Prosecution on the world stage
Seminar explores policies of the ICC’s first prosecutor

This January, in a seminar taught by Dean Martha Minow and Associate Clinical Professor Alex Whiting, 15 students at Harvard Law School discussed the policies and strategies of the prosecutor of the International Criminal Court. Also in the classroom: the man most directly connected to those policies, Luis Moreno-Ocampo, the ICC’s first prosecutor.

Two-thirds of the way through his nine-year mandate, Moreno-Ocampo came to Cambridge from The Hague to participate in the seminar, in which students reviewed policies and proceedings of the first permanent, independent international court set up to hear cases involving genocide, war crimes and crimes against humanity. Discussion ranged from the court’s approach to gender crimes and charging policies, to the role of victims, and the power of what Minow called “the shadow”—outside actors who magnify the court’s impact.

In a presentation to the class, Helen Beasley ’11 described the prosecutor’s approach to charging as focused, selective and aimed at deterrence.

Naira Der Kiureghian ’11, who interned last summer at the International Criminal Tribunal for the former Yugoslavia during the trial of former Serb leader Radovan Karadzic, recalled how prosecutors struggled under the pressure to narrow

New Public Service Venture Fund launched at HLS

Harvard Law School announced in February the creation of the Public Service Venture Fund, which will start by awarding $1 million in grants every year to help graduating students pursue careers in public service.

The first program of its kind at a law school, the fund will offer “seed money” for startup nonprofit ventures and salary support for graduating J.D. students who hope to pursue postgraduate work at nonprofits or government agencies in the United States and abroad.

“This new fund is inspired by our students’ passion for justice,” said Harvard Law School Dean Martha Minow. “It’s an investment that will pay dividends not only for our students, but also for the countless...”

JUDICIAL BRANCHES offered hints of spring ahead, as budding lawyers took refuge from snow in the warmth of Langdell.
Presidential adviser on health care

Robert Greenwald, lecturer on law and director of the Health Law and Policy Clinic and the LGBT law clinic at the WilmerHale Legal Services Center, was appointed to the Presidential Advisory Council on HIV/AIDS. The 24-member council provides advice to the president through the secretary of Health and Human Services on domestic and global HIV/AIDS policy issues. Greenwald founded Harvard Law School’s Health Law and Policy Clinic, which was awarded a two-year $200,000 grant from the Ford Foundation in December.

Lessons from ancient Athens

On Dec. 14, at Columbia University, Professor Adriaan Lanni gave the annual Kyriakos Tsakopoulos Lecture on Aristotle and the Moderns, focusing on Aristotle’s relevance to contemporary debates. The title of Lanni’s talk was “Reconciliation after Mass Atrocity: Lessons from Ancient Athens.” An expert in ancient law and criminal studies from Oxford University, he worked before stepping down in 2009, will be the principal speaker at the afternoon exercises of Harvard University’s 359th Commencement on May 27 in the Tercentenary Theatre of Harvard Yard.

New president of the Harvard Law Review

Zachary Schauf ’11 was elected the 124th president of the Harvard Law Review in January. Schauf has a B.A.S. in history and mathematics from Stanford University and a M.Phil. in modern Middle Eastern studies from Oxford University. He worked as a writer and editor in Washington, D.C. before starting law school.

Tribe now senior counselor for access to justice in the Department of Justice

Laurence Tribe ’66, the Carl M. Loeb University Professor at Harvard Law School, became senior counselor for access to justice in the Department of Justice, where he leads a newly launched initiative aimed at improving access to civil and criminal legal services.

In launching the initiative, Justice Department officials say they hope to elevate the importance of legal access issues and to take concrete steps to address them. The primary focus of the initiative is to improve indigent defense, enhance the delivery of legal services to the poor and middle class, and identify and promote alternatives to court-intensive and lawyer-intensive solutions.

“We at the law school salute Larry Tribe’s willingness to advance the dream of true access to justice for all. We will miss him while he’s in Washington, but it helps to know he will bring his enormous talents and energy to such a vital task,” said Harvard Law School Dean Martha Minow.

As senior counselor, Tribe is a primary liaison to the federal judiciary and works with federal, state, and tribal judiciaries in strengthening fair, impartial and independent adjudication. He also exchanges information with foreign ministries of justice and judicial systems regarding efforts to provide access to justice, as part of the DOJ’s existing international efforts to promote fair and impartial law enforcement and adjudication.

Tribe began his tenure at the DOJ on March 1 and officially reports to Associate Attorney General Thomas Perrelli ’91.

Tribe is a renowned professor of constitutional law. He joined the Harvard Law School faculty in 1968, received tenure in 1972 and held the Ralph S. Tyler, Jr. Professorship of Constitutional Law from 1982 to 2004, when he was appointed University Professor—the highest academic honor that Harvard University can bestow upon a faculty member, reserved for just a handful of professors throughout the university.

Tribe is the author of more than 100 books and articles, including “American Constitutional Law,” “On Reading the Constitution” and “The Invisible Constitution.” He has argued 35 cases before the Supreme Court of the United States—including the historic Bush v. Gore case in 2000 on behalf of presidential candidate Albert Gore Jr.—and has testified frequently before Congress on a broad range of constitutional issues.

After serving in the White House, Freeman returns to Harvard Law School

Professor Jody Freeman L.L.M. ’91, S.J.D. ’93 returned to the Harvard Law School faculty this month, after serving in the White House as counselor for energy and climate change for more than a year.

Freeman, a leading scholar of administrative and environmental law, was appointed to an endowed chair in public law named for Watergate special prosecutor and former Solicitor General Archibald Cox ’37 and will work at the law school and across the university to harness Harvard’s talent and resources toward shaping global energy policy. She resumed her role as director of the law school’s Environmental Law Program, which she founded in 2006 and which houses one of the nation’s top environmental law and policy clinics.

“I’m thrilled to welcome Jody back after her tremendous service in the White House,” said Harvard Law School Dean Martha Minow. “In more than a year of intensive policy review and implementation, she made major contributions to the shaping of bold and innovative new initiatives in environmental and energy policy, and she will now bring the lessons and insights from that experience here to the law school and to the wider university. Her knowledge will be invaluable to students and colleagues engaged in the critical search for solutions to the staggering environmental and energy challenges we face nationally and globally.”

In her role as counselor to Carol Browner, director of the White House Office of Energy and Climate Change Policy, Freeman contributed to a variety of policy initiatives on American energy and climate change issues, including the pursuit of comprehensive energy and climate legislation that would place a market-based cap on carbon. The OECC has supported the Obama administration’s efforts to reduce dependence on oil, cut greenhouse gas pollution, advance energy efficiency and spur American leadership in clean energy manufacturing, including efforts undertaken in the Recovery Act. The OECC helped to facilitate the president’s national auto policy, which represents a historic agreement among the auto industry, California and key stakeholders to support the most ambitious federal fuel efficiency standards and the first-ever federal greenhouse gas standards. ©
A recent study by HLS Professor Carol Steiker ’86 and her brother, Jordan Steiker ’88, a professor at the University of Texas School of Law, has led the American Law Institute to vote to withdraw the capital punishment section of its Model Penal Code.

The study, which was requested by the ALI, examined the effectiveness of the code’s death penalty provisions, which were enacted in 1962 and were designed to make the administration of the death penalty less arbitrary. The Model Penal Code’s provisions were cited by the U.S. Supreme Court in 1976 when it determined that the death penalty could be administered in a constitutional way.

The Steikers’ study examined whether or not the death penalty was in fact being administered in compliance with the Constitution. They found that there are too many obstacles, both structural and institutional, to administering the death penalty in a nonarbitrary way, and recommended that the ALI avoid any attempt to come up with new rules regarding its proper administration.

In a Q&A with HLT in January, Steiker discussed the report’s findings.

In October, the American Law Institute withdrew the capital punishment section of its Model Penal Code, based largely on a report by you and your brother. How did the report come about?

The American Law Institute has been at work since 2001 revising the sentencing provisions of the Model Penal Code—its first major criminal law project since the Model Penal Code was adopted in the early 1960s. Initially, the question of capital punishment was set aside as outside the scope of the sentencing reform project. But at the ALI’s annual meeting in May 2007, some members moved that the institute take a position against the death penalty. In response, the ALI decided to commission a paper to assist the institute in evaluating its response to the motion. ALI Director and former Harvard Professor Lance Liebman [’67] engaged me and my brother Jordan Steiker [’88], a professor at the University of Texas School of Law and co-director of its capital punishment clinic, to prepare that report. The ALI also convened a group of experts, including judges and lawyers in addition to academics, to attend a conference to discuss a preliminary draft of the report. After this conference, at which a wide variety of views were aired, Jordan and I revised our paper and submitted a final draft to the ALI. After considering our report, the Council of the ALI recommended that the institute withdraw the death penalty provisions of the Model Penal Code. At the ALI’s annual meeting in May 2009, two years after the initial motion, the body of the ALI discussed the paper for several intense hours and voted for withdrawal, but with an even stronger statement about the problems in the administration of the death penalty than our report had detailed, approving a motion that stated:

“For reasons stated in Part V of the Council’s report to the membership, the Institute withdraws Section 210.6 of the Model Penal Code in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment.”

In October 2009, the Council approved this stronger statement, and the withdrawal of the MPC’s death penalty provisions—along with the accompanying statement about “the current intractable institutional and structural obstacles to ensuring a minimally adequate system”—became the official policy of the ALI.

What do you expect will be the long-term impact of this decision?

For the first time since the 1960s, the United States is seeing growing doubt about and discomfort with the death penalty. In the past few years, a number of states have rejected capital punishment legislatively—New Jersey and New Mexico through straightforward legislative repeal and New York through the Legislature’s refusal to reauthorize the death penalty after the state’s highest court invalidated New York’s capital statute on grounds that were easily fixable. A growing number of other states are currently considering measures to study, limit or repeal their death penalty statutes.

In this context, the decision of the ALI to withdraw the death penalty provisions of the Model Penal Code—provisions that provided the template for the majority of the states’ modern death penalty statutes—gives the proponents of repeal new strength and thoughtful support. The ALI is known for its careful and unbiased approach to legal reform, and its concerns should be and will be taken quite seriously.

Does this portend an eventual nationwide abolition of capital punishment?

As my brother Jordan and I have written (in a chapter of a book co-edited by HLS Professor Charles Ogletree [’78] titled “The Road to Abolition?” NYU Press, 2009), we doubt that all of the 35 states that currently authorize the death penalty will repeal their statutes anytime in the foreseeable future. However, we also believe that a strong movement by enough of these states toward abolition could lead the United States Supreme Court to declare capital punishment unconstitutional under the Eighth Amendment as inconsistent with “evolving standards of decency”—the Court’s description of its constitutional test for “cruel and unusual punishment.” Nationwide abolition thus will happen judicially, rather than legislatively, if it happens at all. We are by no means certain that constitutional abolition will occur (or that it will not provoke a backlash if it does occur), but we think that the chances of such abolition are much greater now than at any time since the Court’s short-lived attempt at abolition in Furman v. Georgia in 1972.
"I share neither the jubilant sense that the First Amendment has scored a major triumph over misbegotten censorship nor the apocalyptic sense that the Court has ushered in an era of corporate dominance.”

Laurence Tribe ‘66

Harvard Law professors weigh in with reactions to the Supreme Court’s Jan. 21 decision in Citizens United v. Federal Election Commission. In the 5-4 ruling, justices rejected corporate spending limits on political campaigns. Former HLS Dean Elena Kagan ’86 argued the case, her first oral argument as solicitor general of the United States.

LAURENCE TRIBE ’66
SCOTUS BLOG, JAN. 25

“There is no doubt that Citizens United v. Federal Election Commission marks a major upheaval in First Amendment law and signals the end of whatever legitimate claim could otherwise have been made by the Roberts Court to an incremental and minimalist approach to constitutional adjudication, to a modest view of the judicial role vis-à-vis the political branches, or to a genuine concern with adherence to precedent.

“The masterful dissent by Justice Stevens, which merits close reading by anyone interested in the Supreme Court as an institution or in the Constitution as a source of law, shreds any serious claim to the contrary. It also gravely undermines the First Amendment analysis offered by the majority and concurring opinions, doing so thoroughly enough that anyone who (like me) regards the issues in this case as close and difficult has to wish that Justice Kennedy, joined by the Chief Justice and by Justices Scalia, Thomas, and Alito, had been less emboldened by the knowledge that the votes were there for what they all deemed the right result and had taken greater care to respond, point by point, to the largely unanswered critique launched by Justice Stevens, joined in his dissenting opinion by Justices Ginsburg, Breyer, and Sotomayor.

“But there will be plenty of time to dissect the several lengthy opinions in this case and to opine on the merits, and it’s not my purpose in this brief comment to add to that growing body of commentary. I would say only that I share neither the jubilant sense that the First Amendment has scored a major triumph over misbegotten censorship nor the apocalyptic sense that the Court has ushered in an era of corporate dominance that threatens to drown out the voices of all but the best-connected and to render representative democracy all but meaningless.”

MARK TUSHNET
HARVARD LAW ONLINE, JAN. 25

Q: If Congress wanted to draft limits on campaign contributions or spending, how should they do it now in the wake of Citizens United?

“People interested in campaign finance reform and worried about the corrupting effects of money in politics probably should shift their attention from the kind of direct regulation involved in McCain-Feingold to other methods. The most promising, I think, is one proposed many years ago by our colleague Victor Brudney, who saw the problem from the perspective of a specialist in corporate law. Professor Brudney argued that it was well within the ordinary scope of the law of corporations for states (and possibly Congress) to impose requirements of shareholder approval for specific categories of corporate spending. He suggested that states and Congress, to the extent that it has the power to do so, could require that corporate expenditures on campaigns gain shareholder approval. Requiring shareholders to approve a general power in the corporation to spend money on campaigns probably wouldn’t accomplish much. Requiring them to approve specific expenditures—in advance—would, probably to the point of making such expenditures impossible for large general-purpose corporations. (It probably wouldn’t affect small corporations or ideological ones like Citizens United much, which is an attractive feature of the proposal.) Or, you could require that some supersmajority of shareholders approve a general power to spend money on campaigns—say, two-thirds or three-quarters—and treat spending in the absence of such approval as ultra vires the corporation. As with all reform proposals, the details matter. But, I think, the decision in Citizens United should spur the kind of creative thinking about campaign finance reform that Professor Brudney’s proposals represent.”

JED SHUGERMAN
“JUDGING THE CAMPAIGN FINANCE RULING”
HARVARD GAZETTE, JAN. 21

Q: Is there anything to be read into the fact that this case began as a fairly narrow case but wound up having such broad implications?

“The Supreme Court had in front of it a potentially narrower and more minimalist way to resolve this case without overturning precedent. This is the big deal about this case. This sends a larger signal about the Roberts Court. When Chief Justice [John] Roberts was confirmed in the confirmation hearings, he talked about deference and a cautious approach and seeking more consensus. And we have seen that that is not his approach in practice. So today what we’re looking at is an irony. To pass a law in Congress takes a 60-vote supermajority in the Senate. But to strike down a law today takes a one-vote majority in the Supreme Court—and a decision that overturned precedent. … The larger context of the Roberts Court’s aggressiveness and lack of concern about consensus is something that we should be paying more attention to.

“The next question is whether the Supreme Court will move beyond outside political advertising, issue advocacy, or independent spending, and move from striking down regulations on outside spending to striking down regulations on direct donations. That’s a big deal. So if a corporation can go today and now spend money on its issues, that’s one thing. But there are longstanding precedents that set limits on what individuals and groups can donate to candidates. If there’s now an ability to make direct donations to candidates without limits, that will be a major change.”
MARK ROE ’75

“CORPORATE CONSEQUENCES OF THE SUPREME COURT’S SPEECH DECISION LAST WEEK”
FINANCIAL TIMES, JAN. 25

“Last week, the U.S. Supreme Court ruled that the legal blocks on corporations and labour unions advertising for and against political candidates violate free speech principles.

“Constitutional law scholars, the media and the public will debate whether corporations are entitled to free speech protections and Congress may revisit campaign contribution limits and public funding.

“But the potential corporate, business and economic consequences of the decision, assuming it stands, are profound. Conservative and business media have thus far favoured the decision as helpful to business; but it is not at all clear that it is favourable to the economy. It is likely to hurt the dynamism of the American economy, perhaps severely.

“The Court’s decision will strengthen the hand of incumbent interests over unorganised emerging interests. That is not good. Incumbent business interests often see upstarts as competing unfairly, as needing to be regulated, and as deserving of being suppressed. Incumbent businesses like politicians to squelch new entrants. With their chequebooks now opened up, they will support politicians who seek to regulate and suppress upstarts..."

“The campaign finance decision will encourage pernicious corporatist tendencies. Consider the most recent example of these tendencies: unions and incumbent corporate interests in the motor industry managed to get about $80bn in subsidies last year. Even without the ruling in favour of direct campaigning, the steel industry has often been able to suppress international competition. If incumbent industries’ corporate and union leaders see a common cause in Washington, we should expect them to use the campaign process further to increase their friends in Congress. There was always a public-oriented rationale—the economy needs this or that industry—but now there will be more muscle behind the campaign.”

LAURENCE LESSIG

“INSTITUTIONAL INTEGRITY: CITIZENS UNITED AND THE PATH TO A BETTER DEMOCRACY”
THE HUFFINGTON POST, JAN. 22

“What else one believes about the Supreme Court’s decision striking down limits on corporate speech in the context of political campaigns, there’s one thing no credible commentator could assert: That money bought this result. We can disagree with the Court’s view of the Framers (and I do); we can criticize its application of stare decisis (as any honest lawyer should); and we can stand dumbfounded by its tone-deaf understanding of the nature of corruption (as anyone living in the real world of politics must).

But we cannot say that somehow, the influence of money has produced this extraordinary result. The Court jealously guards its own institutional integrity. Two hundred years of careful doctrine, defining the economy of influence under which it does its work, has produced an institution whose decisions we can disagree with strongly, but whose integrity we can’t fairly doubt. Maybe liberal or conservative politics sometimes gets too much mixed with constitutional law. But money is nowhere even close.

“Thursday’s decision by the Supreme Court denies to Congress the same institutional integrity enjoyed by the Court. The vast majority of Americans already believe that money buys results in Congress. This Court’s decision will only make that worse. The Wall Street bailouts, the caving to insurance and pharmaceutical interests in health care reform, the ability of coal companies to stop Congress from addressing even profoundly important questions like global warming lead most to the view that it isn’t reason or even constituent politics that determines what Congress does or doesn’t do. It is instead the siren of campaign funding. Now a second siren walks onto that stage, promising, ever so indirectly, more campaign support from corporate treasuries. Who could doubt that this will further distract Members of Congress from what their constituents want? And who could believe it won’t make Americans even more cynical about what Congress does?”

Prosecution on the world stage
continued from page 1

their case. “I think they wanted to hold Karadzic accountable for everything he had done and didn’t want to leave out any pieces of the story.”

Beasley said the narrow approach to charging “is connected to the policy the ICC has adopted of not trying to write history.”

Minow commented that although there may be great pressure for courts like the ICTY and the ICC to write history, the criminal framework is only roughly appropriate to the task.

“It’s of course focused on the defendant,” she said, “connecting the defendant to specific harms, not telling the whole big story.” In fact, one critique of the Nuremberg Trials, she said, “was that they were boring, with too many documents and no room for the victims.” There was a desire for a trial that gives people a chance to tell the story. But maybe, said Minow, that’s not what should be expected from the trial process.

Moreno-Ocampo agreed, saying that although trials have a historical dimension, to bring charges, he needs sufficient evidence, and too often he just can’t get it within the necessary time frame. “So if I am writing history, it is wrong history,” he said.

One student asked the prosecutor about the genocide charges he brought against the president of Sudan, Omar al-Bashir. Although the ICC pretrial chamber in March of last year issued an arrest warrant for Bashir for crimes against humanity and war crimes, it declined to include genocide.

Whiting—a former senior trial attorney at the ICTY—urged the class to consider the risk of not convicting. And why charge genocide at all, Minow asked, when you might be able to get Bashir on a lesser charge, the way Al Capone was convicted of tax evasion? “What’s wrong with that?” she probed.

Moreno-Ocampo insisted that charging genocide was a legal decision. “It’s not that we are writing history but we are representing the evidence we have,” he asserted. Bashir, he said, is holding millions of refugees from specific ethnic groups in camps under genocidal conditions.

By the beginning of February, ICC judges seemed closer to agreeing with him, when the appeals chamber ordered the pretrial chamber to reconsider the genocide charges.”
Carol Steiker
continued from page 3

What issues are being litigated in death penalty cases now?

There remains a great deal of litigation about modes of execution and whether current protocols for administering lethal injections are sufficiently humane, especially in light of recent cases of botched executions like that of Romell Broom in Ohio this past September. Concerns about the possible innocence of death row inmates are always compelling. The Supreme Court took the highly unusual step this past summer in the case of Georgia death row inmate Troy Davis of ordering a lower court to “receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes petitioner’s innocence.” And questions about the adequacy of defense counsel performance, especially in the investigation of capital cases, are constantly an issue, reaching the Supreme Court with great frequency (three times in the past few months alone).

Relatedly, in these difficult economic times, the same resource constraints that contribute to inadequate representation also can create extensive delays in resolving capital cases. The Supreme Court recently granted review to consider a Georgia capital defendant’s claim that his constitutional right to a speedy trial was infringed by the absence of any funding for his defense for two years, and the absence of representation altogether for a period of 14 months.

LECTURER ON LAW PETER CARFAGNA ’79

Sports law: “very sophisticated lawyering is required”

Lecturer on Law Peter Carfagna ’79 has been a practicing sports law attorney for nearly 30 years. Senior counsel at Calfee, Halter & Griswold in Cleveland and an owner of two minor league baseball teams, Carfagna has built the sports law program at HLS into a series of courses and clinical externship opportunities for students. During January term, he taught Representing the Professional Athlete. We recently spoke with him about some of the trends in his field.

What are some of the big changes you’ve witnessed?

Just an explosion of sports law course offerings both at the undergrad and at the law and business school levels. A proliferation of literature on the subject, and a passion and devotion to it as a field of study. That would be one of the biggest changes: the emphasis on students knowing early on that they can and will get into this field. ... Representing athletes and teams in high-price, high-risk, high-stakes litigation and counseling athletes and teams in the big changes of the last 15 years. That would be the understanding of publicity rights or intellectual property rights, social media rights, interactive multimedia rights—all the way across the spectrum—and who can monetize them.

Can you offer a sense of the complexity of sports law practice?

Very sophisticated, complicated, commercial lawyering is required. The fact that they are athletes is almost incidental to how careful the lawyering has to be in order to represent these high-net-worth clients. Every word, every clause for these guys can be a six- to seven-figure swing, depending on how it’s drafted. Those who call it frivolous have never done it or experienced it. It requires expertise in so many different areas, including counseling athletes on the four stages of their career, from amateurism to professionalism to their mature years to their retirement years. That requires a full range of skill sets, which means knowing your client intimately so you get him or her the right resources to celebrate the success on the field and on the court so they don’t have to worry about post-career success. That involves counseling on post-career planning and thinking about your next move. Is it coaching? Is it television? Is it charity work? What’s it going to be like when you can’t play anymore? Is it broadcasting? Is it coaching? If you’re really good in this area, you’re really doing career planning through the four stages of an athlete’s career.

3L Ashwin Krishnan’s legal playbook

When he was a student at Harvard College, Ashwin Krishnan ’10 wrote about sports for the Crimson. This year, as a 3L at Harvard Law School, he found himself writing about sports again—this time not about a team but for a team.

As part of his clinical work in sports law this January, Krishnan drafted briefs for the Florida Marlins baseball franchise, compiling information on why arbitration-eligible players merited the salaries the team proposed.

Krishnan is a founding editor and editor-in-chief of the new Harvard Journal of Sports and Entertainment Law, which debuts this spring, and president of the Committee on Sports and Entertainment Law.

The general counsel of the Marlins, Derek Jackson ’99, participated in the committee’s 2009 symposium on how the economic downturn is affecting the sports industry, and later tapped Krishnan for the clinical position. Last year, Krishnan worked for Michael Zarren ’04, the Boston Celtics’ associate counsel, mainly on contracts with sponsors and on legal research. He also participated in a moot court competition at Tulane involving an antitrust case, American Needle v. NFL, and served as a teaching assistant for Peter Carfagna ’79.

Krishnan hopes to one day work as an attorney for a sports team or league. While he knows there’s plenty of competition for jobs in the sports business, he feels his immersion in sports law at HLS will keep him ahead of the field.
Amazon mission: Urso Branco prison
HLS team documents human rights abuse in Brazil

At the southwestern tip of the Amazon, in Porto Velho, Rondônia, Brazil, stands Urso Branco, a prison notorious for deadly human rights violations. It’s nowhere anyone would choose to be. But it was into this dank, dark and volatile world that Clara Long ’11; Fernando Delgado ’08, a fellow with the Human Rights Program; and James Cavallaro, executive director of Harvard Law School’s Human Rights Program, insisted on going.

Urso Branco has a violent history. Two prisoner uprisings in 2002 left at least 38 people dead. Another massacre occurred in 2004. These events earned Urso Branco an injunction, known as “provisional measures,” from the Organization of American States’ Inter-American Court of Human Rights in San José, Costa Rica.

The HLS group spent two days in September investigating the prison in preparation for a court hearing to consider whether to lift provisional measures. Entering more than 20 cells, they spoke with more than 100 inmates, and amassed documentary evidence that corroborated the prisoners’ allegations of gunfire and torture. They documented that guards routinely fired live rounds at prisoners as they cowered in their cells; some prisoners still had bullets lodged in their bodies months after being hit; and torture was systematic.

They were assisted by clinical student Alexia De Vincentis ’10, who did legal research off-site and later joined them in Costa Rica, where the team prepared a case against the prison.

Based on their findings and on presentations by attorneys for Justiça Global and Comissão de Justiça e Paz, two Brazilian NGOs also monitoring the prison, the court ruled, on Dec. 14, 2009, to maintain the provisional measures imposed. It ordered Brazil to implement all necessary measures to guarantee the life and physical integrity of the prisoners and prison staff.

It was a significant win. “We were mostly fighting an uphill battle in a context in which the court had lifted provisional measures in similar cases,” says De Vincentis.

OVERHEARD, UNDER OATH

Professors testify

The reason for the rescues during the crisis, such as AIG, or the TARP injections to forestall failures, was not to protect depositors of banks or the FDIC insurance fund. The reason was rather to avoid a chain reaction of failures set off by interconnectedness. Furthermore, this need for rescue does not depend on what activity gives rise to the potential bank failure. We will have to rescue banks whose failure will endanger other banks even if these failing banks are engaging in traditional activities. Mr. Volcker seems to imply that it is acceptable to rescue banks engaging in traditional activities. I disagree. Quite frankly, I do not think a taxpayer would feel better about rescuing a bank that made risky loans than be would rescuing a bank that engaged in less traditional risky activity.”

HAL SCOTT testifying before the Senate Committee on Banking, Housing, and Urban Affairs on Feb. 4 regarding the Volcker Rules, which aim to address some failings in the financial regulatory structure brought to light by the recent financial crisis.

Standard compensation arrangements in publicly traded firms have rewarded executives for short-term results even when these results were subsequently reversed. Such arrangements have provided executives with excessive incentives to focus on short-term results. ... In financial firms, where risk-taking decisions are especially important, rewards for short-term results provide executives with incentives to improve such results even at the risk of an implosion later on.”

LUCIAN BEBCHUK LL.M. ’80 S.J.D. ’84 testifying before the House Financial Services Committee at a hearing titled “Compensation in the Financial Industry” on Jan. 22.

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Breaking down barriers in the courtroom, workplace and community

The Women’s Law Association at HLS hosted “Women for Women: Advocating for Change,” on Feb. 19, a conference showcasing the contributions of women in the courtroom, workplace and community. Speakers included Illinois Attorney General Lisa Madigan, the New York Stock Exchange’s Peggy Kuo ’88 and former Secretary General of Amnesty International Irene Khan LL.M. ’79.

“It doesn’t matter your color or your gender—you just have to expect to work twice as hard, or three times as hard. ... Intelligence is going to get you just so far. ... Eventually you will find that you will hit a wall unless you roll up your sleeves and work really hard. ... Put yourself in the path of lightning ... don’t be afraid to take risks. Put yourself out there and take a chance.”

VALERIE JARRETT
Senior adviser to President Barack Obama ’91

“Women for women, advocating for one another, is the only thing that is going to change things in this world. We need to each remember that the success of women rises and falls on our ability to band together to demand equality, and when we divide against each other, we divide against ourselves and weaken our cause.”

DIANE ROSENFELD
LL.M. ’96
HLS lecturer on law

“You need to be able to beat the ‘old boys’ at their own game ... If you want to think outside of the box on your strategy, I think that’s great, but ... know the rules, plan your strategy and then execute your strategy in a way that can make you successful.”

SHARON JONES ’82
President of Jones Diversity Group and incoming president of HLSA

number of people whose lives they will touch during their public service careers.”

The creation of the Public Service Venture Fund is the latest step taken by the law school to offer new forms of assistance to students who are interested in public service careers. In November, Minow announced an increase in the availability of financial aid overall and a broadening of eligibility for the school’s loan relief program.

She also established 12 new Holmes Fellowships for students interested in postgraduate public service work. All told, financial support for students interested in public service has increased by $2.75 million this year.

To obtain support from the new fund, applicants will submit proposals explaining how the postgraduate grants will help them get started in public service. Minow said the fund will bolster the creative thinking of public-spirited law graduates at a time when the bar profession itself is becoming more entrepreneurial.

“The new venture fund is exactly in sync with that,” said Professor David Wilkins ’80, the faculty director of the Program on the Legal Profession and the Center on Lawyers and the Professional Services Industry at HLS. “It’s also in sync with the values emphasized in our curriculum, and with our pro bono ethos and our strong emphasis on clinical education, all of which encourage students to think creatively about designing interesting projects and approaches to helping people.”

“When jobs are especially hard to come by, the fund may provide fellowships in order to create jobs,” said Alexa Shabecoff, HLS’s assistant dean for public service. “It will also supplement salaries for graduates hoping to work for nonprofits that can afford to pay for only part-time positions. The fund will offer our students the ability to land the job of their dreams—or create it.”

The Public Service Venture Fund will be governed by a board of senior administrators, faculty members and alumni. Advisers helping as the school launches the fund are:

- SUSAN BUTLER PLUM, director of the Skadden Foundation Fellowship Foundation
- ALAN KHAZEEI ’87, founder and CEO of Be the Change Foundation
- REBECCA ONIE ’03, co-founder and CEO of Project HEALTH and winner of a 2009 MacArthur “genius grant”
- PAUL ROSENBERG ’79, a partner at the Bridgespan Group in Boston
- KEN ZIMMERMAN ’88, a partner at Lowenstein Sandler and chairman of the Lowenstein Center for the Public Interest
- ALAN JENKINS ’89, co-founder of The Opportunity Agenda and former director of human rights at the Ford Foundation