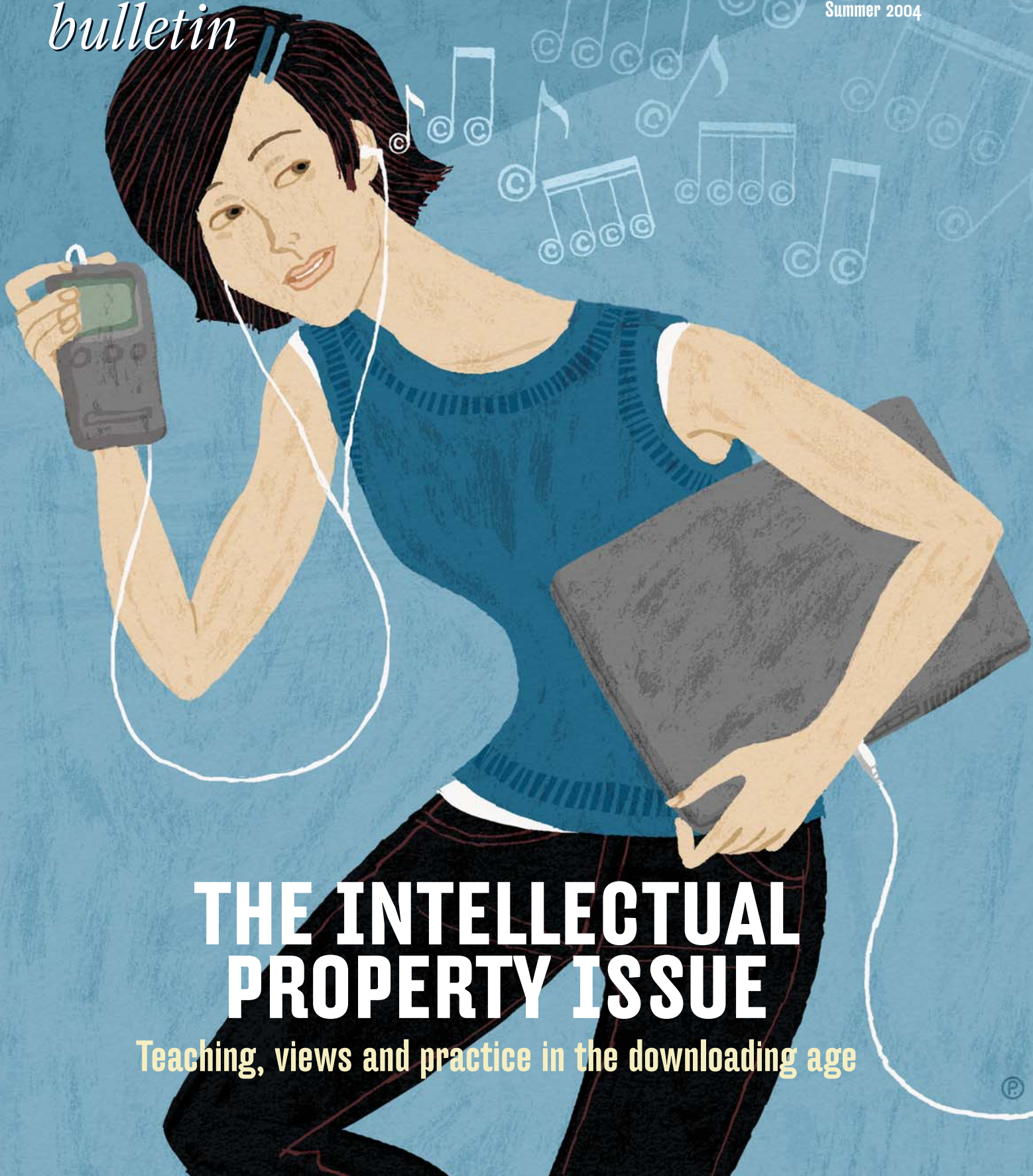


ALSO INSIDE: FACULTY FACE OFF ON GAY MARRIAGE RULING

Harvard Law

bulletin

Summer 2004



THE INTELLECTUAL PROPERTY ISSUE

Teaching, views and practice in the downloading age

®



A scene from "The Crucible." The Arthur Miller play was staged with a cast of Harvard students at HLS in April under the direction of Professor Bruce Hay '88.

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“We did not achieve a great deal in the '70s, but we existed.”
—Shepherd Raimi '55, co-founder of the Lambda Legal Defense and Education Fund

GOVERNMENT-RUN SYSTEM COULD REWARD CREATIVITY

I READ WITH great interest “When Sharing Is a Crime” (Spring 2004), outlining the Berkman Center conference exploring solutions to uncompensated music sharing on the Internet.

The problem of how to incentivize the creation of intellectual property works (such as music) while simultaneously maximizing their dissemination to all consumers who seek them has been the subject of debate for centuries. Today, copyright and patent protection do a fairly decent job of providing financial motivation to creators but do a relatively poor one of ensuring distribution to all potential users who stand to benefit. Devices that allow music sharing accomplish the distributional goal at the expense of diluting incentives to musician-innovators.

As Professor William Fisher notes, a better system would be one which accomplishes both pursuits. Analogous to his compulsory licensing scheme would be a pure government-run reward system, under which today’s intellectual property works would be paid for by the government instead of by the marketplace. What was formerly private intellectual property would become public domain, freely reproducible by anyone at its marginal cost (instead of the monopoly price that prevails under copyright or patent). Of course, tax revenue would need to be raised to finance the necessary rewards to induce creation but would be offset by the corresponding substantial price decreases in what were previously copyrighted and patented works.

HLS Professor Steve Shavell has published an interesting analysis of such a proposal (Shavell & van Ypersele, 44 J. L. & Econ. 525, 2001), and

there is also my own (“An Economic Analysis of Intellectual Property Rights,” 9 Fordham I.P., Media & Ent. L.J. 301, 1998). Valuing the rewards would be the trickiest prong of the proposal but is by no means an insurmountable problem, especially when weighed against the large distributional benefits that would follow.

STEVE CALANDRILLO '98
Seattle

STATUE NOT NEEDED TO SHOW CLARK’S CONTRIBUTIONS

CHARLES FACKTOR’S letter (Spring 2004) calls Dean Clark’s record “mixed at best.” Clark was a wonderful dean. He did more than any other dean in the history of the school to improve the quality of life of the students. Facktor asks: “Will statues be built to honor this man?” I’d contribute toward a statue, but I think Clark is too modest to pose for one.

JOHN JAY OSBORN JR. '70
San Francisco

CONCERNED ABOUT THE ABSENCE OF CONCERN

THE LETTER FROM Charles Facktor touched me painfully. The dorms are plainly no better than they were 40 years ago. Far worse for a foreign student in 1965 was the absence of concern. Devastated by the steely asceticism of my room in my first week after arriving from England, I collapsed with a viral illness and was effectively incommunicado. Were it not for the curiosity of a passing colleague (who assured me that I looked like death and irritatedly but blessedly fetched me a bowl of soup), I might well have died. Some attempt at welfare concern (but perhaps that has been reformed) as



well as more civilized furnishings will, I hope, spring forth from our new dean’s female sensibility and humanity.

ANTHONY BECK LL.M. '66
London

AN EARLY CONTRIBUTOR TO GAY RIGHTS MOVEMENT

THIS LETTER is prompted by your article in the Spring 2004 issue of the Bulletin on the first reunion of GLBT alumni.

I was a co-founder of Lambda Legal Defense and Education Fund Inc., which came into existence in 1972-73, and I was a member of the board of directors for the first 10 years or so.

Those were the hardest years for the gay movement. By the 1980s, gay pride had taken hold. But in the early '70s, for example, we could not find one lesbian lawyer to join our board.

In those early years, we did mount a challenge to the New York sodomy law in the Court of Appeals, but mostly we represented lesbian mothers who were in danger of losing custody of their children, and we handled a variety of military cases.

We did not achieve a great deal in the '70s, but we existed. And our very existence was critical to the eruption of the gay civil rights movement in the '80s. One could say that Harvard Law School’s first contribution to the gay civil rights movement was me.

SHEPHERD RAIMI '55
New York City

HAVE TIMES CHANGED FOR GLBT STUDENTS AT HLS?

AS A GAY GRADUATE of HLS ('88), I read with interest your article “Coming

out Party,” describing the first-ever reunion of gay, lesbian, bisexual and transgendered graduates. Finally, I thought, perhaps HLS is becoming a friendly place for GLBT students.

Yet I searched the article in vain for the mention of some faculty involvement. I am now a law professor myself, and I know that faculty visibility is a key first step to create both an intellectual and emotional home that is welcoming to GLBT students. When I was at HLS, it was a time when most of us (me included) would not appear in the yearbook for fear of negative career consequences. This was a choice the appropriateness of which was affirmed by faculty behavior. When I and others approached faculty we knew to be gay (because of mutual friends, for example), the closet—and office—doors were politely but firmly closed in our faces, with nary an acknowledgment of our shared GLBT status.

After I read the article, I in fact went to check the list of openly GLBT faculty published in the Association of American Law Schools directory. To my great disappointment, HLS remains sadly behind the curve: Despite one of the largest tenured and tenure-track faculties in the nation, the sole tenured or tenure-track faculty member listed is Professor Janet Halley, a 2000 hire and a national expert on sexual harassment and sexuality law. By contrast, Yale Law School boasts twice as many openly GLBT tenured or tenure-track faculty as Harvard.

And Yale is not unusual: I am one of three openly GLBT tenured or tenure-track faculty at Georgia State, a relatively small law school in the socially conservative South. In November, Georgians will likely vote to adopt a constitutional amendment banning same-sex marriage, while same-sex couples will have married in Massachusetts. This contrast underlines how striking it is that HLS evidences the conservativeness it does with respect to sexual orientation diversity.

Thus, I continue to wonder: Why is HLS so different? What is it about HLS’s institutional culture that continues to inhibit the GLBT faculty from identifying themselves, to other colleagues and to students? And, I further wonder, how many students continue to feel, as I did 16 years ago, that at its foundation, HLS pays little more than lip service to equality on the basis of sexual orientation?

COLIN CRAWFORD ’88
Atlanta

ON THE COURT, HLS HOLDS FIRM AGAINST FLAG AMENDMENT

YOUR REPORT ON Professor Richard Parker’s testimony in favor of the Flag Protection Amendment (Spring 2004) reminds me of the contrary role of Harvard Law School graduates in the flag cases of *Texas v. Johnson*, 491 U.S. 397 (1989) and *United States v. Eichman*, 496 U.S. 310 (1990). In both discussions, the four HLS graduates, across the spectrum from Scalia to Kennedy to Blackmun to Brennan, held that flag desecration laws were unconstitutional. As I recall, the presumed ideological confusion was never explained in terms of a common legal education.

In those days, the Harvard bloc needed the vote of Justice Marshall. Today we command a majority, assuming that Justice Ginsburg forgives the school’s unjustified refusal to award her a degree.

SPENCER ERVIN ’59
Bass Harbor, Maine

WE WANT TO HEAR FROM YOU

The Harvard Law Bulletin welcomes letters on its contents. Please write to the Harvard Law Bulletin, 125 Mount Auburn St., Cambridge, MA 02138. Fax comments to 617-495-3501 or e-mail the Bulletin at bulletin@law.harvard.edu. Letters may be edited for length and clarity.

COUNSEL DID NOT PROTECT FREE SPEECH RIGHTS

THE SPRING issue included a profile of Michael Hess ’65 that contained the following: “In the late ’90s . . . as corporation counsel for New York City, Hess restricted a Ku Klux Klan rally and a Million Youth March that, according to him, would have created chaos. ‘But their right to speak was still protected,’ he said.”

Mr. Hess’ characterization of his actions with respect to the Million Youth March is nearly the opposite of what really happened. In two consecutive years, 1998 and 1999, Mr. Hess tried to prevent the Million Youth March from occurring at all, and the march’s organizers repeatedly had to obtain federal court injunctions. Those courts repeatedly held that the denials of events permits violated the First Amendment. (See *Million Youth March, Inc. v. Safir*, 18 F. Supp. 2d 334, S.D.N.Y. 1998, 155 F. 3d 124, 2d Cir. 1998, finding that the city violated the First Amendment by denying a permit for the summer 1998 event; *Million Youth March, Inc. v. Safir*, 63 F. Supp. 2d 381, S.D.N.Y. 1999, finding that again the city violated the First Amendment by denying march permit for summer 1999 event.)

I worked on the 1998 case as a volunteer for the New York Civil Liberties Union and remember well Mr. Hess’ high-volume, virtually screaming, oratory in the courtroom. Such antics bore no relation to his present effort to portray himself as a wise elder statesman of the law who, in his profile, offered such bromides as “it’s very important for a lawyer to remain very rational and stay calm.”

This history is too recent and too well-documented for Mr. Hess to re-characterize himself as a champion of the Constitution rather than just another bureaucrat who violated the First Amendment rights of those disliked by his political patron.

SCOTT MOSS ’98
New York City

Sharon Kelly '04 worked for Howard Dean's campaign during the Iowa caucus season.

Hearing the Call

Presidential race inspires student to go the distance



SHARON KELLY '04 SMILES when she recalls meeting a teenage girl who'd asked her mother for a birthday present: to drive her hours and hours across the plains of Iowa to a town hall meeting of a presidential candidate.

That's why Kelly's still an idealist when it comes to the sometimes rough-and-tumble world of politics. The people in it, she says, are committed and the best kind of co-workers to have, and they inspired her to travel more than 1,000 miles away from campus to work on behalf of the Howard Dean campaign during the Iowa caucus season.

One of many HLS students who put in the hours to support their candidate, Kelly worked on Dean's advance team, ensuring that sites the former Vermont governor visited were photogenic for the TV cameras and trouble-free.

She played a similar role for the Bill Bradley campaign in New Hampshire and elsewhere four years ago. And, though neither candidate won, she doesn't regret the experiences. She endured 14-hour days, illness, bad food and long car drives, but what she'll remember are the people whose passion for her candidate brought them into the political process.

"I've never seen anything like Iowa, with the amount of people who seemed to have left their jobs or left school to come out and volunteer," Kelly said. "You'd hear stories all the time about a family coming from Georgia, and their car broke down, and they bought a new car and kept going."

She'd work for a campaign again. But next time, she hopes, she'll get to use her law degree too. *

Duck Bind

What Should a Justice Do?

JUSTICE ANTONIN SCALIA '60 went duck hunting with Vice President Dick Cheney three weeks after the Supreme Court agreed to hear Cheney's appeal of a lower court order that he turn over records of the closed energy task force meetings he held in 2001. Later, amid calls for him to recuse himself, Scalia said, "It's acceptable practice to socialize with executive branch officials when there are not personal claims against them." (He added, "Quack, quack.") Before the case was heard in April, we asked Professor Andrew Kaufman '54, a former member of the advisory committee on judicial ethics in Massachusetts, what he thought Scalia should do, and he didn't duck the question:

Professor Andrew Kaufman '54 is a former member of the advisory committee on judicial ethics in Massachusetts.

"If you are asking me how I would advise Scalia, I would say that he should not sit. It is the combination of Scalia and Cheney spending a fair amount of time together in a social and nonpublic setting and the nature of the case, where the issue does not involve naming Cheney a party in some formal, almost technical way. The case has a political setting in which the plaintiffs are seeking information about the meetings of the energy task force that Cheney convened, apparently with heavy energy industry participation, and Cheney is resisting making any disclosures about those meetings. His own personal official conduct is at issue, and so this is quite different from situations to which Scalia has referred as justifying his conduct—such as the official annual visit of the Supreme Court justices to the president. As a former law professor, Scalia ought to be able to see the distinction between those types of situations." *



Darkness Visible

The Costs of International Humanitarianism

Professor David Kennedy '80 is director of the European Law Research Center at HLS.

IN HIS MORE THAN 20 years working and teaching in the field of international law, Professor David Kennedy '80 observed something he thought no one was talking about—the negative consequences of good intentions. Kennedy discusses his book on the topic, “The Dark Sides of Virtue: Reassessing International Humanitarianism,” published by Princeton University Press this spring.

Why do you want readers to think about the possible dangers of international humanitarianism?

Humanitarian voices are increasingly powerful on the international stage—often providing the terms through which global power is exercised, wars planned and fought. To be responsible partners in governance, humanitarians must understand and acknowledge the costs, as well as the benefits, of their ideas. I think my main interest in writing the book was to draw attention to the unrecognized costs of well-meaning ventures.

It's not that international humanitarian efforts only have dark sides. It's that too many of us who have been involved in this work underestimate the long-term difficulties and the side consequences of our best-meaning efforts. For example, if you get a Caribbean country to abolish the death penalty in the name of human rights, you might also make a government that incarcerates people under terrible conditions more legitimate. It's very easy to sign up for human rights conventions, not follow them and still use them as a justification for all kinds of other governmental mischief. It's those secondary effects that are so rarely taken into account by humanitarians.



Why is it particularly relevant to look at these dangers now?

Well, I think I was pushed to write the book by the increasing use of a human rights and humanitarian vocabulary to

justify warfare, particularly in the case of Iraq. My sense was that a focus on multilateralism and on the United Nations as a focal point for opposition to the Iraq war was mistaken. The Iraq war would not have made any more sense had it been approved by the United Nations apparatus. The focus on the war's compatibility with the UN Charter made it more difficult for those who were opposed to the war to get their minds around the idea that it might make good sense to change regimes in the Middle East in the direction of democracy, and to have a sincere debate about whether the military was the right way to do it, whether Iraq was the right place to start.

Although you explore problems with the human rights movement, do you feel the good it's done outweighs the harm?

There is no question that the international human rights movement has done a great deal of good. It's been responsible for freedom and an improved quality of life for many people, and it has established standards by which governments judge one another and judge themselves. It has cast light on catastrophic conditions in prisons around the world. All that is true. My worry is simply that we mistake work on the human rights movement for work on the problems of justice and emancipation. More human rights is not always the right answer. Indeed, the most significant challenges for the human rights movement in the years ahead will be to address problems which are difficult to formulate as rights claims—collective problems, economic problems.

You write about human rights approaches crowding out other kinds of solutions. What's an example?

In the field of health care, it's particularly dramatic: the attempt to frame the need for drugs or health as a human

right, rather than a social service or a community activity. But in many places there are alternatives: religious vocabularies, vocabularies of solidarity based on union or labor activities. There are lots of examples at the local level of human rights advocates finding themselves the dominant players in settings where their approach is very inappropriate.

Are you talking about Western human rights activists acting abroad?

It is worrying that humanitarianism has so often been a one-way street—the center criticizing the periphery. But I do not think it is illegitimate for somebody from the United States or Western Europe to try to bring about change elsewhere in the world. We're already engaged across the world all the time—the question is how do we do it. With what range of tools? With what sense of our own responsibility?

How has the human rights movement been used by governments to justify the use of force?

It's difficult for humanitarian professionals to acknowledge that one can bomb for human rights. We say our vocabulary is being misused when President Bush cites human rights to justify policies we oppose. But when we do that, we fail to take responsibility for the effects that we have as human rights practitioners.

Humanitarians have worked for years with military professionals to make the law of war a user-friendly blend of humanitarian standards like "proportionality" and military standards like "efficiency" and "necessity." We shouldn't be surprised when the military or the political leadership then uses this vocabulary to legitimize the use of force. It's completely in line with what we've been intending in developing it. In short, we need to understand ourselves as participants in governance, rather than simply as critics.*



Faculty Viewpoints

A Marriage Contrast

Two professors, two takes on the Massachusetts gay marriage ruling

The Massachusetts Supreme Judicial Court decision in *Goodridge v. Department of Public Health* last fall has allowed gay marriage in the commonwealth—at least for now. The ruling has been hailed by some as courageous and lambasted by others as judicial activism. The Bulletin asked two HLS constitutional law experts, Laurence Tribe '66 and Richard Parker '70, for their views.

On the 50th anniversary of *Brown v. Board of Education*, how do you predict Goodridge will be thought of in half a century?

PROFESSOR LAURENCE TRIBE: I would expect Goodridge at mid-century will look very much like the California Supreme Court's pathbreaking 1948 ruling on interracial marriage looks today: like a decision that prefigured things to come.

PROFESSOR RICHARD PARKER: How Goodridge is thought of 50 years from now will depend on what happens in the meantime.

In 50 years, gays and lesbians may be (I hope) fully integrated into the American community. Same-sex marriage may be legal in every state. That future is eminently imaginable. It is in keeping with the narrative of one-way "progress" that we sometimes tell ourselves as if it were a law of history. If that is what happens, Goodridge may

Professor Laurence Tribe '66 has argued before the Supreme Court on the issue of gay rights, in particular in *Bowers v. Hardwick*, in which a gay man's conviction for sodomy was upheld. Last year, in the decision that overturned *Bowers* and legalized gay sex in all 50 states, Tribe contributed an amicus brief.





Professor Richard Parker '70, who has criticized the SJC decision on gay marriage on the grounds that it subverts the democratic process, is author of "Here the People Rule: A Constitutional Populist Manifesto," published by Harvard University Press.

very well be celebrated as the crucial step between here and there. It will be mainly lawyers, though, who celebrate it as such.

We lawyers often "forget" that it is politics that drives and legitimates changes in the law, not vice versa. At bottom, even judge-made law is in and of politics. Its success is not a matter of hurling a lightning bolt from "above." To take root and effect it must have, or soon win, popular support. Thus it is—and should be—tethered to democratic politics. Political actors—whether a president, a legislature or a court—must draw on, and participate in, a typically gradual process of public persuasion. The 50-year struggle over "enforcement" of Brown illustrates the point. The same will hold true for Goodridge ... in the event that it is, in fact, counted a "success" in 2054.

More than a realistic estimation of judicial influence is at stake here. The

notion that court mandates, by themselves, "disentrench" the political status quo or "catalyze" political change isn't just a self-serving mistake. It nurtures a perverse idea that it is the very mission of courts to act "heroically" by doing unpopular things—defying public opinion or coercing it. The idea is perverse because it is antidemocratic and because it tends to be self-defeating. Today, some who celebrate Brown misrepresent it by wrapping it in a story of judicial "heroism." They thus mislead those who are inspired by Brown. It may be that some such judicial triumphalism influenced the majority in Goodridge—and this misconception may turn out, in the end, to affect its fate.

One thing you know about politics is that you never know, for sure, what is going to happen. What if—as a matter of political preparation and timing—Goodridge "came too soon" or

"went too far too fast"? What if it is widely experienced as imposing the values of a privileged, unelected minority on a majority? What if a powerful "backlash" movement develops, as the right-to-life movement developed after Roe? What if, in response, barriers to gay and lesbian equality are set up by state or federal legislation or constitutional amendments? Might not Goodridge be fingered, then, as the crucial step between here and there? If so, its significance might again be exaggerated. But no more so, surely, than in the other story, the story of court-driven "progress."

There's another dimension, then, on which Goodridge might be remembered. It might be remembered as emblematic of a period in which self-styled legal "progressives" lost touch with the lessons of legal realism and the values of majoritarian democracy. Its formalist rhetoric is at odds with

Faculty Viewpoints

the open, controvertible argument of Brown. The peremptoriness of its claim to find something radically new in generic abstractions of a state constitution without much attention to anything in particular about that constitution or that state—along with the sloppiness, even the cynicism, of its supposedly value-neutral “rational basis” standard of review—looks disingenuous enough now. How will the opinion look once the drama of the moment has passed? Its tone of righteous command-and-control and its disrespect for electoral and legislative politics—its too easy willingness to attribute irrationality and prejudice to people embracing a traditional idea of marriage—are startling enough today. Might it seem, in 50 years, as arrogant as the antipopular prejudice of an 18th-century aristocrat?

It's not too soon, now, to turn a cool eye on Goodridge, however much we believe in the justice of its mandate. Even those who assume an inevitable Onward March of Equality ought to think about it twice, so long as the March, in their mind, includes political equality—which is to say, one person, one vote; which is to say, majority rule.

In 1948, the California State Supreme Court was the first state high court to declare a ban on interracial marriage unconstitutional, despite strong public opposition. How does the Goodridge decision compare?

TRIBE: To 14-year-old Emmett Till, a black boy lynched and murdered in Mississippi in 1955 because he had dared to say “Bye-bye, baby” to a white woman, and to 21-year-old Matthew Shepard, a gay white boy robbed, beaten senseless, and then tied to a fence and left to die in Wyoming in 1998 for being gay, the differences between the history and structure of white supremacy from chattel slavery to the Black Codes to Jim Crow, and the structure and history of homophobia, gay-baiting and gay-bashing weren't awful-

ly important. At bottom, both were the innocent victims of a bigotry born of fear, hammered into hate, ignited by rage and, in the end, enacted as death.

When I've compared the ban on interracial marriage that the U.S. Supreme Court didn't strike down until 1967 with the ban on same-sex marriage, I've sometimes been told that I'm mixing apples and oranges because the laws against so-called miscegenation reflect the view that persons of African-American descent are inferior and would pollute the proud genetic heritage of the Aryan race, whereas the refusal to recognize same-sex unions as forms of marriage need cast no aspersions on gays when it merely reflects the basic nature of things. We've all heard the mantra: “It was Adam and Eve in the Garden of Eden, not Adam and Steve.”

Of course, from Steve's perspective, being told that it's not enough for him and Adam to love one another and to commit to one another until death do them part because Steve is a gay male rather than a straight female (and that, in such circumstances, Steve and Adam will just have to be content—at best—with something called a “civil union”) must feel like Eve's being told she can't marry Adam either because she's white and Adam is black—nothing against her as a white woman, you understand; after all, the rule is no less a restriction on the liberty of black men.

Some, ignorant of history, say that, when California's highest court saw through the phony symmetry of the ban on interracial marriage in 1948, a great majority of the nation's electorate had already come to the same conclusion, so the court wasn't making new law so much as it was ratifying an existing consensus. But the truth is that, as late as 1958, polls reported more than 95 percent of whites still disapproving of marriages between blacks and whites. If anything, therefore, the SJC hasn't ventured as far beyond the

consensus as its California precursor had.

Nor is there much to the argument that the mixed-sex character of the marital unit simply “feels” more deeply woven into the “marriage” concept itself than could ever have been said about the same-race character of a marital unit. In December 1912, when Representative Seaborn Roddenbery of Georgia proposed a constitutional amendment to uphold the sanctity of marriage—an amendment that would have said “Intermarriage between Negroes or persons of color and Caucasians ... is forever prohibited”—he spoke in terms that should make proponents of a federal marriage amendment, designed to overturn decisions like Goodridge and to prevent their ilk from seeing the light of day again either under any state constitution or under the U.S. Constitution, feel right at home. The Roddenbery Amendment was said to be necessary to “exterminate now this debasing, ultrademoralizing, un-American and inhuman leprosy.” Such “marriages” were that in name only to Mr. Roddenbery. They were, in truth, “abhorrent and repugnant” counterfeits of the “sacred marital estate.”

I don't want to overstate the parallel. No doubt some who have nothing against gays or lesbians and who wouldn't mind learning that their sons were gay or their daughters were lesbians—people who don't want to force anybody back into the closet and who'd be happy to accord same-sex couples civil unions possessing every legal incident of marriage—simply balk at extending the “M” word to a relationship they think is neither better nor worse than marriage, simply different. But the issue isn't resolved by good intentions, which we all know can pave one hell of a nasty road. Decisive is the fact that, intended or not, the signal sent to the same-sex couples who are relegated to the “separate but equal” status of civil union is that their relationship is

at best a facsimile of the real thing: a good copy, maybe, but ultimately fake. Using a state's legal system to deliver such a signal of second-class status is inconsistent with the most basic axioms of equal citizenship.

PARKER: Again, this question suggests judicial-triumphalism. Being “the first” to do something which is analogized to something “first” done by a state court combating racial oppression, something that ultimately won out to become the law of the nation, certainly sounds good. In the Goodridge opinion itself, the analogy to antimiscegenation laws is waved like a flag to be followed into battle. What if we look at it as an argument rather than a flag? Shouldn't we consider whether to distinguish a supposed precedent before jumping to follow it in a very different context?

What I have in mind is not a comparison, on the facts, between degrees of oppression of African-Americans, on one hand, and of gays and lesbians, on the other. Nor is it a comparison between the significance of barriers to marriage in the two contexts. Though there are differences along these lines, and though none were addressed by the Goodridge court, what I have in mind, instead, is a comparison between the decision in Goodridge and the California decision in Perez—and ultimately the U.S. Supreme Court decision in Loving—as political decisions, political actions.

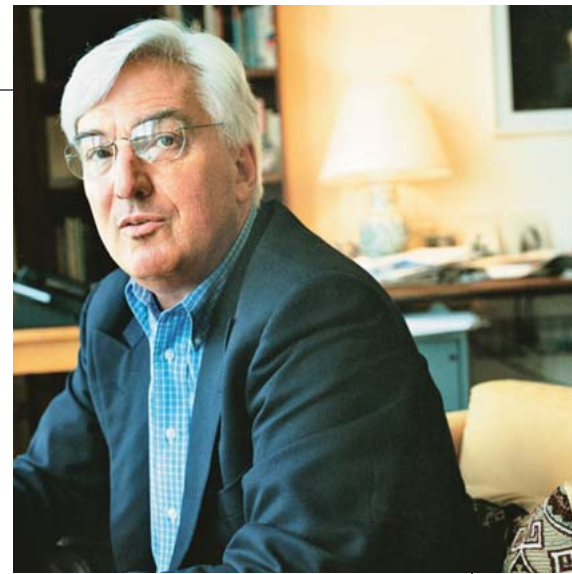
This kind of comparison is the most difficult. The reason is that politics is more complicated than logic or even social history. It calls for context-sensitive judgments of strategy and tactics, an assessment of preparation and timing, of what resistance may be anticipated and overcome, what popular support gained, by what actions and arguments, and when. I don't know enough about California in 1948 to make a satisfactory comparison. But I know a little, and I know the standard against which to make the comparison:

“Courts, I think, should push only on doors that are ajar, that the people are already prepared to pass through.”
—Richard Parker '70

Was the law that the court attacked already politically weak enough to allow for judicial success? Was public opinion ready to entertain, then embrace, the judicial mandate? Courts, I think, should push only on doors that are ajar, that the people are already prepared to pass through—not on doors that, for the moment, are firmly shut, much less ones that may well be locked in response to an unexpected judicial push.

Consider the situation facing the California court. In 1948, interracial marriage was already permitted in more than one-third of the states. The decision to permit it had been made by legislatures, not courts. Among the remaining states, California's antimiscegenation law was unique—uniquely weak. It attached no criminal penalty to interracial marriage, and according to a historian, it was “already largely eviscerated in practice.” Indeed, one justice concurring in Perez went so far as to invoke the “attitude of comparative indifference [to miscegenation] on the part of the [California] Legislature” and “the absence of any clearly expressed public sentiment or policy [about it]” along with “strong indications of legislative intentions which point the [other] way.”

The U.S. Supreme Court, then, waited two decades to confront the issue. It, too, pursued a path of political caution and respect for majority rule. It, too, did not defy democratic politics. It waited to follow it. Between 1948 and 1967—while Congress moved to prohibit racial discrimination—many state



legislatures repealed antimiscegenation laws. By the time Loving was finally decided, interracial marriage was already permitted in two-thirds of the states.

Now, contrast Goodridge. No state permitted same-sex marriage—or ever had. There was no history of non-enforcement of the traditional limitation on marriage. Two courts, in Hawaii and Alaska, pushed at the door, tentatively, in the last decade. These initiatives were quickly repulsed by the voters of each state—locking in new barriers to same-sex marriage—and then resisted by further state and federal legislation. Was there reason to believe the people of Massachusetts were more prepared, in 2003, to embrace same-sex marriage than the people of Hawaii a few years before? I doubt it.

What's more, the Massachusetts court lacked a vital resource of constitutional argument that had been available to the California court. In 1948, suspicion of racial discrimination was well-established in American constitutional law. The Perez opinion invoked it. There is, to this day, no well-established suspicion of discrimination by sexual orientation. Goodridge was left to put its emphasis on the importance of marriage—which played into the hands of its critics whose condemnation of the decision proceeded from just the same premise.

There was available, of course, an alternative. The Supreme Court of Vermont had taken an incremental step, requiring the institution of civil unions. That ignited a political struggle

Faculty Viewpoints

but seems to have stuck. You might think the Massachusetts court would have opted to follow Vermont. (Even the Netherlands, the first country to legalize same-sex marriage, had begun by instituting civil unions.) But no. What the Goodridge court lacked in political warrant for its decision, it made up for in self-righteous self-assertion. The risk that seemed to concern it most was the risk that some other court, later on down the road, would be “first.”

What do you say to those who argue that Goodridge could open the door to legalizing other unions, such as those between siblings or a triad?

TRIBE: When confronted with such hypotheticals, we need to ask ourselves how plausible is it to imagine the dynamic generated by discrimination against same-sex couples—a dynamic constituted by violent intolerance toward those open about their intimate relations and by equally devastating self-erasure by those closeted about their sexual orientations—at work in these other, very different, contexts. Incest laws draw circles around individuals, defining the finite set of family members so closely tied by blood or adoption that sexual intimacy becomes too dangerous or volatile for society to sanction. These restrictions no doubt inflict a heavy burden on particular hapless individuals whose misfortune it is to lust after or to fall in love with a family member, but such tightly drawn circles bear no real resemblance to the broad lines cutting oppressively across society to rule half the adult population off limits as sexual or marital partners for a distinct and despised minority. So, too, the circles that our adultery and bigamy laws have drawn around married couples have established partitions that fall with an undeniably cruel weight upon individuals who fall in love or lust with someone else’s spouse. But these laws likewise cut no wide swath through the population to limit

the options open to any particular oppressed minority.

PARKER: Since the life of the law is (and should be) democratic politics—not logic—the legalization of other unions will occur only if and when there is widespread popular sentiment favoring such an expansion of marriage. I don’t foresee that soon, do you?

What’s your reaction to the many gay marriages performed in San Francisco and other parts of the country, without the law being changed to allow them?

TRIBE: I’m surprised things have moved so quickly, with so little opportunity for people to grow accustomed to one state’s developments before officials in other states hop aboard the bandwagon. To the degree the speed and casualness with which some of the steps toward gay marriage have been taken might fan the flames of backlash against the entire notion of gay unions and may leave the misleading impression that Goodridge has unleashed a period of chaos that only a federal marriage amendment to the U.S. Constitution can stop, I would have preferred that the relatively low-level officials involved not take the law into their own hands but rely instead on the methods that are everywhere in place for launching orderly and speedy challenges to laws that limit marriage to opposite-sex couples.

That said, I do admire the daring and the spirit that these gay marriages represent. Unwilling any longer to remain even partly closeted, the couples involved in these unions are saying to the world that a legal system illegitimately denies their equal worth and dignity when it announces that, however deep and exclusive their mutual commitment may be, and however permanently they intend to remain together, they cannot have in law what my wife and I have had these past 40 years: a civil marriage and not merely some second-class facsimile or simulacrum

of that status. These couples are saying that, if marriage as an institution is under siege, the reason is less likely to be same-sex marriage than casual adultery and easy divorce and the many pressures that make it tough for married couples to live by their wedding vows. If it is under siege, the reason is less likely to be gay marriage than the idiotic TV programs that treat marriage as a game-show prize, or than the antics of Britney Spears and others like her.

PARKER: Civil disobedience can be good for democracy—so long as, in breaking a law, you are calling attention to what is plausibly an injustice; so long as your aim is to persuade others to change the law you break or one of equal or greater importance; so long as you show respect for those to whom your behavior is addressed; and so long as you accept punishment for what you do.

Disobedience by officials raises a special issue. You can argue that—because they are agents of law and because they have other effective ways of promoting its change—they are less justified in breaking it. If, however, the official (say, a mayor) was elected and can be removed from office at the next election, the voters can, I think, apply whatever additional discipline may be needed. The same holds, indirectly, for appointed officials who can be removed by elected officials.

The hard case involves an appointed official who is not term-limited and not responsible, directly or indirectly, to the people—a category that includes judges in Massachusetts. Whether judicial “interpretation” may cross a line and become a sort of civil disobedience is a good question. Whatever the answer, the question suggests the value of judicial term limits and elections as well as more streamlined processes for correction of far-out “interpretations” by legislation and constitutional amendment.

What about consequences, such as the possibility of constitutional amendments defining marriage as a union between one man and one woman?

TRIBE: Some of the proponents of such amendments are undoubtedly sincere, but others—notably including President Bush—seem to me to be playing with constitutional fire for largely political reasons rather than because they truly see a national problem that only an amendment could fix, and I suspect that the fire may end up consuming those who ignite it well before it burns up so basic a part of our constitutional heritage as the principle of equality under the law. A federal marriage amendment, whose most enthusiastic advocates certainly wouldn't be satisfied until they had limited the ability of the states to recognize even civil unions with legal incidents similar to those of marriage, would represent a massive retreat from the direction in which our Constitution has until now evolved: toward ever broader inclusion within the circle of equal citizens, embracing first people of color (1870), then women (1920), then those unable to pay a poll tax (1964) and, most recently, those old enough to be drafted to fight and die for their country because they have reached age 18 (1971). To amend the nation's basic charter in order to deny the status of marriage to same-sex couples, even in a state whose highest court finds the right to such equal status in its own constitution, would be to turn our backs on the core principle of equal dignity. And it would do so by including in the Constitution not the kind of provision for which it has traditionally been reserved—a provision about the structure of our governing institutions and about the limits of government power vis-à-vis the individual—but the kind we have placed in the Constitution only twice, each time with tragic or comic results: tragic in the instance of slavery, which was stitched, although never quite named, into the fabric of the Constitution of 1787 and dissolved

“To amend the nation's basic charter in order to deny the status of marriage to same-sex couples ... would be to turn our backs on the core principle of equal dignity.”
—*Laurence Tribe '66*

by a bloody civil war and by the three constitutional amendments surrounding that war; and comic in the instance of prohibition, which was written into the Constitution through the foolish 18th Amendment, which led to the speakeasy and to a steep rise in organized crime and in cynicism about the law, and which was repealed in the 21st Amendment.

Particularly ironic as a proposal coming from many who otherwise champion states' rights, a federal marriage amendment would go beyond preventing states from exporting gay marriages to other states—hardly a danger in need of prevention inasmuch as marriages, unlike judgments and decrees, have in any event never been held entitled to “full faith and credit” in states whose public policies they offend. Much more difficult to reconcile with axioms of federalism, such an amendment would prevent states from enshrining in their own constitutions, or reading in the existing language of those constitutions, the principle of equality for same-sex couples that the SJC found in the Constitution of Massachusetts. Such an amendment would repudiate the central principle of the federal structure, enshrined in both the Ninth Amendment and the Tenth, that each state is free, so long as it does not violate any federal right or privilege in doing so, to endow its own citizens with rights broader and deeper against that state than they enjoy as citizens of the United States against the national government.



I have enough faith in Congress to believe that it will not send such an amendment to the states for ratification by the requisite two-thirds vote of each house, and enough faith in the American people to believe that, if I am wrong about Congress, then sanity will return before 38 state legislatures have given this blot on our Constitution their blessing.

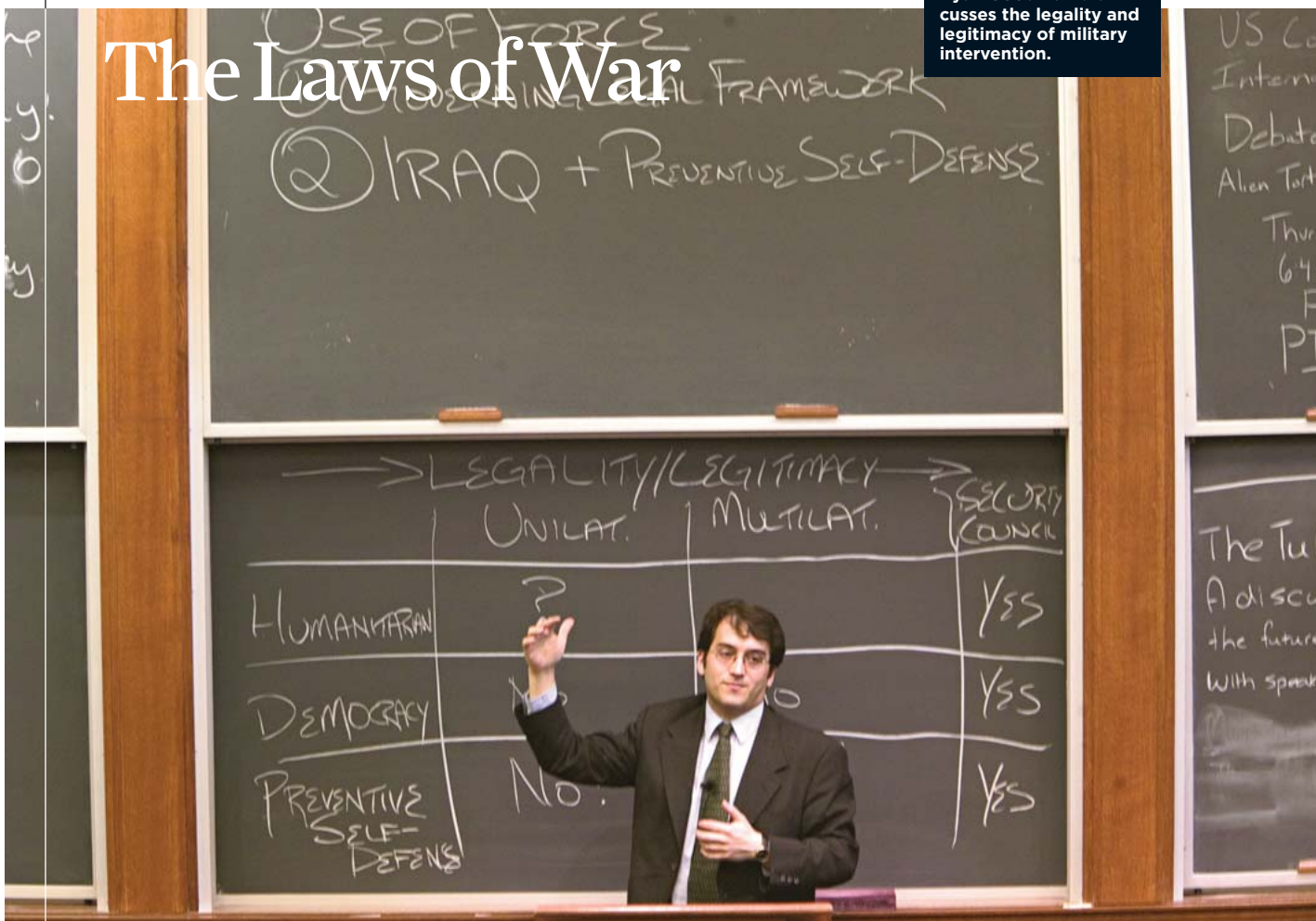
PARKER: In response to Goodridge, constitutional amendments may be enacted to lock a door that should not be—and need not have been—locked. Given Goodridge, however, the amendment process is the appropriate recourse of democratic politics.

It is a mistake to focus, now, on amendment of the U.S. Constitution. The real purpose would be to pre-empt a U.S. Supreme Court decision like Goodridge. But I can't believe that even the current justices will soon impose same-sex marriage on a nation plainly not now ready for it.

For the moment, it is in state politics that this issue should (and will) play out. In Massachusetts, the process will go forward despite the provisional fait accompli presented to the people by the court. In other states, where a decision like Goodridge may be in the cards, the matter should be put to the voters sooner rather than later. No one can be sure of the outcome. But the issue, having been raised, even if raised too soon, must now be resolved where every important issue must ultimately be resolved—at the ballot box. *

Assistant Professor Ryan Goodman discusses the legality and legitimacy of military intervention.

The Laws of War



IN APRIL, during one of the most violent periods of fighting in Iraq since the fall of Saddam Hussein's regime, Assistant Professor Ryan Goodman's Public International Law class struggled to determine when the use of force is legal

and what to do when force may be illegal yet legitimate.

Goodman noted that the answers are never as clear as they may seem and often have unintended consequences. For example, he said, if the

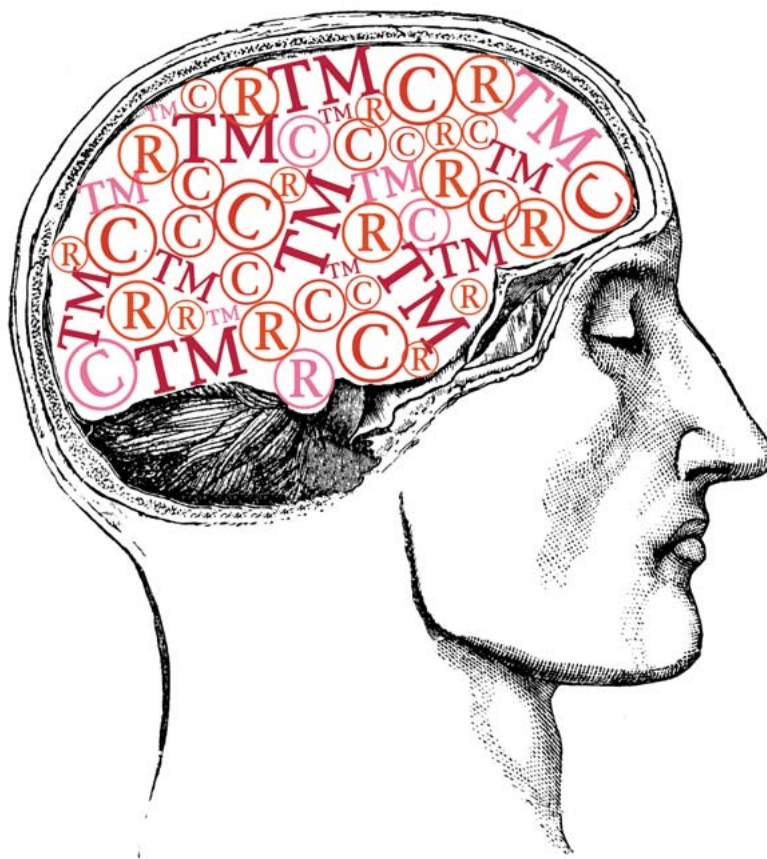
war in Iraq were illegal, then the no-fly zones that protected the Kurds in the north and the Shiites in the south were also illegal.

When Goodman discussed whether the rules of war should be more or less restrictive for humanitarian intervention, one student expressed his dismay at the prospect of fewer restrictions: "I think it's a very pernicious development. ... The notion that military planners may sacrifice lives on the basis of who they are fighting is foreign to me." But after a discussion of the U.S.-led wars in Iraq, the NATO bombing of Kosovo and West African military operations in Liberia, the class concluded that the use of force is often simultaneously illegal and legitimate, a troubling dichotomy for international law advocates as well as law students. *



'THE WHOLE WORLD IS INTERESTED IN INTELLECTUAL PROPERTY RIGHT NOW'

WHEN Harvard Law School first opened its doors in 1817, the U.S. Patent and Trademark Office was only 15 years old, copyright law was less than 30 years old and trademark law didn't even exist. Not surprisingly, there were no IP classes. Today, the law school offers nine courses that cover intellectual property. And faculty and students tackle real-world problems, from helping K-12 students get access to textbook content when copyright law gets in the way to finding solutions to the crisis over music downloading. This issue of the Bulletin looks at the state of intellectual property law and showcases the HLS people and programs that are shaping its future.



**... and, like never before,
Harvard Law School is
showing students how
IP law works**



UP ON DOWNLOADING

HLS professors propose solutions to music industry crisis

ITS REVENUES DEVASTATED BY illegal music downloading and copying, the music industry is struggling with a full-blown crisis. On that, a trio of colleagues at HLS's Berkman Center for Internet & Society agree.

But what to do? That's where the three HLS professors—William "Terry" Fisher III '82, Charles Nesson '63 and Jonathan Zittrain '95—part ways. And, as they debate and challenge proposed solutions, the increasingly beleaguered entertainment industry is watching them closely.

"People are desperate for answers and thinking on this," says Zittrain. Adds Fisher, "Almost all of the players in the recorded music industry sense their business is coming apart at the seams. The film industry—a much larger

by ELAINE McARDLE *photographs by* JOSHUA PAUL

industry—wants to avoid the same fate.” Consumers, artists and technology manufacturers also have much to lose. “There are a lot of people with something at stake in figuring out a solution,” Fisher says.

For that reason, the proposals emerging from the Berkman Center are attracting enormous interest. A conference in September sponsored by the center drew representatives from Microsoft and Intel, among others. In November, Nesson and Fisher met in Los Angeles with executives from a number of movie studios as well as the head of the Recording Industry Association of America. In April, Nesson hosted a conference at HLS, which included a select group of scholars, artists, engineers, lawyers and businesspeople. And the proposals in Fisher’s forthcoming book, “Promises to Keep: Technology, Law, and the Future of Entertainment,” which is excerpted on his Web site and slated for publication in August, have already received significant notice in *The Wall Street Journal*, *The New York Times*, *Los Angeles Times* and *The Economist*, as well as various online journals.

“It’s gotten a lot more attention than anything [else] I’ve written,” he says.

So what exactly are their suggestions for solving the piracy problem? Fisher offers a radical plan that would replace the copyright system with a government-administered compensation plan, funded by a tax on hardware and other systems used to play digital music. Downloading and copying would be legal, but artists and producers would still make money. Nesson’s model, which he calls “Speed Bumps,” tries to improve the legal commercial market by making downloading cheap and attractive while diminishing the quality of illegal downloading. Zittrain isn’t proposing a solution of his own but has worked with the other two to hone their proposals.

“At the core,” Zittrain says, “Terry’s and Charlie’s ideas meet—both anticipate a situation where people are paying money on a bulk subscription model.” While Fisher’s model embeds these fees within Internet service provider subscriptions, blank CD sales and other existing digital expenses, Nesson’s would push people into a fee-based system like iTunes by making it more difficult to use peer-to-peer networks. “For straight music consumption, they’re really arriving at the same thing,” Zittrain says, “though Fisher’s plan anticipates that consumers can create their own new works using others’ old ones.” For his part, Zittrain isn’t convinced the status quo is untenable. For one thing, he says, the liability of ISPs for facilitating peer-to-peer transfers is “surprisingly unclear,” despite broad statutory immunities, and has yet to be battled out in the courts—something the recording lobby is likely to start pushing soon.

All three agree on this, though: The entertainment industry’s favored approach, called “Total Control,” should be avoid-

ed. At its extremes, Total Control wants to build encryption into hardware that would refuse to run unrecognized or illegal programs. (Indeed, the entertainment industry has even considered such extreme measures as creating viruses that would erase the hard drive of any computer that attempted illegal downloading.)

Not only is there serious skepticism about whether it’s technologically possible to prevent piracy, but the approach raises concerns about destroying the openness and flexibility of the Internet. Yet Nesson predicts that Microsoft, for one, will make a huge push for it; moreover, he believes Total Control has a greater likelihood of success than Fisher’s tax scheme. In the gap between those two extremes stands Speed Bumps.

“It’s actually going to be interesting if the Total Control mod-

Fisher’s plan has gotten the most attention—and may

el loom in a realistic way in the future,” Nesson says. “Then I think we may see a lot of movement on the side of those who, at the moment, turn up their noses at Speed Bumps. Suddenly, reforms of the existing system won’t seem as bad, I think.”

Taxes for Artists and Producers

Fisher’s tax scheme, he acknowledges, is the most radical of the proposals. For that reason, it has gotten the most attention—and may also be the hardest to sell.

Under his plan, it would no longer be illegal to copy digital entertainment without permission. The owner or owners of a copyrighted work—including artists and producers—could choose to register the work with the U.S. Copyright Office,





also be the hardest to sell

Professor William Fisher III '82 writes about solutions to the music downloading crisis in his forthcoming book, "Promises to Keep: Technology, Law, and the Future of Entertainment."

which would provide a unique file name. That file name would be used to track how often the work was downloaded or copied, and the owners would be compensated from a fund administered by the Copyright Office. Funding would come from a tax on ISPs or devices used to gain access to digital entertainment. This system makes room for artists to “rip” and mix from existing works to create new songs, films or other works; both the owner of the original work and the creator of the new one would be compensated on a percentage basis.

Other than lawyers, Fisher notes, “pretty much everyone would benefit.” Consumers could download freely and legally with access to a much greater choice of entertainment. Artists and producers would get paid. ISPs and other inter-

Professor Charles Nesson '63 wants to improve the legal commercial market for downloading through his Speed Bumps model.

Nesson takes a carrot-and-stick approach to the piracy problem

mediaries such as electronic manufacturers would not be obliged to police consumer use, something they are strongly resisting. Even recording companies would benefit, at least in the short run, although their long-range fortunes are more difficult to forecast, Fisher says.

Perhaps as important, the ability to create new art through ripping and sharing existing works would be preserved. “The opportunity for consumers to take materials and rewrite and redistribute them would be much enhanced,” Fisher says. “This is one of the most rapidly developing innovative uses of the new technology. Instead of accepting film and music, you can edit and modify it.” The academic term for this “creative explosion,” as he puts it, is “semiotic democracy.”

In that regard, Zittrain shares Fisher’s enthusiasm. “I think an understated benefit to Terry’s proposal is the idea that consumers have the capacity to produce new works based on old works, without displacing the old works,” says Zittrain. “The mixing and production tools on the average PC from Best Buy exceed the most sophisticated recording equipment of the late ’70s. It would be a shame if the law could not evolve to account for the vast new opportunities of content production offered by having these tools in consumers’ hands. Terry’s model allows for it because it suggests formulas by which people can say how much of their work is theirs versus how much they drew from existing works. It is quickly looking forward to a time when consumers can be producers, can be paid and can share. That’s at least a first cut at having the law respect and even provide an economic engine for creation of new works in digital media without economically cannibalizing old ones.”

However, within the entertainment industry, at least, Fisher’s plan is a tough sell. “It seems pretty far out to [the entertainment industry],” says Nesson. “Instead of making money selling things, they’ll be recipients of money from a government agency.” That’s something that also gives Nesson pause. “I’m not disposed to it because, at the biggest level, the end re-





sult of the Internet revolution is we wind up with a mega-government agency that's in control of entertainment. That seems to me a net loss," he says.

"I can't see how anyone could give assurances that such a government agency would not discriminate," he adds. For example, "I can't see an agency paying out money to porn." And, he says, "If there is some other major competitor for funds—like a war or plague—and a big pot of money is sitting there to be paid for entertainment, I don't see what would keep the government hands-off."

"That's a legitimate worry," concedes Fisher. "You're placing a fair amount of discretionary power in a government agency." However, the agency would not choose which artists are paid, he insists, because compensation would be based simply on numbers—which works are downloaded the most often. "The principle of consumer sovereignty would remain," he says. However, he adds, "The total amount of money distributed through the system would be subject to some degree of government discretion. That's an invitation for lobbying," he acknowledges.

There is also the potential for manipulating the compensation system through what Fisher calls "ballot stuffing." The owner of a work could artificially inflate his numbers by setting his computer to download his own songs every 15 seconds, for instance. Then there is the problem of cross-subsidies, in which a tax on all ISPs or hardware means consumers who do very little music downloading are subsidizing the heaviest consumers. "These are not fatal flaws," Fisher is quick to note, "but imperfections in the system. In my book, I discuss ways in which each of these hazards could be mitigated. But in the end, my proposed system is not perfect. None [of the proposals] is."



Zittrain fears the entertainment indus

Assistant Professor Jonathan Zittrain '95 has been working with Fisher and Nesson to hone their proposals.



And, as a complete restructuring of the existing system, his proposal faces the biggest hurdles. Copyright law in the United States typically changes only when all relevant parties agree, he notes. “Studios and record companies are not so sure this is good for them. And, of all the [stakeholders], they have the most political clout.” For that reason, industry reps have been far more receptive to the Speed Bumps approach.

“We know they are skeptical,” Fisher says. But “if their situation gets worse, they may have no choice.” The Berkman Center, in collaboration with others, is developing a pilot project of this model, which they hope to implement on a voluntary, subscription basis. “If we can get the demonstration project up and running, it may reduce the resistance, if we can show it actually works,” he says.

try’s solution would destroy the openness of the Net

“It’s a transformation of the foundation of the record and film industries, and a change of that magnitude is very hard to engineer, so I’m not sanguine about the prospects. It will take a lot of work.”

But, Fisher adds, “I’m quite committed to the idea. I think it would improve life for lots of people.”

Speed Bumps

With Total Control at one end of the spectrum and Fisher’s model at the other, Nesson hopes to forge a reasonable middle ground. Through a carrot-and-stick approach, Speed Bumps would support a viable legal marketplace for digital entertainment while retaining the basic structure of copyright law and the open nature of the Internet.

Speed Bumps suggests making legal downloading inexpensive and high-quality while decreasing the quality of ille-

gal downloading through technology called “spoofing” and also increasing the legal penalties for piracy. It also targets the relatively small group of people who take CDs and convert them into MP3s available for downloading for free. “The more attractive the legitimate market becomes in relation to the on-line black market, the healthier it will be,” Nesson says. “People will become sensitive to the fact you’re at risk if you’re putting up a whole lot to share, and that downloading isn’t always easy, and you don’t always get good material.”

And, as illegal downloading becomes more common, it will lose its attractive outlaw quality. “The idea you’re participating in a revolutionary community by freeloading will diminish,” Nesson says.

Nesson likes the fact that Speed Bumps puts pressure on the entertainment industry to reform. The recording industry, in particular, has an enormous image problem, due to the perception that it has overcharged consumers and to its response to the piracy issue, including lawsuits against consumers. It also was slow to develop creative solutions to illegal downloading. “It took them a long time to come up with iTunes,” he says. But iTunes has been a success because it’s slick, easy to use and high-quality—and “beautifully advertised,” he adds. Similarly, Speed Bumps encourages the industry to reform by charging less for its products and giving consumers more flexibility, for example, by allowing people to buy single songs instead of entire CDs.

“This is the approach the industry most naturally favors,” Nesson says.

Of Speed Bumps, Fisher says, “If successful, it would facilitate the development of an authorized online market.” But, he adds, consumers would continue to pay more for entertainment than some feel is fair. “There would be some savings but

nowhere near as much as the new technologies offer,” he says. Also, computer systems would most likely include encryption systems to limit

what could be downloaded or manipulated. As a result, “The flexibility and movement across systems are not possible,” Fisher adds. “So it’s better than distributing music in CDs but nowhere near as wide open as distributing it” through his plan.

Within the academic community, Speed Bumps isn’t as popular as Fisher’s model, Nesson says: “People in the academic world don’t like copyright—at least, they don’t love it. They feel it’s been extended way beyond its original concept. I feel that way too. I don’t hold myself up as any great defender of copyright.”

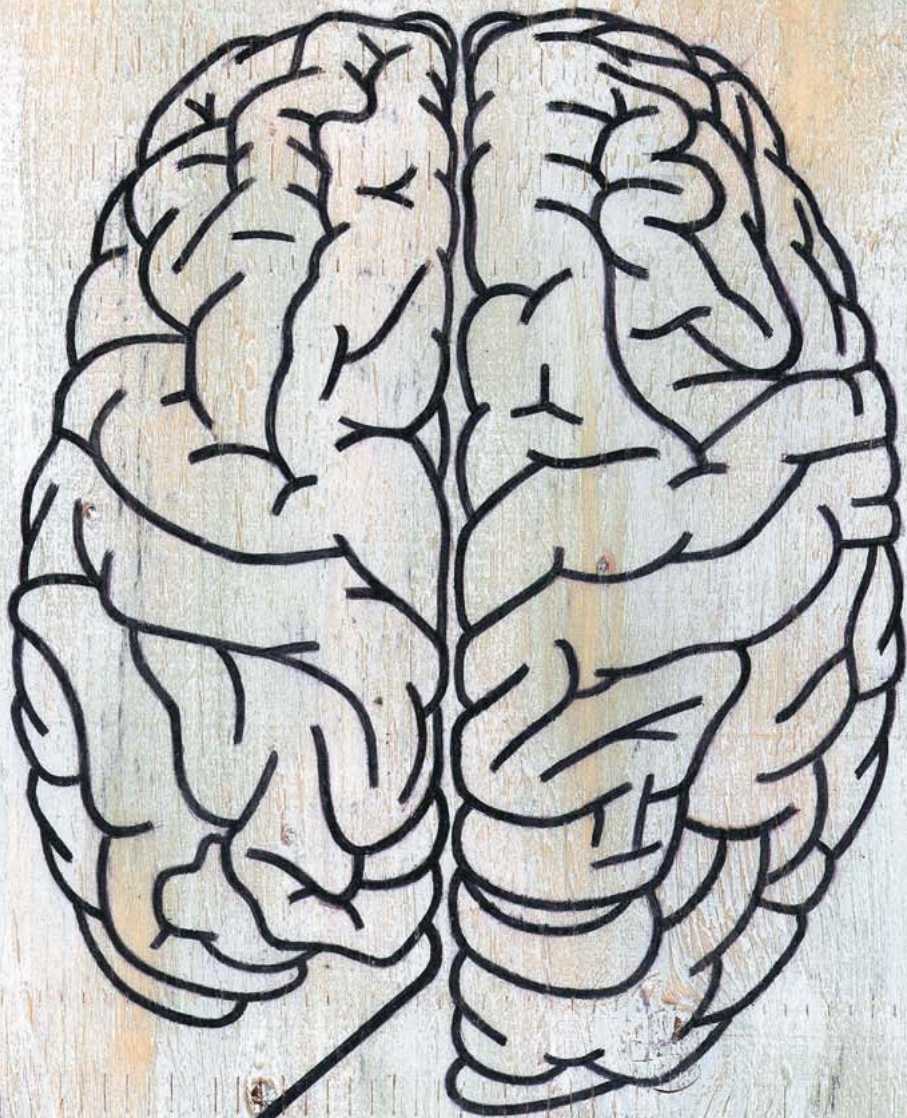
But both of their plans, and all of the work around digital entertainment at the Berkman Center, continue to garner international interest. “The industry is looking for concrete ideas,” says Zittrain. “Both Charlie and Terry are doing that.”*

Elaine McArdle is a writer living in Watertown, Mass.

How the laws of intellectual
property have grown—
and grown apart

THE DISAGGREGATION OF INTELLECTUAL PROPERTY

by PROFESSOR WILLIAM FISHER III '82 *illustration by* DAN PAGE



■ *The following is an abridged version of the speech that Professor William Fisher III '82 delivered upon accepting the Hale and Dorr Chair in Intellectual Property Law.*

OVER THE COURSE of American history, the law of intellectual property has gradually become fragmented into industry-specific subfields. Until now, this trend has been largely inadvertent and uncoordinated. Should it be applauded and pursued deliberately or resisted? I will approach that question circuitously—by first outlining the ways in which the fields of doctrine that together constitute intellectual property law have evolved, and only then considering whether we should strive to disaggregate them.

COPYRIGHT

There are three main zones of intellectual property law: copyright, patent and trademark. Copyright law provides long-term, medium-strength protection for original forms of expression. Copyright originated in a 1790 statute, adopted under the auspices of Article I, Section 8, Clause 8 of the United States Constitution. In the first copyright statute, Congress protected three kinds of works: books, maps and charts.

Since then, Congress and the courts cooperated in expanding the set of protected creations. For example, musical compositions were added in 1831. Photographs became protected in 1865. (Today, not only is xeroxing a landscape photograph clearly illegal, but even taking a photograph substantially similar to a photograph someone has previously taken may give rise to an infringement claim.) Sound recordings—as distinct from the compositions they embody—were added in 1971. Software was formally added in 1978. Architecture became subject to copyright in 1990.

PATENT

Patent law, by contrast, provides short-term, strong protection for inventions. The subject-matter coverage of patent law has grown, with a few notable exceptions, in ways comparable to copyright.

Patents—more specifically, utility patents—are conventionally divided into two broad categories: products (meaning inventions in the conventional sense) and processes (meaning new ways of doing things). Products are, in turn, subdivided into three subcategories: machines, compositions of matter and a residual category called “articles of manufac-

ture.” Laws of nature, mathematical algorithms and naturally occurring substances were traditionally construed to be outside the zone of patent protection.

During the past 200 years, lawmakers have made a series of additions to the patent field. For example, in the 1930 Plant Protection Act, Congress extended special, limited patent protection to asexually reproduced new plant varieties—like chrysanthemums in new colors, created through radiation. The 1970 Plant Variety Protection Act extended limited patent protection to sexually reproduced new varieties.

Judges have played a part in this expansion as well. In the *Parke-Davis* case (1911), Judge Learned Hand LL.B. 1896 ruled that adrenaline, a purified form of the suprarenal gland, could be patented. Among the many derivatives of this seemingly innocuous proposition is patent protection for genes. Beginning in the 1990s, the Federal Circuit has consistently upheld patents on purified and isolated full-gene sequences whose physiological functions (in other words, the proteins for which they code) have been identified. Plainly, genes are “naturally occurring substances.” But the courts take the position that, in Arti Rai’s words, an “isolated gene sequence ... differs from the DNA base pair sequence that is found on the chromosome in nature,” because it has been disentangled from the surrounding “junk” DNA—so called because it has no apparent coding function.

In the 1980 *Chakrabarty* decision, the Supreme Court held that a genetically engineered bacterium is patentable, announcing broadly that “anything under the sun that is made by man” can be patent-

ed. In 2001, the Court adhered to that position, ruling that new plants could be protected, either narrowly under the PPA or PVPA, or broadly using general utility patents.

Since the 1980s, a series of court decisions have removed virtually all impediments to the patenting of software in the United States, resulting in a steady increase in applications and grants. The Patent and Trademark Office, meanwhile, quietly began granting patents on business methods—like Amazon.com’s one-click online checkout system—which had been considered unpatentable on the ground that they consisted of abstract ideas. When challenged, the PTO’s policy (though not Amazon’s specific innovation) held up in court, leading to a vast wave of filings.

In the spirit of a clock striking 13, the PTO has recently issued a few patents on athletic moves—for example, on an unusual way of holding a putter. Patents of this variety are not likely to survive judicial scrutiny. But they are nonetheless suggestive of a worrisome trend.

TRADEMARK

Trademark provides potentially permanent protection for words and symbols that identify goods and services. In the mid-19th century, when it first emerged from the murk of the common law of unfair competition, trademark law shielded only marks that included the name of the person or company that sold something. Bit by bit, the kinds of things that could be protected against competitors expanded. Originally, just the names of providers of services could be trademarked; later, products were added. Services were initially limited to the names of hotels and newspapers; later, any service could be protected. Arbitrary or fanciful names for products, like EXXON or Kodak, became subject to protection. Descriptive marks—like Fish Fri for frying batter—also became subject to protection against competitors, so long as they had already become associated in the minds of consumers with particular manufacturers.

A series of nonrepresentational marks were later added to the fold. Today, symbols—the Nike swoosh, for instance—may be protected by trademark. Owens Corning is the only manufacturer allowed to make pink insulation, since the color of its product is now protected by trademark. Similarly, the sound of the NBC chimes cannot be used by

In 1980, a Supreme Court decision announced broadly that “anything under the sun that is made by man” can be patented.



competitors. “It Just Feels Right” is likely too short a phrase to be protected by copyright law, but Mazda has an exclusive right to use it as a trademark in conjunction with cars. Only Levi’s may place a label on the edge of the back pocket of a pair of jeans, no matter what the label says; other manufacturers must pick different places.

Eventually, companies began to receive trademark protection for things that seemed less like insignia and more like the products or services they were selling. Con-

sider the shape of a Coke bottle or the decor of a Mexican restaurant—the color scheme of the awnings and the waitresses’ uniforms—both of which are shielded against imitation under the rubric of trade dress.

Trademark law now even covers product configurations. The uniforms of the Dallas Cowgirls are shielded, so long as they have acquired secondary meaning and are not, in the eyes of a court, functional. Similarly, no car manufacturer is permitted to make a car that closely resembles a Ferrari Testarossa.

The expansion of the three fields has resulted in increasing amounts of overlap. For example, while all computer software programs are protected by copyright law, a rapidly growing subset (currently over 100,000) are also protected by patent law. Certain industrial designs—objects that are both useful and aesthetically pleasing—are potentially

subject to intellectual property protections under offshoots of all three fields: as copyrightable “useful objects,” through design patents and as product configurations recognizable to consumers.

MAKING SENSE OF THE GROWTH

No single factor explains why the coverage of intellectual property law has been expanding so steadily. Rather, several intertwined forces—economic, political and ideological—appear to be at work. Here are what seem to be the most important: The transformation of the American economy, from agricultural to industrial to service-based to informational, has resulted in an increase in the number and variety of interest groups clamoring for greater protection of their intellectual products. At the same time, the United States has gone from a net importer to net exporter of intellectual property. There has been a dramatic increase, starting in the early 20th century, in the perceived importance of advertising, which has made strong trademark protection seem even more imperative to the firms that engage in it. Americans’ deep commitment to a labor-desert theory of property, together with an associated equity theory of distributive justice, has helped fuel arguments that creators deserve fair returns for their creativity. Popular suspicion, rooted in classical liberalism, of gov-

The number and variety of interest groups clamoring for greater protection of their intellectual products have increased.

ernmental involvement in the process of identifying and rewarding good works of art and socially valuable inventions has fueled hostility to governmental reward systems as alternatives to intellectual property law. The growth of the romantic notion of authorship and the corresponding celebration of the genius inventor has played a part. The groups favored by most extensions of intellectual property have been highly concentrated, while the groups disfavored have been dispersed. Finally, the term “intellectual property,” with its substantial rhetorical force, has gradually displaced an older vocabulary centered on the phrase “limited monopolies.”

Those are what seem to me the principal causes of the growth. A separate question is whether the expansion has been socially desirable. With respect to the first waves of growth, the answer is probably yes. Most of the extensions of the zones of protection made in the 19th and early 20th centuries were necessary adaptations to the emergence of new kinds of works. The creators of those works had legitimate interests in compensation and would not likely have produced them at optimal rates absent legal shields against competition.

In contrast, most of the most recent expansions have been pernicious. For example, there are plenty of incentives other than the hope of securing a patent for making innovations in athletics. Many aspects of the product configuration doctrine in trademark law are similarly problematic. Consider, for example, the Romm Art case (1992), holding that the Israeli artist Tarkay had established an artistic style—featuring languid women with lowered eyelashes in vaguely European cafés—that was infringed by the posters of Patricia Govezensky, even though no single Govezensky poster was deemed an infringement of Tarkay’s copyright in a given work. Finally, the recognition of business method patents is regrettable. No one suggests that the rate with which new business models were generated before 1998 was suboptimal or that the rate has since increased. The result is that patents on business methods produce all of the well-known disadvantages of patent law—deadweight losses and litigation costs, for instance—without any offsetting social gains. Many other recent extensions of intellectual property law turn out, under scrutiny, to be similarly ill-advised.



DISAGGREGATION

As the three fields of intellectual property have expanded, they have begun to fragment. Sometimes, this disaggregation has been deliberate. Congress has, from time to time, identified a particular industry or a particular type of intellectual product, concluded that it warranted special treatment and created a customized set of rules to fit it. The first example was the design patent statute, which created an entirely new patent regime for ornamental inventions. Similarly, Congress, in an effort to comply with the Berne Convention, deliberately differentiated architecture from other types of copyrightable materials.

Sometimes this disaggregation has been deliberate in a narrower sense. Confronted with a problem or plea peculiar to one industry, Congress or the courts have adopted rules limited to that industry. For example, copyright law now permits performers to make “covers” of musical compositions, provided they pay a governmentally determined fee. Another example is the judge-developed requirement of conceptual separability, which applies only to three-dimensional useful objects. Applications for business-method patents, unlike most other patent applications, must be reviewed by two examiners. The requirement, first developed by the courts, that descriptive marks, colors and, most recently, product configurations must have acquired secondary meaning before being shielded by trademark law is yet another example.

Sometimes, by contrast, disaggregation has been a largely inadvertent by-product of judicial decisions attempting to respond to the distinctive features of certain industries. For example, as Professors Dan Burk and Mark Lemley have shown, the Federal Circuit has recently semiconsciously differentiated the software and biotechnology fields while applying the requirements for patentability. In the former, the nonobviousness doctrine has been applied strictly, while disclosure requirements have been applied leniently. In the latter, the reverse bias has been applied. Why? In the court’s view, software is a mature field. Persons having “ordinary skill” in programming are thought to be especially knowledgeable. Thus, you need a big “inventive step” to reach higher than they could reach, and you don’t need to disclose much, because they can fill

Congress has, from time to time, created a customized set of rules to fit a particular industry or kind of intellectual product.

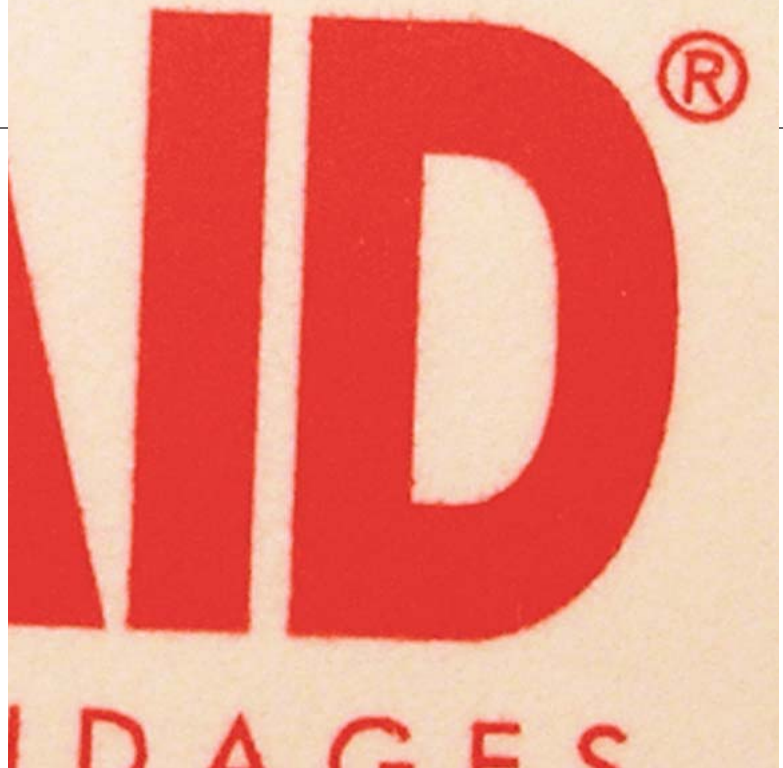
in the gaps in a skimpy patent application. By contrast, the court (oddly) persists in treating biotechnology as an immature and unpredictable field. Thus, a smaller inventive step will suffice to render an invention nonobvious. But to obtain a patent, the inventor must reveal more about it to enable others to replicate it.

In sum, the field of intellectual property has already become, to a significant degree, fragmented. Is this trend good or bad? Should we celebrate and generalize it? Or should we resist it?

Two substantial factors create a strong initial justification for disaggregation. But some other, institutional factors suggest that disaggregation is risky. On balance, my suggestion is that lawmakers should disaggregate more often and certainly more consciously but should be watchful for and seek to avoid certain hazards.

MERITS

The first benefit of self-conscious disaggregation is that it would help to offset the dangerous rhetorical force of the term “intellectual property.” If lawmakers could be persuaded to ask not: “What is necessary adequately to protect creators’ intellectual property?” but instead: “What should be the scope of rights to colors—or genes—or advertisements?” they would be less likely constantly to expand the zone of protection. Lawmakers might then concentrate on the economic and social benefits and costs





associated with different types and amounts of legal control over ideas.

The second, more complex factor favoring disaggregation is that industries differ—and differ in ways that cannot be accommodated by the general doctrines of copyright, patent and trademark law. They vary most obviously and perhaps importantly in terms of the amount of legal incentives necessary to spur innovation. In some fields, the lure of a copyright or a patent is crucial to induce people to invent; in others, it's not. A few examples: Poets are less price-sensitive than screenwriters. Studies have shown that biochemists are primarily driven not by thirst for high incomes, but by a cluster of motivations we might call a commitment to science.

But to warrant reducing levels of intellectual property protection in a given field, it is insufficient to observe that inventors in that area would continue to invent for nonpecuniary reasons. Firms must also be willing to invest in and market their inventions, despite the absence of intellectual property rights. It turns out that investment patterns also vary by industry. In some fields, custom or first-mover advantages enable firms to reap adequate returns without the need for additional incentives, as Justice Stephen Breyer '64 long ago suggested in his study of the trade-book industry. In other fields, intellectual property protection is more important in attracting funding.

A second source of interindustry variation involves the manner in which technological advances

Industries vary increasingly as to whether intellectual property protection is adequate to stimulate innovation.

characteristically occur. Some fields, such as the development of drugs from plants, conform reasonably well to a model of discrete innovation, rendering discoveries relatively autonomous. In other fields, such as telecommunications, an initial, pioneering invention commonly triggers successive waves of secondary inventions. In still other fields, like software, the typical member of each generation of innovators draws on many forerunners and then spawns many more. A patent regime optimal for one type of industry is likely to be ill-suited to the others.

There are several other sources of industry variation that argue in favor of disaggregation. Within trademark law, for instance, the strength of the public interests served by protecting names and insignia varies sharply by subfield. Within copyright law, some kinds of works are primarily informational in character, while some are primarily creative or expressive in character. Rules appropriate to the latter are not necessarily appropriate to the former.

Industries also vary, increasingly, as to whether intellectual property protection is adequate to stimulate innovation and to reward participants properly. The clearest examples of outliers are music and film. Traditional copyright protections are no longer capable of preventing massive, nonpermissive reproduction and distribution of digital audio and video recordings over the Internet.

Partly as a result, the revenues of the music industry are dropping fast, and the fortunes of the film industry are in peril. The search is currently on for a new, better system. My own view—presented in a forthcoming book—is that the most promising candidate would be an alternative compensation system, under which creators would be compensated (in proportion to the relative popularity of their creations) with funds raised by the government through taxes. Many benefits—cost savings, convenience, cultural diversity and semiotic democracy—would be reaped if, with respect to online distribution of recordings, we replaced the crumbling copyright regime with such an alternative source of funding. But that's a subject for another day. The point for the purposes of the present subject is that some system sensitive to the special features of the entertainment industries would be better than continued reliance upon the generic rules of copyright.

HAZARDS

There are four offsetting concerns that suggest, at a minimum, that disaggregation should not be employed casually. The first and most parochial is that it makes the field harder to teach and understand.

Second, the process of drawing the boundaries between the newly subdivided categories will sometimes be difficult. It may be easy to tell the difference between a smell and a sound, a movie and a song, or a plant and an animal. But other boundaries will be harder to police. For example, it's notoriously tricky to differentiate business methods from other kinds of processes. And the boundary between hardware and software is not as clear as one might think. Whenever a frontier is less than crisp, disaggregation will incur unwanted costs.

Third, it's not clear which, if any, institution is well-positioned to formulate and revise industry-specific rules. Congress has a decent track record in this respect. But Congress is vulnerable to rent seeking, which would almost certainly increase if Congress began more often to set rules specific to each industry. Equally important, industry-specific rules can become obsolete quickly (the Audio Home Recording Act leaps to mind), and Congress may not be sufficiently nimble to adjust. The courts are more agile. Judges sometimes do a good job of fashioning industry-specific rules, as when they used a combination of antitrust and copyright law to empower, but also to discipline, the performing-rights societies in the music industry, ASCAP and BMI. But the Supreme Court is very busy, and leaving the job in the hands of lower-court judges is bound to create circuit conflicts and forum-shopping. And the single, specialized tribunal that oversees patent disputes, the Court of Appeals for the Federal Circuit, has a mixed record on this front. That leaves administrative agencies. We might restructure the Copyright Office and the Patent and Trademark Office to equip them for lawmaking, and then give them the job. The difficulty—sadly familiar to administrative-law scholars—would be to devise a way of either designing or supervising the agencies so that they acted wisely and independently. In short, no simple solution to this crucial challenge is yet apparent.

Fourth and finally, lawmakers attempting to disaggregate the field would need either to abide by or

to alter the tight constraints imposed by the several intellectual property treaties to which the United States is now a party. The TRIPS Agreement, for example, would require amendment. Even where treaty amendments were not necessary or could be obtained, industry-specific reforms not paralleled by similar reforms in other countries would create problems.

CONCLUSION

The disaggregation of the law of intellectual property is happening. Two considerations suggest that this trend is desirable. Disaggregation would help neutralize the rhetoric of property rights that currently infuses and distorts the field. And it would accommodate the multiplying and increasingly important respects in which fields of innovative activity differ. When pursuing this strategy, however, we should try to locate reasonably definite boundaries between subfields. We should pay close attention to the design of the institution to which we entrust this task. And we would frequently be obliged to harmonize our adjustments to those made in other countries. Last, we'll have to rethink the way we teach the subject. *

A video recording of the full speech can be obtained at www.cyber.law.harvard.edu/fisherlecture.

It's not clear which, if any, institution is well-positioned to formulate and revise industry-specific rules.



by SETH STERN '01 *photographs by* BOB O'CONNOR

A HOT PROPERTY

IP curriculum evolves with student interest and new technologies

W

WALK BY PROFESSOR LLOYD WEINREB'S copyright lecture, and you might hear the songs of Rolling Stone Mick Jagger, former Beatle George Harrison or even pop singer Michael Bolton blaring from the classroom.

No, they aren't favorite tunes from Weinreb's record collection; he much prefers classical composers or Rodgers and Hammerstein show tunes.

But each of these musicians was involved in a prominent copyright infringement suit, and Weinreb plays their songs as

Renny Hwang '05 and Ory Okolloh '05 worked on a domain name policy for the island of Palau through a clinical at the Berkman Center.



STUDY GROUPS
Institute of Politics

Hackivism
Activism in the 21st Century
Internet & Society: Civil Liberties in Cyberspace
With Special Guest
Julian Assange

IS|2K2
Internet and Society Conference 2002
a community experiment

Harvard's Digital Identity
November 19-20, 2002
Join the online community

MISSION: HOW DO WE GET THERE?

TEACHING: HLS Courses, Clinicals, Think Tank, Bolds, Graphlaw, Filter, iLaw Casebook, ? Colloquium

RESEARCH: H2O, Blogging, SummerCamp, Conferences, Publications, Seminars, Fellows, Radio/College Radio/Free, Filtering/Security, Digital Media, Governance/ICANN, World Bank Institute

ADVISING: Africa, Advising, Panama/Panama/PA, South Africa/PA, Ethion/Development Freq, Jamaica, IS2/PA

ADVOCACY: Litigation/Open Law, Creative Commons, Chilling Effects, Copyright

1) TECH: REGISTERED USER, UPLOAD MUSIC, DOWNLOAD, STREAM, COUNT, PAM, SOCIAL SOFTWARE/COMMUNITY

2) FINANCES: RAISE GRANT \$\$ FOR, BUDGET?, - SOME MALA, - SOME MING CD, - REFLECT FOR AS, - OTHER DOMAINS, MODEL FOR SPIN-OUT

3) MARKET MAKING: ARTISTS, B. KENNEDY, C. ...

4) GENERAL ADMINISTRATION: BERKMAN INCUBATION?, SPIN-OUT SPICE(S), TERM? WHO? HOW MANY COUNTRIES?

5) LEGAL: RT. CLEARING, CC-0, WHAT ART. 17A?, 17B OF DMCA, LICENSES TO ...



**“The demand
for intellectual
property
[classes] has
been immense.”**

LLOYD WEINREB '62

he discusses their cases. On another day, Weinreb might display the insignia of the National Football League's Baltimore Ravens, the subject of another copyright dispute.

Such multimedia presentations were certainly not the norm when Weinreb '62 took Copyright with Benjamin Kaplan at Harvard Law 42 years ago. But much has changed in the intervening decades in how students learn about intellectual property here.

Whereas Kaplan's two-hours-per-week copyright law class was the only intellectual property course offering then, students today can fill whole semesters with the school's nine IP-related offerings, including recent interdisciplinary additions such as cyberlaw and biotechnology law. Just this fall, the school received a \$3 million gift to establish its first professorship in patent law.

“The demand for intellectual property has been immense,” says Weinreb. “The whole world is interested in intellectual property right now.”

Outside of class, students with an interest in IP can do research or enroll in a clinical at the Berkman Center for Internet & Society. Or they might write articles for the student-run Harvard Journal of Law & Technology or help organize conferences for the Harvard Committee on Sports & Entertainment Law.

Though the Internet bubble burst years ago, those offerings keep attracting more students. One explanation: Harvard Law's current student body is stacked with Internet startup survivors who brought their interest in technology with them. But student interest in IP extends far beyond those Silicon Valley expatriates. To see why the same issues are relevant to the average HLS student, look no further than Weinreb's copyright class this past spring that met three times each week in Pound Hall.

The first sound a visitor hears is the constant tapping of keys—nearly all of the students in the room are typing their notes on a laptop. And, thanks to schoolwide wireless Internet access installed this academic year at the direction of Dean Elena Kagan '86, the World Wide Web is just a click away at every seat. That innovation is of little interest to Weinreb, a self-described “semi-Luddite,” who didn't even have a computer in his office until 2001. Even today, he says, he doesn't know how to do much besides e-mail and hasn't ever looked at file-swapping programs like Napster.

Still, in the 16 years since he started teaching copyright, Weinreb's approach has evolved along with new technologies. In today's lecture, he is wrapping up the copyright portion of his class with a lecture on the fair-use doctrine before starting a half-semester overview of patent law and trademarks.

At the same time, Professor William Fisher III '82, co-di-

rector of the Berkman Center, is leading a class discussion in his patent law course while standing before a PowerPoint presentation. Yet the class discussion topic is considerably less high-tech: a hypothetical salt-injected fishing lure designed to catch bass.

He presses one student to discuss whether the inventor should get a patent and what the appropriate field of art should be. During his second IP class of the day, later that night, Fisher takes a back seat to his students in a seminar on current trends in cyberlaw.

Eating takeout Thai food around a table in the attic of Austin Hall, Fisher and his 15 students talk with visiting UCLA law school Professor Jerry Kang '93 about who should own rights to private information on the Web. Kang asks them to consider, if personal data like online buying habits is considered property, whether it's best controlled by individuals, by companies or in some form of mutual control.

In some classes, such as cyberlaw or biotechnology law, IP may be only a part of a broader interdisciplinary course. The biotechnology class is co-taught by Professor Charles Nesson '63 and two practitioners, including Boston biotech attorney Bruce Leicher.

Leicher says he tried to impress upon the 36 students in the class how central a role intellectual property rights play in biotechnology innovation. “Until you have intellectual property, you have no research and development to sell,” explains Leicher, who currently serves as vice president and chief counsel at a biotech firm.

In one class, students split into teams and negotiated a hypothetical agreement between a university and a biotech firm to obtain rights to a critical protein for a pharmaceutical development.

“I've learned a lot from these classes,” says 3L Chris Carnaval, who took the biotechnology course last fall. He's also enrolled in other IP courses, including Copyright and Internet & Society, and worked both summers during law school at IP law firms. One summer associate project: defending a suit against the Washington Redskins National Football League team trademark, which plaintiffs argued disparaged Native Americans. “I wish the law school offered more classes like this,” he says. “I'd definitely take as many as I could.”

In the future, Weinreb envisions the school expanding IP course offerings further to include a regular course in trademark and unfair competition, a patent course every year and perhaps a separate patent litigation course. Such offerings



Professor Lloyd Weinreb '62 teaches Copyright and Other Intellectual Property, one of the school's growing number of IP offerings.

**1L Jeff Engerman
had barely arrived
at Harvard Law
School in the
fall before he
found a way to
learn about IP.**

draw disproportionately on students with scientific or technical backgrounds who are looking for ways to incorporate those interests into a legal career. Others earned undergraduate degrees or Ph.D.s in computer science or other high-tech disciplines.

Some worked at Internet startups—or, in the case of 3L Lara Garner, designed precision equipment for the PC board industry before studying philosophy in college. Still others come from creative fields like art, music or writing.

“It seemed like a natural fit,” says Renny Hwang, a 2L who came to HLS after working as a product manager at an Internet startup. 3L Michael Joffre came to HLS after completing a Ph.D. in astrophysics at the University of Chicago and working for a year looking at gigantic clusters of galaxies with telescopes.

Joffre, who will clerk at the federal circuit court that handles patent cases after graduating this year, says his background provides a unique perspective on the law. “It’s slightly more methodical, slightly more analytical,” he says. “It’s just part of the training you receive as a scientist.” He says he found it easier during his two summers at IP firms for him to relate to inventors and creators. “You have a similar background,” he says.

1L Jeff Engerman worked at Internet search engine Northern Light, doing operations and product management work, before enrolling at Harvard Law. He barely arrived before finding a way to learn about IP. Engerman has started doing research at the Berkman Center’s “Chilling Effects” project, which supports free speech on the Internet through a Web site that helps Internet users respond to legal threats such as cease-and-desist letters.

In his first semester, Engerman analyzed letters posted on the Chilling Effects site. In the spring semester, he switched to analyzing trends in cease-and-desist letters. Though the research isn’t done yet, Engerman says there are many legitimate enforcement actions. This summer, he’ll continue his research as an associate at the Berkman Center.

Engerman says such work has already changed how he thinks about IP. “Working in the field, you start to feel it’s predetermined that larger players will take over,” he says. “But getting into the legal way of thinking, you start to understand there are more options to effectively fight for intellectual property rights and support the progressive goals of the Internet community.”

There are also IP research opportunities that attract foreign students. LL.M. student Yuanshi Bu of China helped file copyright registrations and translate documents for the Chinese version of the International Commons project. The “I-Commons” is designed to help automate the process by which users can obtain permission from authors for online content. Bu, who previously studied IP law in Europe and helped clients in China enforce IP rights against counterfeiting factories, says learning

such practical skills was “quite helpful.”

Each semester, half a dozen students also get practical experience by enrolling in the Berkman Center’s clinical program, which was the first of its kind when created in 1999. “We give students the opportunity to learn that, yeah, that looks good on paper, but you see what will happen in the real world and find all the loopholes,” says Diane Cabell, the Berkman Center’s director of clinical programs.

For Hwang, his clinical meant learning where in the world is the island of Palau. That’s because Hwang was assigned to help draft laws governing domain name registration and resolution for the South Pacific island nation two hours from Guam, which is just two and a half times the size of Washington, D.C. Making matters more interesting: Palau requested a pro-domain holder policy, unlike other nations, which tend to favor the trademark holder.

Hwang and his partner on the project, 2L Ory Okolloh, say building a domain name policy from scratch was a great experience—though the 12-hour time difference with their clients meant e-mails were the only way to reach them.

By the end of the term, Okolloh and Hwang expected to have submitted a draft policy. “We can point to something that’s tangible,” says Okolloh, who will work this year as a summer associate at a Washington, D.C., law firm with an IP practice.

And, for students who want to fill their free nights and weekends with IP too, there are always plenty of student activities to join. Pick up any recent copy of the Harvard Journal of Law & Technology and read student-written notes with titles such as “Trespass to Chattels and the Internet” and “Control of the Aftermarket Through Copyright.”

In March, JOLT hosted its annual conference on the impact of emerging distribution technologies, featuring panelists such as Shari Steele, executive director of the Electronic Frontier Foundation, and TiVo’s general counsel, Matthew Zinn. One week earlier, the Harvard Committee on Sports & Entertainment Law hosted its own conference that featured EFF co-founder and former Grateful Dead lyricist John Perry Barlow. Unfortunately, many Committee on Sports & Entertainment Law members couldn’t make the JOLT conference—not that they weren’t interested in the topic. It’s just that they’d flown to Texas for a music industry trade show. *

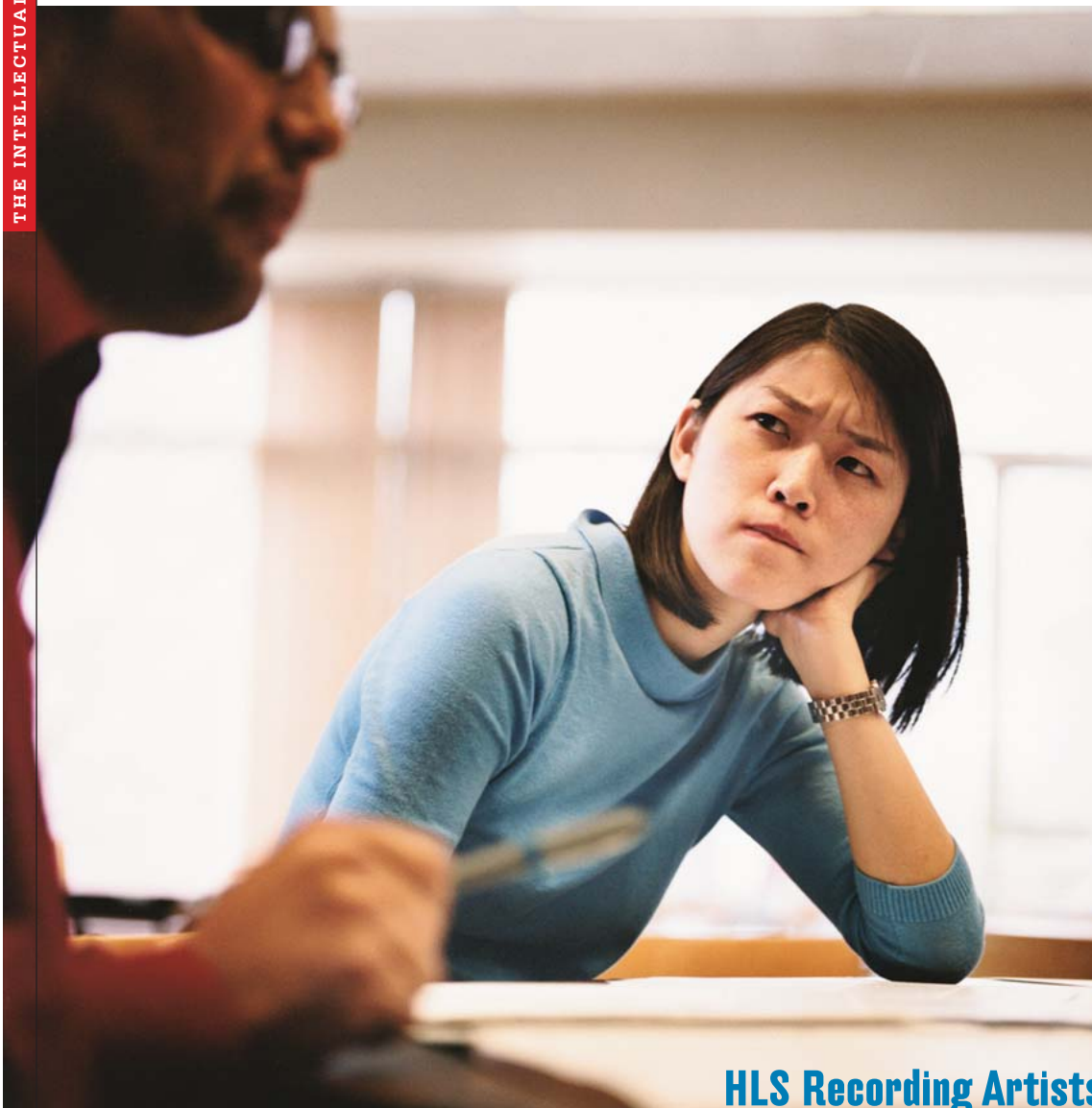
Seth Stern '01 is a legal affairs reporter at Congressional Quarterly in Washington, D.C.



Doron Ben-Atar discusses his book "Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power" as part of a Berkman Center speaker series organized by Executive Director John Palfrey '01 (right).

IN TUNE

WITH
THE
LAW



**HLS Recording Artists
Project focuses on the legal
side of the music industry**

by EMILY NEWBURGER *photographs by* LEAH FASTEN

MUSICIAN KABIR SEN HAS SELF-PRODUCED two albums, performed widely in the Boston area with other hip-hop artists, even appeared on the cover of *Billboard* magazine. But he felt he'd missed a beat when it came to contracts, business plans and the laws that govern his industry. So Sen, like dozens of other Boston-area musicians and producers every year, turned to HLS's Recording Artists Project.

It started in 1998 when two students approached Hale and Dorr Legal Services Center instructor Brian Price about a clinical focused on music and the law. "Their interest sprouted mostly from the desire to empower musicians," said Price, who has a background in music law and heads the Community Enterprise Project, the clinic's transactional practice. "The entertainment industry is notorious for being unforgiving if you don't know what you're doing."

Initially, the project focused on hip-hop and R&B artists. Clients now include a wider array of musicians as well as small production and management companies. The program has also grown beyond its clinical function: RAP now hosts panel discussions—this spring on alternative revenue streams in the music industry—as well as social events. It also launched a Web site this year with the Berkman Center for Internet & Society (www.cyber.law.harvard.edu/rap), which provides practical information on legal issues for those navigating the music industry.

For 3L Marina Bonanni, who has been a member since her first semester and co-director for the past two years, RAP has been an essential part of her law school experience. "It brings together students who love music and are dedicated to entertainment law," she said. As for the clinicals, "You have clients who are really excited, really passionate about their music, and



In a Clinical Program consultation, musician Kabir Sen (above) gets advice from Jennifer Chu '06 (opposite and below), David Flugman '06 and supervising attorney Brian Price.

you're just helping them make their dreams come true."

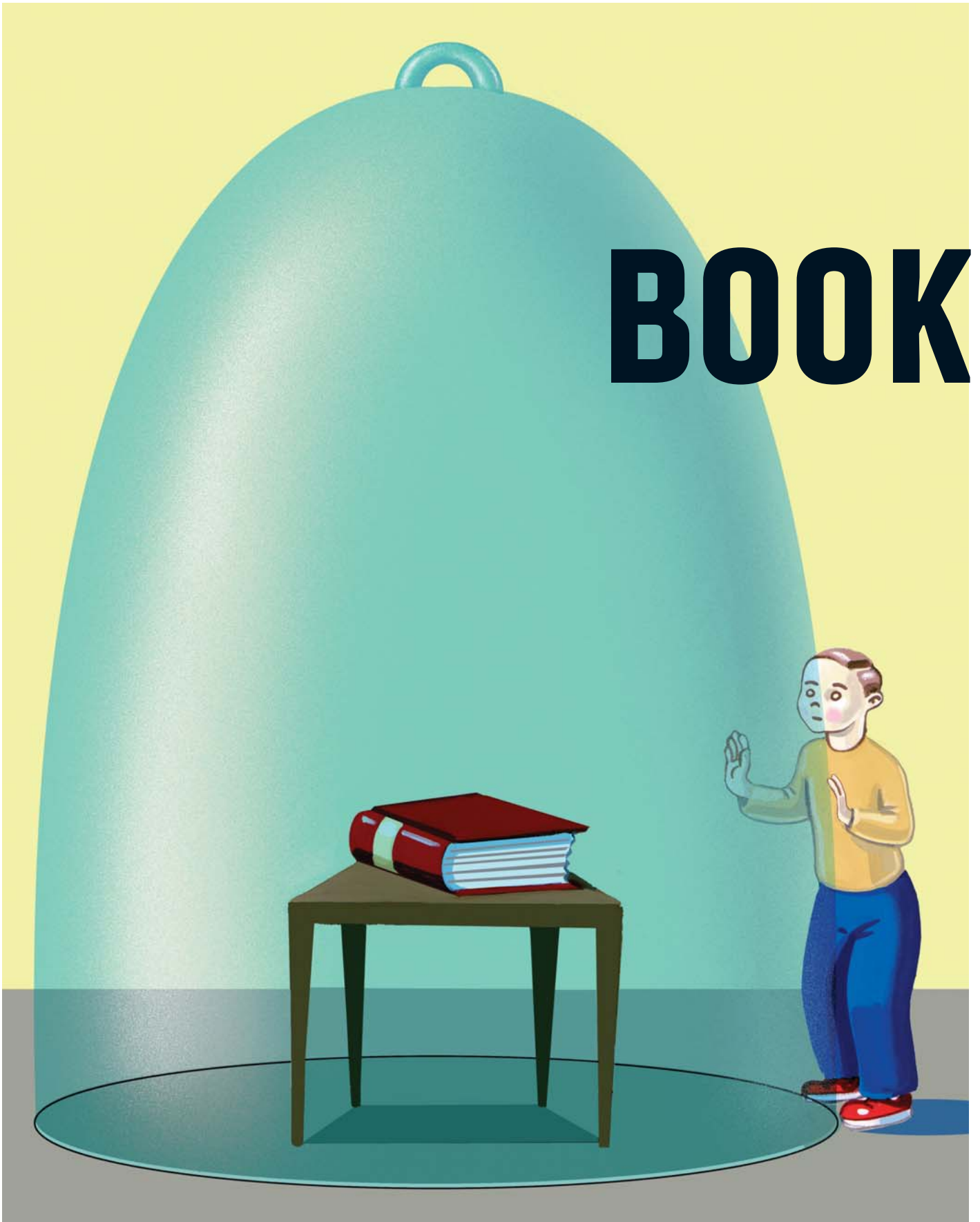
In February, when Kabir Sen met with Price and a team of RAP students at the Hale and Dorr Center, he clearly had lots of dreams for his music—and lots of questions. The team was prepared. One student asked about forming contracts with the other musicians Sen works with. Another explained the protection offered by forming a limited liability company. Another talked to him about the relatively small fee and large protection involved in trademarking his name. Another suggested that he register his songs with organizations such as the American Society of Composers, Authors and Publishers, which collects royalties.

They also listened to Sen's concerns about copyright problems relevant to many hip-hop artists. The musician explained that, although he performs with a band, he also creates his own electronic music, which includes samples of pre-existing works. "Sometimes I feel like I know there is just the right sample out there," he said, "exactly what I need to make that song sound incredible." What he needs to know, he says, is what the law allows.

That's where RAP comes in. And the answers often end up being relevant to RAP students' own careers. Paul Petrick got involved in the program last year and is now on the board. He's a 3L but he's also a deejay, and he is starting his own record label called *Headtunes*, featuring electronic music. By the time he signed his first two artists this year, he—like other RAP students—knew how to draft recording and management contracts and booking agent and band agreements. He could also set up his own LLC and was versed in publishing and performance rights, copyright and trademark issues. "From a practical standpoint, it was great," said Petrick. "Everything I learned for what I'm doing now, I learned there." *



BOOK



by EMILY NEWBURGER *illustration by* ALISON SEIFFER

SMART

HLS professor seeks to make copyrighted works accessible to students with disabilities

EVEN IF A CHILD cannot hold a textbook or see the words on its pages, the law says she must still have access to the same education as her classmates. The good news, says Professor Martha Minow, is that once a book has been digitized, the technology exists to open up the curriculum to children with a wide range of disabilities. The challenge, she says, is that “every opening up of the text leads to a copyright violation.”

Four years ago, with an organization called the Center for Applied Special Technology, Minow began working on a Department of Education project to implement the 1997 amendment to the Individuals with Disabilities Education Act. While it was Minow’s knowledge of special education law that brought her to the collaboration, she soon realized that copyright was

“We are trying to envision a world in which we ... have the fully accessible curriculum for every kid.”

MARTHA MINOW

where she needed to focus.

Particularly pivotal was the Chafee Amendment, which allows for materials to be scanned or copied for persons with visual or related impairments. Some have assumed that this exception could be expanded to cover those with other disabilities, but so far the courts have been silent on this issue. Minow soon became convinced that, beyond looking into legal strategies to fend off lawsuits, the project should work directly with the textbook publishers. She turned to her colleagues at the Berkman Center for Internet & Society, who have been grappling with copyright issues affecting the film and music industries. In October 2002, the center co-hosted a meeting that brought together for the first time the major textbook publishers with technology and copyright experts.

The publishers were wary at first, says Minow. But quickly most everyone agreed that current efforts—including teachers copying and scanning books—barely serve the visually impaired students who are covered by the Chafee Amendment, let alone students with other disabilities.

Most also agreed they must find ways to get children access to the curriculum without depriving publishers

of control over the quality or content of their products. And, of course, they had to make sure that publishers could still make a profit. Erica Perl, managing director and research attorney at the project, says one of the challenges involves the cost of negotiating digital rights with numerous artists and writers. But if publishers were to provide digital versions of all texts at the beginning, she says, money now spent on converting the textbooks might be used for these contracts.

With help from the Berkman Center and its Digital Media Project, Minow, Perl and HLS students are trying to come up with just this sort of business model innovation. “We’re trying to sweeten the pot,” says 1L Charlie Hoffmann, a former high school teacher and software engineer. “We have to figure out ways to incentivize publishers to do this for their own gain.” Many publishers already use traditional accounting systems, which rely on schools buying a book for every student who wants an electronic version. But the project is also ex-

ploring alternative compensation schemes for the K-12 textbook market, just as Professor William Fisher III ’82 has done for the music industry (see page 17). According to Minow, there are parallels between the problems faced by the two industries, but there are also major differences, such as the nature of the demand. “There is no tremendous desire for bootlegged copies of sixth-grade math texts,” she says. And the number of K-12 students considered disabled under IDEA (less than 9 percent) is just a grace note compared to the market for a Norah Jones CD.

Yet, the way Minow and her partners at CAST are thinking about education, the pool of users could get bigger. Minow says studies show that many nondisabled students have different learning styles and that they would benefit from much of the educational software that expands print textbooks. “In addition to working within the existing law,” she says, “we are trying to envision a world in which we don’t create two sets of teaching materials but actually have the fully accessible curriculum for every kid.”

Minow says working on the project has been exciting and emboldening. Seeing a child who has attention deficits engaged by interactive versions of the lessons, or another who can’t speak presenting a multimedia report that suddenly makes him the cool kid, gives her hope for making the promise of the 1997 special education law the reality.

3L Deborah Gordon agrees, calling her three years on the project the best part of law school. It took her into the Boston Public Schools with Perl to study how technology is already at work. It also led them to investigate the laws in each state regarding the digital versions of texts that publishers have to provide. Encouraged by that study, Congress authorized a national panel—on which Minow has served—to generate a standardized file format for digitized versions of all texts. The proposal has now been incorporated into the latest version of the special education law that’s pending before the House and could lead to the establishment of a national clearinghouse of digital files. Someday Gordon hopes to work in education law, and she is grateful that she got “to meet people and talk to them about the issues instead of just reading about them in the classroom.”

Minow says the project has been educational for her too: “It’s provided a terrific window for me into how lawyers can become problem solvers.” From business plans to agreements, she says, “We’ll use whatever tools it takes to solve the problem.” *

Corporate Sleuth

CONSERVATIVE PUBLICATIONS have vilified **Terry Lenzner '64** for his investigative work on behalf of President Bill Clinton. But politics is not what drives him, he says.

"I've never applied a political litmus test when I've considered whether to accept work," said the former federal prosecutor and Watergate lawyer. "I look instead at whether the work is interesting, and whether I think I can help the situation."

Lenzner finds plenty to keep him intrigued as chairman of Investigative Group International, a worldwide network of former law enforcement and intelligence officers and lawyers he founded in 1984 as an adjunct to his own law firm. With headquarters in Washington, D.C., IGI deals with highly sensitive issues, such as money laundering, corporate network security, asset searches and intellectual property. In one of its famous cases, IGI investigated the United Way of America's president and his colleagues for misappropriation of funds, helping to stop illegal activity and save the public charity's reputation. And Clinton's personal lawyers hired Lenzner to help investigate independent counsel Kenneth Starr and his staff during the Whitewater investigation and the Lewinsky scandal.

For all of his accomplishments in his cloak-and-dagger career,

Lenzner readily admits he stumbled into investigative law by dumb chance.

In 1963, during a clerkship with Paul, Weiss, Rifkind, Wharton & Garrison in New York City, Lloyd Garrison, the partner he worked for, advised him to consider a career with the Civil Rights Division of the Justice Department.

"Here is Garrison, one of the greatest civil rights advocates of the time," he recalled, "and I said to him, 'I just don't have much interest in those issues.' Luckily for me, Lloyd smiled and said, 'Just go down there and check it out.'"

He did. And Lenzner found his calling as an investigator in Philadelphia, Miss., during Freedom Summer, 1964. His work helped win the murder conviction of seven of the suspects in the infamous Mississippi Burning trial.

These days, Lenzner is as focused on saving the country from terrorists as he was on furthering civil rights in the '60s.

"I've become quite interested in how we might protect ourselves from people who would use our financial institutions and our technology against us," he said. He sees the country's vulnerability through the lens of IGI's work auditing corporate technological and communications infrastructures for weak spots. This caseload has grown since Sept. 11, 2001.

Just as IGI follows these audits with recommendations for how businesses can reduce their risks, Lenzner sees a corporate-

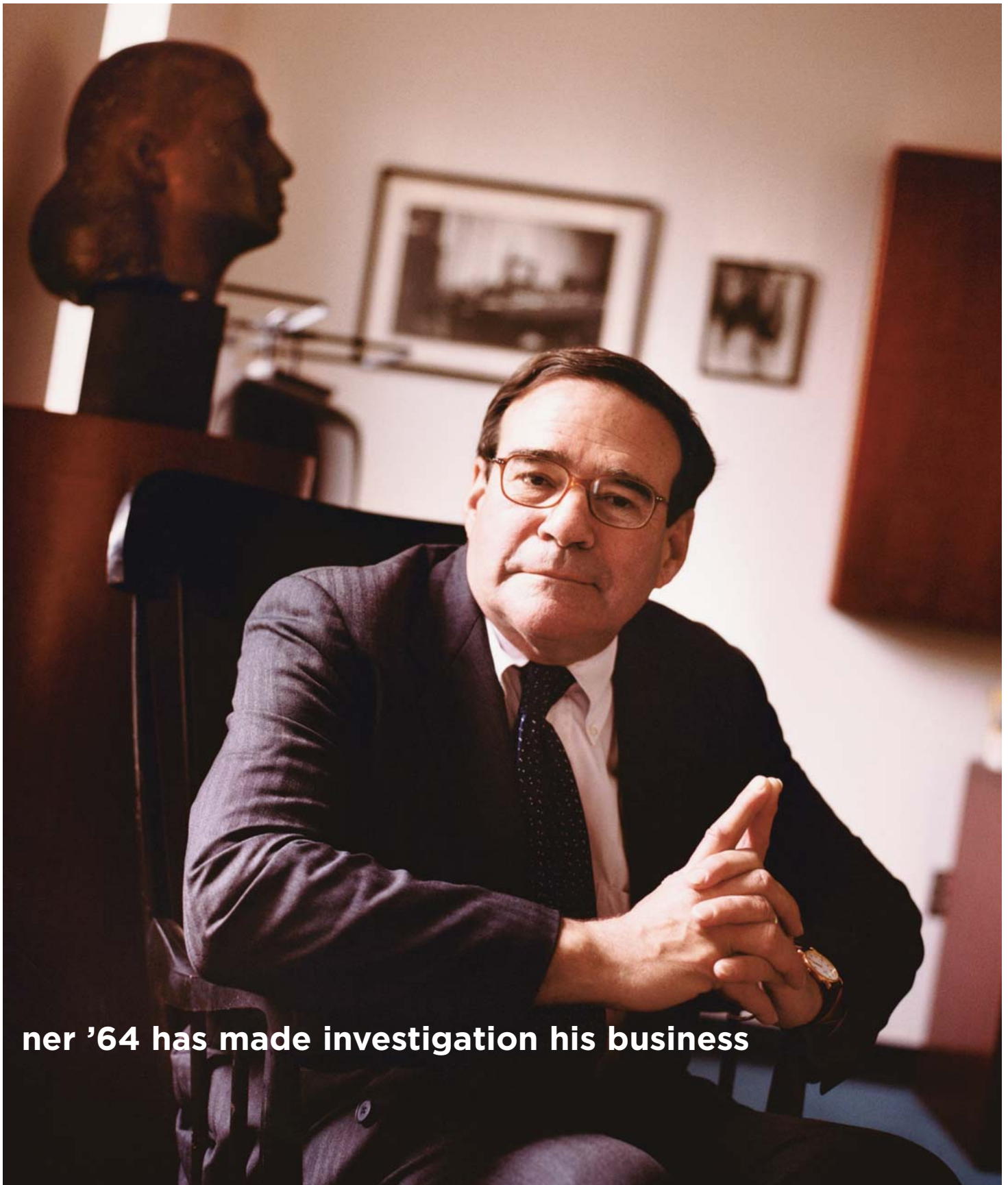
government partnership as one of the keys to protecting the nation's safety. "We had Mohammed Atta's name in the spring of 2001," he said of the 9/11 hijackers' alleged ringleader. "Atta was renting cars and buying plane tickets with a credit card under his own name. If we'd had cooperation between the government and credit card companies, we could have headed him off."

Though recognizing the risks of infringing on Americans' privacy rights, Lenzner is convinced that "it is absolutely vital that we take these kinds of steps now to protect our country."

While he's cultivating dialogue between CEOs and the CIA, Lenzner is also working to realize another of his dreams: to provide law students with tools for learning what he has discovered in his years in the investigative trenches. "I would like to teach," he said, "and write a casebook that would demonstrate how to gather information, in an ethical and legal fashion, in complex financial and fact investigations. That would be my way of summing up everything I've learned since 1964, and to leave behind a contribution."

Attorney Terry Lenz

By Eileen McCluskey | PHOTOGRAPHED BY CHRIS HARTLOVE IN WASHINGTON, D.C., APRIL 26, 2004



ner '64 has made investigation his business

Equal Signs

Paul Steven Miller '86 Has Made It

A RESTAURANT EMPLOYEE is fired. He didn't violate company policy. In fact, he's a good employee, according to his manager. But he is fired because, as the regional manager put it, he is one of "those people."

For much of his career, **Paul Steven Miller '86** has advocated for "those people," whether they be black, Latino, over 40, Muslim or in a wheelchair—anyone who is targeted for how they look or who they are. As a commissioner for the U.S. Equal Employment Opportunity Commission for the past 10 years, Miller helped the restaurant employee (who has mental retardation) recover substantial damages and has supported other victims of discrimination who, like himself, just want a chance to show what they can do.

Born with achondroplasia, a genetic condition that results in dwarfism, Miller got his chance only after 45 law firms rejected him during law school, with one member of a firm telling him the reason: Their clients would think that they were running a "circus freak show." The passage of the Americans with Disabilities Act in 1990 has made such overt discrimination rarer and has changed the culture of the American workplace, Miller says.

"I think that the reality for students with disabilities, for professionals with disabilities, is dramatically different today than it was a scant 15, 18 years ago," he

said. "I think that's attributable to the ADA, to an education process that employers have begun to journey down. ... It has made America stronger, because it forces employers to focus more on people's qualifications than on stereotypes about that individual's disability."

Miller became director of litigation for the Western Law Center for Disability Rights, deputy director of the U.S. Office of Consumer Affairs and White House liaison to the disability community. Now one of the longest-serving commissioners in EEOC history, he will leave the agency on July 1 and will teach on the faculty at the University of Washington School of Law. As commissioner, he spearheaded efforts to resolve charges of discrimination through mediation, helping to improve the agency's longtime backlog. (During his tenure, the commission has received an average of more than 80,000 charges a year alleging workplace discrimination.) He has also endorsed the selective use of litigation both to protect employees and to send a message to employers.

"We try very hard to work with good employers, and we do a lot of training and we do a lot of outreach to employers," said Miller, who has traveled to every U.S. state on behalf of the commission, "but there are also recalcitrant employers and bad actors out there, and we try to reach out and litigate and stop those bad actors from

discriminating."

That litigation has included a sexual harassment suit against Mitsubishi Motor Manufacturing of America, in which the company settled for \$34 million in 1998. Miller also cites a case settled against Burlington Northern Santa Fe Railway, which, according to the agency, secretly performed genetic tests on employees who filed claims for work-related injuries.

Employers—or society at large—should not assign a negative value to genetic mutations, Miller says. After all, he says, most people who actually have them don't.

"Just because it is harder to be different doesn't mean that you want to erase that difference or that identity," he said. "I don't think that people should view folks with disabilities—whether you use a wheelchair, or you're a dwarf, or you're blind or what have you—and say, 'Oh, I bet you sit around hoping that you could get out of your wheelchair and walk again,' because I don't think that people with disabilities think that way, for the most part, any more than African-Americans run around wishing that they were white."

The country has made progress in erasing the stigma of being disabled, Miller says, just as the stigma once attached to race, sex, national origin or religion has decreased significantly since the EEOC began operating in 1965. But, he cautions, he has seen for himself that we haven't finished the job yet.

By Lewis Rice | PHOTOGRAPHED BY DAVID DEAL IN WASHINGTON, D.C., MARCH 31, 2004

A close-up portrait of a middle-aged man with a full, grey-streaked beard and mustache. He is wearing round, tortoiseshell-rimmed glasses. He is dressed in a dark grey suit jacket, a white dress shirt, and a dark blue bow tie with red and green polka dots. The background is a blurred, light blue-grey color, suggesting an outdoor setting. The text "His Job to Combat Workplace Discrimination" is overlaid in the upper left corner of the image.

His Job to Combat Workplace Discrimination

The Case for the President

Ken Mehlman '91 Heads Re-election

Ken Mehlman '91 was a Republican before law school. But HLS helped make him the Republican he is today. His predominantly liberal fellow students in fact made him "more Republican, more conservative," spurred by his view that rampant elitism drove their ideology, he said.

"There were a lot of people there who seemed to think that, because of the fact that they were fortunate to have this excellent education, they were therefore entitled to make decisions for other people who didn't have that education," he said. "And my experience is that I respect people no matter what their education is. Usually people are able to make decisions for their own lives and don't need a bunch of kids who went to a good law school to tell them what to do."

Mehlman's boss would likely concur. That's just one reason Mehlman is working to ensure that he keeps him in office for another four years.

Once a member of the HLS Republicans, Mehlman now serves as campaign manager for the Bush-Cheney re-election effort. He directs the operation from an office building in Arlington, Va., in which he monitors the president's field organization and, as he did during an interview in the fall, the Democrats who want to upend him.

Yet, even as he occasionally glances at a TV in his office showing Democratic candidates appearing at an event in Washington, D.C., his focus

remains on the president and the themes of leadership, security and "compassionate conservatism" that he believes will sway the election in George W. Bush's favor.

"The strong message we can bring forward is that this is a president who has the strong leadership to take on incredibly tough challenges and do it in a way that not only solves those challenges but deals in a very big way with big problems," said Mehlman.

He acknowledges that the presidential election will likely be close, much like the last one, which Mehlman saw firsthand as the national field director for Bush-Cheney 2000 and one of the first officials from Bush campaign headquarters to travel to Florida after the state's contested vote. His role in Bush's victory, in which he supervised regional political directors across the country, was the culmination of a career in politics that began with his party's rise to power in Congress.

After three years practicing environmental law at Akin Gump Strauss Hauer & Feld in Washington, D.C., Mehlman joined Texas Congressman Lamar Smith's staff as legislative director in October 1994. He recalls an attorney at the firm saying to him then, "House Republicans are less important than a bucket of warm spit. Why are you going to work for them?" A month later, he had an answer, when Republicans gained the majority in Congress and influence they had long lacked. His next

position, as chief of staff for Rep. Kay Granger, also from Texas, led to his meeting Karl Rove, her campaign consultant and later Bush's senior adviser in the White House.

Following the 2000 election, Mehlman became White House political director and one of Rove's deputies, working closely with him on the administration's political strategy. Rove, a frequent target of Democratic criticism, "ultimately cares about the substance and ideas as much as anybody and masters them as much as anybody," said Mehlman.

Personal attacks against Rove and the president himself—or indeed against anyone in politics—cheapen discourse and alienate voters, Mehlman says. "Too often it becomes personal; it becomes divisive," he said. "This is the biggest gripe I have, and this partly explains my ideological politics. I don't think you need to question people's motives."

His own motives are simple, he says. The term "compassionate conservative," coined by the president, inspires him. He believes that conservative approaches—less government, more individual responsibility, more of a market orientation—produce compassionate ends. And he has believed in the president since the first time he met him, when Bush was running for governor of Texas and echoed his own views. Of course he wants people to vote for Bush—but he's not going to tell them what to do.

By Lewis Rice | PHOTOGRAPHED BY BRENDAN SMIALOWSKI, GETTY IMAGES

Effort for George W. Bush



Life Lessons

Marina Volanakis '99 Delivers on the Promise

SOMETIMES MAKING THE greatest impact on a student's life is as simple as changing his fifth-grade homeroom. That's what **Marina Volanakis '99** did for 10-year-old Gabriel, and it was enough to turn him from a disrespectful troublemaker into a dedicated student. And Volanakis spends most every waking hour trying to find out what will make her other students flourish too.

"I always wanted to put myself in a position where I could make real changes in people's lives," she said. "And we do that here every day. When I talk to parents, they tell me, 'You've changed my child's life. My child has never been so excited about learning before.'"

Last July, Volanakis founded KIPP South Fulton Academy, a charter middle school in East Point, Ga., where she serves as principal and a teacher. The school is part of the Knowledge Is Power Program, a network of charter schools that grew in 10 years from two schools in South Bronx, N.Y., and Houston to more than 30 top-performing schools in 13 states and the District of Columbia.

A typical day for the former marathoner begins at 7:30 a.m., when she leads students in a morning running program. The school day officially ends at 5 p.m., two to three hours later than most schools. It's also open two Saturdays a month and holds a

mandatory three-week session in July. Volanakis doesn't leave work during the week until 8:30 or 9 at night, and since all teachers are on call 24 hours a day, her cell phone starts ringing at 6 p.m. with students calling for help with their two hours of required homework.

She has always believed education was the best way to change lives, but she first became passionate about public education when she taught in the Mississippi Delta as part of the Teach for America program.

"I know what we promise in terms of public education in America," said Volanakis, "and in Mississippi I saw that the reality, particularly in low-income communities, is that we're just not providing it. That alarmed me."

She chose law school as a way to get involved in education reform. She interned with the Office for Civil Rights of the U.S. Department of Education during her 2L year and spent that summer at the Education Law Center of Pennsylvania. Because of the adversarial nature of the legal system, she came to feel that lawyers shouldn't be changing schools: Educators should.

"I didn't want to keep putting a Band-Aid on a wound that's already there," said Volanakis. "I wanted to find a way to make sure the injury didn't occur in the first place."

A former Skadden Fellow with the Atlanta Legal Aid Society, she became a Fisher Fellow in 2002 with the KIPP School Leadership

Program. After six weeks learning business and operations management at the Haas School of Business at Berkeley and four months traveling around the country studying effective school models, Volanakis returned to Georgia in January 2003 to establish her own school. She visited more than 80 homes, talking with prospective students and their parents, selling her idea of a school that didn't yet exist.

Eighty percent of her students qualify for the federal subsidized meal program, and her incoming class of 75 fifth-graders ranged in reading levels from students who were in the first percentile to one student who scored in the 99th percentile. Volanakis plans to add an additional grade each year until the academy has approximately 320 students in grades five through eight.

Some of her students' parents were initially skeptical of what this Harvard-educated lawyer was doing setting up a school in south Fulton County. But Volanakis never wavered. She says she doesn't wake up in the middle of the night wondering what she was put on earth to do. She knows she is doing it.

By Christine Perkins | PHOTOGRAPHED BY ANN STATES IN EAST POINT, GA., APRIL 3, 2004

of Public Education



CLASS NOTES

Isabella, and are expecting their second child in October.

Javier Miguel Tizado LL.M. was admitted to practice as a special legal consultant in the District of Columbia. He joined White & Case in Washington, D.C., in 2001 and has been working in the international arbitration and litigation group. He and his wife, Marina A. Corpi de Tizado, “happily and proudly announce that [they] have brought to the world another ‘Chacarita’ fan,” Marcos Javier, on May 26, 2003, in Alexandria, Va.

Gabriel Torres joined Simpson Thacher & Bartlett as an associate in the New York City office. He previously clerked for the Hon.

Albert M. Rosenblatt '60 of the New York Court of Appeals.

2002 Deidre A. Downes joined Klehr, Harrison, Harvey, Branzburg & Eilers in Philadelphia as an associate in the corporate and securities department. She concentrates her practice in representing private investment funds, privately held companies and publicly traded corporations.

In April, **Murad Kalam** was honored as a 2004 Hemingway Foundation/PEN Award finalist for his novel, “Night Journey” (Simon & Schuster, 2003).

David R. Mitchell was elected a director of the Greater Corktown Development Corp., a

community-based housing development organization. He is an associate in the Detroit office of Miller, Canfield, Paddock and Stone and a member of its financial institutions and transactions group.

Laurie Puhn announces the sale of her book “Instant Persuasion: How to Change Your Words to Change Your Life” to Penguin Group (USA). It is scheduled for publication in January 2005. She is presently an associate at Orrick, Herrington & Sutcliffe in New York City. She wrote, “If you want tips on how to quickly get what you want from others, check out and join Laurie Puhn’s free ‘Instant Persuasion’ club at www.lauriepuhn.com.”

Zheng Zha LL.M. and his wife, Huan Luo, announce the birth of their first baby, Franklin Mutian Zha, on March 6 in Maryland.

2003 Manuel Calderon and **Erin E. Foley** joined Fulbright & Jaworski as associates in the Austin, Texas, office. Calderon focuses on intellectual property matters and Foley primarily on commercial litigation. **Hannah (Sibiski) Machart** joined the firm as an associate in the Houston office, focusing her practice on appellate and litigation matters.

Marion P. Forsyth co-edited “Legal Perspectives on Cultural Resources” (Altamira Press, 2003), a collection of articles on legal issues pertaining to historic preservation and cul-

tural resource management. She is an associate at Baker & Daniels in Washington, D.C.

Lowell D. Plotkin and Genelle H. Kelly were married on Aug. 16. Plotkin is a real estate associate at Kirkpatrick & Lockhart in Newark, N.J., and Kelly is working toward her medical degree.

William A. Van Asselt joined Warner Norcross & Judd as an associate in the Holland, Mich., office. Prior to joining the firm, he served as the executive director of the Martin Luther King, Jr. National Memorial Project Foundation. He lives in Holland with his wife, Gwendolyn, and their son, Willem.

Geri Zollinger was named an associate at Wolf, Greenfield & Sacks in Boston.

2005 George Farah is the executive director of Open Debates, a Washington-based nonprofit committed to reforming the presidential debate process. Board members include HLS Professor Jon Hanson, **John B. Anderson LL.M. '49**, **Randall Robinson '70** and **Jamin Ben Raskin '87**. In January, the organization formed the Citizens' Debate Commission, a nonpartisan presidential debate sponsor, consisting of 17 national civic leaders. Farah's book, “No Debate: How the Republican and Democratic Parties Secretly Control the Presidential Debates,” was published by Seven Stories Press in April.

SEPT. 10-11
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FALL REUNIONS WEEKEND
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APRIL 14-17, 2005
SPRING REUNIONS WEEKEND
Classes of 1955, 1965, 1970, 1980, 1995
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MAY 13-14, 2005
HLSA SPRING MEETING
Harvard Law School
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JUNE 8, 2005
ALUMNI SPREAD AND CLASS DAY EXERCISES
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JUNE 9, 2005
COMMENCEMENT
Harvard Law School
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SEPT. 23-24, 2005
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Harvard Law School
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OCT. 20-23, 2005
FALL REUNIONS WEEKEND
Classes of 1950, 1960, 1975, 1985, 1990, 2000
Harvard Law School
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Keep us posted

Please send us your news by
July 16, 2004, for the fall issue.

Fax: 617-495-3501
E-mail: *bulletin@law.harvard.edu*
U.S. Mail: 125 Mount Auburn St., Cambridge, MA 02138

Career



Personal

Name

(FIRST)

(LAST)

(MAIDEN, IF APPLICABLE)

Firm/Business

(CITY)

(STATE)

Title

Phone

E-mail address

Year and degree

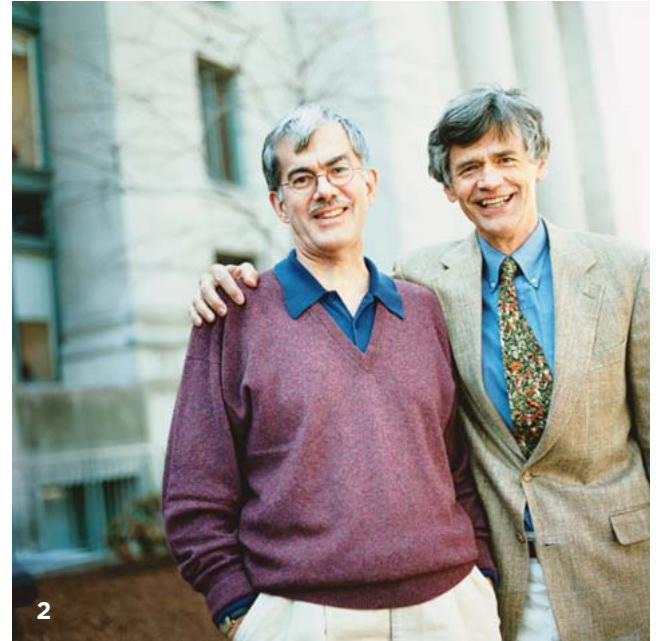
Address change?

yes

no

I would like to read more about

Hello, Old Friend Catching up, hanging out, at Spring Reunions



1. 1994 classmates Anders Yang, Peter Zaldivar, Marc Babsin and Charles Hsieh 2. 1969 classmates Cliff Case and James William Silver 3. the 1964 class photo 4. Wally Myers '54



5



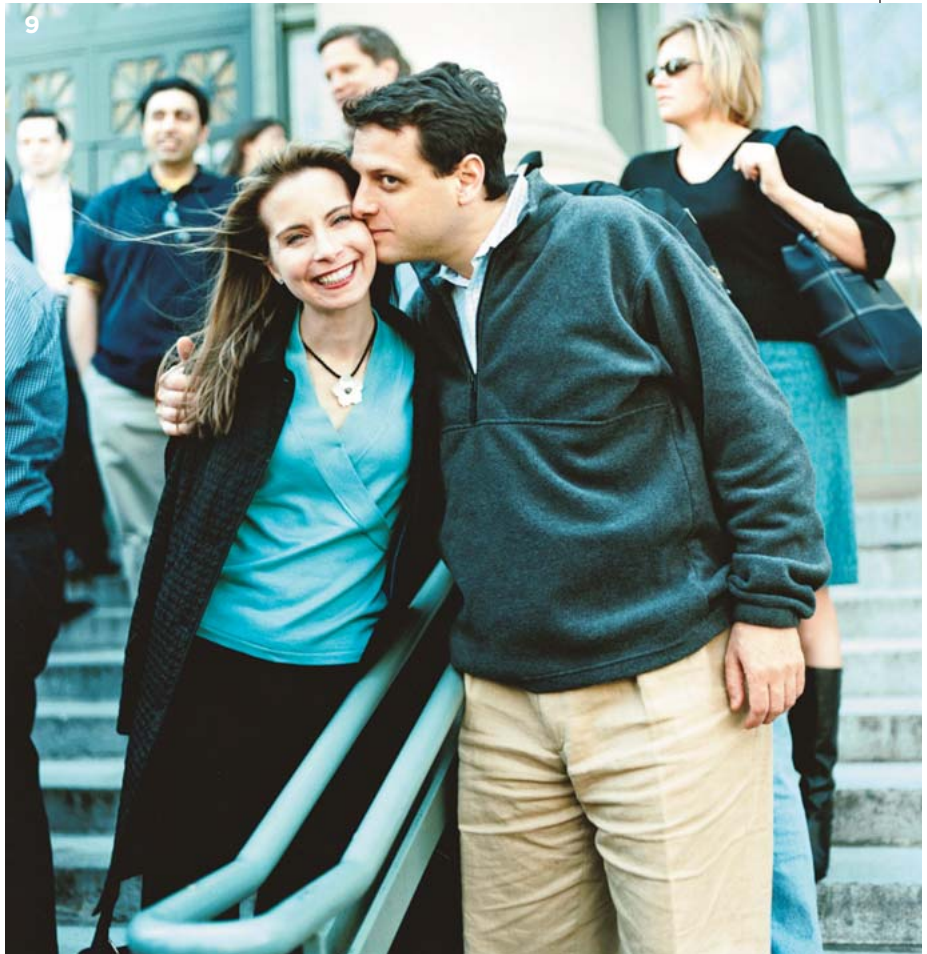
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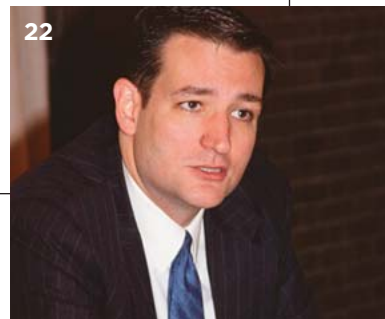
9

5. Eric Moyo '79 6. 1979 classmates Steve Thel and Don Scherer ('80) 7. 1979 classmates Beth Labson and Paul Chessin 8. 1954 classmates Darwin Dornbush and James Shapiro 9. Melissa McCann '94 and her husband, Robert Santangelo '95

Traphagen Distinguished Alumni Speaker Series

During the year, 22 alumni discussed their careers with students as guests of Dean Elena Kagan '86. The speaker series is supported by Ross E. Traphagen Jr. '49.

1. Michael A. Roth '80, founding partner, Stark Investments **2. Scott L. Lessing '91**, partner, McKinsey & Co. **3. Adam S. Cohen '87**, editorial board, The New York Times **4. John F. Olson '64**, partner, Gibson, Dunn & Crutcher **5. Jeffrey C. Levy '89**, CEO, Open Point Networks **6. Robert H. Rawson Jr. '71**, partner, Jones Day **7. James Roosevelt Jr. '71**, senior vice president and general counsel, Tufts Health Plan **8. Peter M. Yu '90**, president and CEO, AIG Capital Partners **9. Rachel L. Brand '98**, principal deputy assistant attorney general, U.S. Department of Justice **10. Harold M. Williams '49**, of counsel, Skadden, Arps, Slate, Meagher & Flom **11. Joshua S. Friedman '82/M.B.A. '82**, founder and managing partner, Canyon Partners **12. Debora M. de Hoyos '78**, managing partner, Mayer, Brown, Rowe & Maw **13. Bentley Kassal '40**, litigation counsel, Skadden, Arps, Slate, Meagher & Flom; retired judge, New York court system **14. Brian P. Bellmore LL.M. '69**, partner, Bellmore and Moore **15. Judith F. Aidoo '87**, chief executive, The Aidoo Group **16. Peter A. Carfagna '79**, chief legal officer/general counsel, IMG Worldwide **17. Lena G. Goldberg '78**, executive vice president and general counsel, Fidelity Investments **18. Ronald A. Rosenfeld '64**, president, Government National Mortgage Association **19. H. Rodgin Cohen '68**, chairman, Sullivan & Cromwell **20. Alice Young '74**, partner and chair, Asia Pacific practice group, Kaye Scholer **21. Christopher A. Keyser '85**, Keyser/Lippman Productions **22. R. Ted Cruz '95**, solicitor general, Texas



In Memoriam

Obituary Information

Details may be sent to Harvard Law Bulletin, In Memoriam Editor, 125 Mount Auburn St., Cambridge, MA 02138

1920-1929

Matthew Brown '28 of Boston died Sept. 5, 2003. He practiced law for more than six decades, helping found what is now Brown Rudnick Berlack Israels in Boston in 1944. In the 1970s, he was a judge for the Municipal Court of Boston. He was president of the Combined Jewish Philanthropies and served as chairman of the endowment program for the group's 75th anniversary. For nine years, he was a Brookline, Mass., selectman, and he was a sergeant at arms for the Republican National Conventions of 1952 and 1956. A chairman of the board of Boston Broadcasters Inc. during the 1970s, he also funded the Brown Walk-in Clinic at Beth Israel Hospital and was a fellow at Brandeis University. After retiring, he served as a mediator in the Palm Beach (Fla.) Circuit Court.

George Turitz '28 of Washington, D.C., died Jan. 1, 2004. He was a lawyer and administrative law judge with the National Labor Relations Board. Earlier in his career, he worked for the legal department of the Puerto Rico Reconstruction Administration in San Juan and, in 1934, ran for Congress on the Socialist ticket for the 16th District of New York. During WWII, he served as a first lieutenant in the U.S. Army, working in counterintelligence in North Africa.

Louis B. Eten '29 of Hackettstown, N.J., died April 5, 2003. He was a partner and later of counsel at Brown, Wood, Fuller, Caldwell & Ivey in New York City. He specialized in securities regulation.

John W. Munro '29 of Fayetteville, N.Y., died Dec. 9, 2003. He was a member of McDermott, Will & Emery in Chicago and what became Hancock & Estabrook in Syracuse, N.Y. After retiring, he served as an arbitrator in family court. He was a member of the American Iris Society.

Mortimer J. Shapiro '29 of Miami and West Orange, N.J., died Sept. 23, 2003. He was CEO of his family's business, the Sheppard Baking Co. in North Bergen, N.J. He previously practiced law in Newark. He was a director of Oheb Shalom Congregation in South Orange, was vice president of the Jewish Education Association of Metrowest and served on various committees of the Metrowest Jewish Federation.

Jackson E. Spears '29-'30 of New Canaan, Conn., died July 14, 2003. He was an investor and specialized in finance and philanthropy law. For 60 years, he was on the board of trustees of New York Medical College and served twice as president. He received three of the college's highest honors, and a community service award was established in his name there. He was also a director of Stamford Hospital, St. Joseph Hospital and Westchester Medical Center.

1930-1939

Charles P. Baker Jr. '30 of Painesville, Ohio, died Feb. 9, 2004. He was a Painesville Municipal Court judge, the city's law director, and owner and president of the Painesville Publishing Co. An expert in Ohio on township zoning law, he crafted the legislation that allowed townships to develop their own zoning codes. He was a lawyer for 61 years, founding his firm, Baker & Hackenberg, in Painesville in the early 1930s.

David R. Pokross '30 of Belmont, Mass., died Oct. 28, 2003. He practiced law in Boston for 72 years, 70 of which were with Nixon Peabody. Specializing in general corporate and electric public utility law, he also worked on corporate policy matters and estate planning. In the 1970s, he was chairman of the firm's executive committee, and he was later counsel to the firm, working several days a week until April 2003. He was involved in many charities and organizations in Massachusetts, including the Combined Jewish Philanthropies of Greater Boston, the United Way of Massachusetts Bay, the Boston Symphony Orchestra and the American Jewish Historical Society. He was chairman of the board of overseers of the Heller School for Social Policy and Management at Brandeis University and established the David R. Pokross Fund for Children in Need through the Boston Foundation. During WWII, he served in the U.S. Navy.

Cleon H. Foust Jr. '30-'31 of Indianapolis died July 27, 2003. He was dean of Indiana University School of Law from 1967 to 1973. He retired in 1978, after 24 years at the law school, and served as chairman of the Indiana Correctional Code Study Commission. He was also vice chairman of the Indiana Criminal Justice Institute. From 1947 to 1949, he was attorney general of

Indiana. Prior to that, he taught at Drake University School of Law in Des Moines, Iowa.

Sheldon G. Harlan '30-'31 of Ashton, Md., died Sept. 13, 2003. Formerly of Livingston, N.J., he was a program supervisor for the U.S. Bureau of the Census in New York City.

Patrick M. Hennessey '30-'31 of Bidwell, Ohio, died Sept. 6, 2003.

Meyer Fix '31 of Fairport, N.Y., died Aug. 23, 2003. A senior partner specializing in litigation at Fix, Spindelman, Turk, Himelein & Shukoff in Rochester, N.Y., he also was a lecturer on trial practice at Cornell Law School.

Bernard Phillips '31 of New York City died June 6, 2003. He was a sole practitioner specializing in foreign mergers. Earlier in his career, he practiced law at Gordon, Brady, Caffrey & Keller in New York City. In the early 1930s, he was assistant corporation counsel for the city of New York.

William C. Pierce '31 of West Baldwin, Maine, died Nov. 12, 2003. He was a partner at Sullivan & Cromwell in New York City, where he specialized in commercial banking, and trusts and estates. He was director of the European-American Banking Corp. and the European-American Bank and Trust Co. He was also chairman of the banking law section of the New York State Bar Association, a trustee of Bowdoin College and treasurer of Brown Memorial Library. A president of the Maine Historical Society, he published the article "The Rise and Fall of the York & Cumberland Rail Road" in the society's quarterly publication. During WWII, he was a lieutenant commander in the U.S. Navy.

Andrew B. Young '31 of Upper Gwynedd, Pa., died Aug. 21, 2003. Formerly of Chestnut Hill, Pa., he was a founder of Stradley Ronon Stevens & Young in Philadelphia, and he helped the firm grow from a three-lawyer partnership into a firm of more than 300 employees. He continued to work at the firm five days a week until a few months before his death at 96. He helped draft the 1954 Internal Revenue Code and served as chairman of the ABA's division of tax in 1963. He lectured on finance at the Wharton School of the University of Pennsylvania and on tax at other universi-

IN MEMORIAM

ties and law schools. He was chairman of the Philadelphia Industrial Development Corp. for more than 20 years. During WWII, he served in the U.S. Army Surgeon General's Office, converting businesses for the war effort.

Warner M. Bouck '32 of Albany, N.Y., died Feb. 19, 2004. For over 20 years, he was senior partner of Bouck, Holloway, Kiernan & Casey in Albany, joining the firm as a partner in the 1940s. He served on several committees of the New York State Bar Association and the New York State Bar Foundation and was a board member of many civic and cultural organizations, including the Albany Institute of History and Art and the Albany Medical College. During WWII, he was a contract administration officer in the U.S. Navy.

Ray I. Hardin '33 of Basking Ridge, N.J., died Sept. 9, 2003. He practiced tax law at what is now Dewey Ballantine in New York City.

Thomas A. Keegan '33 of Rockford, Ill., died Sept. 27, 2003. He was a trial and general practice attorney in Rockford for more than 50 years. Early in his career, he was an Illinois assistant attorney general and a chief trial attorney for the Office of Price Administration in Washington, D.C. In 1959, he was elected to the American College of Trial Lawyers. He joined the U.S. Navy during WWII and served as officer in charge of the Armed Guard on merchant ships. He later served as counsel to Secretary of the Navy James Forrestal.

Henry P. Phyfe '33-'35 of New York City died April 17, 2003. He was a physician and the great-grandson of Duncan Phyfe, an American furniture maker. He was a member of the Harvard Club of New York City and led the club's weekly Shakespeare group.

Kenneth C. Davis '34 of La Jolla, Calif., died Aug. 30, 2003. A legal scholar and pioneer in the field of administrative law, he taught at the University of San Diego School of Law from 1976 until his retirement in 1994. He helped create the field of administrative law as a unified body of law, publishing "Administrative Law" in 1951 and a multi-volume treatise on the topic in 1958. He helped draft the 1946 Administrative Procedure Act. Earlier in his career, he was a lawyer both in private practice and with the federal government. He later taught at many universities, including as a visiting professor at HLS from 1948 to 1950. He held a chaired professorship at the University of Chicago until 1976 and published more than eight dozen scholarly articles in national law jour-

nals. In 1979, he was elected to the American Academy of Arts & Sciences.

Frederic P. Houston '34 of Bristol, Maine, died Sept. 6, 2003. Formerly of New York, he was a senior member and counsel of Otterbourg, Steindler, Houston & Rosen in New York City, a firm his father co-founded in 1909. He was counsel to the Textile Fabrics Association and associate counsel and general counsel of the New York Board of Trade. He helped found the House of the Redeemer, an Episcopal retreat center in New York City, where he served in executive positions for 45 years. He served as a captain in the U.S. Army Air Forces in England and attained the rank of lieutenant colonel in the Reserve.

Ralph E. Bowers '35 of Lake Forest, Ill., died Oct. 23, 2003. He was vice president, corporate counsel and corporate secretary for Marshall Field & Co. in Chicago. He later served as of counsel to Vedder, Price, Kaufman & Kammholz. During WWII, he served as an industry member of the National War Labor Board.

James B. Gordon '35 of Chestertown, Md., died March 25, 2003. He was a lawyers' search consultant.

John R.L. Johnson Jr. '35 of Rockland, Del., died Dec. 23, 2003. A longtime employee of Hercules Powder Co. in Wilmington, Del., he joined the company as assistant general counsel in 1936 and was elected vice president and a member of the executive and finance committees in 1955. He served on several organizations' boards, including as director and president of the College of William & Mary Alumni Society and trustee of the college's endowment association.

Martin A. Jurow '35 of Dallas died Feb. 12, 2004. A studio executive in Hollywood and New York, he was an assistant to movie titans Jack L. Warner and Hal B. Wallis and an independent producer for movies, including "Breakfast at Tiffany's," "The Pink Panther" and "The Great Race." As an agent for MCA and the William Morris Agency, he was instrumental in the making of "My Fair Lady," "Oklahoma!," "South Pacific," "The King and I," "Guys and Dolls" and "The Music Man." He later moved to Dallas and continued to work on films, including "Terms of Endearment." He became an assistant district attorney for Dallas County and taught a course at Southern Methodist University.

Bernard W. Slater '35 of Beulah, Mich., died Dec. 20, 2003. He was president of the Histacount Corp., a printing company in Melville, N.Y.

Howland S. Warren '35 of Nahant, Mass., died July 29, 2003. An attorney and bank executive for nearly four decades, he was vice president and counsel of Old Colony Trust Co., trust counsel of First National Bank of Boston and counsel at Herrick and Smith in Boston. He served on many boards, including as a trustee of Children's Hospital and as treasurer of the New England Conservatory of Music. He was also a member of the Boston Athenaeum and the Tavern Club, a group of amateur playwrights. His father was HLS Professor Joseph Warren LL.B. 1900. During WWII, he served in the U.S. Navy in Sicily and the Pacific.

Herbert D. Tobin '35-'36 of Newport Beach, Calif., died Nov. 3, 2003. A longtime residential developer, he was president of Frank I. Tobin and Sons and built homes in New England and California. In 1937, he helped establish one of the first chapters of the National Association of Home Builders and served as president of the Building Industry Association and the Residential Builders Council. In 1974, he received the highest honor of the Building Industry Association of Southern California, the Meritorious Award. He was a member of the Los Angeles County Sheriff's Mounted Posse and was a sworn reserve deputy for 25 years. He served in the U.S. Coast Guard Reserve.

Duane E. Minard Jr. '35-'37 of Boonton, N.J., died Dec. 22, 2003. He was CEO and chairman of the board of Blue Cross Blue Shield of New Jersey.

Abraham S. Guterman '36 of Mamaronck, N.Y., died Feb. 11, 2004. A tax, trusts and estates attorney, he was a partner at Hess, Segall, Guterman, Pelz, Steiner & Bavorick, which merged with Loeb & Loeb in New York City in 1986. He taught at New York University Institute on Federal Taxation and wrote a number of articles on taxation. He was a benefactor and trustee of Yeshiva University and served on the boards of many businesses and private foundations.

H. Ober Hess '36 of Gladwyne, Pa., died Feb. 18, 2004. He was a partner and later senior counsel at Ballard Spahr Andrews & Ingersoll in Philadelphia, where he served as chairman from 1973 to 1981. He was the editor, since 1941, of the *Fiduciary Review*, a monthly law journal, and he edited "The Nature of a humane society: a symposium on the Bicentennial of the United States of America." He served on many civic and cultural boards and was a trustee of the Philadelphia College of Art.

Leonard Kaplan '36 of Cambridge, Mass., died Oct. 11, 2003. For more than five decades

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he worked for Nutter McClennen & Fish in Boston, retiring as a senior partner in 1987. He was also a special assistant attorney general in the charities division of the state attorney general's office. He was president of three local Jewish organizations and served as vice president of the National Jewish Welfare Board. He was honored by the American Jewish Committee and the Lena Park Community Development Corp. for his community service. An overseer of the Boston Symphony Orchestra, he was a cello player and participated in the Harvard Music Association orchestra.

Gilbert Kerlin '36 of Riverdale, N.Y., died April 9, 2004. He spent his entire career at the Wall Street firm of Shearman & Sterling. For 50 years, he worked to preserve the natural landscape of the Riverdale section of the Bronx, founding the Riverdale Community Planning Association, which developed a rezoning plan to restrict construction of apartment buildings. In 1961, he was instrumental in saving Wave Hill, a 28-acre estate overlooking the Hudson and the Palisades, from development and helping make it into a public garden and cultural center.

John Lansdale Jr. '36 of Harwood, Md., died Aug. 22, 2003. He was a longtime partner at Squire, Sanders & Dempsey in the Cleveland and Washington, D.C., offices and served in the U.S. Army as head of intelligence and security for the Manhattan Project during WWII. As part of the Alsos Mission prior to the end of the war, he was instrumental in locating and removing close to 1,100 tons of uranium ore in northern Germany, the products of a German atomic bomb project. As head of security for the Manhattan Project, he approved security clearance for physicist J. Robert Oppenheimer, leader of the scientific team for the atomic bomb project, and later defended that decision during congressional hearings of the McCarthy era. He attained the rank of colonel and subsequently was awarded the Legion of Merit and the Order of the British Empire, Degree 4 Commander.

Bernard Roberts '36 of Lake Worth, Fla., died Nov. 22, 2003. Formerly of Palm Beach, Fla., and Newton, Mass., he was an attorney, real estate developer, investor, civic leader and philanthropist. He was president of Roberts Brothers Realtors, developing apartment complexes and commercial properties in the Greater Boston area. He was also a director of a number of companies, associations and hospitals.

Walter F. Sloan '36 of Rye, N.Y., died Aug. 5, 2003. Formerly of Bronxville, he was general tax counsel for Caltex, a petroleum corpora-

tion. He was a member of the Bronxville Field Club and secretary of the board of governors for the Siwanoy Country Club. During WWII, he served as a lieutenant in the U.S. Naval Reserve in the Mediterranean.

Stanley W. Osgood '36-'37 of Winchester, Mass., died Nov. 12, 2003. He was a senior test editor for Houghton Mifflin and worked closely with author Robert L. Thorndike, helping to shape the Lorge-Thorndike Intelligence Tests and the Stanford-Binet Intelligence Scales. Earlier in his career, he sold insurance for Northwestern Mutual Life Insurance Co. During WWII, he worked for the U.S. Naval Electronics Laboratory.

Richard M. Root '36-'37 of Des Moines, Iowa, died Aug. 21, 2003. He practiced law in Des Moines and was a trust officer at Brenton Bank from 1967 until his retirement. He previously lived in Paris, where he was an employee of the U.S. government. Supporters of liberal arts education, he and his wife funded trusts at several universities and colleges in Iowa. He was a charter member of the Iowa Wine Advisory Board and a 33-year member of the Sertoma Club of Des Moines. He served in the U.S. Army from 1942 to 1953, attaining the rank of captain.

Samuel Duker '37 of Clifton, N.J., died Dec. 18, 2003. A sole practitioner, he specialized in labor relations. He retired from the practice of law in 1975 and spent half of his time in Jerusalem.

Owen Jameson '37 of San Francisco died Oct. 20, 2003. A corporate lawyer, he practiced his entire career at McCutchen, Doyle, Brown & Enersen, now known as Bingham McCutchen, where he was managing partner for 20 years. He was a longtime member of the Pacific-Union Club and served as president from 1972 to 1973. He helped raise funds for Saint Francis Memorial Hospital, Opportunities for the Blind and the University of California, San Francisco. During WWII, he was an attorney representing the Office of Price Administration and the Manhattan Project.

Monroe Kroll '37 of San Francisco died March 20, 2002. For 35 years, he was an immigration judge for the U.S. Immigration and Naturalization Service in San Francisco. He was an honorary member of the San Francisco chapter of the American Immigration Lawyers Association and an officer and board member of Congregation Sherith Israel in San Francisco.

John Eris Powell '37 of Chevy Chase, Md., died Oct. 15, 2003. A Washington, D.C., trial attorney, he specialized in corporate, estate

and probate law. As a partner at Drury, Lynham and Powell, he represented the Washington Baseball Club and Washington Senators owner Calvin Griffith. He was general counsel to National Savings and Trust Bank. In the 1950s, he taught estate law and the history of English law at Georgetown University. A member of many professional organizations, he was president of the Bar Association of the District of Columbia, the Barristers and the John Carroll Society. He was also president of the Archdiocesan Board of Education in Washington, D.C. During WWII, he served in the U.S. Naval Reserve, attaining the rank of lieutenant commander.

Edward F. Connor '37-'38 of Hingham, Mass., died Jan. 17, 2004. He was a sole practitioner in Hingham and previously worked for the Federal Aviation Agency, now known as the Federal Aviation Administration. He represented the agency during the 1950s, when it expanded airports across New England.

Nathaniel L. Berger '38 of Pompano Beach, Fla., died April 17, 2002. He was president of Nat Berger Securities Corp.

Roland Gray Jr. '38 of Hobe Sound, Fla., died Feb. 4, 2004.

Harry P. Letton Jr. LL.M. '38 of San Marino, Calif., died Oct. 29, 2002. He was president and chief executive of Southern California Gas Co. He served as president of Los Angeles Town Hall, vice president of the Greater Los Angeles Chamber of Commerce, a director of Independent Colleges of Southern California and chairman of American Gas Association and Pacific Coast Gas Association. During WWII, he was a communications officer in the U.S. Navy.

Edwin J. Putzell Jr. '38 of Naples, Fla., died Dec. 23, 2003. He was mayor of Naples from 1986 to 1990. In 1937, he joined Donovan, Leisure, Newton and Lumbard and helped Bill Donovan set up the Office of Strategic Services, the precursor of the CIA. During WWII, he was an executive officer of the Office of Strategic Services, and in late 1943, he played a part in a plot to capture Adolf Hitler while Hitler was on a yacht out at sea. After 1945, he joined Monsanto Co. in St. Louis as general counsel and vice president, and he later served as senior partner at Coburn, Croft & Putzell in St. Louis. He was vice chairman of the St. Louis County Board of Police Commissioners and president of the St. Louis Social Planning Council. He moved to Naples in 1979 and was chairman of the Naples Airport Authority before being elected mayor. After his mayoral term, he

served on a number of civic boards in Collier County and was awarded the Naples Daily News Outstanding Citizen Award in 1995.

Ray W. Richardson Jr. '38 of Jacksonville, Fla., died Aug. 21, 2003. A founding partner of Freeman, Richardson and Watson in Jacksonville, he specialized in corporate law and insurance and lectured on corporation law at state bar seminars. He was president and honorary director of Florida Georgia Blood Alliance, a director of Voyager Group and president of Duval County Legal Aid Association. Active in the Florida and American bar associations, he was commended for his efforts in expanding legal aid programs within the state in the 1949 annual report of the ABA president. During WWII, he was a major in the U.S. Army Air Forces.

Norbert Lee Anschuetz '39 of Washington, D.C., died Oct. 15, 2003. He was a Citibank executive specializing in foreign affairs and served in the Foreign Service for 22 years. At Citibank, he was vice president for international affairs in New York and director of Citicorp's international development organization in London. During his time in the Foreign Service, he served in Athens, Greece, and Bangkok, Thailand. He was a minister counselor in Cairo, Egypt, shortly after the Suez Crisis and in Paris during Charles de Gaulle's presidency. In 1968, he retired from the Foreign Service. He was a member of the Council on Foreign Relations. During WWII, he served in the Judge Advocate General's Corps in Austria.

Milton I. Goldstein '39 of St. Louis died Dec. 7, 2003. He co-founded Goldstein and Price in St. Louis in the mid-1950s and specialized in admiralty law. He previously practiced with Green, Hennings and Henry. Active in the Jewish community and in civil liberty causes, he was president of the board of trustees of St. Louis Jewish Light, a weekly community newspaper; president of the Jewish Community Relations Council of St. Louis; and vice chairman of the National Jewish Community Relations Advisory Council. During the late 1950s, he headed a lecture series sponsored by the Jewish Community Center called the Liberal Forum, which hosted Eleanor Roosevelt and the Rev. Martin Luther King Jr. From 1942 to 1945, he was a lieutenant in the U.S. Coast Guard.

Emil Oxfeld '39 of South Orange, N.J., died July 20, 2003. A civil libertarian and labor lawyer, he represented workers and unions, including the New Jersey Education Association. He worked on cases involving loyalty oaths, prayer in school, McCarthyism and unconstitutional excesses of congressional committees. In 1960, he founded the New

Jersey chapter of the ACLU, and he served as its president for 25 years. In 2000, the National Staff Organization presented him with the first Emil Oxfeld Advocacy Award.

Robert Lorne Stanfield Q.C. '39 of Ottawa died Dec. 16, 2003. He was leader of the Progressive Conservative Party of Canada and served as premier of Nova Scotia from 1956 to 1967. He was chosen as his party's national leader in 1967 and entered the House of Commons. After losing to Pierre Trudeau in the 1974 elections, he stepped down as head of the party. He was often referred to as "the greatest prime minister Canada never had."

Winthrop B. Walker '39 of Harrisville, N.H., died Dec. 30, 2003. Formerly of Lincoln, Mass., he was a vice president for State Street Bank in Boston and a director or trustee of a number of civic organizations.

Philip C. Seminara '39-'40 of Pasadena, Calif., died Dec. 10, 2003.

1940-1949

Arthur L. Adamson '40 of Rumson, N.J., died Feb. 2, 2004. He was executive vice president and later president of Electronics Associates, a company he founded with the Signal Corps team he served with during WWII. He was president of the Rumson Board of Education during the 1950s and 1960s. A sailor, he was commodore of the Shrewsbury Sailing and Yacht Club and for many years raced his yacht, Wing II, one of the first Cal 40 racing sloops on the East Coast. He was a founding member of Polly's Pond Sailing Association and a founder of Wayside Skeet Club. He won the state skeet shooting championship in 1964.

Raymond L. Brittenham '40 of New York City died Nov. 14, 2003. He was a director of the French Institute Alliance Française and senior vice president, general counsel and director of International Telephone and Telegraph Corp., where he worked for 25 years. He later joined Lazard Freres as a consultant in investment banking and was vice president of the Tinker Foundation, both in New York City. A major in the U.S. Army's Office of Strategic Services during WWII, he received a Bronze Star, the French Croix de Guerre and the Belgian Chevalier de l'Ordre de Léopold.

Robert E. Long '40 of Burlington, N.C., died Feb. 18, 2003. He practiced law in Burlington beginning in 1952 and was a director of Aeroglide Corp. of Raleigh. He was president of the Burlington Rotary Club and was named a Rotary Paul Harris Fellow.

Early in his career, he practiced in Roxboro, N.C., before serving as administrative assistant to Sen. Willis Smith in Washington, D.C., and later as an assistant U.S. attorney in Raleigh. He served in the U.S. Army during WWII.

Howard Meyers '40 of Washington, D.C., died Feb. 6, 2004. He worked on international security and atomic energy issues as a Foreign Service officer posted in London, Brussels, Tokyo and Washington, D.C. He was staff director of the Presidential General Advisory Committee on Arms Control and Disarmament and, from 1974 to 1977, was special assistant to the director of the U.S. Arms Control and Disarmament Agency. After retiring from the Foreign Service in 1977, he worked at the U.S. State Department, helping to establish its centralized document declassification system. A founding member of the International Institute for Strategic Studies, he was also a governor of Diplomatic and Consular Officers and a trustee of the DACOR-Bacon House Foundation. During WWII, he served in the U.S. Army Counter Intelligence Corps in New Guinea, the Philippine Islands and Japan.

Edward M. Rothstein '40 of Lakewood, N.J., died Oct. 24, 2002. He was a member of Rothstein, Mandell, Strohm, Must & Gertner in Lakewood, where he practiced real estate and trusts and estates law. He was assistant Ocean County counsel for 10 years and was township attorney for Lakewood Township and Lakewood Board of Education. From 1942 to 1946, he served in the U.S. Army.

John A. Swainbank '40 of St. Johnsbury, Vt., died Jan. 18, 2004. A longtime St. Johnsbury attorney, he practiced law for 53 years and helped found Swainbank, Morrissette and Neylon in 1949. A St. Johnsbury selectman, town agent and town attorney, he helped found and directed the Community School for the Handicapped and Caledonia Home Health. He served in the U.S. Navy as a communications officer in the Pacific during WWII.

Alfred E. Kenrick Jr. '40-'41 of Isle of Palms, S.C., died Jan. 30, 2003.

Herbert Y.C. Choy '41 of Honolulu died March 10, 2004. He was a senior judge of the Ninth Circuit U.S. Court of Appeals. Appointed to the bench in 1971 by President Nixon, he was the first Asian-American to be appointed to a federal court. Earlier in his career, he practiced law in Honolulu and served a term as attorney general of the Territory of Hawaii. He enlisted in the U.S.

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Army after the bombing of Pearl Harbor. He served as a judge advocate general, learned Japanese and was instrumental in writing a new constitution for Japan after the war.

Whitfield J. Collins LL.M. '41 of Fort Worth, Texas, died Nov. 24, 2003. A partner at Cantey & Hanger in Fort Worth, he practiced tax and estate law at the firm for 54 years. He served on the boards of many corporate and cultural institutions, including the Fort Worth Opera, Fort Worth Symphony Orchestra, Van Cliburn Foundation and Modern Art Museum. In 1995, he received the Blackstone Award, the highest honor of the Tarrant County Bar Association, and in 2001, he received an award from the All Saints Foundation for outstanding health care philanthropy. During WWII, he served in the U.S. Navy as a lieutenant commander and an aide to Fleet Admirals Ernest J. King and Chester Nimitz.

Ramon de Murias '41 of Babylon, N.Y., died Jan. 28, 2004. He was vice president of international affairs for Braniff Airways and Pan American-Grace Airways and a director and board chairman of Southside Hospital. He wrote "The Economic Regulation of International Air Transport." During WWII, he served as a lieutenant commander in the U.S. Navy.

Arnold M. Gordon '41 of Niskayuna, N.Y., died Oct. 29, 2003. A member and later senior counsel at Gordon, Siegel, Mastro, Mullaney, Gordon & Galvin, now in Latham, N.Y., he practiced law for more than 50 years and was a noted trial attorney in New York's Capital Region. He lectured on trial advocacy and was president of the Schenectady County Bar Association. A major in the U.S. Army during WWII, he was awarded the Bronze Star.

Willburt D. Ham LL.M. '41 of Lexington, Ky., died Dec. 8, 2003. A professor emeritus at the University of Kentucky College of Law since 1986, he had taught at the school since 1949. In 2003, he was inducted into the university's College of Law Alumni Association Hall of Fame. He was previously a visiting professor at Southern Methodist University School of Law and the University of Louisville School of Law. He was a director of the University of Kentucky Research Foundation and a member of the Kentucky Securities Advisory Committee.

Leonard B. Thomas '41 of Aurora, N.Y., died June 17, 2003. Formerly of Sennett, he was an entrepreneur, philanthropist and nationally recognized thoroughbred horse breeder. He owned Lime Ledge Farm in Sennett, and his horses won many races at

Finger Lakes Race Track in Farmington. Earlier in his career, he was an attorney in New York City and worked for several years for Pfizer Pharmaceutical Co.

Arnold L. Veague '41 of Bangor, Maine, and Cocoa Beach, Fla., died May 26, 2003. He was a partner at Eaton, Peabody, Bradford & Veague, now Eaton Peabody in Bangor, where he worked for 40 years. Active in the Bangor community, he was a member of the city council and served as council chairman in 1955. He was a trustee of the Northern Conservatory of Music, Castine Community Hospital and the Bangor Savings Bank and was president of the Penobscot County Bar Association and the New England Bar Association. He was an expert trap shooter and received a number of trophies for his marksmanship. During WWII, he served with the U.S. Army's 88th Infantry's "Blue Devils," in North Africa and Italy.

Anthony P. Alfino '42 of Gainesville, Fla., died June 22, 2003. Formerly of Vero Beach and St. Louis, he was a senior labor counsel at General Dynamics Corp. in Clayton, Mo., for 21 years, specializing in equal employment opportunity. He served in the U.S. Army Air Corps during WWII.

Robert R. Cotten II '42 of Binghamton, N.Y., died Dec. 30, 2003. He taught English, history and economics at Broome Community College and business law at Triple Cities College from 1948 to 1949. Active in local politics, he served as Binghamton city counsel and was instrumental in establishing Binghamton's first public housing complex.

Hugh Gregg '42 of Nashua, N.H., died Sept. 24, 2003. He was a lawyer and businessman, and he served as governor of New Hampshire from 1953 to 1955. A GOP activist and champion of the presidential primary, he was the state's Republican National Committeeman and a member of the state Ballot Law Commission. In 1997, he was named to a special New Hampshire-Iowa commission to preserve the New Hampshire primary and Iowa presidential caucuses. He wrote two books on the New Hampshire presidential primary and one book claiming New Hampshire as the official birthplace of the Republican Party in October 1853. During his career, he practiced at the law firm Sullivan & Gregg and was treasurer and later president of the family millwork firm, Gregg & Son Inc. In 1947, he was elected alderman-at-large in Nashua before becoming mayor in 1950. He served as a special agent with the U.S. Army Counter Intelligence Corps during WWII and the

Korean War and was a counterintelligence instructor at Fort Holabird, Md.

Philip M. Hanft '42 of Tucson, Ariz., died April 13, 2002. Formerly of Duluth, Minn., he was a senior partner of Hanft Fride in Duluth, where he represented mining interests in the Iron Range of northern Minnesota. He was active in civic affairs in Duluth, was a board member of the University of Arizona Sarver Heart Center in Tucson and was a veteran of WWII.

John J. Rhodes '42 of Mesa, Ariz., died Aug. 24, 2003. For 30 years, he was an Arizona congressman, the first Republican elected to the U.S. House of Representatives from Arizona. He was house minority leader in 1974 when he visited President Richard Nixon with Sens. Barry Goldwater and Hugh Scott on Aug. 7, advising Nixon to resign. Nixon resigned the presidency on Aug. 9. He served nine years as minority leader and worked to win approval for the Central Arizona Project, a large canal system that brought Colorado River water to central and southern Arizona. He headed the GOP National Conventions in 1976 and 1980. After leaving Congress in 1983, he practiced in the Washington, D.C., office of Hunton & Williams. In July 2003, he was awarded the first Congressional Distinguished Service Award. He served in the U.S. Army Air Forces as an administrative officer stationed in Arizona during WWII.

James F. Stern '42 of Longboat Key, Fla., died March 19, 2004. Formerly of Milwaukee, he was an attorney and CEO of Great Lakes Biochemical Co. A member of the British Philatelic Society and the American Philatelic Congress, he received several awards for his stamp collections. He wrote "Swimming Pools and the Law." During WWII, he served in the U.S. Army as a first lieutenant.

Melville Chapin '43 of Cambridge, Mass., died March 9, 2004. A longtime corporate lawyer, he was of counsel at Kirkpatrick and Lockhart in Boston. He began his career at Warner and Stackpole in Boston, which later merged with Kirkpatrick and Lockhart. A trustee for many organizations, he served for 50 years as a trustee for the Massachusetts Eye and Ear Infirmary and helped raise over \$12 million for the performing arts center at Phillips Academy. During WWII, he served as a lieutenant in the U.S. Navy.

Jack H. Fisher '45 of Kalamazoo, Mich., died March 31, 2003. He was a sole practitioner specializing in estate planning, probate, personal injury and corporate law.

He was a director of the Kalamazoo County Bar Association and the Legal Aid Bureau. He published over 200 articles on numismatics and syngraphics and was elected to the Numismatic Literary Guild for original research.

Duncan Longcope '45-'47 of Boston and Lee, Mass., died Dec. 23, 2003. A writer and artist, he was on the staff of *The New Yorker* and lived in Paris in the 1960s. During WWII, he served in the U.S. Army.

William H. Witt '45-'47 of Mitchellville, Md., died Oct. 24, 2003. A longtime resident of Bethesda, he worked for the Foreign Service for 30 years, serving as a political affairs officer and teaching courses in international law at National Defense University at Fort McNair in Washington, D.C. In the 1960s, he was a political counselor to the U.S. Embassy in South Africa and then a senior official in the U.S. State Department's Bureau of African Affairs in Washington. During WWII, he served in the U.S. Army Air Forces.

Laurence A. Tisch '46-'47 of New York City died Nov. 15, 2003. A Wall Street investor and media mogul, he co-founded Loews Corp. and was chairman, president and CEO of CBS Inc. He was a trustee of the Whitney Museum of Art, the Metropolitan Museum of Art and the New York Public Library and president of the United Jewish Appeal of New York. As chairman of the board of trustees of New York University from 1978 to 1998, he helped raise almost \$2 billion for the university, including more than \$40 million from his family's donations. During WWII, he served in the U.S. Army, Office of Strategic Services.

Robert E. Bingham '47 of Cleveland Heights, Ohio, died June 25, 2003. He practiced law for 50 years, was a councilman in Shaker Heights and served on more than 20 civic boards, including as president of the Cleveland Mental Health Association, the Cleveland Church Federation and the Cleveland Health Museum. For 30 years, he practiced corporate law, and he later did estate planning and probate work at Thomson Hine in Cleveland before joining Spieth Bell McCurdy and Newell. After retiring from Spieth Bell in 1989, he helped establish offices for Columbus-based Porter Wright Morris & Arthur in Cleveland and Naples, Fla. A golfer, he was the Mayfield Country Club champion seven times and runner-up eight times. During WWII, he served as an intelligence officer in the U.S. Navy, stationed at Adm. Chester Nimitz's headquarters at Pearl Harbor.

George M. Cheston '47 of Philadelphia died Oct. 15, 2003. He was an officer of the Philadelphia Orchestra Association, trustee of the Philadelphia Zoological Society and the Philadelphia Museum of Art, and a director of the American Federation of the Arts.

Arthur H. Healey '47 of New Haven, Conn., died July 25, 2003. He was an associate justice of the Connecticut Supreme Court from 1979 to 1990 and later served as a state trial referee. He was appointed to the Connecticut Court of Common Pleas in 1961 and the Superior Court in 1965, where he served as chief judge from 1977 to 1978. Earlier in his career, he was a three-term senator of Connecticut, rising to majority leader in 1959. During WWII, he served in the U.S. Army.

J. Frederick Hoffman '47 of Lafayette, Ind., and Sonoita, Ariz., died Oct. 20, 2003. He was a senior and founding partner of Hoffman, Luhman & Masson in Lafayette. He served as Tippecanoe County attorney from 1971 to 1982 and again from 1995 to 1997. A fellow of the Indiana Bar Foundation, he served as president of the Tippecanoe County Bar Association and the Legal Aid Corporation of Tippecanoe County. He received the Indiana State Bar Association's Pro Bono Publico award and was named a Sagamore of the Wabash by Indiana Gov. Frank O'Bannon for his work in civic affairs.

C. Bedford Johnson '47 of Hanover, N.H., died Dec. 6, 2003. A longtime resident of Bedford and Mt. Kisco, N.Y., he spent his career with Shearman & Sterling in New York City, where he was a partner and legal adviser to Citicorp. He was a director of many companies, including Fuji Bank. He served in the U.S. Marine Corps during WWII, was wounded at Iwo Jima, and received a Bronze Star and a Purple Heart.

Charles J. Kickham Jr. '47 of Brookline, Mass., died Dec. 27, 2003. He practiced law in Brookline for more than 55 years, forming Kickham Law Offices in 1948. He served three times as president of the state bar association and was on the board of governors for the HLSA of Massachusetts. He was a graduate of Holy Cross, and the faculty lounge in the school's religion department is named in his honor. In 1942, he joined the U.S. Navy and served in the Philippines during WWII.

Marshall A. Levin '47 of Baltimore died Feb. 1, 2004. A Baltimore Circuit Court judge, he was named to the bench in 1971 and continued to hear cases until two weeks before his death. In 1992, he presided over a historic asbestos-injury case, the nation's largest mass trial, consolidating pending asbestos claims from Baltimore and several

Maryland counties. The case included 8,600 plaintiffs, 14 defendants, 40 lawyers and more than 7 million documents. During WWII, he was a lieutenant in naval communications in Europe.

Edward C. Maher '47 of Shrewsbury, Mass., died Feb. 3, 2004. Formerly of Worcester and Osterville, he was an attorney in Worcester for 55 years and was president, chairman of the board and CEO of Home Federal Savings and Loan Association. A senior partner at Maher, McCann and Talcott until 1975, he later served as of counsel with Phillips, Silver, Talman, Aframe and Sinrich. He was active in local politics and, in the late 1940s and early 1950s, was local secretary to Congressman John F. Kennedy. For 40 years, he served on various public commissions and authorities, and he was the longest-serving member of the Massachusetts Port Authority. During WWII, he was a captain in the U.S. Army.

Gilbert Siegal '47 of Hartsdale, N.Y., died March 9, 2004. An attorney for over 50 years, he was the Greenburgh, N.Y., urban renewal commissioner and housing commissioner and president of the Hartsdale Civic Association. He served in the U.S. Army Air Forces during WWII and was awarded two Distinguished Flying Crosses, two Conspicuous Service Crosses, four Oak Leaf Clusters and numerous air and marksmanship medals.

Ralph O. Winger '47 of New York City died Sept. 25, 2003. He was a senior tax partner at Cahill Gordon & Reindel in New York City. He joined the firm in 1947 and was a partner for more than 30 years before retiring in 1991 and becoming senior counsel to the firm.

Richard M. Wyman '47 of Lexington, Mass., died May 17, 2003. He was a partner at Wyman & Gulick in Boston.

William J. Brick Jr. '47-'48 of Portsmouth, N.H., died Dec. 26, 2003. He was a financial control analyst for the Massachusetts Department of Welfare in Springfield. He published a number of short stories and essays. During WWII, he served as a bombardier in the 815th Bomber Squadron. His plane was shot down over Austria, and he was a prisoner of war in Germany.

Irwin W. Barkan '48 of Columbus, Ohio, and Fort Myers, Fla., died June 19, 2003. He practiced law for 41 years and was the founding partner of the firms Barkan & Barkan and Barkan & Neff. In Columbus, he was a Franklin County councilman and a founder of Alvis House, a halfway house for released prisoners. He participated in the Great Books program with the state peniten-

tiary and was a member of the Legal Redress Committee of the NAACP. After retiring to Florida, he was an attorney emeritus with the Florida Rural Legal Services and the Lee County Sheriff's Association and was a founding promoter of the Quality Life Program in Fort Myers. He served in the U.S. military during WWII.

Edward T. Butler '48 of La Jolla, Calif., and Yuma, Ariz., died Dec. 24, 2003. He served on the San Diego County Superior Court and was an associate justice on the Court of Appeal, 4th District from 1982 to 1988. After retiring, he worked with a private mediation service. In 2000, his civic contributions were recognized by the deputy-mayor, who proclaimed Feb. 7 Edward T. Butler Day in San Diego. Earlier in his career, he was senior vice president of Electro Instruments, was appointed city attorney of San Diego in 1964, practiced at Schall, Butler, Boudreau & Gore and was a candidate for mayor of San Diego in 1971. He served in the U.S. Marine Corps in the Pacific theater during WWII. He received the Bronze Star for service at Guadalcanal and was honorably discharged with the rank of major. He returned to the Marines as a legal officer during the Korean War and became a lieutenant colonel at the age of 31.

Thomas J. Carens '48 of Wellesley, Mass., died Nov. 28, 2003. A senior partner at Roche, Carens & DeGiacomo in Boston, he began his career with the firm in 1948 when it was known as McGuire & Roche. He practiced civil and real estate law and was a member of the Massachusetts Conveyancers Association, the town of Wellesley's Permanent Building Committee and the Harvard Club of Boston. He was president of the Clover Club of Boston in 1981. He served in the U.S. Army Air Forces during WWII.

John L. Casey '48 of Quogue, N.Y., died Feb. 9, 2004. A managing director at Scudder, Stevens & Clark, he worked at the investment firm for over 30 years. He published two business ethics books, "Ethics in the Financial Marketplace" and "Values Added," and was the first executive fellow at the Bentley College Center for Business Ethics. He was also president and chairman of the board of trustees of Saint David's School in New York. He served in the U.S. Navy during WWII.

Kendall M. Cole '48 of Naples, Fla., died Sept. 28, 2003. He was vice president and general counsel for Eastman Kodak Co. and General Foods Corp., and was a director of several organizations, including Fleet Bank and Allendale Columbia School, a college preparatory day school in Rochester, N.Y. During WWII, he served in the Pacific

theater.

William C. Cramer '48 of St. Petersburg, Fla., died Oct. 18, 2003. Elected to Congress in 1954, he was the first Republican to win a congressional seat from Florida since Reconstruction. He served eight terms in the House and was the ranking Republican on the House Public Works Committee during his fifth term. In 1964, he became vice chairman to Gerald R. Ford on the Republican Conference. He surrendered his seat in 1970 after an unsuccessful run for U.S. Senate. He later practiced law in Washington, D.C., and Pinellas County, Fla. From 1952 to 1984, he served as a delegate or alternate delegate to the Republican National Convention. Earlier in his career, he was city attorney in Pinellas Park, was Pinellas County attorney and served in the Florida House of Representatives. During WWII, he served as a lieutenant aboard the USS Omaha. He participated in the invasion of southern France.

Robert B. Kittredge '48 of Cumberland Foreside, Maine, died Jan. 20, 2004. Formerly of Winchester, Mass., he was longtime chief legal counsel for the investment law firm of Loomis, Sayles & Co. He also was president of the company's mutual funds and served on the governing boards of both the mutual fund and investment counsel trade associations. For several years, he was president and chairman of the Investment Counsel Association of America. He previously practiced at Ely Bartlett. During WWII, he served as a commanding officer of a minesweeper in the Panama Canal.

F. Benjamin MacKinnon '48 of Sanibel, Fla., died April 29, 2003.

William S. Marshall '48 of Miami died Sept. 8, 2003. He practiced corporate law in Miami at the Law Offices of William S. Marshall.

John H. Montgomery Jr. '48 of Edgartown, Mass., died July 16, 2003. An international aviation lawyer in New York City for 20 years, he moved to Martha's Vineyard in 1969 and was a sole practitioner, focusing on probate and real estate law.

Paul Cushing Sheeline '48 of Lloyd Harbor, N.Y., died Aug. 6, 2003. He was chairman and CEO of Intercontinental Hotels Corp. in New York City and of counsel to Verner, Liipfert, Bernhard, McPherson & Hand in Washington, D.C. A director of Pan Am Corp. and National Westminster Bank, U.S.A., he was also a member of President Ronald Reagan's Board of Advisors on Private Sector Initiative. He was a trustee of St. Luke's-Roosevelt Hospital Center in New York City and the Camargo Foundation in

Cassis, France. During WWII, he served in the U.S. Army Air Forces and received the Silver Star, the French Legion of Honor and the Croix de Guerre with Palm Leaf. He was a co-founder and trustee of the Battle of Normandy Foundation.

Nathaniel B. Taft '48 of White Plains, N.Y., died Jan. 11, 2004. A lifelong resident of Westchester, N.Y., he was a sole practitioner in New York, specializing in health care and life insurance regulation. He previously worked for New York Life Insurance Co., heading several national and New York state group insurance industry task forces. After 22 years with the company, he retired as group vice president. He was active in his community and was president of the Westchester Philharmonic from 2001 to 2002. During WWII, he served in the U.S. Army.

Dow Votaw '48 of La Selva Beach, Calif., died March 29, 2004. A former dean and professor emeritus at the University of California, Berkeley's Haas School of Business, he was known for his groundbreaking work on corporations and social responsibility. He joined UC Berkeley's business school as an instructor in 1948. Named a professor in 1959, he began teaching a course on the political, legal and social environment of business with Earl F. Cheit. Their work was the foundation for the Business and Public Policy Group at the school, a group Votaw chaired from 1972 to 1980. He wrote and edited books on business and public policy, including "Legal Aspects of Business Administration" and "The Corporate Dilemma." During WWII, he was a lieutenant and communications officer in the U.S. Navy.

Charles Biddle '48-'49 of Princeton, N.J., died Nov. 1, 2003. An executive with International Flavors & Fragrances in New York City, he joined the company as a management trainee in 1961 and went on to serve as area president of North America, Europe, Africa and Asia. He retired in 1985 as a corporate vice president. He served in the U.S. Air Force as a pilot and navigator.

Eugene E. Anderson Jr. '49 of Haverford, Pa., died Aug. 24, 2003. He was senior counsel for Penn Central Corp., where he specialized in real estate.

Mason L. Bohrer '49 of Winnetka, Ill., died Dec. 8, 2002. He practiced law mostly in Winnetka and Chicago until his retirement. In the 1970s, he taught at the John Marshall Law School in Chicago, and from 1957 to 1964, he practiced law in Missoula, Mont. He served in the U.S. Army Signal Corps in Australia and the Philippines during WWII.

James A. Brink '49 of New Castle, N.H., died Sept. 22, 2003. He was a partner at Hale and Dorr in Boston, specializing in estate planning and administration. A recovered alcoholic, he was co-founder of Lawyers Concerned for Lawyers, a statewide program designed to assist Massachusetts lawyers impaired as a result of alcoholism or substance abuse. He oversaw the employee assistance program and 12-step meetings at Hale and Dorr and was a member of the Supreme Judicial Court's Standing Committee on Substance Abuse. He also was vice chairman of the Board of Bar Overseers, and for nearly 20 years, he was president of the Social Law Library. During WWII and the Korean War, he served in the U.S. Navy as a submariner. From 1952 to 1965, he was active in the U.S. Naval Submarine Reserve.

Robert S. Burton '49 of Shaker Heights, Ohio, died Aug. 4, 2003. He joined what became Arter & Hadden after graduating from HLS and specialized in small corporations, contracts and estate planning. He retired as a partner in 1985. He was vice president of United Way, a board member of the Federation for Community Planning and chairman of the Shaker Heights Citizens Committee. A Marine Corps fighter-bomber pilot, he flew 50 combat missions against Japanese forces in the Pacific. He also served as a reserve during the Korean War. His father was U.S. Supreme Court Justice Harold Hitz Burton '12.

Rolf G. de Leuw '49 of St. Louis died Nov. 8, 2003. He was counsel and corporate secretary of the International Shoe Company in St. Louis. He and his wife were supporters of the Humane Society of Missouri, the Animal Protective Association of Missouri and the St. Louis Zoo. During WWII, he served in the U.S. Army.

Edward A. Friend '49 of San Francisco died Aug. 31, 2003. A San Francisco litigator and sole practitioner, he practiced civil law for 53 years. He was a lifelong member of the English-Speaking Union, and he was fluent in Japanese; was conversant in French, German and Latin; and spoke some Russian and Korean. He was trained as an intelligence officer and mastered Japanese in the U.S. Army, where he served as a second lieutenant under Gen. Douglas MacArthur during the occupation of Japan. After graduating from HLS, he joined the U.S. Army Reserve, earning the rank of major and retiring in 1966.

Bertram Glovsky '49 of Beverly, Mass., died Jan. 3, 2004. For 53 years he was an attorney, practicing with his father and brother at Glovsky & Glovsky in Beverly. For

the past few years, he was of counsel to MacLean Holloway Doherty Ardiff & Morse in Peabody. Active in the Beverly community, he was named a Paul Harris Fellow by the Beverly Rotary Club and received the Man of the Year Award from the Beverly B'nai B'rith. During WWII, he served in the U.S. Army Air Forces.

Morton Greenspan '49 of Metuchen, N.J., died Oct. 1, 2003. He was of counsel at Kroll & Tract in New York City. A member of the Executive Advisory Commission on Insurance Industry Regulatory Reform, he was also deputy superintendent and general counsel of the New York State Department of Insurance from 1975 to 1981.

Arthur D. Jackson '49 of Falls Village, Conn., died Feb. 10, 2003. He was vice president of U.S. Trust Company of New York City.

Arthur F. Koskinas '49 of Worcester and Osterville, Mass., died Nov. 3, 2003. An attorney for over 50 years, he was a partner at Koskinas and Langella in Worcester. He was president of Lincoln Ventures and senior partner at JEDCO Investments. Early in his career, he was an assistant city solicitor for the city of Worcester. He served on the board of the UMass Memorial Foundation, and in 2001, he and his wife endowed a professorship in biochemistry and molecular pharmacology at the University of Massachusetts Medical School. During WWII, he served in the U.S. Army Air Forces.

John S. Macdougall Jr. '49 of Haverhill, Mass., died July 24, 2003. He was a justice of the Dukes County Probate and Family Court on Martha's Vineyard and an associate justice of Middlesex County Probate and Family Court in Cambridge. Earlier in his career, he worked at Holland, Johnson & Hays in Boston. He later became a partner at Soroka, McDonald, Davis & Macdougall in Haverhill. A fellow of the American College of Trust and Estate Counsel, he was also a trustee and finance committee member of the Pentucket Bank in Haverhill and a finance committee member of both Griffin White Home, a retirement community, and the First Congregational Church.

William B. Macomber Jr. '49 of Nantucket, Mass., died Nov. 19, 2003. He was a U.S. ambassador to Jordan and Turkey and president of the Metropolitan Museum of Art in New York City. He worked in the U.S. State Department during five presidential administrations, beginning with Eisenhower's, and served as undersecretary for management from 1969 to 1973. Earlier in his career, he taught government at Boston University and spent two years with the CIA. He wrote "The

Angels' Game: A Handbook of Modern Diplomacy." He was a founding member of the American Academy of Diplomacy, a trustee emeritus at the Carnegie Endowment for International Peace and a member of the board of overseers at the Hoover Institution on War, Revolution and Peace, Stanford University. During WWII, he served in the U.S. Marines, in the Office of Strategic Services, and twice parachuted into France to work with the French Underground.

Charles E. Pierson '49 of Akron, Ohio, died Nov. 18, 2003. A trial lawyer specializing in malpractice and product liability, he was a partner at Buckingham, Doolittle & Burroughs in Akron. Earlier in his career, he practiced at Herberich, Rowley, Taylor & Pierson. He was president of the Akron Bar Association and a fellow of the American College of Trial Lawyers. He was president of the Akron Art Museum and the Torch Club and helped found and served as president of Friends of Hower House, a Victorian-era home. As president of the Summit County Historical Society, he worked to restore the Simon Perkins Mansion, a Greek Revival home built by the son of one of Akron's co-founders. He served in the U.S. Army Air Forces as a B-29 crew member during WWII.

Seymour E. Podolsky '49 of Detroit died Jan. 26, 2004. He was a partner in his family's beer and wine wholesale business in Wyandotte, Mich. He was named to the Michigan Liquor Control Commission in 1991 and served as an administrative law judge and administrative commissioner until his retirement in 1999. He practiced law for four years before joining the family business. During WWII, he served in the U.S. Army Air Forces as a lieutenant in Australia and the Philippines.

James E. Quinn '49 of Newton, N.J., died Dec. 7, 2003. He was an attorney with Morris, Downing & Sherred in Newton and a superior court judge from 1977 to 1982. After retiring, he served as a municipal court judge for several New Jersey townships. He was the first chairman of Newton Housing Authority and president and board chairman of Newton Memorial Hospital, helping develop three expansion plans for the hospital over five decades. During WWII, he served four years as a captain in the U.S. Army Air Forces in the Pacific theater.

William V. Roth Jr. '49 of Wilmington, Del., died Dec. 13, 2003. A senator from Delaware, he served five terms in the U.S. Senate and created the retirement account known as the Roth IRA in 1997. A champion of tax cuts, he was chairman of the Finance and Governmental Affairs committees and

oversaw inquiries into abuses by the Internal Revenue Service and Pentagon overspending. He wrote a book about the IRS in 1999, "The Power to Destroy." Prior to losing his seat for a sixth term, he was one of the longest-tenured politicians in Delaware's history and the state's longest-serving U.S. senator. He served two terms in the U.S. House of Representatives beginning in 1966 before winning a seat in the Senate. During WWII, he served in a U.S. Army intelligence unit in the South Pacific and received the Bronze Star.

Edward M. Rothman '49 of Studio City, Calif., died July 20, 2003. An entertainment lawyer for 41 years, he was a longtime Universal Pictures executive and served as vice president of MCA Inc. He also held executive positions with 20th Century Fox and ZIV TV.

Edward L. Springer '49 of Coraopolis, Pa., died Sept. 19, 2003. He was a managing partner for Springer Bush & Perry in Pittsburgh.

N. Ferebee Taylor '49 of Chapel Hill, N.C., died Feb. 24, 2004. He was chancellor of the University of North Carolina at Chapel Hill from 1972 to 1980. He practiced corporate law in New York City for almost two decades before joining the university as a visiting law professor in 1968. After his tenure as chancellor, he was a full-time law professor until 1991. During WWII, he served in the U.S. Navy.

Thomas W. Underhill '49 of West Chatham, Mass., died June 26, 2003.

Robert J. Ward '49 of New York City died Aug. 5, 2003. For more than 30 years, he was a federal judge for the U.S. District Court for the Southern District of New York, appointed to the court in 1972 by President Richard Nixon. He presided over nationally prominent lawsuits that included charges of illegal interference with abortion rights against the anti-abortion group Operation Rescue and accusations of plagiarism against the author of "Roots," Alex Haley. Previously, he was an assistant district attorney in Manhattan and an assistant U.S. attorney in the Southern District, where he was later chief of the civil division. He served in the U.S. Navy from 1944 to 1946.

Burton D. Wechsler '49 of Washington, D.C., died Jan. 19, 2004. He was professor emeritus at American University's Washington College of Law, where he taught constitutional law, federal courts and First Amendment law for 20 years. Honored as "Outstanding Teacher" for the college of law many times, he received the Outstanding

Faculty Award for Outstanding Teaching for the entire university in 1995. He previously taught at Antioch School of Law in Washington, D.C., and Valparaiso University School of Law in Indiana. A civil rights activist, he assisted with voter registration in Mississippi in 1964; was instrumental in the campaign of Richard Hatcher, the first African-American mayor of a major U.S. city; and was a founder of the Gary, Ind., chapter of the ACLU. During WWII, he served as an ensign in the U.S. Navy.

Philip L. Winter '49 of Jensen Beach, Fla., died June 24, 2003. Formerly of Larchmont, N.Y., he practiced with Bohan, Trask, Bohan & Winter in Larchmont for more than 30 years. He practiced entertainment law in New York City before moving his practice to Larchmont and later Estes Park, Colo. He served in the U.S. Army as a Japanese interpreter during WWII.

Walter E. O'Leary '49-'50 of Berkeley, Calif., died July 19, 2003. Formerly of White Plains, N.Y., he was an attorney in White Plains.

Charles F. Whittemore '49-'51 of Manchester, N.H., died Oct. 20, 2003. He was president and CEO of Catholic Medical Center in Manchester and a longtime public servant. He served as a school district moderator and chairman of the Municipal Budget Committee, and he was moderator for the town of Pembroke from 1972 to 1989. He was the first director for the Federal Housing Authority of New Hampshire from 1964 to 1967, before serving as New Hampshire's commissioner of health and welfare. He was president of the Manchester Historic Association and served in executive positions on the Havenwood-Heritage Heights Retirement Communities Trust Fund. Earlier in his career, he taught government and administration at a number of colleges and universities. During WWII, he served in the U.S. Army.

Frederick B. Grill '49-'53 of New York City died Oct. 19, 2003. He had a general law practice in New York City.

1950-1959

William P. Everts Jr. '50 of Mill Valley, Calif., died Dec. 3, 2003. For 25 years he worked in the law department of U.S. Steel Corp. He also taught at San Francisco Law School and Hampton University. Earlier, he practiced at Johnson, Clapp, Ives & King in Boston and served with the Atomic Energy Commission in Richland, Wash. After retiring, he wrote a biography, "Stockwell of Minneapolis," on S.A. Stockwell, his

maternal grandfather and a longtime member of the Minnesota state legislature. During WWII, he served with the Medical Administrative Corps in India and Burma.

Jerome J. Gelman '50 of Hackensack, N.J., died Jan. 12, 2004. Formerly of Teaneck and Paterson, N.J., he was an attorney with Gelman & Gelman in Elmwood Park for 50 years. He was president of the Paterson Rotary Club, trustee of the Botto House American Labor Museum and counsel member of the Order of the Golden Chain. He served in the U.S. Army during WWII.

William T. Munson '50 of Falmouth, Mass., died Sept. 28, 2003. A partner at Munson Leberz & Turkington in Falmouth, he specialized in real estate and probate. He was chairman of the board of assessors in Falmouth and board of trustees of the Falmouth Public Library for 25 years. During WWII, he served in the U.S. Army Air Forces, attaining the rank of master sergeant.

Anthony P. Nugent Jr. '50 of Kansas City, Mo., died Dec. 23, 2003. He was a judge for the Missouri Court of Appeals, Western District. He unsuccessfully fought his mandatory retirement from the court at age 70 all the way to the U.S. Supreme Court. Previously, he served as assistant U.S. attorney in Kansas City. In the mid-1960s, he was with the appellate section of the Criminal Division of the U.S. Department of Justice in Washington, D.C., and was a member of the attorney general's committee to review and evaluate the criticisms of the Warren Commission Report. During WWII, he was a medic in the U.S. Army and served in five campaigns in France and Germany. He was wounded in Normandy and again in the Battle of the Bulge and was awarded the Bronze Star and the Purple Heart with oak leaf cluster.

George D. Reycraft '50 of Key Largo, Fla., died March 1, 2004. Formerly of Pelham Manor, N.Y., he was a longtime principal of Cadwalader, Wickersham & Taft. He litigated complex corporate cases, including an investors' suit challenging the accounting practices of Arthur Andersen and an investors' complaint against Ivan F. Boesky and his main underwriter. Reycraft retired in 1994 as co-chairman of the firm and chairman of the litigation department and became vice chairman and later chairman of M.A. Schapiro & Co., a bank securities dealer. Earlier in his career, he was a trial lawyer with the U.S. Department of Justice, rising to chief of the special trial section in 1958. The following year, he was the federal

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government's chief litigator in an antitrust confrontation with E.I. du Pont de Nemours & Co. and General Motors. He served as a major in the U.S. Army Air Forces during WWII and in the U.S. Air Force in the Korean War.

Palmer Smith '50 of Seattle died Feb. 11, 2004. For over 40 years he practiced law in Seattle as a partner at Cary, Durning, Prince & Smith and Smith, Brucker, Winn & Ehlert. He was later a sole practitioner. He worked on legislation prohibiting racial discrimination in housing in Seattle and Washington state, drafted the first abortion-rights legislation in Washington state in the late 1960s and served on a number of boards and committees related to fair housing, human services and civil rights. He studied Japanese and Malay languages in the U.S. Navy and served at the Joint Naval Intelligence Center.

Philip H. Suter '50 of Concord and Chatham, Mass., died Dec. 23, 2003. He practiced for four decades at Sullivan & Worcester in Boston, where he was a partner specializing in estate planning and administration. He was a Concord selectman from 1972 to 1978 and led the town's 1975 bicentennial celebration, helping organize the April 19 event attended by more than 110,000 people, including President Gerald R. Ford. He was a chairman of the town's planning board and zoning board of appeals, as well as a member of the boards of Concord Academy, the Concord Museum and Concord Friends of the Aging. During WWII, he was a field artillery platoon commander and served in the Office of Strategic Services.

David P. Templeton '50 of Lake Oswego, Ore., died July 2, 2003. He was a partner and later of counsel at Martin, Bischoff, Templeton, Langslet & Hoffman in Portland. He joined the firm 1958, practicing civil litigation until his retirement in the 1990s. He served in the U.S. Army during WWII with the 95th Infantry Division.

Ralph Stephen Carrigan '51 of Houston died Sept. 16, 2003. An attorney with Baker Botts in Houston, he joined the firm in 1951 and retired as a senior partner after 40 years there. He later joined his two sons in their respective Houston firms, Carrigan Lapin & Landa and Sydow & Carrigan, as of counsel. He was president of the Houston Bar Association and a member of the American College of Trial Lawyers. He served in the U.S. Army Air Corps as a second lieutenant.

Robert H. Gillespy II LL.M. '51 of Chagrin Falls, Ohio, died Jan. 28, 2004. He was a

partner at Squire, Sanders & Dempsey in Cleveland.

Armand A. Korzenik '51 of Hartford, Conn., died July 17, 2003. A city official and a Hartford lawyer for 50 years, he was a long-time member of the Democratic town committee. He worked as an assistant corporation counsel and was a member of the Hartford Board of Education and the city's redevelopment agency. He also was a chairman of the Greater Hartford United Negro College Fund. A member of the Mount Moriah Baptist Church, he donated his legal services to the church for 40 years. He was a brigadier general with the Air National Guard and a colonel with the U.S. Air Force. He served in WWII and the Korean War.

George S. Leisure Jr. '51 of Sea Island, Ga., died Aug. 25, 2003. A courtroom litigator who worked in corporate and antitrust law, he was a longtime partner at Donovan, Leisure, Newton & Irvine in Manhattan. His clients included Howard Hughes, American Cyanamid and Walt Disney Co. Earlier in his career, he worked for the CIA, was an assistant U.S. attorney for the Southern District of New York and was a trial lawyer in the Antitrust Division of the U.S. Department of Justice in New York City. He was president of the Federal Bar Council and a fellow of the American College of Trial Lawyers. During WWII, he served in the U.S. Navy and again during the Korean War as a lieutenant on destroyers.

John P. Persons LL.M. '51 of Norfolk, Conn., and Vero Beach, Fla., died Jan. 29, 2004. Formerly of Scarsdale, N.Y., he practiced at Patterson, Belknap & Webb in New York City for over 40 years, focusing on general corporate law with a specialty in tax. He began his legal career in the chief counsel's office of the Internal Revenue Service in Washington, D.C. He was a trustee of the Shelburne Museum in Vermont, president of the Scarsdale Friends of the Parks and a longtime member of the Harvard Club of New York City.

Joseph H. Wishod '51 of Delray Beach, Fla., died Dec. 5, 2003. He practiced law with Cahn Wishod & Lamb in Melville, N.Y., and earlier with Wishod & Fisch in Manhattan. He served in the U.S. Merchant Marines from 1945 to 1946.

Avukat Yahya Muvaffak Kavrar '51-'52 of Mersin, Turkey, died Feb. 27, 2003.

William J. Kirby '52 of Forest Hills, N.Y., died Nov. 22, 2003. He was a partner at

Sullivan & Cromwell in New York City. He retired in 1992 and was named senior counsel.

Leonard H. Monroe '52 of Burbank, Calif., died Aug. 16, 2003.

Roy H. Scharf '52 of Guilford, Conn., died Jan. 10, 2004. He practiced real estate law in Branford and was a member of the Connecticut Bar Association for 50 years. Since the mid-1960s, he concentrated his practice on representing real estate builders, developers, investors and mortgage companies. He was working toward a master's degree in urban planning at Southern Connecticut State University.

Alexander M. Vagliano '52 of Norfolk, Conn., died Nov. 13, 2003. An executive with J.P. Morgan & Co., he was involved in the negotiations for the return of American hostages from Iran, one of whom was his cousin, Moorhead Kennedy '58 ('59). As head of Morgan Guaranty Trust Company's international banking division, in 1981, he joined a group of bank executives who were negotiating the release of Iranian assets from American banks. Before joining J.P. Morgan, he worked at White & Case. In the 1980s, he received the rank of Chevalier de l'Ordre des Arts et des Lettres from the French government for his work promoting French-American culture.

Aram Jack Kevorkian '53 of Paris died Dec. 20, 2003. An American lawyer in Paris for more than 40 years, he wrote a monthly newsletter on the spirit of French law. He started "The Kevorkian Newsletter" in 1978 and eventually sent it to 3,000 people in 72 countries. A collection of his newsletters, "Confessions of a Francophile," was published in 2002. Early in his career, he worked on Wall Street for Dewey Ballantine. In 1966, he established his own law firm, advising international companies on business law. He served in the U.S. Army Judge Advocate General's Corps.

Herbert Semmel '53 of Los Angeles died Feb. 5, 2004. A longtime civil rights attorney, he was founder and director of the Federal Rights Project of the National Senior Citizens Law Center in Los Angeles, where he worked for about 10 years. The Federal Rights Project has been renamed in his honor. He was previously director of the Center for Law and Social Policy in Washington, D.C., and litigation director of New York Lawyers for the Public Interest. He taught at seven law schools and wrote three books, including "New Approaches in the Law of Civil Procedure." Last year he received the Reginald Heber Smith Award

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from the National Legal Aid & Defender Association and the Felix A. Fishman Award for Public Service from New York Lawyers for the Public Interest.

John P. Dunn '54 of Chatham, Mass., died Sept. 15, 2003. A corporate, banking and estate planning attorney, he practiced law for nearly 50 years and was a founding partner of Dunn McGee & Allen in Worcester. For 13 years, he was town moderator for Shrewsbury. In 1962, he tried a labor law case before the U.S. Supreme Court. He began his career with Vaughn, Esty, Crotty & Mason, becoming senior partner of its successor firm. He was a trustee of Worcester Academy and a director of Pepsi-Cola Bottling Co. of Worcester.

Andrew E. Norman '54 of Palisades, N.Y., died Feb. 7, 2004. A journalist, philanthropist and publisher, he served as a financier and consultant to HealthDay, a health news content provider to various media and health care organizations. He worked for the Newark News and Current magazine in the late 1950s and became part owner of Chelsea House Publishers in 1968. He and his wife, Helen Dwell Davis, an artist and miniaturist, ran the Hudson River Dollhouse Co. He was involved with the NAACP Legal Defense and Educational Fund and the American Civil Liberties Union. He was also chairman of the Norman Foundation and a founding member of the National Network of Grantmakers, and he helped develop the Big Apple Circus and Rockland County Community College.

Donald E. Sanford Jr. '54 of Buffalo, N.Y., died Feb. 13, 2004. For 28 years, he was an estate and gift tax attorney for the Internal Revenue Service. Earlier in his career, he worked at Williams, Stevens & McCarville and in the trust department of Liberty Bank. He served in the U.S. Army in Germany for two years.

Robert M. Spaulding '54 of Buffalo, N.Y., died July 15, 2003. He was a longtime Buffalo-area attorney, specializing in bankruptcy law at Phillips, Lytle, Hitchcock, Blaine & Huber. Joining the firm after graduating from HLS, he led its commercial bankruptcy practice and served as chairman of its management and governing committees. He lectured on bankruptcy before the ABA and ALI and was listed in every edition of "The Best Lawyers in America" since its first publication.

Thomas D. Titsworth '54 of Carmel, Ind., died July 8, 2003. For 40 years, he practiced law with Bamberger & Feibleman in Indianapolis. He continued his law practice at

Wooden & McLaughlin in Indianapolis and Campbell Kyle Proffitt in Carmel.

Edgar W. Bassick III '55 of Stratford, Conn., died Oct. 31, 2003. He was a Superior Court judge and a partner at Pullman & Comley in Bridgeport, where he specialized in family law. He was nominated to the court by former Gov. William O'Neill in 1986. He served in the U.S. Army from 1946 to 1948.

Daniel H. Kossov '55 of Armonk, N.Y., died March 15, 2004. He was an entertainment lawyer in New York City for many years and most recently had a law office in White Plains.

H. David Leventhal '55 of Hartford, Conn., died March 24, 2004. An attorney for 50 years, he practiced at Brown Raysman Millstein Felder & Steiner in Hartford. He was a fellow of the American College of Real Estate Lawyers and chairman of the real property section of the Connecticut Bar Association. He co-wrote "The Connecticut Common Interest Ownership Manual," published by the Connecticut Bar Association, and was a lecturer at the University of Connecticut School of Law.

Edward G. Bauer Jr. '57 of Boca Raton, Fla., died Oct. 1, 2003. He was a city solicitor for Philadelphia in the 1960s and general counsel for Philadelphia Electric Co., now Peco Energy Co., beginning in 1970. From 1978 to his retirement in 1988, he was senior vice president and general counsel at the company. He was also an attorney for the Delaware Valley Regional Planning Commission. He served on Philadelphia's Bicentennial Commission and on the boards of the Defenders Association, the American Foundation for Negro Affairs and the American Heart Association of Southeastern Pennsylvania. During the Korean War, he served in the U.S. Air Force in San Antonio.

Charles C. Cabot Jr. '57 of Dover, Mass., died Sept. 9, 2003. He was of counsel at Sullivan & Worcester in Boston, where he practiced trust and estates and business law beginning in 1966. Previously, he practiced in the counsel's office of the U.S. Information Agency. Since 1970, he was a member of the Conservation Law Foundation, becoming a director in 1981 and chairman of the board of trustees in 1991. A trustee of Milton Academy and the Neighborhood House Charter School in Dorchester, Mass., he was also selectman for the town of Dover for many years. During WWII, he served in the U.S. Navy.

Charles S. Cohen '57 of Orleans, Mass.,

died Feb. 16, 2004. Formerly of Longmeadow, he practiced law in Springfield for 40 years, retiring from Egan, Flanagan and Cohen in the late 1990s. From 1975 to 1978, he served as a judge of the District Court of Springfield, and he was president of McKinstry Inc. in Chicopee for over 30 years. He was president of the Hampden County Bar Association, chairman of the Massachusetts Board of Bar Overseers and a member of the Judicial Nominating Council for Western Massachusetts.

Joseph T. Conlon Jr. '57 of Farmington, Mo., died Oct. 13, 2003. He was a professor emeritus at St. Louis University. He also taught at the University of Notre Dame and was a prosecuting attorney of Lincoln County, Mo. During the Korean War, he was a U.S. Army correspondent for The Stars and Stripes newspaper.

Herbert L. Spira '57 of Washington, D.C., died Sept. 9, 2003. He was tax counsel for the Independent Community Bankers of America and for the Subcommittee on International Development of the House Banking Committee. For 18 years, he was tax and chief counsel of the U.S. Senate Committee on Small Business and Entrepreneurship. After retiring in 1998, he composed songbooks, including a "History of American Patriotic Songs" and "A Sentimental Journey Around Scotland in Poetry and Song."

Richard C. Torbert '57 of Philadelphia died Oct. 7, 2003. A longtime resident of Center City, Pa., he was vice president of Girard Bank in Philadelphia, where he worked for 27 years. He previously worked for Irving Trust Co. in New York. He helped found the Friends of the Free Library and, in the 1980s, helped develop the Mayor's Commission on Literacy and the Center for Literacy, all in Philadelphia. From 1951 to 1954, he served in the U.S. Air Force in Munich, Germany.

C. Robertson Trowbridge '57 of Peterborough, N.H., died Sept. 8, 2003. A state legislator and publisher of Yankee magazine, he joined the publication in 1964, was named president in 1970 and became chairman in 1989. When he joined the company, the publication's circulation was 100,000. Under his leadership, circulation increased to more than 1 million by the mid-1980s, and the company expanded from its two main publications, Yankee magazine and the Old Farmer's Almanac, to a multi-million-dollar publisher of business magazines, books and other periodicals. During his career, he served in both state legislative houses and was chairman of the House Ways and Means Committee and the Senate

Finance Committee. He was town moderator for Dublin, N.H., for 26 years, served on the boards of the Society for the Protection of New Hampshire Forests and the National Trust for Historic Preservation, and was a founder of the Trust for New Hampshire Lands.

Eudore J. Fontaine Jr. '58 of Wellesley, Mass., died Jan. 13, 2004. An artist, he painted Impressionist paintings of city scenes and depictions of Boston and Rhode Island landscapes. In 1996, he was commissioned by the Boston Athletic Association to design a lithograph to commemorate the 100th anniversary of the Boston Marathon. He practiced law until the early 1970s, when he devoted himself to painting. He served as a communications officer in the U.S. Navy.

Laurence J. Hoch '58 of Hull, Mass., and Key Colony Beach, Fla., died June 18, 2003. He was an admiralty attorney at Hoch & McHugh in Boston and a commander in the U.S. Coast Guard, where he served for 25 years. He was a treasurer and director of the U.S. Coast Guard Foundation and in 1997 received the foundation's Distinguished Service Award. He also was an officer of the International Goodwill Foundation, president of the U.S. Navy League's Boston chapter, and a member of the Boston Marine Society and the Propeller Club of Boston.

Jeremiah Marsh '58 of Winnetka, Ill., died Jan. 19, 2004. An expert on Illinois state law and a partner at Ungaretti & Harris in Chicago since 2001, he was previously co-chairman of Hopkins & Sutter in Chicago. Earlier in his career, he was a legislative aide to Massachusetts Sen. Edward Kennedy and later general counsel to Illinois Gov. Richard Ogilvie, helping to establish the Illinois income tax and redraft the state's constitution. He served on the National Commission on Uniform State Laws and on the board of overseers of the Chicago-Kent College of Law, Illinois Institute of Technology.

Philip E. Peterson LL.M. '58 of Lewiston, Idaho, died Dec. 29, 2003. A professor emeritus and dean at the University of Idaho College of Law, he joined the faculty in 1952, served as dean from 1961 to 1966 and retired in 1990. An expert on Idaho's tax law, he wrote many of Idaho's sales tax and income tax laws and co-wrote the Uniform Probate Code to standardize probate procedures between states. During WWII, he was a B-29 navigator with the U.S. Army Air Forces. He was involved in the fire bombing of Japan and helped provide transport for Chinese Nationalist leader Chiang Kai-shek.

He was awarded the Distinguished Flying Cross, Silver Star and Purple Heart. After the war, he remained in the Air Force Reserve, retiring as a lieutenant colonel in 1966.

Duane T. Sargisson '58 of Worcester, Mass., died Sept. 4, 2003. A partner at Bowditch & Dewey in Worcester, he was an expert in Massachusetts on the National Labor Relations Act and other federal and state labor laws. Beginning in 1964, he served two terms in the Massachusetts House of Representatives. He was counsel for the University of Massachusetts Medical School and town counsel for the towns of Barre and Petersham. In the 1990s, he was on the governor's Judicial Nominating Council for Central Massachusetts. He was a trustee and president of the board of Worcester City Hospital and Worcester Academy. A member of a number of hereditary and patriotic societies, he served three terms as chancellor general of the National Society of the Sons of the American Revolution, receiving the organization's highest honor, the Minuteman Award. He served in the U.S. Army.

Mendel Small '58 of Overland Park, Kan., died Dec. 18, 2003. He was a partner at Spencer Fane Britt & Browne for over 25 years, specializing in bankruptcy law. He previously served as a general practitioner in Kansas City for 13 years. He wrote a chapter of the Missouri Bar Continuing Legal Education treatise on assignment for the benefit of creditors and received the 2003 Michael R. Roser Excellence in Bankruptcy Award from the Missouri Bar Association's commercial law committee. He was chairman of the Beth Shalom Cemetery committee and a member of the Jewish Community Relations Board.

Thomas L. Cantrell '59 of Dallas died Nov. 13, 2003. He practiced patent, trademark and copyright law as of counsel at Jenkins & Gilchrist in Dallas. He previously practiced at Johnson & Gibbs in Dallas.

1960-1969

Eugene G. Coombs Jr. '60 of Boston died Jan. 13, 2004. He practiced insurance law as a partner at Kilburn Casey Gosciniak & Coombs in Boston.

Rudolph V. Lutter Jr. '60 of Washington, D.C., died Dec. 14, 2003. He taught communications law at Howard University School of Communications and was a senior attorney adviser to the Federal Communications Commission for 18 years. A member of the board of managers for the Overbrook

School for the Blind in Philadelphia beginning in 1970, he was named a Distinguished Alumnus of the school.

Alexander M.S. McColl '60 of Boulder, Colo., died Oct. 23, 2002. He was a director of special projects for Omega Group, publishers of *Soldier of Fortune* magazine, and founder and president of Refugee Relief International, a nonprofit medical and relief agency. In the early 1970s, he was president of Humphrey-Stone-McColl Corp., a natural gas drilling and production business, and he later established an investment firm. Commissioned as a special agent in the Counter Intelligence Corps, he served four years in the U.S. Army before coming to HLS. After practicing law for three years, he returned to active duty and served two tours in Vietnam. He remained active in the U.S. Army Reserve Special Forces and retired as a full colonel, U.S. Army Reserve, in 1984. He wrote two novels based on his experience in Vietnam, "Valley of Peril" and "Maccat."

Theodore L. Tolles '60 of New Hartford, N.Y., died Feb. 7, 2004. A businessman and lawyer in New York City and Utica, N.Y., he worked for a number of companies before joining the law firm of Kowalczyk Tolles & Deery in 1991. He was active in local and state politics and served as a Democratic committeeman for the town of New Hartford, Oneida County and New York state. He was a trustee of Utica College and the House of Good Shepherd. He served in the U.S. Army from 1960 to 1961.

Sergius M. Boikan '61 of San Francisco died July 20, 2003. He was a sole practitioner in San Francisco, specializing in public utility law and transportation regulation.

Wesley B. Smith '61 of Ridgewood, N.J., died Feb. 5, 2004. Formerly of Rutherford and Succasunna, N.J., he worked at Smith & Ely in Rutherford. Early in his career, he worked at Dewey Ballantine.

Stuart D. Buchalter '62 of Los Angeles died Jan. 6, 2004. A corporate and securities attorney, he was of counsel at Buchalter Nemer Fields & Younger in Los Angeles, where he worked for 40 years. He served as the firm's managing partner during the 1970s and was co-chairman of its business practices group at the time of his death. He also taught securities regulation at the UCLA School of Law. He was a director on many corporate boards, including City National Corp. and the Warnaco Group. Early in his career, he served as special counsel to the Securities and Exchange

IN MEMORIAM

Commission in Washington, D.C. He also served as chairman of the board of trustees of Otis College of Art and Design in Los Angeles and as president of the Jewish Community Foundation of Greater Los Angeles.

David L. Fishman '64 of Belmont, Mass., died Feb. 14, 2004. A management consultant, he established a media and entertainment consulting practice at Arthur D. Little in the 1970s and was serving as its director and vice president when he left in 1994. He briefly worked at EDS/AT Kearney before forming his own firm, Centre Advisory Services, in Belmont. He wrote film scripts and was a board member of Visionaries, a nonprofit educational organization developing documentaries for social change, and the Kendall Center for the Arts in Belmont. Early in his career, he lived in London and supervised the production of low-budget films. He served in both the U.S. Army and U.S. Air Force reserves.

William R. Carlson '66 of Gates Mills, Ohio, died July 25, 2003. An attorney, real estate agent and businessman, he sold real estate for the Smythe, Cramer Co. He previously practiced law, did business management consulting for McKinsey & Co. and was a principal in Technicare, a developer of medical diagnostic equipment. He was president of Mayfield Country Club's curling association in Cleveland.

J. Frank Osha '66 of McLean, Va., died Jan. 29, 2004. A patent lawyer, he was a senior partner at Sughrue Mion, an intellectual property firm in Washington, D.C. Earlier in his career, he worked as an IP counsel for Communications Satellite Corp. During the 1960s and 1970s, he sang with the Dupont Circle Consortium, and he once performed at the Kennedy Center with the Paul Hill Chorale.

Lyman R. Patterson S.J.D. '66 of Athens, Ga., died Nov. 5, 2003. A legal ethics and copyright professor for 45 years, his teaching career included stints at the law schools of Mercer, Vanderbilt and Emory universities. From 1986 to the fall of 2003, he was the Pope F. Brock Professor of Professional Responsibility at the University of Georgia School of Law. He was dean of Emory University School of Law from 1973 to 1980. He also served as special assistant attorney general of Georgia for copyright matters. For his HLS S.J.D. thesis, he wrote "Copyright in Historical Perspective." He also co-wrote "The Nature of Copyright" and wrote a casebook on legal ethics.

David A. Cathcart '67 of Pasadena, Calif.,

died Sept. 30, 2003. A labor and employment law specialist, he was a senior partner at Gibson, Dunn & Crutcher in Los Angeles. He left the firm in 1970 for two years to serve as chief legislative assistant to California Sen. John V. Tunney, helping draft the Water Quality Act. He served on the Management Advisory Committee of the National Labor Relations Board from 1994 to 1998, was the founding chairman of the American Employment Law Council and held leadership positions in the ABA. He was a senior editor of the "California Employment Litigation Practice Guide" and editor in chief of the "Five-Year Cumulative Supplement to Employment Discrimination Law." In 1996, he was elected a fellow of the College of Labor and Employment Lawyers. For 23 years, he was on the board of governors of the Santa Monica Boys & Girls Club, where the David A. Cathcart College Scholarship Fund has been established.

Stephen A.A. Goddard '68 of Honolulu died Dec. 31, 2003. He owned a yacht brokerage, The Yacht Connection, in Honolulu, beginning in 1990. He moved to Hawaii in 1985, after a career in law and business in Minneapolis and Austin, Texas.

Stuart R. Abelson '69 of Chicago died Oct. 22, 2003. He practiced poverty law in El Paso, Texas, and New York City before returning to Chicago and working in his family's business, Barton Brands. After the business was sold in 1982, he was an investment manager and adviser while pursuing his interests in photography and traveling.

Charles J. Beard II '69 of Lexington, Mass., died March 30, 2004. A nationally recognized authority on cable television regulation and business law, he worked at Foley, Hoag & Eliot in Boston for 30 years and was the first African-American to be named a partner by a major Boston law firm. Prior to joining the firm in 1974, he worked for the Boston Model City Administration. He served on a number of community and professional boards, including as a charter trustee of Phillips Academy in Andover and chairman of the board of trustees of WGBH. He was also a director of Blue Cross Blue Shield of Massachusetts.

Jacob C. Diemert '69 of Acton, Mass., died Nov. 7, 2003. He served as Stow town counsel for 30 years and was a partner at Wilson & Orcutt of Acton since 1996. He began his career at Sherburne, Powers and Needham in Boston, where he was a partner for 20 years. A lecturer and writer on business and municipal subjects, including "Municipal Law" and "Massachusetts Handbook of Legal Research," he was presi-

dent of the Waltham Rotary Club and the Concord Chamber of Commerce and was a board member of the Orchard House in Concord, the Acton Chamber of Commerce and the United Way of Acton. He also served as president of the Central Middlesex Bar Association in 1979 and 1980.

1970-1979

George B. Reid Jr. '74 of McLean, Va., died Oct. 3, 2003. He was a co-founder of Pitts Bay Partners, an advisory firm, and was chief executive of Bacardi Ltd. In 1974, he joined Covington & Burling in Washington, D.C., and he became a partner in 1982 and served as coordinator of the firm's corporate and securities practice group. He also served as Bacardi's legal adviser for 10 years and later helped to negotiate the company's acquisition of Martini & Rossi. In 1996, he joined Bacardi as executive vice president. In the 1980s, he was deputy counsel to the Republican National Committee, and he was a board member of the Institute for Advanced Studies in Aging and Geriatric Medicine. He served in the U.S. Army Reserve for 11 years.

Frank A. Rosenfeld '76 of Arlington, Va., died Sept. 29, 2003. Formerly of Squirrel Hill, he was a trial attorney with the U.S. Department of Justice, Civil Division.

Jerome McCristal Culp Jr. '78 of Durham, N.C., died Feb. 5, 2004. For nearly 20 years, he was a professor at Duke University School of Law. He specialized in race and the law, law and economics, and labor economics issues. From 1989 to 1993, he was director of the John M. Olin Program in Law and Economics at Duke. He began his career with the Rockefeller Foundation in New York City, working on youth employment and affirmative action issues.

1980-1989

Henry N. Winters '81 of Franklin, Mich., died Aug. 7, 2003. He was a director at Ford Motor Co., Division of Corporate Finance, in Dearborn, Mich. He previously practiced in New York with the law firms of Cahill Gordon & Reindel and Shearman & Sterling.

Karin I. Henrikson '87 of Auburn, W.Va., died Aug. 30, 2003. She formerly lived in Canterbury, N.H.

1990-1999

Elizabeth R. Turner '90 of Dallas died Oct. 12, 2003. A partner at Hughes & Luce in Dallas, she joined the firm after graduating from HLS and specialized in estate planning

Professor Archibald Cox, 1912-2004, taught the nation what it means to be true to one's principles.



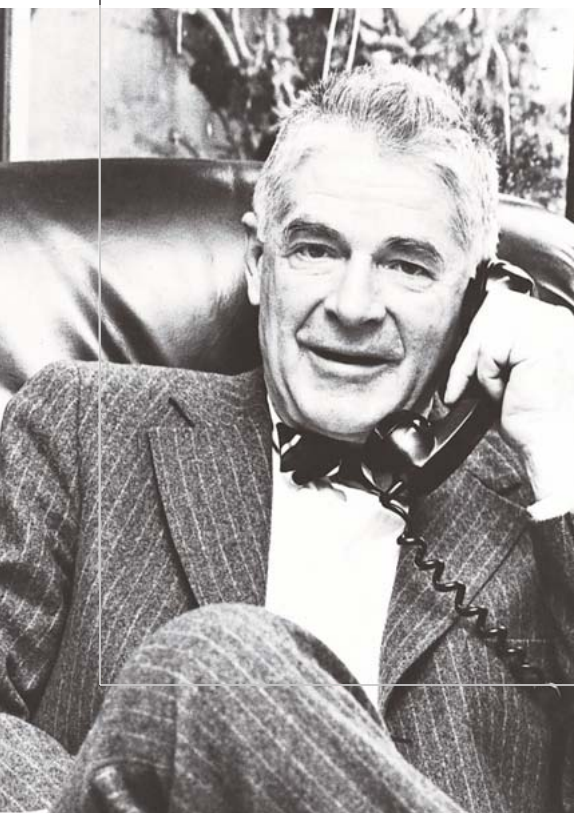
Archibald Cox
in his office
at HLS

Lessons in Courage

PROFESSOR EMERITUS ARCHIBALD COX '37 died on May 29 at age 92. Tenured at Harvard Law School in 1946, he taught generations of students torts, administrative and constitutional law. In addition, the Watergate special prosecutor taught a nation about the primacy of the rule of law and the power of public service. In the famous press conference that preceded his firing, he explained to the American people why he had to refuse to obey a presidential order that violated not only his principles but the spirit of the Constitution. "Whether ours shall continue to be a government of laws and not of men," he said before his departure, "is now for Congress and ultimately the American people to decide."

More on the life of the law professor, solicitor general and public servant—who left his mark on the law school and on history—in the next issue of the Bulletin. *

A memorial service is scheduled for Oct. 8 at 2 p.m. in Memorial Church, Harvard Yard.



M. Bernard Aidinoff '53 is senior counsel at Sullivan & Cromwell in New York City, where he has practiced for nearly 50 years. A recent recipient of the Distinguished Service Award of the ABA's section of taxation, Aidinoff served as chairman of his 50th reunion gift committee and is a member of the HLS Visiting Committee.

On Intellectual Boot Camp and Supreme Gossip

You're from the Class of 1953, the first Harvard Law School class to include women. What was that like from your perspective?

Well, many of us had come from coed colleges and universities, and quite frankly, we thought it was weird that Harvard Law School did not have women prior to our class. The general attitude was, "It's about time." But there was little recognition by

the men in our class of the significance of the change and its importance to the newly admitted women and to women in general.

After graduating, you clerked for Judge Learned Hand LL.B. 1896, a real legend. What was that like?

It was a great year. Hand was in his eighties and had senior status; he did not carry a full caseload. The result was I had a lot of one-on-one time with the judge. On Tuesday mornings, we would discuss the Supreme Court decisions that had been handed down on Monday. He would always want to know what I thought, and we would argue the merits of the cases as well as the reasoning and quality of the opinions. Hand drafted his own opinions and the memoranda to the other judges. His clerks could make comments, disagree with him and on occasion convince him to make changes. His law clerks did not do first drafts. Hand was a wonderful gossip, and he spoke frankly about each of the justices. We also frequently rode the subway home together in the evening.

Was there a particularly memorable moment?

The whole experience was memorable. I was very lucky!

You've spent nearly 50 years in practice. When you look back, what was the most valuable part of your HLS training?

First year, to me, was one of the most marvelous experiences I ever had. The type of training, the rigor, the method of argument—it was really intellectual boot camp. I loved nearly all of the first-year classes, and I had some amazing professors (Fuller, Kaplan and Seavey). They were truly masters of the Socratic method. We had one or two teachers who weren't quite as good, but we forget about them.

What has been your main area of practice?

Tax, particularly corporate and international tax. But I still don't know how to fill out a return.

Do you think of law practice today as a profession or an industry?

I haven't heard it put quite that way, but there is no question that the private practice of law, particularly big-firm law, is a business. At the same time, there is constant awareness that professional standards must be maintained. So the question is: How do you retain the independence of being a true professional? How do you retain collegiality, the camaraderie, the sense of purpose that you are doing something more than just making money?

As a supporter of the law school, you're familiar with the current campaign and the Strategic Plan. Is there a part of the planning that really resonates with you?

The expansion of the faculty is important. Harvard's got the toughest standards for its faculty, and we all want that to continue. But you have to prepare years in advance for great professors not living forever. We need more courses in more areas, and in order to do that, we need a larger number of faculty members who have the capacity and drive to be great scholars and great teachers. This also means that you have to take risks in recruiting younger faculty members. *



**“The whole world is
interested in intellectual
property right now.”
Professor Lloyd Weinreb '62**



JOSHUA PAUL

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