CLASS NOTES ISSUE

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CALL TO ALL READERS: LIBRARY LORE
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For more information, call the phone number listed for each event.

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Arthur T. Vanderbilt Lecture and Annual Dinner
Speaker: Prof. Andrew Kaufman '54
The Manor, West Orange, New Jersey
(617) 495-2600

November 3-7 Program of Instruction for Lawyers
Mediation, Advanced Mediation, and Negotiation Workshops
Cambridge
(617) 495-235

November 18-19 Ames Semi-Final Competition
Ames Courtroom, 7:30 p.m.
(617) 495-435

January 30, 1998 HLSA of New York City Luncheon in conjunction with annual meeting of New York Bar Association
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(617) 495-4698

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June 1, 1998 Alumni Spread and Class Day 1998 Cambridge
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For more information, call the phone number listed for each event.
In this issue we’ve brought our readers’ favorite section from the back to the front of the Bulletin and expanded our coverage.

Our thanks to those who wrote. We hope you’ll keep the submissions coming.

Nancy Waring, Editor

Class Notes compiled by
Linda Grant and Lori Ann Saslav
Lisa Grow, Summa Cum Laude

Lisa Grow '97 is the first woman in the history of Harvard Law School to graduate summa cum laude, and the first woman to receive the Fay Diploma, awarded to the student who maintains the highest average over three years at the School. The last summa graduate was Peter Huber '82, a senior fellow at the Manhattan Institute. Since 1950, four members of the current faculty have graduated summa cum laude from the School: Lewis Sargentich '70, Charles Nesson '63, David Shapiro '57, and William Andrews '55.

This June the School's top graduate began clerking for Judge Michael Luttig of the Fourth Circuit Court of Appeals in Alexandria, Virginia. Her first day on the job was a "baptism by fire"—Grow worked almost 44 hours straight on an emergency motion involving the parental notification provision of Virginia's abortion law. "The time pressure was pretty intense in law school, too," says Grow. "But what is different about the work I'm doing now is that it has a real impact on people's lives."

Another difference Grow notes and enjoys is the rapid-fire exposure to different fields—she has already worked on a few hundred cases, intensively on over a dozen—although she sometimes longs for the "perspective on an area of law that you get in law school and the leisure to see how the pieces fit together." But Grow says she's lucky to be working for "a very hands-on judge who gives a lot of immediate feedback, which is a very good way to learn. That doesn't happen in law school, except in small classes."

While Grow is HLS's first woman summa, this is not the first time she has earned highest academic accolades—she graduated summa cum laude in chemistry from the University of Utah in 1994. She grew up in Sandy, Utah, a suburb of Salt Lake City, the daughter of "very smart and very supportive parents" who contributed immeasurably to her academic success, she says. Grow's study habits, however, are not as impeccable as one might think. "I have a really bad long-term memory, so I mostly crammed for exams," she says.

When not cramping for exams or doing homework, Grow could often be found at the Lovley Owen, where she was an editor. She worked on two other student journals, the Journal of Law and Technology and the Journal of Law and Public Policy. Her 3L year, she was a member of the Harvard Defenders and also taught 1L day school at a Mormon church near Harvard Yard. Among Grow's favorite courses at the School were Federal Courts, Constitutional Law, and Professor Joseph Singer's seminar on Supreme Court Decision Making.

As for her free-time activities, Grow likes to play piano mostly classical music—and enjoys composing music. Her friends say she sounds like New Age. She enjoys camping, and vows to spend more time on the treadmill and stairmaster. A diehard "ER" fan, she rarely missed an episode during law school and rarely misses one now. Non-fiction is her chosen fare, and she is currently reading a history of China and a book on the Middle East.

Next summer Grow begins a clerkship for Supreme Court Justice Anthony Kennedy '61. Eventually, she will probably teach, but she is considering working in a law firm first and learns more toward litigation than corporate work.

She misses daily contact with her HLS friends and the flexibility of an academic schedule, and maps are, regrettably, a thing of the past. At HLS she stayed up late, sometimes grabbing a few hours of sleep in the afternoon. And dressing for work means "a dry cleaning bill that's out of this world," says Grow, who wore "scruffy clothes" at HLS, a holdover from college when her jeans had bare holes in them from chemistry experiments.

Does Grow have any advice for future women law students? "Believe in yourself, believe you can do it, and don't let anybody tell you otherwise." Nancy Waring

Advocating for Women Prisoners with AIDS

Cindy Chandler '95 thought her client would die in a prison cell. After the California Board of Prison Terms refused parole in September 1996 to Patty Contreras, a 34-year-old Mexican woman with end-stage AIDS who was serving time for second-degree murder. But six months later Chandler convinced the board to grant Contreras a compassionate release hearing, and after a year of legal and political advocacy on her behalf, the five-foot-tall, 75-pound woman inched her way out of the California women's prison at Chowschilla with the support of a walker last April. Contreras was the third life in California ever awarded a compassionate release. She is now living in a hospice, where Chandler visits her regularly.

Chandler is sole attorney at the Oakland-based Women's Positive Legal Action Network (Women PLAN), which provides legal services to HIV-positive women involved in the criminal justice system, or at risk for involvement.

According to Chandler, Contreras is in many ways typical of the 50,000 women in the California prison system, an estimated 9–10 percent of whom have HIV disease. "Most are mothers, and most are poor; the majority are in prison for property offenses such as petty thefts; and some, like Patty, for crimes they didn't instigate."

Contreras had served ten years of a 15-year-to-life sentence for her role in a robbery committed by her abusive husband, who had agreed to leave her alone if she would serve as a decoy. Contreras continued to have involvement after learning several months later that the victim had died of complications from a head injury sustained from a fall when Contreras' husband grabbed a television the victim was carrying. Contreras' confession was the only evidence in the case; neither her husband nor any other accomplice was charged. Contreras is one of five incarcerated women with HIV/AIDS for whom Chandler has won compassionate releases since she started Women PLAN two years ago with an echoing green foundation fellowship. She was also awarded a Kaufman fellowship by the Law School and, under the sponsorship of the San Francisco non-profit Legal Services for Prisoners with Children, she has applied for a number of grants to keep her project going.

"Incarcerated women with HIV are desperately in need of legal services," she says. "HIV infection is disproportionately higher in the women's prisons in this state than in the male. The conditions these women suffer under are horrendous. They are kept in segregation without access to prison programming or support groups. There are no infectious disease specialists, and no special diets or regular dental care or gynecological care. Many women die prematurely while locked up alone without access to family or friends."

In addition to pressing for compassionate releases, Chandler advocates for alternative sentences for women with HIV who are facing charges, and helps terminally ill women prisoners write their wills and make provisions for the disposition of their remains. "I wouldn't be surprised if I make the lowest salary of any HLS graduate," says Chandler. "The reward of the work is helping women like Patty Contreras get out of prison and die with dignity."

Nancy Waring

Cindy Chandler '95 (left) with her client, former prisoner Patty Contreras
Payam Akhavan LLM, ‘90 recently argued and won the first appellate case ever heard by the International Criminal Tribunal for the former Yugoslavia.

Hired as the tribunal’s first legal adviser soon after its creation in 1993, Akhavan was counsel this spring in Prosecutor v. Erdemović, in which a Bosnian Serb Army soldier, Drazen Erdemović, challenged his ten-year prison sentence for participating in the 1995 massacre of some 1,200 unarmed Muslim civilians. At his trial in 1996, Erdemović admitted to killing between 70 and 100 people and was convicted of crimes against humanity, the first such conviction since WWII. On appeal he claimed that he had acted under a threat of death from his superior.

The challenge for Akhavan was to come up with an effective argument against the duress defense, in the absence of clear or consistent international case law. “The tribunal is heir to an anarchistic body of international humanitarian law that has been lying dormant for half a century since the trials after WWII at Nuremberg and Tokyo,” he explains. “It’s a potpourri of civil and common law systems and doesn’t strictly follow the approach of any single jurisdiction.”

Akhavan based his argument on 50-year-old decisions of British and Canadian international tribunals, which drew on their own common law traditions in holding that duress cannot be a defense to murder. “We argued that it was an accident of history that judges from common law traditions decided most of the Nuremberg law, and that once a norm has been incorporated into the body of international law, it is unnecessary to inquire into its common law or civil law pedigree,” he says. “And we tried to discredit the several cases against us, arguing that they were either non-binding decisions by national courts or merely obiter dicta.” Akhavan views the Appeals Chamber’s September decision in favor of the prosecution as “very promising for the long-term development of international criminal law.”

“When I was writing my LLM. paper on the punishment of the crime of genocide,” he says, “I never imagined it would become such an important practitioner’s area.” Now, stationed in the Hague, Akhavan is writing his Harvard S.J.D. thesis on the subject, integrating a practitioner’s perspective with his research.

Reflecting on the complex human dimensions of Prosecutor v. Erdemović, Akhavan says it offers a window into the devastating effects of war on ordinary people like Drazen Erdemović. “As a Bosnian Croat married to a Bosnian Serb in the midst of a raging inter-ethnic war, Erdemović was in a terrible predicament. I certainly don’t think he should be exculpated, but he is not a bloodthirsty criminal or powerful leader. He joined the Bosnian Serb Army because he needed security for his family; he did not want to commit these atrocities.”

And while the political future of the tribunal is uncertain and its resources scantly, Akhavan persists “in the hope that the architects of Bosnia’s genocide will one day face justice.”

Nancy Waring
Covey's Fast Ride

"An exciting challenge at an extremely fast-moving company" is what Jay Covey '89 (J.D.) anticipated when she became chief financial officer of Amazon.com, "one of the fastest-growing technology companies of all time."

Open for business since 1995, the Internet-based bookseller offers more than 2.5 million titles to customers worldwide, plus on-line services including reviews, book searches, reading lists, and personalized customer notification of new titles. A visitor to Amazon.com's website can check out the latest books featured in Oprah's Book Club, read what writers have to say about their works, tour "miles of aisles" organized by category — all while wearing bathrobe and slippers.

Covey joined Amazon last December after four years as CFO at Digidesign, where she managed that company's initial public offering (IPO) and merger with Avid Technology. During the first week at her new job, she restructured employee stock option plans and began preparations for Amazon.com's IPO in May, which attracted intense media attention. "Because stock market windows are unpredictable, we had to be ready to move fast. I didn't take a full day off until after the IPO," says Covey, who also holds an M.B.A. from Harvard.

The CFO is so busy that she rarely has time to read. Her fiancé orders books for her via Amazon.com, and the stack continues to grow. While Covey browses in a traditional bookstore from time to time, she thinks the virtual version has unbeatable benefits. For instance: "When you go to a regular bookstore, you don't tap someone on the shoulder to ask, 'What do you think of that book?' Our site offers pages and pages of customer reviews, as well as author interviews, and we'll continue to enhance the shopping experience."

On-line commerce offers a clean slate, making Covey's job different every day. "We're not in an existing business, where we follow the rules others have established. We're creating a new form of business and business model. Internet time moves much faster than physical-world time, and Amazon.com is moving as quickly as anyone could ask," she says, before speeding off to another interview.

Julia Collins

Family Business Paves the Way

As the new president and CEO of Metropolitan Industries, Amy Renkert-Thomas '89 heads a family business started by her German great-great-grandfather and his brother, brickmakers from Bavaria who settled in the slate- and clay-rich Canton, Ohio, area in the late 1880s. Over five generations the business has evolved from the largest paving brick manufacturer in the United States to the leading U.S. producer of quarry tile, a brick red or gray flooring material used in fast food kitchens, schools, airports, and other pedestrian traffic areas.

Renkert-Thomas joined the company as vice-president-special assistant in 1990 at the invitation of her father, then the head of Metropolitan. Renkert-Thomas' father led her through what she describes as "an intensive one-on-one M.B.A. training program" until his retirement six years later. "We studied the Industry, created and implemented a strategic plan for the business, and worked on day-to-day and long-term problems. We made decisions as a team. We argued a lot. Sometimes I wanted to throw things, but I learned to manage our business."

Now as head of the company, Renkert-Thomas keeps the production of quarry tile profitable at a time when there is "a wide variety of ceramic and synthetic substitutes" for the product in the marketplace. "We're too little to take on the big companies making a wider variety of tiles, but there are plenty of smaller games out there, and my job is to evaluate them and get the company into them so that we are in the right place 20 years from now," she says. Today the company produces 32 million square feet of tile each year, enough to pave 556 football fields, and Renkert-Thomas plans to double production in seven years.

Her brother Gary serves as vice president of corporate development for Metropolitan, and president of The Meredith Collection, a division of the company started by their mother in 1986, which manufactures hand-carved, molded, and glazed tile, used to decorate kitchens, baths, and fireplace fronts.

"It's unusual for a family business to survive this long," says Renkert-Thomas. "We look at it as a family asset and consider it our responsibility to grow and expand the business for those in the next generation who choose to work in it. So in a sense we are really trustees. I think about this a lot as I try to position the company for the future."

Linda Grant

An employee of Metropolitan Industries loads tiles onto a kiln car. (lead: Amy Renkert-Thomas '89, the company's president and CEO.)

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PHOTOGRAPH: COURTESY OF METROPOLITAN INDUSTRIES, INC.

CLASS NOTES 11
Walking the U.S.A.

On July 4, former attorney Don Brown '89 set out from Boston on a 15,756-mile walk throughout the United States with stops in Alaska and Hawaii. Brown is walking 40 miles a day to raise money for charities, including the United Cerebral Palsy Fund, and to inspire others to pursue seemingly impossible goals. "I am walking in honor of my son, Louis, six, who was born with cerebral palsy, and the millions of individuals who have this condition," he says.

Brown, who hopes to set a new record for distance walking in the Guinness Book of World Records, is a high school drop-out who started college at 36 and graduated from the Law School at 44. A disabled veteran of the U.S. Marine Corps and former factory foreman, he was told that he would never walk again after his knees were crushed on the job.

Brown starts at six a.m. and often keeps on trekking until eight at night. En route he plans speeches he delivers in the mornings and evenings to private schools, Rotary Clubs, or NAACP groups.

"I've never been stronger," Brown told the Bulletin from a stop in Indianapolis, Indiana, 42 days and 1,700 miles into the trip. "My legs are in great shape and I've lost 40 pounds. More importantly, each day of this journey reinforces for me how extraordinary this country and its people are. The incredible support that I get along the way keeps me going." To monitor Brown's progress, visit his Website at www.walkingusa.com.

Linda Grant
Fascinated with the former socialist world since his student days, Daniel Arbesu LL.M. '87 got involved with early joint ventures in the former Soviet Union and privatization efforts in Czechoslovakia in the late 80s as an associate with New York-based White & Case.

"Czechoslovakia looked like a country that had the right structural components in its market to allow it to move fairly quickly into privatization," he says.

And move quickly it did. As a pioneer, Arbesu got White & Case in on the boom, opening the firm's Prague office in 1990. He generated so much business in the region that the firm leaped to the top of Privatization International's league of legal advisors in 1992 and 1993.

In the five years Arbesu spent in the Czech Republic, from 1990 to 1995, he advised the government on nearly every noteworthy foreign investment deal. His negotiating talent earned him the ear of the country's power elite and a partnership with White & Case just four and a half years after joining the firm.

Arbesu left White & Case in 1995, to participate as a principal in a buyout firm targeting enterprises in the Czech Republic and Russia. In 1996 Arbesu started Taiga Capital Group, a private equity investment firm primarily focused on buyouts and corporate turnarounds in the former socialist republics.

Tens of thousands of enterprises have been privatized in Russia since 1990, according to Arbesu, but only a small fraction of those have attracted Western investment. The reason? Investors are accustomed to evaluating Western-style enterprises with a complete set of corporate functions and financial information. But the vast majority of the region's privatized enterprises are not companies at all; they are factories designed for another economic system."

While these factories can produce high-quality products, he explains, they often lack basic manufacturing functions of financial management and sales. Arbesu sees a "unique opportunity for investors who know how to spot value to introduce the capital and talent these businesses need to survive the transition from socialist factory to Western company."

Arbesu believes that assets acquired for a fraction of their replacement cost will be sold to corporate industrial buyers at considerably higher valuations once the "transitional restructuring" is done.

He cautions like-minded investors, however, to understand the economic system and legacy of the companies they're considering buying. "The challenge in doing business in the transforming economies is to apply our Western standards and ethics, but to avoid inappropriately imposing the exact same mechanics we developed over the years for our own circumstances."

Molly Colin
**Fighting Fires in the Courtroom**

"It was a grueling ordeal and the most rewarding work I've ever done," says Jenny Ross '86, Nevada County deputy D.A., of her high-stakes win in the legal showdown The People of the State of California v. Pacific Gas & Electric Company.

On June 19 a Nevada County jury convicted PG&E, California's largest utility, of 739 counts of criminal negligence for failing to trim trees near its high-voltage power lines. The charges stemmed from a 1994 wildfire that destroyed 500 acres, a 19th century schoolhouse, 12 homes, and other property in tiny Rough and Ready, a historic Gold Rush town in the Sierra foothills. California Department of Forestry and Fire Protection (CDF) inspectors determined the blaze was sparked by a 21,000-volt PG&E power line. CDF spot inspections yielded another 738 counts against PG&E for tree-trimming violations.

"This is a small county and that was a very large fire, with enormous losses involved. Our office lacked adequate staffing, but we couldn't allow this egregious corporate misconduct to persist unchecked," says Ross, the lone prosecutor selected to fight an elite defense team. She joined the D.A.'s office in 1995, following two stints with Pillsbury Madison & Sutro in San Francisco, where she focused on environmental litigation, and a job at the Contra Costa County D.A.'s office doing criminal prosecution.

Prior to this case, PG&E was largely able to shift the burden of liability for power line fires onto its tree-trimming contractors. Ross pursued PG&E under the California Public Resources Code, which requires the utility to maintain specified clearances between vegetation and high-voltage equipment.

With the trial expected to last four months, and Nevada City courtroom space limited, the county converted a former nightclub called the Bouzy Rouge to house the proceedings. During the tenacious, arduous trial, Ross presented damaging internal PG&E communications and expert testimony that established that the utility diverted to shareholder profits some $60 million it charged ratepayers for vegetation maintenance, despite the fact that the company knew its inadequate vegetation maintenance expenditures were resulting in chronic widespread violations of the law, and numerous fires. "I put a large number of PG&E employees on the stand. They refused to talk prior to trial, so I subpoenaed them and hoped for the best. Except for one or two who blantly lied, they established corporate guilt across the board."

On July 18, the judge denied PG&E's motion for a new trial and ordered the utility to pay $2 million in criminal fines, with direct restitution for Rough and Ready fire victims to be determined. PG&E has since filed an appeal, which means Ross will have to postpone indefinitely her chances to draw on months of bankrolled comp time. Despite her longing for a vacation, the deputy D.A. says, "There are interesting legal issues involved and proper resolution of them is vital to reduce the threat to life and property during wildfire season."

Julia Collins

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**Legislative Lawyer**

As the principal author and negotiator for the 1992 Americans with Disabilities Act (ADA), Chai Feldblum '85, associate professor at Georgetown University Law Center since 1993, has helped to expand legal protection for people with disabilities, including people with AIDS. In September, the Employment Non-Discrimination Act (ENDA), the ADA modeled bill Feldblum authored that would extend antidiscrimination protection to gay men and lesbians in the workplace, lost in the Senate by one vote, a far narrower margin than expected from a conservative Congress, where Feldblum will fight again for ENDA this fall. Feldblum terms the role she has played in these battles "legislative lawyering."

"It's nothing I was taught directly at Harvard Law School or anywhere else," she says. "I research and draft legislation and serve as a conduit between the litigation lawyers and the lobbyists in the process. Legislative lawyering requires in-depth knowledge of the law (Feldblum is now recognized as one of the country's experts on disability law) and a keen understanding of politics, so that the legislative lawyer's advice is persuasive to strategists, lobbyists, and congressional staff."

As head of Georgetown's Federal Legislation Clinic, which she founded in 1993, Feldblum teaches students the combination of skills and strategy involved in developing legislation for public interest clients. Students work on a range of legislation involving welfare and immigration benefits, adoption, and disability issues for clients including Catholic Charities U.S.A., the Consortium of Citizens with Disabilities, and the Pediatric AIDS Foundation.

Part of Feldblum's mission at the clinic — the first in the country to focus on federal legislation — is to teach students to be careful readers of statutory law. (Raised an Orthodox Jew and schooled in Talmudic law, Feldblum has a special, long-standing respect for the text.) Under her supervision students learn to review every legal clause of pertinent documents and then "boil down hundreds of pages of research into a two-page memo for the client." Feldblum also teaches the art of compromise, wherein, she says, lies much of the creativity and intellectual stimulation of legislative lawyering. "If a certain five words in a piece of legislation are legally perfect, but will lose you 20 votes, you have to be able to sacrifice them, knowing they are perfect, for ten other words you come up with, less legally precise, but that will meet your political needs."

In addition to supervision at the clinic, Feldblum continues to work on the ENDA for the Human Rights Campaign, a national gay and lesbian rights lobby group. Feldblum feels confident she will get ENDA through the Senate and eventually through the House. "It's been a long, slow process of education and persuasion," she says, "but getting the bill into law is simply a matter of when, not if."

Emily Newburger
SAFE HAVENS

"I lived two lives at the Law School," says Rafael Rios '84. "I was a student taking courses and exams, and an addict injecting heroin regularly." Rios started using drugs at age 14 in the South Bronx projects. He was hooked on heroin, cocaine, and alcohol for 18 years, through college, law school, and private practice. In 1987 he finally quit. Two years later he joined the Daley administration as commissioner for development in Chicago's Department of Planning.

Today Rios is executive director of Safe Havens, a Chicago-based, privately funded chain of apartment houses for recovering alcoholics and addicts. He and three cofounders, also in recovery, opened their first 48-bed facility in Chicago in 1995; they now oversee 500 beds in Illinois, Indiana, and Wisconsin, with the aim of expanding nationwide.

Rios takes pride in undercutting the stereotype of "dismal, transient halfway houses." Safe Haven buildings are safe, clean, comfortable, and attractively furnished, with exercise equipment and other amenities. Each has residential managers. Children are welcome to visit.

Residents stay as long as they like, provided they complete prescribed treatments, participate in a 12-step program, attend in-house, peer-run group sessions, and remain sober.

"We welcome a wide social strata, from blue-collar workers to doctors and even lawyers," says Rios. "Safe Haven has the best record for recovery in the nation," according to a study by Northwestern University School of Medicine. "We've created a critical mass of people who are doing very well in recovery, which has a strong grass-roots impact on strengthening community fabric." Rios was recently awarded a fellowship by Boston University's School of Public Health, to address issues surrounding substance abuse and recovery.

He recalls his own juggling of work demands and drug cravings. While working as a transaction attorney he often used alcohol publicly as a cover for his secret dependence on IV drugs, since drinking was socially acceptable. He remembers a particularly tense time following a closing in L.A. for a TV station acquisition. "It was going through the documents in a conference room, so far gone from drugs, drinking, and lack of sleep that I could barely conceal my condition."

Soon afterward Rios entered a treatment program for four months, followed by a strict regimen of daily 12-step meetings. He learned the hard way how vulnerable newly sober people are. "Fresh from treatment centers, they need sane and safe living environments, till they can take care of themselves." However, the advent of managed health care, reduced treatments, and shrinking hospital stays force many to return to where they lived as addicts, Rios says. Safe Haven was his creative response.

HLS faculty and fellow students never caught on to his secret, he believes. "I didn't fail any of my courses and I suspect I even got some A's here and there." In fact, Rios managed to detox sufficiently to participate in the Law Review writing competition, becoming one of some 20 finalists. "But during the last two days we competed my addiction kicked in, and my final product was not as good as it should have been. I still regret that."

Julia Collins
Lee's Winning BET

In the late 1970s corporate law was not thought to be relevant to the minority community, says Debra Lee ’80, president and chief operating officer of Black Entertainment Television Holdings Inc. (BET). In fact, when she ran BET's legal department in the mid-1980s, she recalls, it was hard to find minority attorneys in corporate law.

But as the number of minority companies in the United States has increased, so has the demand for minority lawyers—including corporate counsel.

Lee’s pioneering efforts were recognized this June when she was the keynote speaker at the first annual dinner and reception of the Minority Corporate Counsel Association in Washington, D.C. The organization is a national, non-profit organization created to promote the advancement of attorneys of color in corporate law departments.

Lee joined BET as vice president and general counsel in 1986 after nearly five years with the Washington, D.C.-based communications law firm Stetino & Johnson. She started the legal department at BET, and as that department grew, her responsibilities in the business area expanded. Eventually Lee, who also holds an M.P.P. from the Kennedy School of Government, became head of business development. She was promoted to president and chief operating officer in 1996.

Since Lee joined BET, the company has grown significantly, with new offshoots such as BET Weekend Magazine, MSBET Website, BET Soundstage Restaurant, and the G-II Apparel line. And not long ago BET was the first black company to go public, paving the way for others, according to Lee. They are no longer a small cable network, but a global multimedia company, she says.

Since her promotion Lee has been involved in the launching of BET on Jazz: The Cable Jazz Channel, for domestic and international markets, and BET Movies. “We try to keep our finger on the pulse of what’s going on in the industry in general and try to represent the interests and needs of African Americans in the industry,” she says.

Molly Colvin
Alaska's Landlord

Deborah Williams '78 has been ennobled of Alaska's beauty and untamed wilderness since a family camping trip to the state when she was six. Today as special assistant to Secretary of the Interior Bruce Babbit '65 she is charged with resolving land and resource disputes for the state's 3.5 million acres of national parks and refuges and 90 million acres of other federal public lands. Most of the parks and refuges were created 31 years ago by the Alaska National Interest Lands Conservation Act (ANILCA), an historic piece of legislation that Williams worked on while in the Department of Interior Solicitor's Honors program in Washington, D.C., during her first years after law school.

A former attorney with a background as an environmental advocate and a founder of the Harvard Law School Environmental Law Review, Williams has been praised by both developers and environmentalists for her consensus-building skills.

During the past three years she has been at the center of escalating controversies involving such issues as federal subsistence management of fish and game, the Trans-Alaska pipeline, and road development through prime refuges and park habitats. One of the most intense current debates concerns whether to open the National Petroleum Reserve-Alaska, a 23-square-mile block of land at the northernmost edge of the United States, to commercial oil leasing. An important ecological resource and a potentially rich source for oil, the reserve is also home to 6,000 Alaskan natives.

"The Department of the Interior must weigh this important natural resource, while keeping in mind Alaska Natives' concerns that oil drilling might impede hunting or cause other damage to the environment in which they live," says Williams, who is arming the area with Babbit this summer.

When she is not in the field, Williams is on the phone, handling as many as 50 calls per day, frequently organizing large conference calls to coordinate activities among numerous Department of Interior bureaus on subjects from Indian affairs to minerals management. She keeps communication lines open between local, state, and federal officials on the latest resource management issues.

"How we manage and protect the land in Alaska has an impact on the lower 48 states and other parts of the world," says Williams, noting that 88 percent of all U.S. refuge land, and 70 percent of the U.S. national parks, are located in the state.

"Abundant wildlife including over 100 million migratory birds who winter in places like South America, Mexico, Florida, and south Texas make their home in regions of Alaska."

Says Williams, "Where else but in Alaska could I find the challenges and excitement of playing such a central role in helping to manage some of the world's most important ecosystems?"

Linda Grant

A Revolutionary Brewer

C. James Koch '78 of the Boston Beer Company (BBC) and producer of Samuel Adams beer brews less than 1 percent of the beer in America, but he heads the country's largest "microbrew" beer company, bigger than the next five competitors combined. Koch founded BBC in 1985 after earning a J.D./M.B.A. from Harvard and enjoying a successful consulting career with Boston Consulting Group.

"I set out to create a revolution in American beer, to show American beer drinkers that a small American brewery could make world-class American beer," says Koch, a sixth-generation brewer, who uses a family recipe for Samuel Adams beer.

Koch's company is now the tenth biggest brewer in the United States. Sales have increased steadily at a rate of 25 percent to 65 percent per year. The company went public in 1995, and its stock is listed on the New York Stock Exchange. Time magazine named Samuel Adams "Best Beer of the Decade" in its 1990 New Year's issue. BBC's beers are available in all 50 states and in Germany, Sweden, the United Kingdom, Canada, Ireland, and Japan.

But Koch's success has not been without incident. Last year his company was the subject of attack advertisements by Anheuser-Busch, producer of about 50 percent of America's beers, including the market leader, Budweiser. Anheuser-Busch accused BBC of misleading consumers by claiming its beer is produced by a local brewery when, Anheuser-Busch alleged, it actually is produced by contract brewers throughout the country. BBC filed a complaint against Anheuser-Busch about the ads with the Better Business Bureau, and after one of the longest cases in its history, the Bureau ruled in April in favor of BBC, calling the Anheuser-Busch ads inaccurate and ungrounded. Did Koch's legal background help play a part in the victory? "If there's one thing I learned from law school, it's that a man who represents himself has a fool for a client," says Koch.

"I knew enough to hire a lawyer."

Michael Chmura
Farmworkers in California's San Joaquin Valley have been tuning in to Hugo Morales' Fresno-based radio station since 1980. Founded by Morales '75 to empower poor farmworkers, Radio Billingie has grown into a news and information network for Latinos in more than 80 cities and towns throughout the United States, Puerto Rico, and parts of Mexico. The only Spanish-language programming source in the public radio system, Radio Billingie broadcasts primarily in Spanish and English, but in keeping with the station's mission to "foster multicultural understanding," some programming is in Hmong, Portuguese, and Mixtec, an indigenous language spoken in Morales' hometown, Oaxaca, Mexico.

Morales came to California's Sonoma County from Mexico with his migrant farmworker parents in 1958. In 1964, his brother, Cándido, began hosting a Spanish-language program, and Morales saw the potential of public radio. "Just about every farmworker in Northern California was listening to him," says Morales. "Spanish radio programming seemed like a good way to reach people who do not read or speak English. It was a totally new concept."

Following his years at Harvard College and Harvard Law School, Morales taught at Fresno State University. Later he began training farmworkers and college students in radio programming, and led efforts to raise money to start his station. Three years ago Morales received a MacArthur Foundation grant recognizing his radio innovations. "Money from our major sources, the National Endowment for the Arts and the Corporation for Public Broadcasting, was drying up that year," says Morales. "The MacArthur grant allowed me to continue my work."

Today Radio Billingie's roster of programs includes Noticiero Latino, an hourly national and international Spanish news service, Música Nortena, a Mexican-American music show, and an "oldies" rock and roll show.

Two years ago the station launched Linex Alberita, the first Spanish-language talk show on public radio in this country. Via an international toll-free line, listeners share ideas and personal experiences with talk show hosts knowledgeable about welfare reform, health issues, the arts, and other subjects. "Our hosts inform, educate, and, most importantly, relieve anxiety on topics of pressing concern," says Morales.

The future looks bright for the station. "As computers, satellites, and telephone data transmission equipment become ever more affordable, we will be able to reach more communities throughout the continent," says Morales, who hopes that within three years, nearly six million listeners will be tuning in.

Linda Grant.
Outside his Boston courtroom, U.S. District Judge Mark L. Wolf ’71 can’t discuss the Mafia-related case over which he is presiding. But inside the courtroom, Wolf’s voice has been anything but silent.

In May, acting on a motion to suppress electronic surveillance evidence in a major RICO case, Wolf ordered a resistant Department of Justice to disclose whether James "Whitey" Bulger, a fugitive defendant in the case, and Angelo "Sonny" Mercurio, a former fugitive in a related Mafia case, were actually FBI informants rather than targets of investigation — as they had been characterized in government applications for court authorization of wiretaps and bugs. The Department of Justice ultimately acknowledged that Bulger had been an FBI informant and that, furthermore, a recent review indicated Bulger was at least tacitly authorized to participate in Mafia policymaking — one of the major charges against him.

After the Department of Justice refused to disclose Mercurio’s status, he revealed during questioning by Wolf that he had been an FBI informant in connection with a 1969 Mafia Induction ceremony (described by some as "a scene out of The Godfather"), which federal agents intercepted in wiretaps. Mercurio fled shortly before he was charged with participating in the ceremony.

The intercepted Mafia ceremony, which Wolf refused to suppress in a prior case, helped to convict Raymond Patriarca, the Boss of the New England family of La Cosa Nostra, and many other organized crime figures.

Stephen "The Rifleman" Flemmi, one of the other defendants in the present case, also disclosed that he had been an FBI informant, and claimed that he, Bulger, and Mercurio had been tipped off concerning their forthcoming indictments so they could flee rather than face the charges.

The current case has attracted national attention and has wide implications for the use of government informants. The defense has filed motions to dismiss the case in addition to its motions to suppress electronic surveillance evidence. "It is very much a landmark case," says HLS Professor Alan Dershowitz, who plans to teach the case in his legal ethics course this fall. "It is also very much a case of a courageous judge, who was himself a prosecutor, holding prosecutors to the same standards that all lawyers must satisfy."

Wolf was appointed to the federal bench in 1981. A 1962 recipient of the Attorney General’s Distinguished Service Award for his prosecution of public corruption in Massachusetts, Wolf is knowledgeable about the use of informants in law enforcement. In fact, earlier in his career, as a special assistant to Attorney General Edward Levi, he helped write Department of Justice guidelines on their use.

In the case before him, Wolf found that the defense raised substantial questions regarding whether the government engaged in serious misconduct. Embarking on the evidentiary hearings necessary to resolve those questions, Wolf stated in court this summer that at this point, "This whole case is about the credibility of what the United States tells federal judges."

Molly Colin

Mark L. Wolf ’71

Gropper’s Push for Pro Bono

Although Allan Gropper ’69 is pleased to be one of this year’s recipients of the American Bar Association’s Pro Bono Publico Award, he’s not celebrating yet. The pro bono case that meant the most to him, says the White & Case bankruptcy partner, was an unsuccessful class action to establish the right to counsel for tenants facing eviction in New York City.

Gropper chairs his firm’s pro bono committee and is active in the Association of the Bar of the City of New York, where he has served as vice chair of the Project on the Homeless and chair of the Steering Committee on Legal Assistance. He clocks prodigiously more than the ABA’s suggested 3 percent of a lawyer’s working hours on behalf of those who would otherwise go without representation.

Relatively few practicing lawyers, however, meet the ABA’s pro bono standard, and only Florida has adopted a mandatory reporting requirement. Gropper believes that even if reported pro bono hours were higher, the system would still be limited in the types and number of cases volunteer lawyers could manage effectively.

Gropper and other attorneys have a plan they believe is urgently needed: additional funding from which lawyers with the right expertise — in housing law, or domestic violence, or immigration matters — would be paid to represent the indigent. Funding could come from, say, increased lawyers’ registration fees, a surcharge on judgments, a percentage of punitive damages won by litigants, settlement funds not paid out in class action suits, or monies contributed by lawyers in place of pro bono work.

In the current climate, however, Gropper doesn’t feel particularly sanguine about the plan being quickly embraced. The Legal Services Corp. has seen its federal funding slashed by one-third since 1992, primarily the result of a more conservative Congress. And severe restrictions now limit the kinds of cases agencies receiving federal funding can take — no class actions; no cases involving attorney’s fees; no challenges to welfare legislation. So despite the desperate need, the Legal Aid Society of New York, for instance, now refuses to accept federal funds.

This brings Gropper back to that attempt to establish for civil cases what is already accepted for criminal law: an individual’s right to counsel. "The courts," he says, "must address, from a constitutional perspective, the fact that until we have equal access to justice, our judicial system will be flawed." In the meantime, he plans to press on to increase the funding for legal services at the federal, state, and local levels, and to improve the efficiency and effectiveness of pro bono work.

Janet Hawkins

Allan Gropper ’69
Merger negotiations between the two computer networking companies were turning into a marathon session. Silicon Valley mergers and acquisitions specialist Gregory Gallo '69 watched the hours tick by. It would be the third largest merger in Silicon Valley history if the deal between Ascend Communications Inc. and Cascade Communications Corp. was cinched. On the line was a stock swap worth approximately $3.7 billion. At one point tempers flared, and Gallo, who led the legal team representing Ascend, became the shuttle diplomat between opposing counsels, helping to settle differences. Finally, after 36 hours, a deal was reached. The merger officially closed on June 30, another plum in Gallo's many-feathered cap.

"I see the role of the lawyer in these transactions to be a diplomat who holds the parties together while representing the client effectively," says this partner at the Palo Alto powerhouse, 275-lawyer firm of Gray Cary Ware & Freudenrich. Gallo is Gray Cary's leading dealmaker.

His track record has not gone unnoticed by big New York firms. They've tried to lure Gallo and raid-making partners like him away from Valley firms. But Gallo has said no thanks. "We've grown up with our clients," he says. "I know the people, and most of us have become relatively sophisticated in understanding the technologies of our clients, which enables us to be more effective."

In the often tense world of mergers and acquisitions, it's not easy to close a big deal and come away from the table well liked by all parties. But Gallo manages. His secret? "I don't think you have to be unpleasant to be tough." All too often, says Gallo, business lawyers are too stolid in their approach. They tend to overnegotiate relatively minor points and lose sight of the overall transaction goal. And sometimes it's in the client's best interest to walk away from a deal. "You can't negotiate well if you haven't got the ability not to do a transaction," he says. "You have to be able to step away from it if appropriate."

Molly Colin
The Contended Attorney of Aroostook County

From his office in a converted Colonial home on Main Street, Philip Parent ’67 overlooks the St. John River, the international boundary that divides his tiny, tightly knit hometown of Van Buren, at Maine’s northernmost tip, from its sister town of St. Leonard in Canada.

For 30 years Parent has cultivated his solo practice in this remote and pristine setting, providing distinguished personal legal services to an increasingly diverse group of clients. Many, like Parent, speak both French and English, reflecting the region’s Francophone heritage.

"Phil was the only member of our class who went into solo practice," says Professor Peter Murray ’67, a fellow Maine resident. "His name is now revered in the St. John Valley."

The St. John River Valley is located in Aroostook County — Aroostook means "beautiful river" — which encompasses an area as large as Connecticut and Rhode Island combined. Aroostook County’s population of approximately 80,000 includes 50 practicing lawyers, many of whom are solo practitioners like Parent.

"Being close to nature, and practicing in a rural environment with people I care about and am deeply fond of, has given me a greater understanding and appreciation of what is truly important," says Parent. "I enjoy helping people prevent and solve their legal problems. My practice has allowed me to accomplish small things, always striving to do them in great ways."

While Parent’s earlier caseload reflected the "jack-of-all-trades" nature of general practice, his professional interests have gravitated toward commercial law, probate matters, and real estate. He provides legal services to the neighbor down the street, family businesses, regional ventures, and multinational corporations that include a Canadian health care corporation and Canadian food processing conglomerate.

Some grand traditions of country lawyering endure, he says. When the First District Court Judge Ronald A. Daigle rides U.S. No. 1 from Fort Kent south to Madawaska through Van Buren and on to Caribou, or when the Second District Court Judge David B. Griffiths travels from Presque Isle to Houlton, the county seat, and returns, most lawyers in the county, including Parent, join in and ride circuit too.

He invites anyone interested in rural lawyering to get in touch. "A good time to visit is the belle nuit de la Rivière St. Jean, which is mid-summer, during potato blossom time, or for the hearty soul, mid-winter, when sledding and skiing are the great leisure pastimes."

Julia Collins

Goodbye, Joe Camel

In 1994, tobacco control activist and Northeastern law Professor Richard Daynard ’67 established the Tobacco Products Liability Project (TPLP) — a national organization to facilitate lawsuits against the tobacco industry housed at Northeastern University.

"When I started the TPLP with other lawyers and doctors, we found that individuals across the country were bringing lawsuits, but there was no coordination, no consolidated effort," says Daynard, who chairs the TPLP. In 1985 TPLP organized the first nationwide conference on anti-tobacco litigation, and since then it has continued to serve as a clearinghouse for tobacco control.

Daynard’s many writings on legal issues in tobacco control began with a 1988 article for the journal of the National Cancer Institute focusing on litigation as a cancer control strategy. He edits the Tobacco Products Litigation Reporter and has lectured on tobacco control policy to lawyers, doctors, and public health professionals in ten countries, sketching out goals, such as raising prices to discourage consumption, delegitimizing the industry, and winning restitution for victims. He has also been a frequent and vigorous commentator in the press on tobacco litigation.

Finally, 13 years after Daynard founded TPLP, it seemed there was cause to celebrate for anti-smoking activists. In June, a group of attorneys general announced that a landmark

Richard Daynard ’67

September, the President called for improvements to be made in the proposal, some of which echoes Daynard’s concerns.

Regardless of the outcome, Daynard sees much work ahead. "If a revised agreement can’t be reached, litigation will continue. Even if the parties renegotiate an acceptable agreement, it’s likely litigation will be necessary to enforce it."

Daynard hopes that the tobacco industry’s unprecedented concessions will encourage smoking activists in other countries. "Europeans don’t see their system as conducive to a battle against the tobacco industry," he says, "but they shouldn’t be discouraged. For the first 40 years of American anti-smoking activism, our legal system didn’t seem particularly amenable either."

Emily Newburger
The Legal Eagle Scout

In May the Boy Scouts of America awarded the Silver Buffalo, its highest honor, to Robert Reynolds '64 for his service to youth nationwide. The Silver Buffalo joins Reynolds' Silver Beaver, Silver Antelope, and Distinguished Eagle Award, previously bestowed by the Boy Scouts on their stalwart volunteer.

Reynolds has enthusiastically supported Scouting since he first donned a Cub Scout uniform at age nine. After graduating from HLS and starting practice, he decided to give back to his community through Scouting, eventually serving as Scoutmaster of his son Stephen's troop, Explorer program adviser, board member, council president, and president of the 16-state central region. Today he is a member of the Boy Scouts' national executive board and chairman of the central region committee for the upcoming World Jamboree.

"I still try to conduct my life by the Scout oath and law," says Reynolds, a partner at Barnes & Thornburg in Indianapolis, where he heads the international practice group. "The values orientation of Scouting — its emphasis on duty to God, country, and self — meant a lot to me when I was a child, and I continue today in most situations, including my work, to pattern my behavior along these ethical standards."

He treasures his merit badge sash, decorated with the 21 badges he earned during his rise to Eagle Scout rank, mastering Scouting skills from knot-tying to first aid to trailblazing. "I can still start a fire with a single match," Reynolds chuckles. He especially benefited from Scouting leadership opportunities, whether planning group menus "and getting kids to agree on what to eat" on Boy Scout camping trips, or as senior patrol leader of Scout Troop 21.

Reynolds' public service reaches far beyond the Boy Scouts organization. He is active in many educational, cultural, and community organizations in Indianapolis. "But what is unique and marvelous about Scouting," he says, "is that it does a tremendous amount of good at such a tiny cost. Here in central Indiana alone, a mere 29 professionals oversee 12,000 adult volunteers who bring the Scouting program into the lives of 40,000 kids."

Julia Collins

E-mail Your News
HLGTLN@LAW.HARVARD.EDU
If you think that Currier & Ives prints are has-beens in the art world, Marshall Berkoff '62 may change your mind. According to the labor lawyer and collector who owns "hundreds of the prints," there are probably 2,000 collectors of C&I lithographs today.

The 8,000 nostalgic scenes churned out for the masses by Nathaniel Currier and James Ives in the mid to late 19th century cost as little as 15 cents and no more than three dollars each when first printed. "Since then the market for the prints has been consistently upward," says Berkoff, noting that depending on size and condition, they can cost anywhere from $500 to $50,000.

Berkoff made his first Currier & Ives purchase 35 years ago, when he took time off from his HLS studies to attend a New Hampshire auction. Hoping to make a lucrative sale, he took the print to Goodspeed's, a rare-book shop in Boston, only to find that he had bought a worthless reproduction. But at Goodspeed's, he saw fine original C&Is. Struck by the "wonderful simplicity and clarity" of the prints and the idyllic way they captured America from the 1850s to the 1870s, he soon became a dedicated collector. Berkoff acquired his first authentic print, "Midnight Race on the Mississippi," in trade for a tape recorder that he had imported from Germany in a short-lived entrepreneurial effort while a student.

Berkoff even planned his vacations around the pursuit of C&I prints, traveling to places throughout New England, New York, and the South and West. "A lot of the fun of this hobby is that it gets you in touch with people with whom you share a common bond," says Berkoff. Prints such as the rare clipper ship image "Adelaide" have come to him recently through individuals who have heard about his interest or seen the recent Forbes article about Berkoff and his collection.

While some might debate the artistic significance of the prints, Berkoff feels that he could stack the best C&Is against the best of the classic art prints. Says Berkoff, "And if you can get an art historian in an honest moment they would agree."

Berkoff displays his collection at his home and along the halls of Michael, Bent, & Freedman in Milwaukee, the firm he joined after graduation. He particularly likes transportation, railroad, and clipper ship themes as well as whimsical and American pastoral scenes. His favorite image? "I don't know," says Berkoff. "If I had to get out of the house because of a fire, I would probably just grab a handful and run!"

Linda Grant
The Confusing Brothers Levin

Representative Sander Levin ’57 and his brother Senator Carl Levin ’59 (pictured above in an undated family photo) have been look-alikes since childhood. But now that the two both report to work on Capitol Hill, confusion abounds. Whether it’s the congressional physician, who tried to treat Carl for Sandy’s bad knee, or the Congress member who sent Carl a letter congratulating him on his reelection to the seat in the House that Sandy had just won, people get their Levens mixed up. Far from being perturbed by the confusion, the Michigan democrats — who are close friends, squash partners, and each other’s political advisers — seem to enjoy it. Carl keeps track of the most egregious instances of Levin swapping in what he calls “confusion file.” And in addition to documenting the confusion, the Levens seem not averse to adding to it on election night in 1996, for example, Sandy went to Carl’s campaign headquarters and donned his brother’s half glasses, the only accessory that helps people tell the two apart.

Emily Newburger

Patrolling the Information Superhighway

The Internet was a hot topic at the Salzburg Seminars this summer, largely due to the fact that Jack Brown ’52 led the discussion, during a core session for an international audience, on “Developments in American Law.”

The founder of Brown & Bain in Phoenix, Ariz., and an authority on intellectual property rights and high-tech legal issues, Brown began his career at the dawn of the computer age, when room-sized behemoths ran Paleolithic programs. In the intervening 40 years, his level of expertise has accelerated alongside the development of computer technology.

Beginning in 1988, Brown represented Apple in Apple Computer, Inc. v. Microsoft Corp., a case in which he argued that Microsoft had appropriated the “look and feel” of Apple’s Macintosh operating system for Microsoft’s Windows 2.03 and 3.0 programs. Several long delays permitted “the ride to turn against copyright protections,” says Brown. “In 1991 a case in New York effectively vilified copyright law for computer programs.” As a result, the Apple case never went to trial.

Arguments against the protection of computer programs rest on finely articulated differences between an “idea,” which cannot be protected legally, and the idea’s “creative expression,” which can, Brown explains. Microsoft contended that more than 90 percent of the components of the Macintosh interface were licensed to Microsoft for Windows 2.1 in 1985, and that Microsoft then utilized these components to create its later versions. “It’s like determining that a Picasso is not a unique work of art since it can be broken down into a lot of colors and shapes that reside in the public domain,” says Brown.

The fact that legal protections pertaining to creative works were not applied to computer programs in the United States did not prevent the government from seeking these protections abroad. “U.S. diplomats,” Brown continues, “have gone all over the world successfully persuading other countries to put a provision in their law that says computer programs shall be treated as literary works under their respective copyright laws. But we undercut that position at home.”

Brown thinks that eventually U.S. courts will have to reevaluate copyright laws as they relate to computer technology.

Having stood as a vigilant force for order on the shadowy frontier of high-tech law, Brown is well positioned to navigate the even murkier region of cyberspace, which poses profound questions for constitutional law. For one, he is closely following the debate between the demand for the right to publish anonymously on the Internet versus “the counter-demand to hold responsible those who disseminate speech that is false and defamatory or that incites hatred and violence.” And advertising and merchandising on the Net will be a much bigger issue in the future, he observes, since that’s where the money will be made. In fact, Brown will argue in his next case that Ticketmaster’s Website was misappropriated for advertising and marketing purposes. His adversary? Once again, the industry giant, Microsoft.

Janet Hawkins
Deconstructing an Airline Disaster

Lee Kreindler '49 shares his Park Avenue office in New York with a couple of Boeing 747 fuel pumps that Kreindler & Kreindler's aviation experts tested in the Mojave Desert a while back. The pumps were shown to contain six defects, any one of which could potentially bring down an airliner. Kreindler believes that's what happened to TWA 800 on the night of July 17, 1996, when it exploded off Long Island, killing all 230 people on board. And that's what he told "Larry King Live" two days after the crash, when nearly anyone with an opinion — including Boeing and TWA — was trumpeting the theory that the plane had been destroyed by a missile or bomb.

Kreindler has been successfully litigating airline disaster cases on behalf of the victims since 1992, when Kreindler & Kreindler meant Lee and his father, Harry. (Row, Lee's son, James, is a partner.) On his first aviation case, the 28-year-old showed such a passion for pursuing complex engineering puzzles to their solution that his father — "a well-known trial lawyer," says Kreindler, "and a wonderful man" — told him, "No case will ever reward the kind of effort you're putting into this one."

Having secured $500 million in passenger claims in the 1998 bombing of Pan Am 103, Kreindler confidently counters the prevailing wisdom about the crash of TWA 800. "The Lockerbie bomb brought Pan Am 103 down because it exploded at 32,000 feet in high winds," he says. "It punctured a small hole in the fuselage, and that permitted the winds to tear the structure apart. TWA 800 exploded its report about the faulty pumps, Boeing issued a service bulletin requiring an unprecedented inspection of the nearly 3,200,747 in its fleet. "I wouldn't be surprised if in time Boeing admits responsibility," says Kreindler, "and we will have played a major role in focusing on the truth."

Janet Hawkins

ABA's Pied Piper

Jerome Shestack '49 has entered the most fertile of the three phases involved in heading up the American Bar Association, which include a year each as president-elect, president, and past president. "It's been likened to being a mushroom," says the chair of litigation at Wolf, Block, Schorr & Solis-Cohen in Philadelphia and — since August — the ABA president. "The first year they keep you in the dark, the second year they cover you with mure, and the third year they can you."

If Shestack's sense of humor doesn't carry him through, his appetite for justice probably will. Having grown up poor in Atlantic City and Philadelphia, he has earned the sobriquet "pied piper of just causes" exercising his legal skills on behalf of the poor and underrepresented. In the sixties he lobbied against the segregation policies of George Wallace and helped found the Lawyers' Commission on Civil Rights. He assisted in creating the Legal Services Corp. under President Nixon and, later, under Carter, served as ambassador to the UN Commission on Human Rights. The ABA's Section of Individual Rights & Responsibilities owes its existence in part to his determination, and, currently, he is championing the formation of an international criminal court to handle human rights abuses. None of which, he points out, has interfered with his successful representation of a corporate giant or two, among them Westinghouse and the three major television networks.

At age 72, Shestack intends to lead the ABA in raising the level of ethical discourse in the legal profession and in restoring those qualities that make it a "learned and noble calling." His six-point plan, he says, is a response to the concerns of the membership, emphasizing standards of ethics and integrity; dedicated service to clients; serious continuing education (which might mean anything from an active effort to grow personally and professionally to "baking the Program of Instruction for Lawyers courses that Harvard Law School offers every year"); improvements to the justice system and the rules of law; pro bono service; and "meaningful civility" and respect for authority.

With its $385,000 members and $120 million annual budget, the ABA might be regarded as something of an authority itself, but Shestack says the authority to which he refers in his six-point plan of professional values includes "advancing individual worth and dignity, which is the critical authority in humanity." If that's an attitude not shared by some lawyers for whom "the bottom line is the real deal" — as Shestack wrote in the National Law Journal last July — it's also uttered by a seasoned crusader. Recently he has had to fend off criticism by some members for his pro-affirmative action stance, having now appointed a greater percentage of women (15 percent) and minorities (17 percent) to association posts than any ABA president before him. For Shestack, the criticism is merely part of the metamorphosis — his and his profession's. "Getting to higher moral ground," he says, "is no casual undertaking."

Janet Hawkins
**Blackmun's Film Debut**

Supreme Court Justice Harry Blackmun '32 joined veteran actors Anthony Hopkins and Morgan Freeman, and rising star Matthew McConaughey on location in Mystic Seaport, Connecticut, this past April for the filming of the new Steven Spielberg movie *Amistad*, due to be released in December.

*Amistad* chronicles the rebellion in 1839 of 53 African slaves aboard the Caribbean-bound Spanish slave ship, *Amistad*, and the ensuing U.S. Supreme Court case, *United States v. Amistad*. Justice Blackmun plays his predecessor on the Court, Justice Joseph Story, who presided over the case. (Fittingly, during his tenure on the Court, from 1817 to 1845, Blackmun occupied the seat that Story held from 1812 to 1845; Story was also the first Dane Professor of Law at the School.)

After the slaves seized the ship on July 3, 1839, they demanded that their captors head back to Africa. But the *Amistad* wound up off the coast of Montauk Point, Long Island, where it was spotted by a U.S. Navy ship. The slaves were taken to New Haven and charged with the murder of the ship’s captain and cook. The U.S. district court in Hartford ruled that they were being held illegally and were not liable for criminal acts committed in attempts to gain their freedom. President Martin Van Buren insisted that the case be appealed to U.S. Supreme Court, where Story upheld the lower court’s opinion.

In his cameo appearance, Blackmun reads Story’s 1841 decision ruling that the slaves should be freed and returned home. Former President John Quincy Adams (Anthony Hopkins) and young lawyer Roger Baldwin (Matthew McConaughey) argue on the slaves’ behalf, and Morgan Freeman plays the leader of New England’s growing abolitionists’ movement, which raised money for their defense.

Justice Blackmun is “honored,” he says, to be in “Mr. Spielberg’s significant film about our nation’s struggle with slavery.”

*Nancy Waring*
Common Sense and Uncommon Wisdom

A TRIBUTE TO JUSTICE BRENNAN

Associate Justice William J. Brennan, Jr. 3d died on July 24, at age 91. Until his reluctant retirement for health reasons in 1990, Brennan joyfully served on the highest court for nearly 34 years.

In 1950 the death of his father almost derailed Brennan’s law school studies, but an HLSA scholarship enabled him to graduate. He returned after to the School, whether to celebrate the golden anniversary of the Harvard Legal Aid Bureau, to which he belonged as a student; to present the Oliver Wendell Holmes Lecture in 1966; or to judge the Ames finals.

We asked Professor Laurence Tribe ’66 to remark on Brennan’s legacy, drawing on his long experience as a friend of the justice and as a lawyer who argued 26 times with Brennan listening from the Supreme Court bench. “Justice Brennan voted 15 times for the position I was arguing,” Tribe recalls, “and three times against.”

Tribe met Brennan for the first time while clerking for Justice Potter Stewart in 1967–68. “We became increasingly good friends after he retired from the Court,” says Tribe. In fact, following Justice Brennan’s retirement, he and Tribe taught together several times in seminars on constitutional law and theory at the University of Miami Law School — a collaboration Tribe called “a delight as well as an honor.”

An expanded version of Tribe’s remarks will appear in the November 1997 issue of the Harvard Law Review.

William J. Brennan, Jr. was one of the greatest justices of all time. But to say that is to put the matter much too abstractly. Consider what our constitutional world looked like before Justice Brennan began to reshape it: the Bill of Rights protected people mostly from federal abuses and provided only the most watered-down protection from state and local oppression. The government couldn’t seize a piece of real estate without a hearing and, if the seizure was for public use, without just compensation. But governments could represens a car or kick someone off welfare without explaining why — or even hearing the individual’s account of the relevant facts. Racial desegregation was required in principle, but not in practice. Even the most blatant sex discrimination was immune from attack under equal protection principles. Officials could punish their critics by deploying libel laws in ways calculated to stifle public debate. So long as no steps were taken to punish religious beliefs as such, government could make religious practices prohibitively costly by conditioning public benefits on those practices’ cessation. And lawmakers with an interest in keeping political district lines and apportionment formulas unchanged could preserve a system in which the votes of some counted far more than the votes of others.

Through his 1,500 opinions — many of them masterpieces of reason and craftsmanship — Justice Brennan played the pivotal role in changing all that, building an enduring edifice of common sense and uncommon wisdom that transformed the landscape of America. If Chief Justice John Marshall was the chief architect of a powerful national government, then Justice William Brennan was the principal architect of the nation’s system for protecting individual rights. Intellect alone could never have achieved so much, though Brennan’s intellectual brilliance and analytical acumen were indispensable. What drove him were passion and compassion, insight and empathy, and a dream of a Constitution of, by, and for the people.

Brennan’s warm, genuinely lovable personality — he had no hint of pretension and treated the Court’s juniors with as much respect as he did his fellow justices — helped him to build bridges across ideological chasms that produced not only landmark decisions, but steppingstones to future developments in every major area of law. It is becoming commonplace to stress that the Justice’s judicial colleagues were too strong-minded to be moved by mere charm. True enough — but it trivializes the Brennan magic to reduce it to a cult of personality. Justice Brennan’s unique ability to cut to the heart of an issue in terms that spoke the language and embraced the concerns of his fellow justices was inseparable from the content of his constitutional vision, a vision that at bottom rested on the deepest respect for the dignity and views of all who participate in the dialogue of democracy — whether as welfare recipients or as Supreme Court justices. That vision is now embodied in a structure of doctrine whose edges may be blurred or chipped away, but whose core is likely to endure. Not every Brennan opinion will live forever, any more than he could. But the Brennan legacy is immortal. —

Laurence Tribe ’66
COMMENCEMENT 1997

A record 3,800 graduates and guests packed Holmes Field for Commencement activities on June 5. The Class of 1997 - 547 J.D.s, 144 LL.M.s, and 53 J.D.s - received diplomas, and 29 International Tax Program students received certificates following remarks from Dean Clark, Assistant Dean and Dean of Students Suzanne Richardson, First Class Marshal Shelby Lee Carter, and Antonio Oposa LL.M.

A high point of the festivities was the awarding of the Fay Diploma for the highest combined grade point average over three years to Lisa Grow, the first woman in the history of the School to receive the honor and the first woman ever to graduate from HLS summa cum laude. Earlier in the day at the University's Commencement exercises in Harvard Yard, Class of '97 member Janilla Efuru Jefferson gave the graduating English oration, a century-old Commencement tradition.

On June 4, alumni and students attended the annual alumni luncheon to honor Carl M. Loeb University Professor Emeritus Archibald Cox '37 with the 1997 Harvard Law School Association Award. Cox received the award, which is the HLSA's highest honor, for his extraordinary service to the School and the legal profession as labor lawyer, public servant, adviser to Presidents, solicitor general, teacher, and scholar. "Your integrity, courage, and selfless devotion to the common good symbolize the best qualities of Harvard Law School and the ideals of American democracy," said Dean Clark in presenting the award. After that afternoon the class presented Professor Elizabeth Warren with the 1997 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence. And Class Day speaker New York Times columnist Anthony Lewis '56-57, reflecting on the cynicism about the law and lawyers, told the class that the legal profession "has made this country what it is at its best, the freest and most wisely ordered on earth."

COMMENCEMENT AWARDS

Joseph H. Reade Prize
Highest grade in Conflict of Laws course
Fred Anthony Rowley, Jr.

Addison Brown Prize
Best essay on a designated subject of maritime or private international law
Nikitas Emmanuel Hatzistavrinou

Fay Diploma
Highest combined average for three years
Lisa Anne Grow

Judge Edith Fine Fellowship
Fellowship for demonstrating extraordinary leadership and commitment to public-service work
Traci Lynn Douglas

Irving R. Kaufman Public Service Fellowships
Ours to two-year fellowships for individuals demonstrating exceptional promise for careers in public interest
Nina Kovac Pasture
Traci Lynn Douglas
Heather Inne Friedinan
Marla Nicole Green
Carla Alonah Halpern
Alex George Harahi
Marla Lauren Heslopson
Mark Andrew Hickenbrell
Jamie Frederic Metzl
Hannah Anne Nires
Susan Heathcote Vickers
Paul Christophe Weinberger

Yong K. Kim '95 Memorial Prize
Best paper on East Asian law or legal history or issues of law related to U.S.-East Asian relations
Eun K. Cho

Levin Prize
Best paper on public international law
Rebecca Louise From
Kayla Kahan Malquyorry

Irving Oberman Memorial Award
Best essay on taxation
Sue Leon Law

John M. Olin Law and Economics Prize
Best paper on law and economics
Mark Philip Fisher
James Todd Kennard

Boykin C. Wright Memorial Fund Prize
Awarded to Ames Final competitors
Stephanie Marie Agli
Rachel Mulcahy Bum
Carly Andrew Boonstra
Jonathan Evan Cantor
Anthony Ted Falzone
Jodi Michael Hemmerman
David O. Marleus
Jonathan Brian New
Adam Seth Paris
Travis Ryan Pearson
Joshua Christopher Topil
Michelle Lynn Wodron


Below: Cafeteria Penn LLM. inspectes LLM. Boyko Dimitroglou's head at Commencement morning breakfast while Yen Banfieldeni LLM. (left) and Caroline Lemone LLM. (right) look on.
FACULTY APPOINTMENTS

JOHN COATES

TRENDS IN M & A

Shortly before Christmas in 1989 — John Coates’s first year as an associate at Wachtell, Lipton, Rosen & Katz — the firm got a call from the Bank of New England, announcing that the bank was facing a billion-dollar loss, evaporating liquidity, and imminent failure. The bank had assets to sell, but arranging sales would take months. "If we didn’t get a bridge loan in place by Monday, the day after Christmas, the bank would fail," says Coates.

Today Coates is a much-sought-after specialist in corporate securities, mergers and acquisitions (M & A), and financial institutions law and regulation. He is also a new assistant professor at the School, teaching M & A this fall, and Corporations in the spring. When he left Wachtell, Lipton in May to come to HLS, he had worked first as associate, then as partner, on over 150 deals, many of them high-profile. But in 1989 he "couldn’t have been greener, or more daunted at the prospect of trying to save one of the largest banks in the country," he says.

Wachtell was able to help the Bank of New England arrange an interim loan from J.P. Morgan, but not without anxious moments. "We were about to close on the loan when one of J.P. Morgan’s lawyers found a problem with the collateral, which was shares of stock of a Canadian subsidiary. At 11 p.m. on Christmas night, we needed to find a Canadian lawyer to give an opinion J.P. Morgan would accept, and get every-
thing in place before the start of business. Somehow, we managed."

Coates, who taught M&A at his alma mater, New York University School of Law, from 1993 through May 1997 (NYU wooed him for a permanent appointment, but Harvard won him), and Bank M & A at Boston University Law School, likes to tell students about the Bank of New England case "because it shows the real-world role that deal lawyers can play, even as junior associates."

Another case Coates has imported from the boardroom to the classroom is IBM’s hostile takeover of Lotus in 1995. By the time Coates and other Wachtell attorneys were brought in to represent Lotus, its defenses were so poor that there was no way to avoid a takeover, he explains, but they thought they had a shot at improving IBM’s bid, including the deal price, the severance package for departing Lotus employees, and the benefits of those who stayed. "We managed to get IBM not only to agree to increase its bid price but also to double the severance originally planned, so in the end we salvaged a bad situation. It’s useful for students to hear about one of the few hostile takeovers in a ‘people industry’ like software, that wasn’t a total disaster."

"I like to think I can offer some insights about what lawyers actually do in the merger process," Coates says. In recounting his experiences to students, he stresses the need for lawyers to understand the macro-economic environment affecting the merger decision, as well as the particular industry in which the merger is taking place — considerations that are not part of typical analysis in corporate law cases. Also, he notes that the academic literature often overlooks the importance of the personalities of the decision-makers. "Whether or not the two CEOs get along makes a huge difference in whether the merger will work," he observes. "Lawyers, as much as investment bankers, help bring compatible people together."

Coates has written numerous articles on corporate securities and financial institutions regulatory law, and the subjects of his research often shape classroom discussion. He is finishing a paper on valuation in "freeezouts" — deals in which public shareholders are forced to take cash for their stock — which he regards as "one of the most important unresolved issues in corporate transactions, and largely ignored by scholars, probably because of the technical difficulties it presents." Coates’s new research projects include scrutiny of the package of corporate documents companies adopt when they go public, and an exploration of the ways large financial institutions enforce internal compliance with the many regulations on their activities. "Regulators are increasingly relying on companies to self-enforce, so compliance policies are increasingly important," he says.

For seven years Coates has been a coauthor of the leading annual survey of developments in bank M & A, such as the creation of interstate, regional, and national banks since a 1978 case permitting regional interstate banking.

Another recent development Coates has been tracking is a boom in commercial bank acquisitions of investment banks, as legal barriers to such deals, in place since the Depression, continue to fall.

The boom, he notes, makes this an especially exciting time to introduce students to the field. And while Coates will miss the boardroom and his friends at Wachtell, he is settling happily into teaching at HLS. "I’ve left the best law firm in the country for the best law school in the country."

by(757,333),(986,999) Nancy Waring

"Whether or not the two CEOs get along makes a huge difference in whether the merger will work. Lawyers, as much as investment bankers, help bring compatible people together."
Professor Lawrence Lessig, a constitutional theorist and cyberlaw specialist, joins the HLS faculty this fall after six years on the law faculty at the University of Chicago. "I came here in part because of the Law School's Center on Law and Technology," says Lessig, noting that "Harvard is becoming a center for addressing the policy implications of cyberspace."

In his view American constitutional law is "backward-focused. It tends too often to be a passive articulation of history, as in 'We're just doing what the Framers did.'" This presents a serious problem in cyberspace, where there are so many new things for legal scholars to think about, says Lessig, including how to safeguard free speech, intellectual property, and individuals' "informational privacy" on line. To rely on the Framers' intentions, rather than seek solutions that make sense, would mean "an ever-shrinking Constitution in cyberspace."

This year, in addition to the core Contracts course and a seminar interpreting constitutional fidelity in the context of the Civil War amendments, Lessig will co- teach a new course, The High-Tech Entrepreneur, focusing on the fast-growing cyber-marketplace. Students will examine the dynamics of start-ups, mergers and acquisitions, and venture capital in the information industry, with the help of guest speakers — lawyers, businessmen, and policymakers — at the front lines of high-tech ventures. Legal questions include whether a new paradigm for antitrust law is needed for the Internet, in light of, to name an obvious case example, expansionist Microsoft.

Despite some hesitancy, largely due to unfamiliarity, "people are increasingly moving onto the Net for commerce," says Lessig, who buys most of his books via the electronic bookstore Amazon.com. "It remains to be seen how the government will regulate this, and how the Net will establish its own internal rules."

Lessig previously taught a course on cyberlaw at HLS when he was a visiting professor during the 1996-97 winter term. He codirected the Center for the Study of Constitutionalism in Eastern Europe at the University of Chicago, and will continue his work comparing the constitutional interpretations of different countries, particularly Russia and the United States.

In fact, Lessig is planning a new book that will treat cyberlaw as a type of comparative constitutional law. His book will also examine the problems of regulation on the Net. "Traditionally, law directs human behavior," Lessig says. "Far more common in cyberspace will be regulation by code contained in the software," which determines how users gain access to on-line information. But who encodes the software, he asks. The government? Private companies? "The way we structure the code has vast social and political implications that are barely understood. With the law, we as citizens have the right to complain. When code instead of the law regulates, to whom do we complain?"

The prolific author's views recently influenced U.S. Supreme Court Justice Sandra Day O'Connor, who cited his 1996 article "Reading the Constitution in Cyberspace," in her minority opinion in Reno v. ACLU, which ruled that the Clinton administration's proposed Communication Decency Act (CDA) was unconstitutional. CDA attempted to impose civil and criminal penalties for posting indecent material on the Internet, a move opposed by civil liberties groups, says Lessig. "I expected the justices would strike the statute down. It was too broad and vague in its description of the categories of speech to be limited on the Net, and the litigators didn't demonstrate the relative ease with which Websters could [use new technology to] block access by minors."

He does not, however, regard the Court's opinion as definitive. "I'm not in favor of CDA, but as a constitutional matter, these issues of victory on free speech grounds are very short-lived." Congress can now proceed to focus more narrowly the categories of speech to those already regulated in the outside world, and technological "filters" can be created relatively easily and at low cost. Such an approach, Lessig suggests, would result in a "zoning statute" that electronically distinguishes between adults-only sectors on the Internet and those open to children. "When Congress demonstrates the effectiveness of this approach," he predicts, "the Court will accept it."

Lessig received a B.A. in economics and a B.S. in management from the University of Pennsylvania, and a master's degree in philosophy from Trinity College (Cambridge University). He graduated from Yale Law School in 1989, then clerked for Judge Richard Posner '52 of the U.S. Court of Appeals, Seventh Circuit, and the following year for Supreme Court Justice Antonin Scalia '56. "Scalia is deeply interested in constitutional fidelity. His approach raised many questions for me, such as, how do we carry forward 18th-century ideas into 20th-century America?" ~

by Julia Collins
This fall, Jon Hanson returned to the classroom as a newly tenured professor of law, teaching Corporations and a seminar on products liability. In the spring, he will teach the core course on Torts, in which he gives 1L students "the necessary dose of doctrine as well as an overview of intellectual and theoretical currents in law," he says. "I try to provide a firm foundation in law and economics..." The dominant intellectual paradigm for understanding tort law—while introducing students to some prominent critiques of tort doctrine and of law and economics, including those offered by feminist legal scholars and critical race theorists.

Hanson's scholarship on tort law reflects his own mixed feelings about the role of law and economics. Although he considers himself a "legal economist," he casts a skeptical, if not critical, eye on much of the conventional law-and-economics wisdom regarding tort law.

Hanson's tenure appointment was followed by a period of intense research and writing, on a question he and co-author Kyle Logue, of the University of Michigan Law School, have grappled with for several years: How, if at all, should the cigarette market be regulated? According to Hanson, legal economists approach this question, typically, by considering whether there are significant "market failures"—that is, reasons to believe that the relatively unregulated cigarette market leads to "undesirable or inefficient outcomes." If so, regulation may be called for.

While Hanson and Logue accept this approach, "we disagree with the general anti-tort and anti-plaintiff-lawyer sentiment in this country, very little attention has been devoted to considering the implications of the settlement's tort law restrictions.

Those implications were the focus of a roundtable discussion at the conference that brought together economists, legal scholars, public health officials, and attorneys sharing their "view from the trenches," says Hanson. Of the three tobacco industry lawyers on the panel, only two spoke favorably of the settlement. Notes Hanson, "I know of no other setting where the cigarette industry has allowed its lawyers to speak so openly about their views of any industry-related legal policy."

At the conference, Hanson and Logue sought to destigmatize the emerging consensus among policymakers and public health officials that the proposed settlement offered the best regulatory scheme attainable. They contend that the settlement relies far too heavily on "command-and-control" regulation requiring regulators to pursue unrealistic expertise on cigarette designs and the cigarette market in order to be effective. Hanson and Logue prefer a system of "incentive-based" regulation that would require cigarette manufacturers to pay for all costs caused by cigarettes. Under such a system, market forces become the friend, rather than the enemy, of public health.

Hanson and Logue prefer a system of "incentive-based" regulation that would require cigarette manufacturers to pay for all costs caused by cigarettes. Under such a system, market forces become the friend, rather than the enemy, of public health.

In September, President Clinton called on Congress to make significant changes in the settlement plan, which delays and complicates its prospects of becoming law. The President's recommendations do not, however, address the regulatory pitfalls identified by Hanson and Logue. Whether legislators revise the current settlement or scuttle it, requiring a new process altogether, Hanson hopes the President and other interested policymakers will recall how successfully the tobacco industry has counteracted and, ultimately, financially benefited from ill-considered regulatory efforts in the past. "My hope is that, at the very least, Kyle Logue and I will be able to remind the settlement's proponents of the need for circumspection and humility when attempting to regulate this industry," he says. "The issues are complex and important, and I expect to be dealing with them for some time."
Randall Kennedy Examines the Embattled Crossroads of Race and Justice

With the publication in May of his new book, Race, Crime, and the Law (Pantheon Books, 1997), Professor Kennedy has brought illuminating ideas and legal analysis to national discussions about race relations and criminal justice. The book has been widely reviewed, in the New York Times Book Review, the Los Angeles Times, and elsewhere; and Kennedy has been a guest on "The Today Show," "Nightly News with Tom Brokaw," and the National Public Radio shows "Fresh Air" and "The Connection." The Bulletin asked several of Kennedy’s colleagues to comment on chapters that particularly interested them.

Suspicion

In the fourth chapter of Race, Crime, and the Law, Professor Kennedy discusses the use of race as a factor to identify persons who are, in the circumstances, more likely to be engaged in criminal conduct. For practical purposes, that has meant largely black males, either because they are in a generally unblack neighborhood or because they fit a profile for some category of crime. (As he points out, if a white person is "out of place," a police officer may conclude not that he is dangerous but that he is in danger and needs help.)

Professor Kennedy separates the statistical basis for race-related heightened suspicion from the policy that authorizes public officials to act on the suspicion. The former he acknowledges as a matter of fact: “blacks, particularly young black men, commit a percentage of the nation’s street crime that is strikingly disproportionate to their percentage in the nation’s population” (p. 143). The policy, however, he rejects except in the narrowest circumstances, which satisfy the standard of a compelling public interest. His argument is entirely convincing.

He exposes the indignity and humiliation of being subjected to police investigative tactics, which are rarely respectful and often forceful and threatening. The extent of such occurrences is attested repeatedly by persons whose own conduct gave no basis whatever for suspicion. Each such occurrence, Professor Kennedy observes, exacerbates the difficult relationship between minorities and the police. More generally, racially discriminatory law enforcement, however it is explained, impedes other strong public policies by reinforcing stereotypes that we are committed to eradicate.

Professor Kennedy notes that in other aspects of public life, including sports in which race has been used as a factor favoring minorities, the Supreme Court has sharply distinguished the policy in question from the facts on which it is based. The comparison makes his insistence that reliance on race as an element in law enforcement is not a simple matter of fact but a choice, and one that deserves the policy, all the more pointed. ~

Professor Lloyd Weinreb ’82

The Death Penalty

Few subjects have inspired as much passionate prose as the death penalty. Some classics have emerged, like Albert Camus’ moving Reflections on the Guillotine. But, alas, much muddled thinking has also resulted. Chapter 9 of Randall Kennedy’s Race, Crime, and the Law, entitled “Race, Law, and Punishment: The Death Penalty,” is a freshly and clearly, precise, and even-handed treatment of this difficult subject and its disquieting intersection with racial injustice in the United States. Kennedy is tremendously effective in elucidating the historical impact of race on capital sentencing, addressing both the recent but easily forgotten history of interracial rape prosecutions and the more current controversy regarding the disproportionate imposition of the death penalty on those who murder whites rather than blacks. But despite the discriminatory abuses of capital punishment that he deplores, Kennedy resists the easy answer of single-minded support for the movement to abolish the death penalty. Even as he criticizes supporters of capital punishment for being unwilling to confront its racist applications, Kennedy chastises death penalty abolitionists for being insensitive to the fact that legislative majorities overwhelming view the death penalty as a social good. Ultimately, he calls for greater honesty and forbearance on both sides of this contentious issue.

Full of wit, style, and irreverence, this book will actually be read all the way through rather than collect dust on academic shelves. For example, in discussing his own personal views on the constitutionality of the death penalty, Kennedy candidly admits that, at times, his great abolitionist justice Thurgood Marshall led him to question his own abolitionist leanings as he read the gruesome details of crimes of murderers sentenced to death. And in explaining why abolition of the death penalty is not necessarily the proper remedy for race-of-the-victim disproportionate in capital sentencing, Kennedy offers the unforgettable analogy of reducing to darkness a town in which streetlights have been provided on a racially unequal basis. Bracingly iconoclastic and eminently quotable, Kennedy’s book will clearly prove to be indispensable in future debates about capital punishment. ~

Assistant Professor Carol Stecker ’86

O.J.

In his otherwise excellent book on race and justice, my colleague Randy Kennedy makes a number of telling mistakes in his discussion of the O.J. Simpson case. He says that, "Judge Ito ruled wrongly in initially permitting the defense to examine Fuhrman on his use of the N word." In support of this position, Randy cites "the applicable rules of evidence," which permit "questions going to Fuhrman’s credibility" (p. 180). But then argues that the relationship between Fuhrman’s racism and credibility is too tenuous to permit introduction of his racist comments. But trial judges make decisions on the basis of the governing case law, not on the basis of some general principles of evidence approved by professors. And there is a California case that ruled specifically that racial bias is directly relevant on issues of credibility.

Following that case, Judge Ito made the right decision. Surprisingly, Randy also is wrong when he says that, "Judge Ito permitted the Fuhrman tape to be played in its entirety in court, albeit outside the presence of the jury." That simply never occurred, period. Indeed, to my knowledge, the entire tape has never been played in public to this day. I have urged various television and radio shows to play the entire Fuhrman tape so that the extent of his anti-black, anti-woman, anti-Mexican, and anti-Jewish bigotry might be known. But in the absence of a pending trial, the Fuhrman tapes are no longer relevant news. So Randy is also wrong when he suggests that Judge Ito could have satisfied the public interest in Fuhrman’s bigotry, "by releasing the tapes after a verdict.

So much of the discussion about the Simpson case has been based on misinformation that it is important for an objective scholar — who Randy Kennedy surely is — to get it right. On the larger issues of race and justice, I tend to agree with much of what Randy has written.

Professor Alan Dershowitz

From Race, Crime, and the Law

“This effort to reorient thinking about the race question in criminal law is animated by a sense that inherited debates between liberals and conservatives have become increasingly sterile. It is also animated by a belief that useful prescriptions for problems as complex as those generated by the imperatives of law enforcement in our large, rambunctious, multiracial society can arise only from thinking that frees itself of reflexive obedience to familiar signals.” ~

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O.J. Simpson

Randall Kennedy

BULLETIN: Is your book relevant to President Clinton's discussions on race relations?

Kennedy: Yes. There is no more volatile area in race relations than that contested crossroads that marks the intersection of racial conflict and the rules governing the administration of criminal law.

What might you do differently if you were starting to write Race, Crime, and the Law today?

I should have devoted more attention to prisons. I discuss prisons to some extent. Given their unfortunate significance in American society, particularly African American society, I should have had a more elaborative analysis of their functions and failings.

Why have you chosen to present much of your work in magazines such as the Atlantic Monthly rather than in law reviews, and in trade books rather than university press books?

I write for a wide variety of forums, purely academic publications as well as publications for the general reader. I do this in order to reach as wide an audience as possible. I enjoy and learn from the feedback I receive from academic peers. But I also enjoy and receive useful instruction from the proverbs of John Q. Citizen. ~

Photography: Martin Steward

Compiled by Nancy Waring

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Federal Jurisdiction in Historical Context

by John F. Manning '85


For more than four decades, Hart and Wechsler's The Federal Courts and the Federal System has earned a scholarly status unique among law school casebooks. To a degree shared by no other work of its kind, the 1963 edition defined the intellectual and judicial terms of American public law within its field of coverage. Generations of law students, teachers, and judges have viewed this casebook with reverence if not awe, and its status shows no signs of diminishing. The book has changed a great deal since 1963, but each edition has built upon the excellence of its predecessors. Some commentators have praised contemporary editions for what they have added. (See, e.g., Akhil Amar's "Law Story," a review of the third edition in 1982 Harvard Law Review.) In my view, however, the book's abiding strength is that edition after edition is suffused with inquiry into first principles of American constitutionalism.

Profs. Richard Fallon, Daniel Meltzer, and David Shapiro build on that strength in the fourth edition. For example, beginning with the deliberations of the Philadelphia Convention, chapter 1 offers students a detailed exposition of the Madisonian Compromise, which gave Congress the discretion to forgo lower federal courts in favor of state court adjudication of federal rights (at least in the first instance). After a brief account of the relevant numbers of The Federalist, the chapter chronicles Congress' implementation of Article III throughout the Republic's formative years and beyond. These materials, which have retained their essential character across four editions, supply a vital point of reference for the book's subsequent examination of congressional control over federal jurisdiction. Similarly, by opening with accounts of Marbury v. Madison and the Supreme Court's 1803 rejection of the Executive's request for an advisory opinion, chapter II provides students with a solid historical context against which to evaluate complex modern problems of jurisdiction. And in addressing federal judicial control of state officials, subsequent chapters continue to preface contemporaneous case law with an exhaustive account of the relevant decisions and political history. Indeed, compared with its predecessor, the fourth edition places even greater emphasis on the history of state sovereign immunity, giving the Court's pivotal (albeit flawed) decision in Harris v. Louisiana its rightful position as a principal case.

While it preserves constitutional history as a starting point for analysis, the fourth edition also does justice to the increasingly frequent and often powerful judicial and scholarly challenges to the premises of the federal courts' orthodoxy. Chapter II forcefully invites students to consider whether all of the assumptions underlying Marbury have full applicability in the vastly altered circumstances of the modern administrative state. Chapter IV gives careful consideration to Akhil Amar's theory of "mandatory" federal jurisdiction for certain categories of Article III cases. The same chapter also takes seriously Justice Scalia's challenge to the assumption that judicial remedies are universally available for claims of constitutional right.

Despite all of the momentous social, intellectual, and doctrinal changes during the four decades since its first publication, the book's many editions never deviate from the quality that marked the first. Nor, I hope, does it outlive its date of publication in 1995. Its editors, most recently Professors Fallon, Meltzer, and Shapiro, never lose sight of the reality that the Constitution is law — to be enforced by courts, if necessary. And law must be, in its historical context.

John F. Manning is associate professor of law at Columbia University, where he teaches federal courts and administrative law.

Professor Minow's New Book Explores Paradoxes of Identity and Diversity

"What needs to be remedied: an identity politics that seals people in their dependence on victim status as a source of meaning or widespread ignorance of the mistreatment of people because they are black, His- tapine, Japanese, Korean, Irish, disabled, women, Moslem, gay, lesbian, or otherwise different? I think both. But is it possible to attain sustained public acknowledgment of past and continuing oppressions along group lines and to promote individual self-definition and fulfillment, while somehow avoiding the truncated effects of asigned group identity or victim status? Can the broader society acknowledge the meanings that group affiliation affords to individuals without forcing individuals into groups? Can the broader society recognize the value of plural- ist group experiences without turning them into objects of curiosity or advertising marketing strategies? To respond to group-based mistreatment and to promote individual freedom means at times to pursue divergent or even conflicting paths. Yet, to do one alone is to risk deepening the other problem. To attack the wide-scaled removal of Indian children from Indian families, the Indian Child Welfare Act gives tribal courts and tribal court members authority in custody decisions — thereby elevating tribal status over parental freedom or exclusive concern with the individual child. Similar arguments for matching children available for adoption with parents of race whose black or Hispanic and Native Americans produce classes without many individ- uals with those backgrounds. Workplace practices that ignore the exclu- sion of people with disabilities render it difficult or impossible for many people with disabilities to get and maintain employment. Rather than picking strategies, I suggest pursuing both. We should seek both sustained public acknowledgment and response to past and continuing burdens along the lines of group membership, and we also should promote opportunities for individual self-invention and individual decisions to em- brace or de-emphasize the racial or ethnic aspects of themselves. This dual mission requires settings for telling and knowing truths about exclusions and degra- dations because of group status and structures that permit people to experi- ment with and negotiate through the groups, interests, and practices, that can afford them personal meaning. Both approaches, taken together, are nec- essary if the paradoxes and the vulnerabilities are to be acknowledged rather than enacted: the universality of our uniqueness, and the rich variety of our beings."

ASSOCIATION EVENTS

Asian Pacific American Alumni Committee

APALSA's New York City chapter held a reception for summer associates in June. Later in the summer members attended a reading of "If You Sing Like That for Me," a short story written by Asabih Sharma '98, which appeared in the May '98 issue of the Atlantic Monthly. The event was held in conjunction with The Asian American Writers Workshop.

In June APALSA's Washington, D.C. chapter sponsored an evening happy hour, organized by Peggy Kuo '98 and Denise Cheung '99, for summer associates to meet alumni.

This past summer APALSA awarded its first summer public interest fellowship to Tae-hui Kim '98, who used her fellowship to work primarily at the Asian Outreach Program of Greater Boston Legal Services, on employment cases involving Asian immigrant workers. Executive board members Anders Yang '94 and Fred Yan '88 hosted a dinner in her honor this summer.

Kentucky

Former Kentucky State Supreme Court Justice Walter A. Baker '64 spoke on the history of Kentucky Supreme Court justices at a dinner meeting in June at the University of Louisville's University Club. The meeting was held in conjunction with the State Bar Convention.

High on Neil Chayet's agenda — as talk show host, attorney, and HLSA leader — is improving the image of lawyers, whose favorability rating has plunged to an all-time low, he says.

"The vast majority of lawyers are fine professionals helping people every day, but the publicity seems reserved for those who let us down — it's time for us to deal with our image problems head on," says Chayet, who routinely defends lawyers on his "Looking at the Law," the 60-second radio program broadcast daily nationwide, which he has hosted for more than 20 years. Chayet also hosts a Sunday call-in show on law for lawyers.

Chayet sees the HLSA Communications Committee, which he co-chairs with Walter Effros '65, as another forum for "restoring a sense of credibility to our profession." The committee's mission was broadened in 1996 at the request of then HLSA President Charlotte Armstrong '73 to make use of the Internet and other information channels to increase communication between the School and its alumni, and to educate the public and the media about the role of lawyers.

"We hope the committee can engage both lawyers and non-lawyers in discussion about lawyers' contributions to society, in large and small ways," says Chayet, "and we will work closely with the local HLS associations to further the discussion." The committee plans to take the dialogue on-line.

Chayet, whose Sunday radio program is now fed to the Internet, also looks forward to collaborating with HLSA Task Force on the Legal Profession, chaired by HLSA Vice President Howard Abel '31 (S2), to link students and alumni via the Internet for chats about the legal profession.

Nancy Wiering

For further information about HLSA events in your area, contact the Alumni Association by phone: (617) 495-4698, e-mail: hlsa@law.harvard.edu, fax: (617) 496-4572, or U.S. mail: Baker House, 1587 Massachusetts Ave., Cambridge, MA 02138.

VIEWSPOINT

Neil Chayet '64, Cochair, HLSA Communications Committee, Special Counsel, Mintz Levin Cohn Ferris Glosky and Popeo

California

The association of Northern California held its summer associates' reception in conjunction with the ABA convention in San Francisco. Calif. HLSA President Charles Brock '97 encouraged the group to "rejuvenate" by expanding its membership.

Sixty students and alumni attended a June cocktail reception sponsored by the association of Southern California. At the meeting, president Allen Hubsch '88 introduced Ana Henderson '98, one of the recipients of the association's summer public interest fellowship.

Pennsylvania

Professor Christopher Edley, Jr. '78 spoke on "Racial Justice: Developments at the White House and in the Law," at the Greater Philadelphia association's annual meeting in May. New officers elected at the meeting were Sara Staman '86, president; Julian Read '66, vice president; Robert Robinson '87, secretary; and A. Michael Pratt '85, treasurer. In July the association sponsored a reception in honor of HLS students at the Western Pennsylvania association's first luncheon meeting of 1997, Bernard J. Hribbitts LLM '88, associate dean for communications and information technology and professor of law at the University of Pittsburgh School of Law, spoke about law school scholarship and the use of the Internet in replacing law reviews. Mr. Hribbitts is also the Webmaster for Jurist--Law Professors on the Web.

Boston

Boston summer associates and '98 classmates Kira Parmele, Catherine Mondell, and Roger Fairfax join association treasurer and association president Jerry Bresnahan '60, and Professor David Westfall '50 on Bowes Wharf at the Massachusetts summer reception. At the conclusion of the July 21 reception participants witnessed the return of the USS Constitution from her historic sail from Marblehead to her home port of Charlestown, Massachusetts, her first solo sail since 1884.

Rhode Island

Associate Justice Robert Flanders '74 spoke about his year on the Rhode Island Supreme Court, at the association's 41st annual dinner meeting held in May at the University Club in Providence. The association donated a $50 gift in honor of Judge Flanders to support summer public interest fellowships.

New York

Alan Jakimo '90 (left) and Sidney Gittelson '94 (right) were among the more than 800 alumni, summer associates, and guests who attended the 9th annual New York summer reception at Sotheby's in July. HLSA President Charles Brock '97, founder of the reception, and association council member and appointed Harvard Alumni Association Director Paul Dodyk '54 collaborated to organize this year's event.

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sentive for the second Middlesex District. Mr. Homans worked for the enactment of the Fair Housing Practices Act in Massachusetts, and helped to abolish the state’s death penalty. Last November the Supreme Judicial Court Historical Society established its first endowed fund in his honor. During WWI Mr. Homans served in the Royal Navy in Italy and then transferred to the U.S. Navy in 1943 and served as an officer in the Navy’s intelligence and helped to

Chester B. McCaughrin, Jr. 4th, November 14, 1996.

Howard F. Shattuck, Jr. 4th, April 2, 1997.

Boston, N.Y. Mr. Shattuck was a retired international counsel for the Mobil Oil Corp. He joined Mobil in New York in 1955, in its international division. In the 1960s he helped negotiate settle-

ments for expropriated American petro-

leum interests in the Middle East and

before the World Court at The Hague.

After retiring in 1989, Mr. Shattuck became a panelist for the American Arbitration Association, the ABA, and the City Bar Association. Most recently, as cochair of an ABA task force, he focused on the preparticipation

operations of the UN and helping to develop ABA recommendations for standing UN military

John E. Arming 4th, October 10, 1996.

New York, N.Y. Mr. Arning was a partner at Sullivan & Cromwell in New York City.


Dayton, Ohio.


John M. Kaufman 4th, April 7, 1997.

Canton, Mass.

John J. Murphy 4th, December 18, 1996.

Framingham, Mass. Mr. Murphy was a federal administrative law judge from 1966 to 1996. He served in the Army Air Corps during

World War II and became a prisoner of war in 1944 after his plane was shot down dur-

ing a bombing mission over Germany.

Donald D. Webster 4th, April 7, 1997.

Belfast, Md. Mr. Webster was a lawyer and former owner of the Washington fine art

aunt in law firm of Rosenman & Colin in New York City.


Hershel Zonderman 5th, April 22, 1997.


New York, N.Y. Mr. Cook was a barr-

ister in London at the time of his death.

David C. Hamblett 9th, January 30, 1996.

Nashua, N.H. Mr. Hamblett was an attorney with Hamblett & Kerrigan in

Nashua, N.H.


Joseph O. Madden, Jr. 3rd, 1996.

Ira C. Pierson 5th, April 11, 1997.

Lakeview, Ohio. Mr. Pierson practiced law in Quincy, Ill., and was an actor and a

promoter of the dramatic arts. Following

two years in the Army, he practiced law in Quincy from 1961 until his retirement in 1972. During those years he was also involved in a variety of community activ-

ities, including community theater. He

promoted the dramatic arts in Quincy through various organizations, acting in local plays from the mid-1970s to mid-

1980s and later directing. In recognition of

his contributions to the arts, the Quincy Community Little Theatre presented him with its Enid Ireland Award in 1988.


1950-1959

Robert D. Hazlett 5th, December 4, 1996.


Thoppe Nesbit, Jr. 50th-51st, February 12, 1997.

Charles Condlin 51st, November 16, 1996.

Honolulu, Hawaii.

Richard W. Karrus 51st, July 6, 1996.

Potomac, Md.

John F. Lawless 51st, October 20, 1996.

Conrad F. Reiman 51st, December 15, 1996.

Stamford, Conn. Mr. Reiman was a retired judge for the State of Connecticut.

He served in the Army Air Force during

World War II and was a member of the Distinguished Flying Cross and Air

Medal with Oak Leaf with Wings.

He was also a member of the Caterpillar Club, an organization dedicated to the men who survived parachuting out of a plane during the war.

Sabri Kandah LLM, 60th, February 2, 1996.


Carlsbad, Colo. Mr. Teller was a retired Indianapolis attorney and former

president of Cathedral Arts. He practiced law with another firm in downtown Chicago.

Poncho was concentrating on federal tax matters, until his retirement in 1995. A horseman, Mr. Teller was an equestrian chair of the 1987-88 American Games.


Sandusky, Ohio.

Margaret "Molly" Geraghty 67th, December 14, 1996.

Washington, Mass. Mr. Geraghty was a former assistant dean and director of admissions at HLS. She was also a former executive television pro-

ducer. She practiced law briefly with Goodwin, Proctor & Hoar in Boston before becoming producer of "The Advocate," a weekly public affairs show that aired on PBS. From 1974 to 1977 she was assistant dean at the Northeastern

University School of Law and then worked at HLS for ten years. Ms. Geraghty moved to Washington, in 1987 and was a associate dean of Western New England College School of Law until 1994. She was the for-

mer president of the American Historical Society, a member of the Washington Conservation Commission and a trustee of the Becket Arts Center.

Julian S. Ferris 69th, November 14, 1996.

Mr. Ferris was executive vice presi-

dent and general counsel of Arruth

Associates, a real estate management and
development company in Houston, Tex.

1970-1979

Merle W. Loper 72nd, October 27, 1996.

Bali. Mr. Loper was a longtime professor at the University of Maine School of Law. He served as a civil rights attorney with the U.S. Department of Justice and as a teaching fellow at Harvard before joining the Maine fac-

ulty in 1971. A professor of law since 1973, he taught courses in constitutional law, torts, property and general human rights, and professional ethics. He served since 1983 as executive secretary and counsel to Maine’s judicial ethics committee.


Los Angeles, Calif. Mr. Sand was an attorney with the National Labor Relations Board for 25 years. A lover of sailing and row-

ing, he was a member of the Wooden Boat Center and the author of Looking Aft and of articles that appeared in vari-

ous boat journals.

Robert J. Deann 73rd, July 5, 1996.

Mr. Deann was general counsel, vice president, and seat at Securities Corp.

in Redwood City, Calif.

Lawrence W. Inlow 75th, May 21, 1997.

Indianapolis, Ind. Mr. Inlow was a gen-

counsel at Comice Inc., an insurer and financial services company based in Carmel, Ind.

1990-1997


Mr. Asher was an attorney in Washington, D.C. Before attending law school, he was a professor of philosophy at the University of Wisconsin-Madison from 1976 to 1982, and at the University of Vermont from 1984 until 1997. After grad-

uating from HLS he spent a year as a staff attorney for the Massachusetts Correctional Legal Services. In 1992 Mr. Asher joined the General Litigation Group of Wilton, Cotler & Packard in Washington, D.C. He also worked on pro-

bono civil rights litigation and had a strong interest in disability rights and environmental issues. ~
"I enjoy the unending diversity of my work," says U.S. District Judge Kimba M. Wood, who has served for nine years on the federal bench in Manhattan. She handles about 400 new cases every year, ranging from cases requiring analysis of the competitive dynamics of entire industries, to those requiring her to decide whether one design for a pair of sneakers "knocks off" another company's design.

One example of the former is a recent antitrust trial in which the New York State Attorney General challenged an acquisition by one large cereal manufacturer of the assets of another. In the course of ruling that the acquisition did not violate antitrust laws, Wood was called upon to analyze in depth the pricing structure and other competitive features of the cereal industry.

The judge's most highly publicized case was the securities fraud sentencing hearing for junk bond king Michael Milken, whom she ultimately sentenced to a two-year prison term. She also oversaw the massive 1995 settlement in which Japan-based Daini Bank, Ltd., pleaded guilty to a criminal cover-up of $1.1 billion in trading losses and was fined $320 million.

After her studies at Connecticut College and the London School of Economics, where she earned a master's degree, Wood became one of fewer than 40 women in her class at HLS. "Our welcome was an uneven one," she says. "To its credit, the School has worked hard to change this."

Particularly memorable for Wood was the introduction to legal reasoning she received in Professor Robert Braucher's Contracts class, and the experience of studying Constitutional Law with Professor Paul Freund.

After law school, Wood worked in the legal services program for the poor at the Federal Office of Economic Opportunity before joining LeBoeuf, Lamb, Leiby & MacRae in 1975, where she became a formidable litigator and antitrust expert. Of her transition from private practice, the judge reflects:

"I had to go through a process of learning not to form conclusions as quickly as I had as a litigator, in an attempt to become a truly neutral, fair judge." Wood has demonstrated this achievement on the bench, where she is perceived as completely evenhanded. She is praised by litigators for her intelligence and her pragmatism. These qualities were displayed to HLS students when she shared the bench with Supreme Court Justice David Souter '66 and Judge A. Leon Higginbotham, Jr. during the 1993 Ames Competition.

Judge Wood relishes the groundbreaking legal questions that continually arise in her courtroom. She recently gave Law Review president Kenneth Bamberger '98 the opportunity to work on one such issue during his day of legal service, for which she was the high bidder at last spring's Student Public Interest Auction.

As a Visiting Committee member, Wood comes to the School regularly and pays close attention to student concerns. She is also active in the HLSA New York chapter and served a term as president. "What keeps me so connected to the School," says Wood, "is that it continues to develop and progress on so many fronts."
Justice Harry Blackmun ’32 plays Justice Joseph Story in Steven Spielberg’s new film (page 40).