of his career as an election lawyer, and he was as ready as any first-time candidate could be to take on the job. Then he was elected.

"The biggest thing I learned is how much different it is when you're the candidate and it's your name on the ballot," said Adams. "I worked for literally 400 candidates professionally before I ever ran myself. And people [said], 'You must have been really well prepared.' No, there's nothing that prepares you for this."

"This," as it turned out, was more than anyone could have anticipated for a candidate who took office in January 2020 as Kentucky's chief election official. The pandemic hit shortly thereafter, and Adams, a Republican, worked with Democratic Gov. Andy Beshear to make voting by absentee ballot easier. He also added early voting days as a way to help people safely vote, which they did in record numbers. He was called a traitor and worse for his bipartisan efforts, which led him to be named the 2024 John F. Kennedy Profile in Courage Award winner "for expanding voting rights and standing up for free and fair elections despite party opposition and death threats from election deniers."

"I've certainly tried to be fair, and to be above partisanship and

to work with both sides, and I think it makes a big difference," Adams said. "There are plenty of issues that we fight about all the time. But elections are too important. And they can't be politicized."

Adams has forcefully denied the assertion that widespread election fraud exists and has rebutted misinformation that he said is often driven by social media or cable news: "They don't know any better, but that hasn't stopped them from yelling at public officials." He also faced accusations of voter suppression from progressives for instituting a photo ID requirement to vote, but he insists that safeguards such as offering free photo IDs have bolstered the security of elections without disenfranchising voters. Since winning re-election last year, he has worked to maintain the gains from his first term, including fighting efforts from members of his party to take away early voting.

He credits his Harvard Law experience with helping him communicate and solve problems across party lines. After growing up in Kentucky, where he attended college, Adams acknowledges feeling some culture shock when he arrived in Cambridge. But the opportunity to interact with people from different backgrounds benefited him, he says. He appreciated learning from professors whose politics he does not share, such as Elizabeth Warren, Elena Kagan '86, and Laurence Tribe '66, who wrote a note to Adams commending his classwork after he didn't do as well as he had hoped he would on an exam. He still has that note in his desk at the State Capitol.

"I had some pretty significant people … who really shaped my intellect, but also they taught me empathy," he said, adding that he believes it was good for him as a conservative to go to Harvard and meet so many people who differed from him. "I think it's made me more effective in the job I have."

Adams, who spent much of his career as an election lawyer, said he now knows how different it is when "it's your name on the ballot."

After graduation and a judicial clerkship, Adams worked for a law firm while volunteering for campaigns. When campaign officials found out he was a lawyer, they asked him to help with legal matters such as vetting campaign finance reports. The experiences helped propel him to a full-time practice in election law, starting as general counsel to the Republican Governors Association and later representing national political committees and politicians including former Vice President Mike Pence and former South Carolina Gov. Nikki Haley. His career opportunities also were enhanced, Adams says, by the Supreme Court's 2010 decision in *Citizens United v. FEC*, which spurred the need to hire lawyers to navigate the new campaign financing rules.

"There are plenty of issues that we fight about … but elections are too important."

Adams developed an interest in politics at a young age. His parents restricted his TV viewing options, but he was allowed to watch C-SPAN, and he became the rare preteen captivated by the Iran-Contra hearings and other congressional matters. By contrast, his interest in law came about, literally, by accident. His parents, who struggled financially, wanted him to be the first in the family to graduate from college so he could have an easier life than theirs. But he did not have any lawyers in his orbit, and couldn't have imagined becoming one himself. Then, shortly before graduating from high school, he got into a car accident. When the insurance companies couldn't determine who was at fault, a lawsuit ensued.

It was "one of the best things that ever happened to me," Adams said. "I was able to for a couple of years go through the process of litigation, go through the complaint and the answer, and the written discovery and the oral discovery and the trial prep. And I thought it was just fascinating." He asked his attorney, "Do you think I could do this?" His attorney advised him to take the LSAT and find out.

After the rigors of his first term and re-election campaign, Adams would like to spend more time with his wife, Christina, and daughter, Lucia, who voted for the first time recently, although she hadn't been old enough to vote for her father when he ran in 2023. He can't run for a third consecutive term as secretary of state because of Kentucky law. But Adams, who says that state government fits his style more than more polarized national politics, is considering a run for governor. Lucia may yet have the chance to cast a vote when her father's name is on the ballot.

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Christopher Edley Jr.: 1953–2024

Civil rights expert and policy adviser to presidents

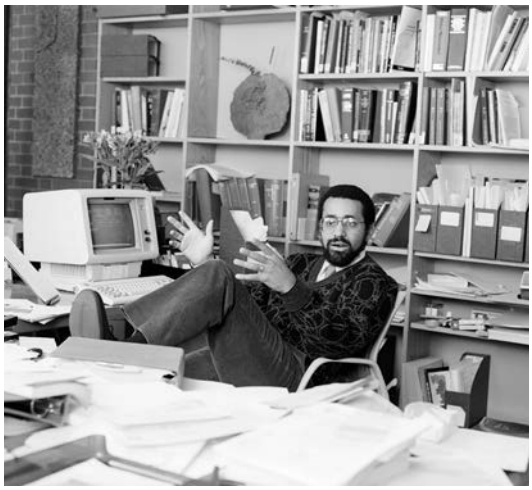
Christopher Edley Jr. ’78, a civil rights expert and policy adviser to several presidents, who was a member of the Harvard Law School faculty for more than two decades before becoming dean of University of California, Berkeley, School of Law, died on May 10. He was 71.

“Chris Edley infused his brilliance and public interest commitments in his stellar career as a professor, policymaker, dean, and civil rights analyst and architect,” said Martha Minow, 300th Anniversary University Professor and former Harvard Law dean. “I was lucky to start teaching at Harvard the same day he did and to collaborate on projects. As we mourn him, there is comfort in knowing that his legacies are large.”

Edley joined the Harvard Law School faculty in 1981 as an assistant professor, becoming a professor in 1987 and serving on the faculty for 23 years. His academic work focused on administrative law, civil rights, and education.

“Chris was enthusiastic about everything he did, including being an enthusiastic friend,” said Todd Rakoff ’75, Byrne Professor of Administrative Law. “We taught Administrative Law together for several years; Chris was wonderful at being able to cross over the boundary between legal doctrine and real-life behavior, and to come back again.”

“It was a privilege to know Chris Edley,” said William Alford ’77, Jerome A. and Joan L. Cohen Professor of Law. “He was a great and generous colleague who made enormous contributions to public and academic life both, while keeping a healthy, wry perspective on the quirks of each.”



Christopher Edley taught at Harvard Law for 23 years.

During his time at Harvard Law, in the wake of a court decision targeting race-conscious admissions, Edley co-founded with colleague Gary Orfield the Civil Rights Project, which addresses critical gaps in civil rights research and policy.

Jocelyn Benson ’04, currently Michigan’s secretary of state, worked for Edley when she was a law student and is one of many students for whom he was a mentor.

“He welcomed me into the civil rights and voting rights legal community as a young law student, hiring me in my first year of law school to work with him on the passage of the Help America Vote Act and ultimately to serve as the voting rights policy coordinator at his Civil Rights Project,” she wrote on X. “He taught me how to link a drive for justice and equality with real demonstrable impact, how to move beyond demands for action to getting things done.”

In 2004, Edley became dean at Berkeley Law, where he served for nine years before returning to teaching at the school. In 2016, he co-founded the Opportunity Institute, the Berkeley-based nonprofit organization that promotes social equity through education. He also oversaw Berkeley’s education school as an interim dean.

Erwin Chemerinsky ’78, current Berkeley Law dean, said of his friend and Harvard Law classmate: “Chris led an exemplary life in academia and in public service. He was a brilliant intellect and a charming person with a great sense of humor. He made a huge difference in Berkeley Law and in every institution that he was a part of. He really did transform Berkeley Law, especially in his support for public interest work, in getting a new building done, and creating many centers. I will miss him terribly.”

A graduate of Swarthmore College and the Harvard Kennedy School as well as Harvard Law School, Edley, in addition to working in academe, had extensive policy experience and served in several presidential administrations.

In the late 1970s, he worked for the White House domestic policy staff during the Carter administration, focusing on issues such as food stamps, child welfare, and disability rights. In the early 1990s he served as associate director of the Office of Management and Budget under President Clinton, who later appointed him to lead a review of the nation’s affirmative action programs. Edley also held senior posts in five presidential campaigns: those of Michael Dukakis ’60, Al Gore, Howard Dean, Hillary Clinton, and his former student, Barack Obama ’91.

Edley’s survivors include his wife, Maria Echaveste, and their children, Elias and Zara, as well as Christopher Edley III, his son from a previous marriage.

JOHN CHAPIN

1940–1949

NELSON J. DARLING JR. '48
June 18, 2024

1950–1959

BENJAMIN H. LACY '51
May 18, 2024

DANIEL H. MARGOLIS '51
May 21, 2024

PHILIP H. BUSNER '52
March 27, 2024

JOSEPH A. YANNI '52
Jan. 27, 2024

MILTON C. "BUD" BOESEL JR. '53
Aug. 8, 2024

EDWARD BOOTH '53
April 30, 2024

EUGENE M. FEINGOLD '53
April 21, 2024

ALAN L. HYDE '53
June 10, 2024

SONDRA MILLER '53
Aug. 7, 2024

ROBERT J. BLACKWELL '54
Feb. 15, 2024

MARVIN G. BURNS '54
May 2, 2024

J. LESTER CRAIN JR. '54
April 28, 2024

ALLEN GREENBERG '54
Dec. 7, 2023

RICHARD P. MCGRATH '54
July 21, 2024

FRANCES P.F. MINNO '54
March 19, 2024

EDWARD C. BLOOM '55
Sept. 29, 2023

LAWRENCE J. GREENBERG '55
March 16, 2024

BERTRAM WOLFSON '55
June 24, 2024

DAVID E. CLINKENBEARD '56
April 8, 2024

ROCCO L. D'AMBROSIO '56
Feb. 26, 2024

JEROME B. FLEISCHMAN '56
May 13, 2023

RICHARD G. FREIDIN '56
Feb. 23, 2024

ALAN B. HANDLER '56
May 23, 2024

I. AUSTIN HEYMAN '56
April 15, 2024

RICHARD E. HULL '56
March 22, 2024

MELVIN KATZ '56
March 17, 2024

ALLAN R. LIPMAN '56
June 12, 2024

DAVID A. WATTS '56
May 18, 2024

FRANK A. WEIL '56
May 29, 2024

JOSEPH E. IMBRIACO '57
Feb. 29, 2024

LUIS ZARRALUQUI LL.M. '57
April 29, 2022

ROBERT M. ASHEN '58
Jan. 22, 2024

STEPHEN M. BOYD '58
April 7, 2024

RICHARD A. GROSSMAN '58
April 8, 2024

MOORHEAD C. KENNEDY JR. '58
May 3, 2024

RICHARD B. LANE '58
June 24, 2024

ARTHUR D. NORDENBERG '58
Sept. 3, 2023

BERTRAND B. POGREBIN '58
March 25, 2024

STEPHEN S. RUBINS '58
May 17, 2024

ARNOLD M. APPLEFELD '59
Jan. 4, 2024

JAMES B. DAVIS '59
May 19, 2024

VICTOR R. ORTEGA '59
May 17, 2024

NORMAN H. ROSEN '59
June 19, 2024

ISAAC D. RUSSELL '59
Feb. 27, 2024

WILLIAM C. UGHETTA '59
Jan. 8, 2024

1960–1969

JAMES A. CHURCHILL '60
Jan. 10, 2024

ELIOT D. HAWKINS '60
Feb. 22, 2024

DAVID A. MACDONALD '60
June 1, 2024

DAVID W. MAXEY '60
Dec. 23, 2023

FRANCIS X. MEANEY '60
April 2, 2024

STEPHEN R. VOLK '60
Jan. 20, 2024

ROBERT M. ZINMAN '60
March 2, 2024

WILLIAM L. BALFOUR '61
March 26, 2024

DANIEL W. COHEN '61
April 4, 2024

RAYMOND P. PERRA '61
Jan. 3, 2024

SYDNEY S. TRAUM '61
March 6, 2024

GARY O. CONCOFF '62
April 28, 2024

D. ROBERT GRAHAM '62
April 16, 2024

GEORGE MORRIS GURLEY '62
May 17, 2024

JOHN E. HARRIS '62
Feb. 5, 2024

JOAQUÍN MARTÍN CANIVELL LL.M. '62
Nov. 28, 2023

DONALD L. MORGAN '62
Nov. 12, 2023

JAMES M.H. GREGG '63
April 2, 2024

JOHN T. HANSEN '63
March 25, 2024

BRIAN E. LORENZ '63
April 2, 2024

JESWALD W. SALACUSE '63
July 25, 2024

EDWARD I. SELIG '63
April 8, 2024

WILLIAM B. EARLY '64
Jan. 11, 2024

DANIEL J. GIVELBER '64
June 25, 2023

HOWARD J. "COOKIE" KRONGARD '64
May 3, 2023

GARY H. KLINE '65
May 22, 2024

BARRY M. SMOLER '65
April 6, 2024

ALAN I. BARON '66
Feb. 24, 2024

PETER S. BRITELL '66
Oct. 17, 2023

ROBERT H. CRAFT JR. '66
March 15, 2024

JOHN E. KING '66
Feb. 3, 2024

DAVID B. SMOYER '66
June 1, 2024

DAVID W. WALKER '66
May 2, 2024

PAUL M. WOLFF '66
June 10, 2024

J. EDWARD FOSTER '67
May 11, 2024

JOEL H. GOLOVENSKY '67
Feb. 28, 2024

KENNETH R. JOHANSON '67
July 8, 2024

ALAN W. SCHEFLIN LL.M. '67
Aug. 27, 2023

ANTHONY J. STEINMEYER '67
April 7, 2024

BRUCE WALDMAN '67
May 5, 2024

DONALD J. BRACKEN '68
June 18, 2024

CYRUS E. HORNSBY III '68
Feb. 6, 2024

STUART M. STATLER '68
March 16, 2024

PETER C. WILLIAMS '68
May 23, 2024

THEODORE WILSON '68
May 26, 2024

ANTHONY C. CASTELBUONO '69
April 6, 2024

WILLIAM LESSE CASTLEBERRY '69
May 29, 2024

JAMES B. KEENAN '69
June 10, 2024

1970–1979

ROGER I. ABRAMS '70
Nov. 12, 2023

C. JOHN ANDERSON '70
Dec. 24, 2023

JON T. ANDERSON '70
March 13, 2024

ROBERT A. DRESSLER '70
June 17, 2024

E. CLIFTON "CLIFF" HODGE JR. LL.M. '70
May 8, 2024

ROBERT RANDALL BRIDWELL LL.M. '71
Feb. 23, 2024

DAVID A. BURNS '71
Jan. 4, 2024

WILLIAM O. FIFIELD '71
March 22, 2024

GUILFORD W. GAYLORD '71
May 16, 2024

RICHARD K. COPLON '72
June 2, 2024

ROBERT P. AULSTON III '74
March 1, 2024

E. JOSEPH DEAN '74
May 28, 2024

MATTHEW J. BOTICA '75
March 26, 2024

MICHAEL L. FAY '75
March 18, 2024

CHARLES M. SCHWARTZ '75
Feb. 6, 2024

ANDRIA S. KNAPP '76
March 11, 2024

GAIL E. BOWMAN '77
Feb. 18, 2024

CHRISTOPHER EDLEY JR. '78
May 10, 2024

KENYON B. HODGE '79
June 27, 2024

JAMES A. HUGHES '79
March 2024

1980–1989

NICHOLAS FINKE '80
Sept. 14, 2023

ROSEMARY O'SHEA LL.M. '82
April 25, 2024

PIERRE ARSENAULT LL.M. '83
March 11, 2024

DAVID E. LURIE '83
April 24, 2024

STEVEN A. ARMATAS '84
April 23, 2024

STEPHEN R. LEDOUX '85
May 19, 2024

MARCIA J. WINITZER LL.M. '87
Feb. 17, 2024

J. RUSSELL GEORGE '88
Jan. 1, 2024

MICHAEL E. GERTZMAN '88
April 24, 2024

ROBERT S. BURNSTINE '89
June 28, 2024

1990–1999

KATHERINE K. "KIT" CARTER '91
May 13, 2024

ROBERT D.W. LANDON III '92
March 29, 2024

SUSAN J. CRAIGHEAD '93
Dec. 29, 2023

SARAH E. (WIEDEMER) KIRSON '94
Aug. 14, 2023

DEBORAH A. GITIN '99
March 3, 2024

2000–2009

DANIEL S. EBNER '04
March 14, 2024

2020–2024

MARIA CAROLINA SAID LABAN LL.M. '23
April 7, 2024

ONLINE

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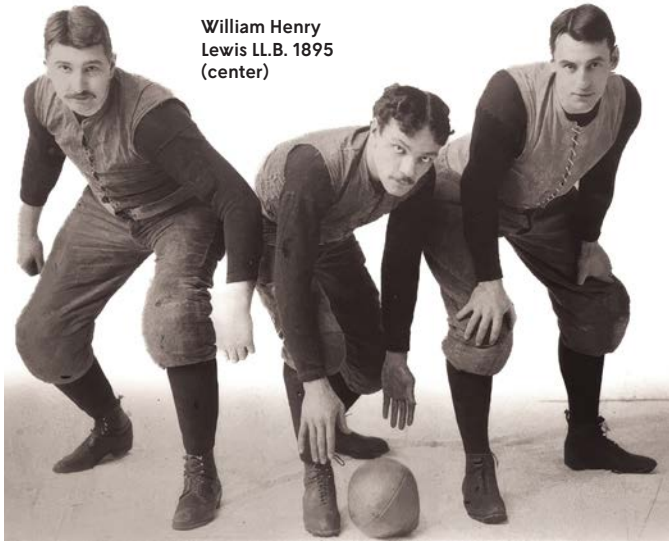
Gallery

A historic match, a pathbreaking coach and lawyer, and the attraction of resisting The Game

Football on the Harvard Law Campus



William Henry Lewis LL.B. 1895 (center)

On May 14, 1874, for the first time, an intercollegiate "foot-ball" game, as Harvard's Magenta newspaper called it, was played on what is now the Harvard Law School campus, on Jarvis Field near where Langdell Hall now stands. The Crimson emerged victorious over McGill by a score of 3-0. A rematch the next day, played under rugby rules, ended 0-0. The rules of football were very much evolving, and Harvard followed "Boston rules," closer to those of soccer. But after these matches with McGill, the Crimson incorporated elements of the game as played by the Canadians (running with the ball, downs, and tackling) into their first intercollegiate match with Yale in 1875, helping to shape football as it is played today.

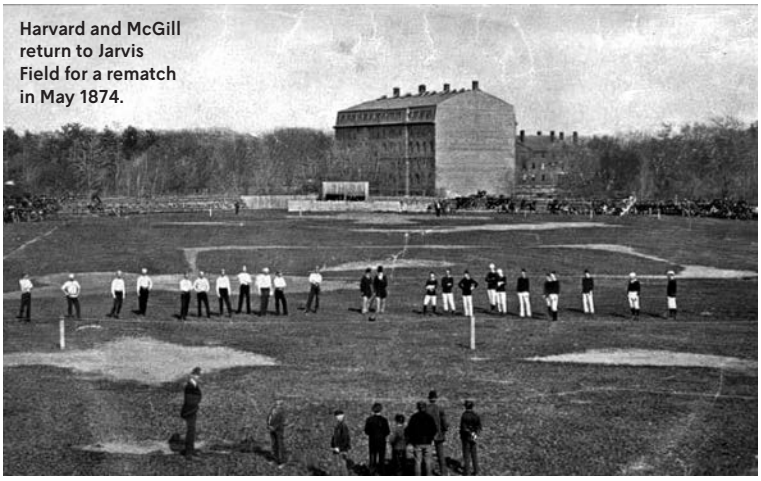
Harvard vs. McGill, May 1874, Jarvis Field

Harvard's 1874 varsity football team with the round ball used under "Boston rules"

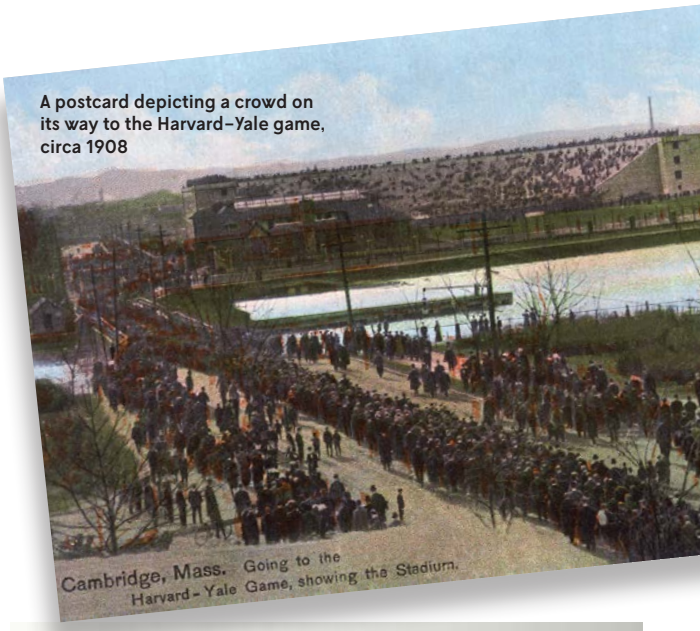
Less than 20 years after that doubleheader, William Henry Lewis LL.B. 1895, then a student at Harvard Law School, played football for two years for the college's team (which eligibility rules then allowed), after having played as an undergraduate at Amherst. He was named to Walter Camp's All-America team, the first Black player to receive that honor. He coached Harvard's team for 12 seasons after he graduated, and he wrote one of the first books on the game he loved, "A Primer of College Football." According to a 2005 profile of Lewis in Harvard Magazine, he continued to practice law much of that time, even serving as assistant U.S. attorney for Boston, a first for Black lawyers. He later served as assistant attorney general of the U.S. under President William Howard Taft (then the highest federal position ever held by a Black person). He was also a criminal defense attorney, heading one of the most successful practices in Boston.

Lewis served as assistant U.S. attorney for Boston, a first for Black lawyers.

In 1892, William Henry Lewis was a Harvard Law student as well as a member of the Harvard varsity football team. He was named to the All-America team, the first Black player to receive that honor. He went on to coach the team at the same time as he became a pathbreaking lawyer.



Harvard and McGill return to Jarvis Field for a rematch in May 1874.



A postcard depicting a crowd on its way to the Harvard–Yale game, circa 1908

Even when intercollegiate matches were no longer being played on Jarvis Field after the construction of the Harvard Stadium in 1903, football, and in particular the Harvard-Yale game, continued then, as it does today, to play a role in the lives of students on the Harvard Law campus.

That was true even for those who did not attend. The letters home of two HLS students that are part of the school's collections attest to that fact. When he was a law student, Austin Wakeman Scott LL.B. 1909, who went on to be a professor at the school, wrote to his mother that although there had already been a "good deal of talk about the Yale game," he wasn't very interested, owing to his inability to "get quite enough spirit into the 'Rah Rah Haavards.'" Student Albert Burt LL.B. 1914 wrote to his younger brother that following a Harvard win in New Haven, his fellow students returned to the dormitory "almost wild" with plans for "getting out and waking up the hall."

Hundreds of observers on Jarvis Field taking in a game in the pre–Harvard stadium days

The Harvard Stadium filled to capacity for the 1913 Harvard–Yale game.

PREVIOUS PAGE, CLOCKWISE FROM LEFT: HARVARD UNIVERSITY ARCHIVES; COURTESY OF JACOB LURIE, "FOOTBALLOFYORE.BLOGSPOT.COM; HARVARD UNIVERSITY ARCHIVES (2)
ABOVE FROM TOP CLOCKWISE: "FOOTBALL, THE AMERICAN INTERCOLLEGIATE GAME" BY PARKE H. DAVIS, C. SCRIBNER'S SONS, NEW YORK, 1911; ALAMY; PACH BROTHERS; HARVARD UNIVERSITY ARCHIVES

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