

Fall 9-1-2010

Law School Record, vol. 57, no. 1 (Fall 2010)

Law School Record Editors
LawSchoolRecord.Editors@chicagounbound.edu

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Recommended Citation

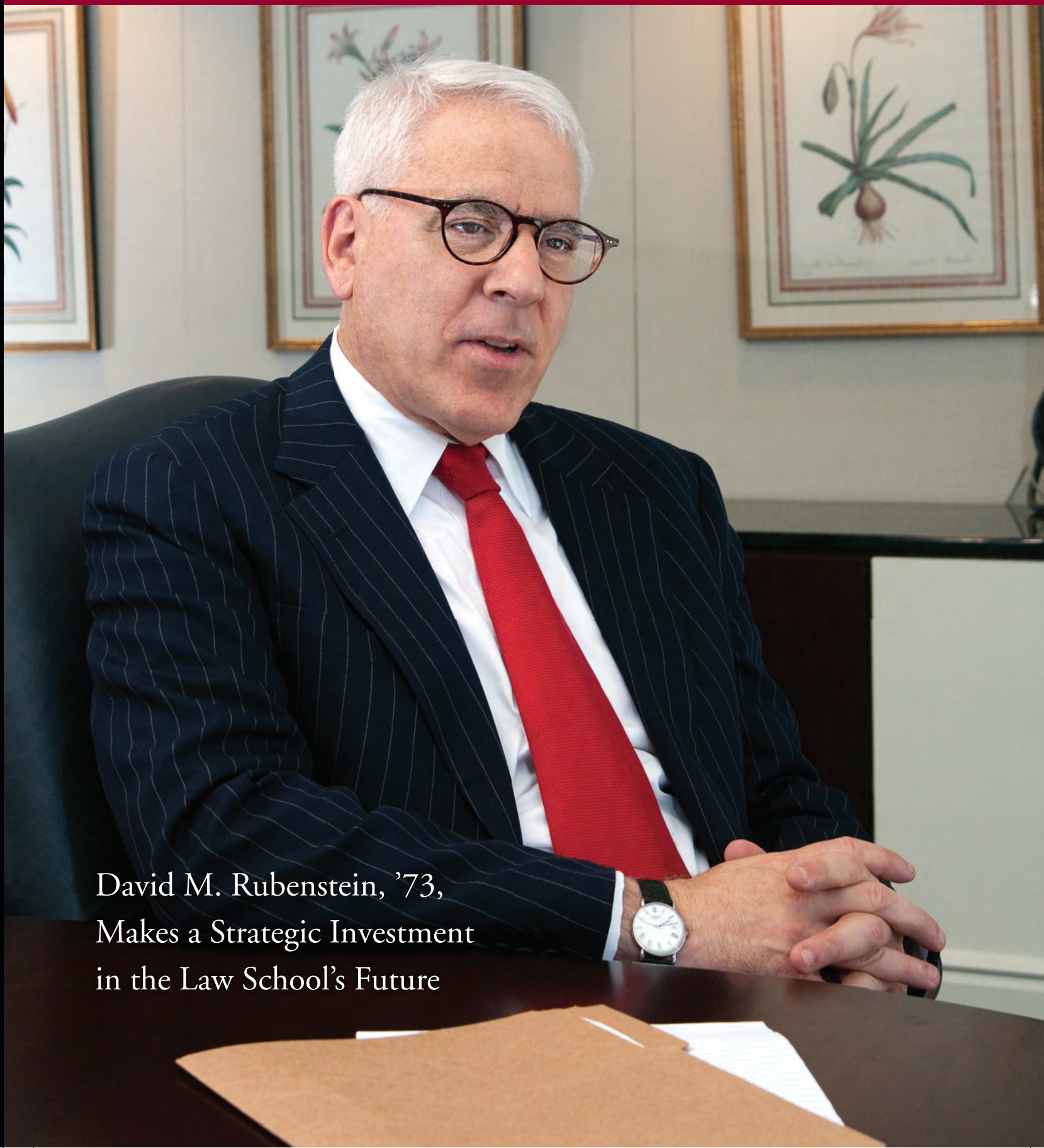
Editors, Law School Record, "Law School Record, vol. 57, no. 1 (Fall 2010)" (2010). *The University of Chicago Law School Record*. Book 110.
<http://chicagounbound.uchicago.edu/lawschoolrecord/110>

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CHICAGO LAW

The University of Chicago Law School Record

Fall 2010



David M. Rubenstein, '73,
Makes a Strategic Investment
in the Law School's Future

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CHICAGO  LAW

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Michael H. Schill

Dean and Harry N. Wyatt Professor of Law

Jonathan S. Stern

Associate Dean for External Affairs

Editor

Marsha Ferziger Nagorsky, '95
Assistant Dean for Communications

Assistant Editor

Lynn Safranek

Record Online Editor

Aaron Rester

Class Notes Editor

Elisha O'Shea

Contributing Editor

Chelsea Vail

Class Correspondents

61 Affable Alumni

Contributing Authors

Lisa Guynn
Gerald de Jaager
Jayme McKellop
Robin I. Mordfin
Marsha Ferziger Nagorsky, '95
Martha C. Nussbaum
Lynn Safranek
David Strauss

Contributing Photographer

Lloyd DeGrane

Photo on page 34 courtesy of the International Criminal Tribunal of Yugoslavia
Photos on pages 32, 33, 34, 35 courtesy of Allison Stowell, '08
Photo on page 25 courtesy of Marsha Ferziger Nagorsky, '95

Design

VisualLingo

Publisher

The University of Chicago Law School
Office of External Affairs
1111 East 60th Street
Chicago, Illinois 60637
www.law.uchicago.edu
telephone: (773) 702-9486
fax: (773) 702-9628

Comments? Please write to Marsha Nagorsky at m-ferziger@uchicago.edu.

The University of Chicago Law School Record (ISSN 0529-097X) is published for alumni, faculty, and friends of the Law School.

Vol 57, Number 1

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Message from the Dean

Dear Friends –

David Rubenstein, '73, graces the cover of this latest issue of *The Record*. David is the cofounder of the Carlyle Group, one of the nation's largest private equity funds. The interesting story of how David went from a modest background in Baltimore to become one of the nation's most successful entrepreneurs would itself justify the journalistic focus. But David Rubenstein is much more than a successful man. He is an extraordinary person who has become one of the most important philanthropists and civic leaders in our country. As a trustee of his two alma maters, Duke and the University of Chicago, as well as other



universities, Chair of Washington's Kennedy Center, and a Director of New York's Lincoln Center, David is also one of a small number of men and women who play a critical role in shaping our nation's intellectual and cultural heritage.

David Rubenstein's gift to the Law School of \$10 million is the largest individual act of philanthropy the school has ever witnessed. The gift is meant to be transformative. As the article by Gerald de Jaeger indicates, over each of the next three years, twenty students—or more than 10 percent of each entering class—will be named David Rubenstein Scholars and will be awarded three-year full-tuition scholarships. This will enable the Law School to recruit the very best and brightest students to Chicago. It will also permit the 60 recipients of the scholarships to follow whatever careers they choose without worrying about debt repayment.

Tuition and fees at Chicago and its peer schools have reached staggering levels. For the entering class of 2013, tuition will be over \$45,000 per year plus room and board. As the economy has declined over the past two or three years, the rate of increase has slowed, but for some of our students, particularly those who do not take jobs at major firms, the expenses can be prohibitive. That is where financial aid comes in. Perhaps one of the worst kept secrets in Hyde Park is that the University will begin a new fundraising campaign soon. For the Law School, one of our top priorities will be scholarships and financial aid.

We will only be successful in making this happen if all of our alumni take up the challenge articulated by David Rubenstein on page 7 of this issue of *The Record*. In our nation, tuition covers only a portion of the cost of legal education. Our obligation to the profession and our obligation as alumni of great Law Schools is to contribute the rest just as our predecessors did for us. Over the past eight months I have felt the intense love, pride, and appreciation of our alumni for the unique education they received at the Law School. I am confident that David's leadership gift will inspire similar acts of philanthropy that will make an already great school even greater.

A handwritten signature in cursive script that reads "Michael J. Gill".



GENERATING A VIRTUOUS CYCLE

David Rubenstein Makes \$10 Million Gift for Student Scholarships

BY GERALD DE JAAGER

David M. Rubenstein has never forgotten the importance of the full-tuition scholarship he received to attend the University of Chicago Law School and the difference it made in his life.

Coming from a family of modest means, he graduated from the Law School in 1973 free of debt and free to pursue a nontraditional career path that made him one of the most successful and influential businessmen and philanthropists in the United States. Now Rubenstein is giving back in a way that will usher in a new era at the Law School by making a similar difference in the lives of 20 of the nation's brightest students each year.

Rubenstein has given the Law School the single largest gift it has ever received from an individual: \$10 million. With this one extraordinarily generous act of philanthropy, Rubenstein's gift creates the most expansive scholarship program the Law School has ever offered. Beginning in 2011, the David M. Rubenstein Scholars Program will provide 60 entering students with full-tuition scholarships covering all three years of their studies (20 students per year for three successive classes—2014, 2015, and 2016).

Rubenstein is cofounder and managing director of The

Above: David Rubenstein, '73, and Dean Michael Schill

Carlyle Group, which as one of the world's largest private equity firms manages more than \$90 billion from 19 worldwide offices. He says he expects that his gift will help redress the principal impediment facing the Law School in competing for top students: "Chicago is a great, great law school, but it is handicapped by an endowment that is small compared to the endowments of other top schools. I'm hoping that my gift—along with gifts that might be given by other graduates who are in a position to make them—will help persuade even more of the most talented students to come to Chicago."

Rubenstein understands from personal experience the influence that a generous scholarship can have. A magna cum laude, Phi Beta Kappa graduate of Duke University,

The more accomplished a school's faculty and students, the greater its reputation and ranking is likely to be, which means that more top students will be attracted to enroll.

he applied successfully to several law schools. It was the offer of a full-tuition scholarship that ultimately led him to choose Chicago. That National Honor Scholarship was particularly significant for him because of his family's modest financial circumstances—his father was a postal clerk whose annual wage never exceeded \$10,000. "The scholarship meant that I could tell my parents that I wouldn't need any money from them for law school," he recalls. "That meant a lot to me."

Just two years after law school, he enjoyed another important benefit of his scholarship when he stepped away from practicing at the law firm Paul Weiss Rifkind Wharton & Garrison to pursue his interest in politics. Rubenstein became chief counsel to a U.S. Senate subcommittee headed by Indiana Senator Birch Bayh, who was considered a likely presidential contender. "I probably couldn't have pursued that opportunity if I had been burdened with debt," he says.

When Bayh's candidacy didn't work out, Rubenstein joined Jimmy Carter's successful presidential campaign along with Carter advisor Stuart Eizenstat. Carter made Eizenstat his domestic policy advisor, Eizenstat made

Rubenstein his deputy, and at the age of 27 Rubenstein had a West Wing office. "The White House job didn't pay badly," Rubenstein recalls, "but I probably wouldn't have had it without the first step of going to work for Bayh, so I have my scholarship to thank for that, too."

Chicago's rigorous atmosphere apparently also prepared Rubenstein for the life of a White House staffer. A contemporaneous profile of Rubenstein reported that his working hours exceeded even those of the Commander-in-Chief, who had a well-earned reputation as a workaholic.

TURBOCHARGING THE VIRTUOUS CYCLE

Rubenstein's \$10 million commitment to the Law School will affect every aspect of the school. According to Dean



Michael Schill, "David's magnificent act of philanthropy is a game-changer." Attracting the best and the brightest students to Chicago with full-tuition scholarships will generate a virtuous cycle. Great faculty are attracted and retained in part by the presence of extraordinary students; and top students are attracted by the presence of great faculty. The more accomplished a school's faculty and students, the greater its reputation and ranking is likely to be, which means that more top students will be attracted to enroll. In addition, the more talented a student body is, the more rich are the conversations in and outside of class. Thus, although only 20 students or one-tenth of each admitted class will be named Rubenstein Scholars, the program will benefit the entire community in important ways.

Accelerating this cycle at Chicago is the primary reason why Rubenstein chose to make his gift an expendable one rather than a gift to the Law School's endowment. With an expendable gift, funds can be applied quickly, as the Law School perceives the need for them, rather than more slowly, as with an endowment. "Let's see the results right away," Rubenstein says. "If it works, you can expand it or

extend it. If it doesn't, try something else. If the Law School gets the right bang for these bucks in a short time frame, it could make a very big difference very quickly."

Rubenstein says he believes that this is a moment when scholarships can have a particularly large impact. "Right now, some of the financial allure of practicing law has diminished. Salaries probably aren't going to keep rising as fast as they have, and so debt load becomes an increasingly important consideration, even for students from relatively well-off families. It's an excellent time for the Law School to get the attention of the students it really wants, the most talented ones, and make them a very attractive offer."

"The Law School gave me so much, and I wanted to give back," he explains. "I never had a bad professor there, and many of them—Soia Mentschikoff and Walter Blum, to name just two—were exceptional. It was the best law faculty in the country."

Rubenstein's own experience exemplifies many aspects of the virtuous cycle. "The Law School gave me so much, and I wanted to give back," he explains. "I never had a bad professor there, and many of them—Soia Mentschikoff and Walter Blum, to name just two—were exceptional. It was the best law faculty in the country. And my classmates were extraordinarily talented people—[federal Appeals Court judges] Frank Easterbrook and Doug Ginsburg come to mind. I think anyone fortunate to have the kind of experience I had would want, if their circumstances permitted it, to give something back."

"In some ways," he adds, "my time at the Law School helped edge me into government and eventually into business because it became clear to me that in contrast to the faculty and to many of my fellow students, I wasn't going to be a Richard Posner; I wasn't any kind of legal genius." (Rubenstein once told an interviewer that he knew he wasn't a great lawyer because when he was thinking of leaving Paul Weiss and when he later considered leaving Shaw Pittman (after a stint between his White

House service and before founding The Carlyle Group), "none of my partners said 'Don't leave' and none of my clients said 'Don't leave.' So I concluded I must not be that great a lawyer.")

"A MODEST REPAYMENT"

When Rubenstein founded The Carlyle Group in 1987 with three others, his expectations were modest. "I didn't think we'd ever have more than ten employees, and the space we leased didn't have any room for expansion," he remembers. Today the firm has more than \$90 billion under its management and employs more than 880 people in



19 countries. The companies within the Carlyle portfolio have more than \$84 billion in revenue and employ more than 398,000 people around the world.

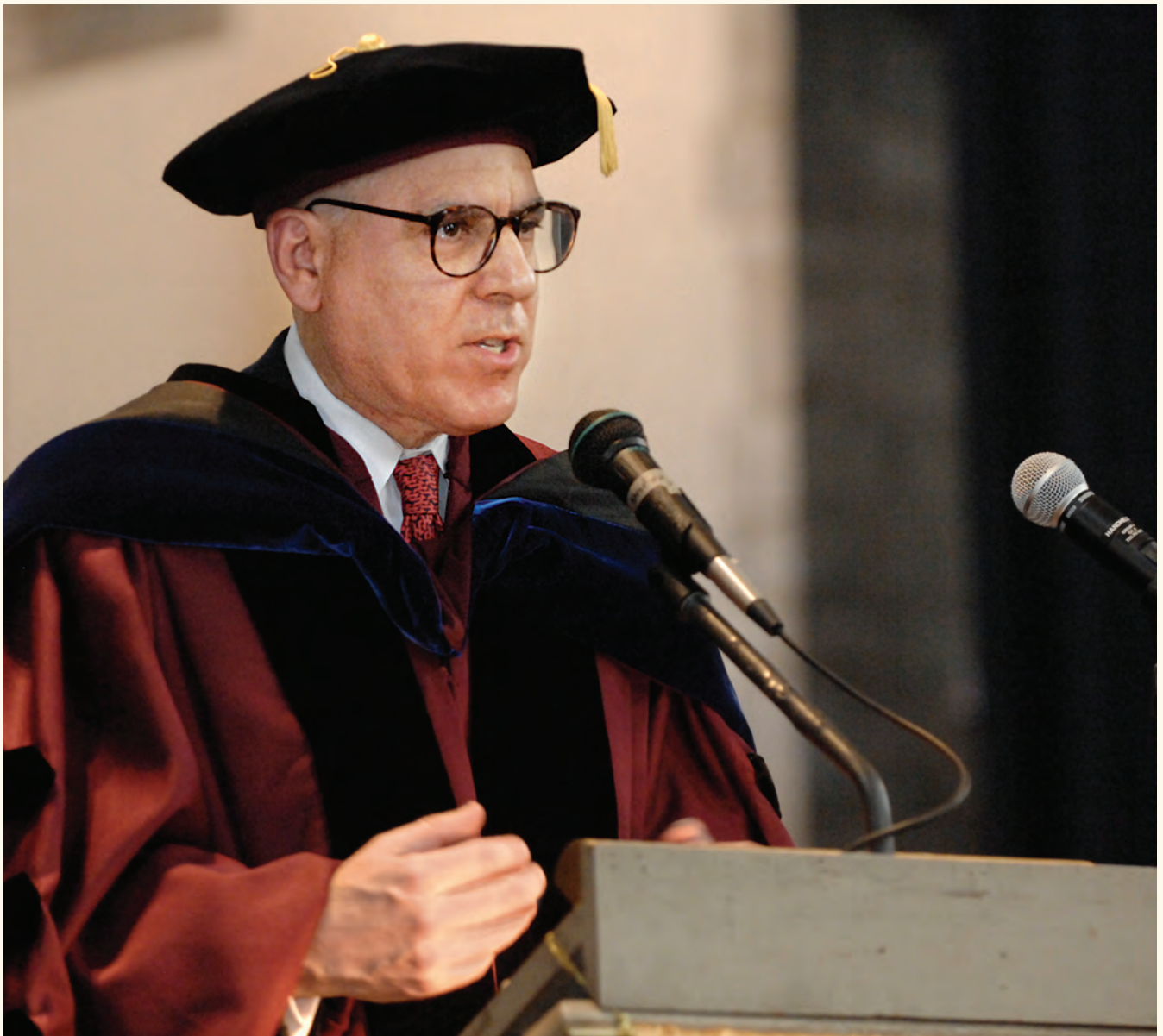
"I've been extremely lucky," he says. "Whatever I can give back will be only a modest repayment for my good fortune." In addition to financial gifts to a wide range of educational and other institutions, Rubenstein serves as a trustee of the University of Chicago, Duke, and Johns Hopkins and in major advisory capacities at Harvard and Princeton. He holds leadership and advisory positions at 24 other

*“I’ve been extremely lucky,”
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will be only a modest repayment
for my good fortune.”*

organizations, including service as chairman of the John F. Kennedy Center for the Performing Arts, president of the Economic Club of Washington, and a Regent of the Smithsonian Institution. Last month, Rubenstein was part

of a group of 40 individuals who pledged to give half of their wealth to charity. The Law School honored Rubenstein at graduation in 2007 with its Distinguished Alumnus Award. Dean Schill observes, “David Rubenstein is the sort of person a dean dreams of being an alumnus of his or her school. David is a wise man, a good man. He is a leader in every realm he touches. We are all proud that this institution helped make him the man he is today.”

Still traveling at least 250 days a year on business, Rubenstein comments, “I see people my age preparing for retirement, but I have a different view—I’m intending to sprint to the finish line, wherever that may be.” To keep



The Law School honored David Rubenstein at graduation in 2007 with the Distinguished Alumnus Award.



himself in sprinting shape, he maintains his longtime practice of not eating meat, not drinking, and not smoking. “I’ve told my kids,” he says, “that after I die and an autopsy is done on me, I’d like them to let me know whether all that clean living was worth it.”

“THE BEGINNING OF A NEW ERA”

Dean Schill (whom Rubenstein praises for acting quickly and forcefully to build on the strong legacy created by his predecessor Saul Levmore) notes that when he and Rubenstein met, they quickly discovered that they had similar family backgrounds—they both were among the first in their families to attain post-secondary degrees, and coming from

The Impact of a Full-Tuition Scholarship

By Gerald de Jaager

In 1959, under the leadership of its farsighted dean Edward Levi, the Law School created the Floyd Russell Mechem Prize Scholarship, awarded to entering law students and renewable in their second and third years. The scholarship’s annual stipend—which in 1960 was \$2,000—handily covered the cost of tuition, making the Mechem Scholarship one of the first three-year full-tuition merit-based scholarships offered by any top-tier law school.

In creating the Mechem Scholarship, the Law School was recognizing the same phenomena that principally underlie the new David M. Rubenstein Scholars Program: First, that top law-school candidates might be encouraged to choose the University of Chicago Law School over other schools with a generous financial offer; and second, that freedom from law-school debt might permit those top candidates to more readily pursue their highest career aspirations.

Unlike virtually all of the scholarships offered by the Law School then and since then, the Mechem Scholarship was financed primarily through the Law School’s general fund, not by gifts from alumni and friends of the Law School. In its early years, the scholarship covered not just tuition but other expenses as well, and for more than 30 years, its stipend was regularly increased to continue meeting at least the full cost of tuition. But with so many other demands on the Law School’s general-purpose funds, over time both

the number of Mechem Scholarships and their typical dollar amount were reduced.

The number of Mechem Scholarships awarded each year ranged from eight to one. Among those who received them are current U.S. Court of Appeals Judges Danny J. Boggs, ’68, and Douglas Ginsburg, ’73; former Court of Appeals Judge Michael McConnell, ’79; and Wachtell Lipton partner Andrew Nussbaum, ’91.

MECHEM SCHOLARS REFLECT

Conversations with five graduates who were Mechem Scholarship recipients show how well it achieved its purposes, providing an important incentive for top prospective students to come to Chicago and enabling them to make important career choices without debt as a major consideration. When Stephen Curley, ’69, became a Mechem awardee, the stipend covered his tuition and his room and board expenses. Curley, who is now a partner at Mintz Levin, remembers, “The Mechems were in a class by themselves at the top law schools. The amount I received, over \$3,000, was a huge stipend at the time. There was no way I was going to turn that down, so I came to Chicago.”

Carol Rose, ’77, whose teaching career includes more than 20 years at Yale Law School (she now divides her time between Yale and the University of Arizona’s James E. Rogers

families of modest means they both relied upon scholarship support to enable them to pursue higher education. “David’s commitment to providing scholarships resonated

“The scholarship meant that I could tell my parents that I wouldn’t need any money from them for law school,” he recalls.

strongly for me,” Schill says. “Not only because it is so right for the Law School, but because he and I both understand at a personal level that scholarships can make all the difference in whether a student can attend a great school like Chicago.”

Now, Schill observes, Rubenstein’s gift has initiated “the beginning of a new era” at the Law School. “Not only will we have more resources to attract the very brightest students to the school, but David’s leadership will inspire our other alumni to open their pockets to benefit the school that they also owe so much to.”

Perhaps no one says it better than David Rubenstein, who invites other alumni and friends of the Law School to join in this “potentially transformative” moment: “I’ve made a down payment toward a future when the Law School may have financial assets comparable to those of its competitors, but there are still many places where new funding can create additional leverage. I hope my gift might incent others who are in a position to be helpful. I hope they’ll keep in mind how much a Chicago education has meant to them, and see fit to give back to this great institution.” ■

College of Law), recalls, “I was choosing among several prestigious law schools when I learned that I had been awarded a Mechem. It was not just the money that tipped the scales in Chicago’s favor, although that was very important. I also felt that Chicago really wanted me.”

James Hipolit, ’76, Senior Vice President and General Counsel of Irex Corporation, and David Litt, ’88, a partner in the Tokyo office of Morrison & Foerster, both say that their scholarships enabled them to attend law school without having to draw on their families’ modest financial resources. Hipolit’s father was a public-school teacher; Litt’s breadwinner mother played in the symphony orchestra in Portland, Oregon.

Freedom from debt permitted many Mechem Scholars to pursue opportunities that might otherwise have been closed to them. Noting that he first ran for elected office less than five years after graduating from the Law School, Richard Cordray, ’86, who is now Attorney General of Ohio, says that with a typical graduate’s debt load he probably would not have been able to afford to enter that early electoral race. Hipolit, who took a job with the U.S. Department of Energy shortly after graduation, observes, “The Mechem gave me the freedom to take that job, a freedom I wouldn’t otherwise have had.”

Litt and Rose both found themselves able to take a year off during Law School to pursue activities that enriched their personal lives and their careers: Litt studied Japanese

intensively, while Rose served as associate director of the Southern Governmental Monitoring Project of the Southern Regional Council.

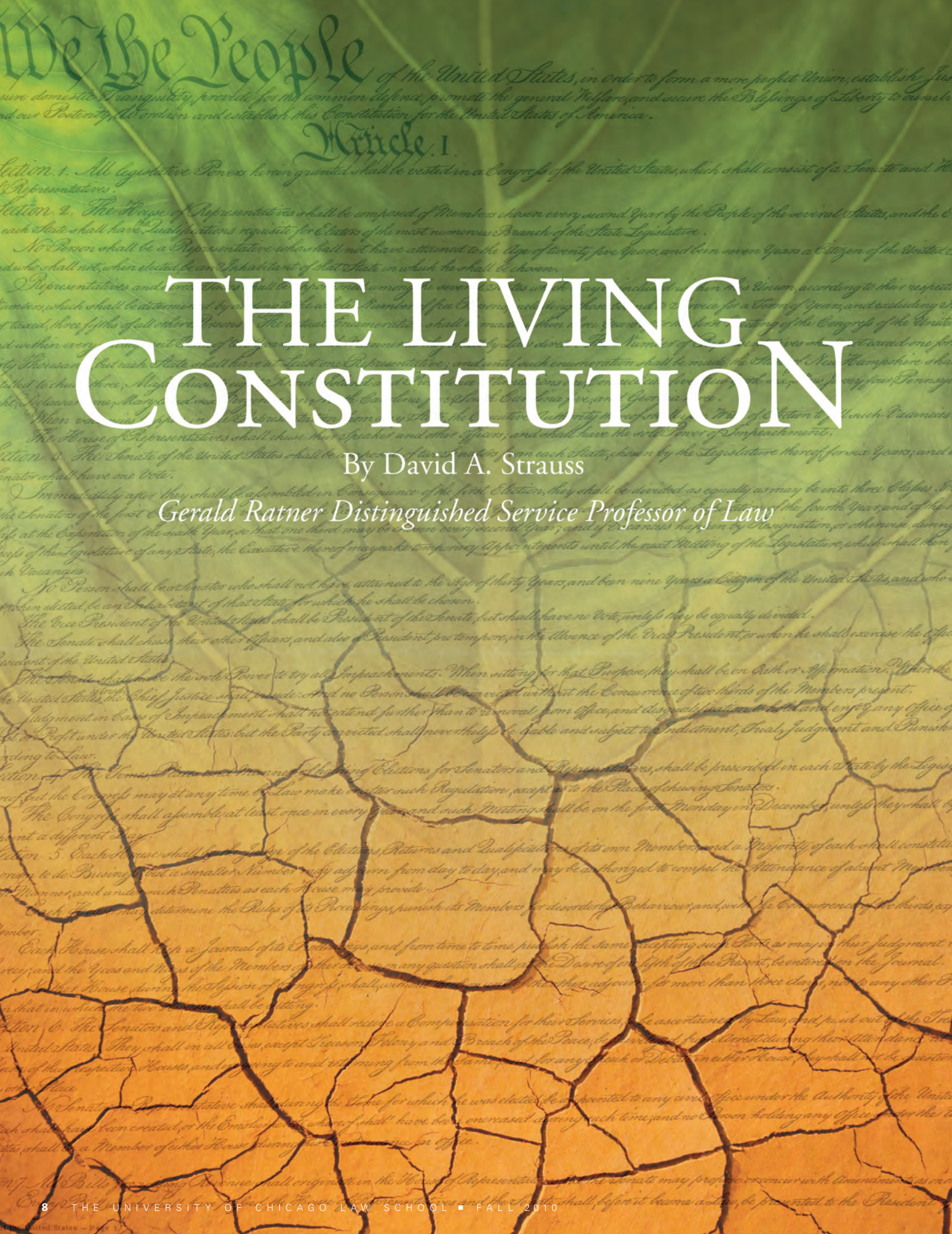
GIVING BACK

All of the Mechem interviewees say that they are glad to have chosen Chicago. As Stephen Curley puts it, “Chicago was a great law school then, just as it is now. I wasn’t going with a second-best option just for the scholarship money. I got a great education that has served me well.”

And each of them has shown their appreciation by giving back to the Law School. “The Mechem made me a donor,” says Rose, who has contributed to the Law School every year since she graduated. “The Law School gave me a fabulous, one-of-a-kind helping hand, and I’m happy to reciprocate.”

David Litt says that as he makes regular gifts to the Law School, he feels as though he’s “barely paying the interest on what the Mechem and a Chicago education were worth to me.”

Richard Cordray remembers that every day as he went to class he would see the portrait of Floyd Mechem that hangs in the Law School’s main corridor, and he would sense the lineage of brilliant scholarship and great teaching connecting him to the very beginnings of the Law School. Now, Cordray says, “I like to think of my donations as a similar act of continuity that will make a difference for the future of other law students.” ■



We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

THE LIVING CONSTITUTION

By David A. Strauss

Gerald Ratner Distinguished Service Professor of Law

Representatives and electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. Representatives and electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and the Electors in each State shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. In the first Class, the Names of the Senators shall be arranged so that the first Term shall expire at the end of the second Year, the second at the end of the fourth Year, and the third at the end of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Term of any of these Classes, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulation, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a quorum to do Business, but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place, that in which one of them shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance in either House, and in going to and returning from the same; and for any Speech or Debate in either House they shall not be questioned in any Place.

Section 7. No Senator or Representative shall, during the Term for which he was elected, be appointed to any civil Office under the Authority of the United States, which has been created, or the Emolument whereof shall have been increased during that Term; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 8. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments to any Bill passed by the House of Representatives, and after such Amendment, if any, shall be presented to the President.

Do we have a living Constitution? Do we want to have a living Constitution? A living Constitution is one that evolves, changes over time, and adapts to new circumstances, without being formally amended. On the one hand, the answer has to be yes: there's no realistic alternative to a living Constitution. Our written Constitution, the document under glass in the National Archives, was adopted 220 years ago. It can be amended, but the amendment process is very difficult. The most important amendments were added to the Constitution almost a century and a half ago, in the wake of the Civil War, and since that time many of the amendments have dealt with relatively minor matters.

Meanwhile, the world has changed in incalculable ways. The nation has grown in territory and its population has multiplied several times over. Technology has changed, the international situation has changed, the economy has changed, social mores have changed, all in ways that no one could have foreseen when the Constitution was drafted. And it is just not realistic to expect the cumbersome amendment process to keep up with these changes.

So it seems inevitable that the Constitution will change, too. It is also a good thing, because an unchanging Constitution would fit our society very badly. Either it would be ignored or, worse, it would be a hindrance, a relic that keeps us from making progress and prevents our society from working in the way it should.

On the other hand, there seem to be many reasons to insist that the answer to that question—do we have a living Constitution that changes over time?—cannot be yes. In fact, the critics of the idea of a living constitution have pressed their arguments so forcefully that, among people who write about constitutional law, the term “the living constitution” is hardly ever used, except derisively. The Constitution is supposed to be a rock-solid foundation, the embodiment of our most fundamental principles—that's the whole idea of having a constitution. Public opinion may blow this way and that, but our basic principles—our constitutional principles—must remain constant. Otherwise, why have a Constitution at all?

Even worse, a living Constitution is, surely, a manipulable Constitution. If the Constitution is not constant—if it changes from time to time—then someone is changing it, and doing so according to his or her own ideas about what the Constitution should look like. The “someone,” it's usually thought, is some group of judges. So a living Constitution becomes not the Constitution at all; in fact it is not even law any more. It is just some gauzy ideas that

appeal to the judges who happen to be in power at a particular time and that they impose on the rest of us.

So it seems we want to have a Constitution that is both living, adapting, and changing and, simultaneously, invincibly stable and impervious to human manipulation. How can we escape this predicament?

The good news is that we *have* mostly escaped it, albeit unselfconsciously. Our constitutional system, without our fully realizing it, has tapped into an ancient source of law, one that antedates the Constitution itself by several centuries. That ancient kind of law is the common law. The common law is a system built not on an authoritative, foundational, quasi-sacred text like the Constitution. Rather, the common law is built out of precedents and traditions that accumulate over time. Those precedents allow room for adaptation and change, but only within

*Public opinion may
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remain constant. Otherwise, why
have a Constitution at all?*

certain limits and only in ways that are rooted in the past. Our constitutional system has become a common law system, one in which precedent and past practices are, in their own way, as important as the written Constitution itself. A common law Constitution is a “living” Constitution, but it is also one that can protect fundamental principles against transient public opinion, and it is not one that judges (or anyone else) can simply manipulate to fit their own ideas.

The bad news is that, perhaps because we do not realize what a good job we have done in solving the problem of how to have a living Constitution, inadequate and wrongheaded theories about the Constitution persist. One theory in particular—what is usually called “originalism”—is an especially hardy perennial. Originalism is the antithesis of the idea that we have a living Constitution. It is the view that constitutional provisions mean what the people who adopted them—in the 1790s or 1860s or whenever—understood them to mean. (There are different forms of originalism, but this characterization roughly captures all of them.) In the hands of its most aggressive proponents,

originalism simply denies that there is any dilemma about the living Constitution. The Constitution requires today what it required when it was adopted, and there is no need for the Constitution to adapt or change, other than by means of formal amendments.

There is something undeniably natural about originalism. If we're trying to figure out what a document means, what better place to start than with what the authors understood it to mean? Also, as a matter of rhetoric, everyone is an originalist sometimes: when we think something is unconstitutional—say, widespread electronic surveillance of American citizens—it is almost a reflex to say something to the effect that “the Founding Fathers” would not have tolerated it. And there are times, although few of them in my view, when originalism is the right way to approach a constitutional issue. But when it comes to difficult, controversial constitutional issues, originalism is a totally inadequate approach. It is worse than inadequate: it hides the ball by concealing the real basis of the decision.

But if the idea of a living Constitution is to be defended, it is not enough to show that the competing theory—originalism—is badly flawed. You can't beat somebody with nobody. So I will describe the approach that really is at the core of our living constitutional tradition, an approach derived from the common law and based on precedent and tradition.

* * *

THE COMMON LAW

Pick up a Supreme Court opinion, in a constitutional case, at random. Look at how the Justices justify the result they reach. Here is a prediction: the text of the Constitution will play, at most, a ceremonial role. Most of the real work will be done by the Court's analysis of its previous decisions. The opinion may begin with a quotation from the text. “The Fourth Amendment provides . . .,” the opinion might say. Then, having been dutifully acknowledged, the text bows out. The next line is “We”—meaning the Supreme Court—“have interpreted the Amendment to require . . .” And there follows a detailed, careful account of the Court's precedents.

Where the precedents leave off, or are unclear or ambiguous, the opinion will make arguments about fairness or good policy: why one result makes more sense than another, why a different ruling would be harmful to some important interest. The original understandings play a role only occasionally, and usually they are makeweights or the Court admits that they are inconclusive. There are exceptions,

like *Heller*, the recent decision about the Second Amendment right to bear arms, where the original understandings take center stage. But cases like that are very rare.

Advocates know what actually moves the Court. Briefs are filled with analysis of the precedents and arguments about which result makes sense as a matter of policy or fairness. Oral argument in the Court works the same way. The text of the Constitution hardly ever gets mentioned. It is the unusual case in which the original understandings get much attention. In constitutional cases, the discussion at oral argument will be about the Court's previous decisions and, often, hypothetical questions designed to test whether a particular interpretation will lead to results that are implausible as a matter of common sense.

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The contrast between constitutional law and the interpretation of statutes is particularly revealing. When a case concerns the interpretation of a statute, the briefs, the oral argument, and the opinions will usually focus on the precise words of the statute. But when a case involves the Constitution, the text routinely gets no attention. On a day-to-day basis, American constitutional law is about precedents, and when the precedents leave off it is about common sense notions of fairness and good policy.

What's going on here? Don't we have a Constitution? We do, but if you think the Constitution is just the document that is under glass in the National Archives, you will not begin to understand American constitutional law. Our nation has over two centuries of experience grappling with the fundamental issues—constitutional issues—that arise in a large, complex, diverse, changing society. The lessons we have learned in grappling with those issues only sometimes make their way into the text of the Constitution by way of amendments, and even then the amendments often occur only after the law has already changed.

But those lessons are routinely embodied in the cases that the Supreme Court decides, and also, importantly, in traditions and understandings that have developed outside

the courts. Those precedents, traditions, and understandings form an indispensable part of what might be called our small-c constitution: the constitution as it actually operates, in practice. That small-c constitution—along with the written Constitution in the Archives—is our living Constitution.

* * *

THE TWO TRADITIONS

There are, broadly speaking, two competing accounts of how something gets to be law. One account—probably the one that comes most easily to mind—sees law as, essentially, an order from a boss. The “boss” need not be a dictator; it can be a democratically-elected legislature. According to this theory, the law is binding on us because the person or entity who commanded it had the authority to issue a binding command, either, say, because of the divine right of kings, or—the modern version—because of the legitimacy of democratic rule. So if you want to determine what the law is, you examine what the boss, the sovereign, did—the words the sovereign used, evidence of the sovereign’s intentions, and so on.

Originalism is a version of this approach. As originalists see it, the Constitution is law because it was ratified by the People, either in the late 1700s or when the various amendments were adopted. Anything the People did not ratify isn’t the law. If we want to determine what the Constitution requires, we have to examine what the People did: what words did they adopt, and what did they understand themselves to be doing when they adopted those provisions. And we have to stop there. Once we look beyond the text and the original understandings, we’re no longer looking for law; we’re doing something else, like reading our own values into the law.

The command theory, though, isn’t the only way to think about law. The common law approach is the great competitor of the command theory, in a competition that has gone on for centuries. The early common lawyers saw the common law as a species of custom. It would make no sense to ask who the sovereign was who commanded that a certain custom prevail, or when, precisely, a particular custom became established. Legal systems are now too complex and esoteric to be regarded as society-wide customs. But still, on the common law view, the law can be like a custom in important ways. It can develop over time, not at a single moment; it can be the evolutionary product of many people, in many generations.

Similarly, according to the common law view, the authority of the law comes not from the fact that some

entity has the right, democratic or otherwise, to rule. It comes instead from the law’s evolutionary origins and its general acceptability to successive generations. For the same reason, according to the common law approach, you cannot determine the content of the law by examining a single authoritative text or the intentions of a single entity. The content of the law is determined by the evolutionary process that produced it. Present-day interpreters may contribute to the evolution—but only by continuing the evolution, not by ignoring what exists and starting anew.

Characteristically the law emerges from this evolutionary process through the development of a body of precedent. A judge who is faced with a difficult issue looks to see how earlier courts decided that issue, or similar issues. The

The better way to think about the common law is that it is governed by a set of attitudes: attitudes of humility and cautious empiricism.

judge starts by assuming that she will do the same thing in the case before her that the earlier court did in similar cases. Sometimes—almost always, in fact—the precedents will be clear, and there will be no room for reasonable disagreement about what the precedents dictate. But sometimes the earlier cases will not dictate a result. The earlier cases may not resemble the present case closely enough. Or there may be earlier cases that point in different directions, suggesting opposite outcomes in the case before the judge. Then the judge has to decide what to do.

At that point—when the precedents are not clear—a variety of technical issues can enter into the picture. But often, when the precedents are not clear, the judge will decide the case before her on the basis of her views about which decision will be more fair or is more in keeping with good social policy. This is a well-established aspect of the common law: there is a legitimate role for judgments about things like fairness and social policy.

It is important not to exaggerate (nor to understate) how large a role these kinds of judgments play in a common law system. In any well-functioning legal system, most potential cases do not even get to court, because the law is so clear that people do not dispute it, and that is true of common law systems, too. Even in the small minority of

cases in which the law is disputed, the correct answer will sometimes be clear. And—perhaps the most important point—even when the outcome is not clear, and arguments about fairness or good policy come into play, the precedents will limit the possible outcomes that a judge can reach.

ATTITUDES, NOT ALGORITHMS

This description might seem to make the common law a vague and open-ended system that leaves too much up for grabs—precisely the kinds of criticisms that people make of the idea of a living constitution. When, exactly, can a case be distinguished from an earlier precedent? What are the rules for deciding between conflicting precedents? What are the rules about overturning precedents?

For the most part, there are no clear, definitive rules in a

Originalists... do not have an answer to Thomas Jefferson's famous question: why should we allow people who lived long ago, in a different world, to decide fundamental questions about our government and society today?

common law system. The common law is not algorithmic. The better way to think about the common law is that it is governed by a set of attitudes: attitudes of humility and cautious empiricism. These attitudes, taken together, make up a kind of ideology of the common law. It's an ideology that was systematically elaborated by some of the great common law judges of early modern England. The most famous exponent of this ideology was the British statesman Edmund Burke, who wrote in the late eighteenth century. Burke, a classic conservative, wrote about politics and society generally, not specifically about the law. But he took the common law as his model for how society at large should change, and he explained the underpinnings of that view.

The first attitude at the basis of the common law is humility about the power of individual human reason. It is a bad idea to try to resolve a problem on your own, without referring to the collected wisdom of other people who have tried to solve the same problem. That is why it makes sense to follow precedent, especially if the precedents are clear and have been established for a long time. "We are

afraid to put men to live and trade each on his own stock of reason," Burke said, "because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations." The accumulated precedents are "the general bank and capital." It is an act of intellectual hubris to think that you know better than that accumulated wisdom.

The second attitude is an inclination to ask "what's worked," instead of "what makes sense in theory." It is a distrust of abstractions when those abstractions call for casting aside arrangements that have been satisfactory in practice, even if the arrangements cannot be fully justified in abstract terms. If a practice or an institution has survived and seems to work well, that is a good reason to preserve it; that practice probably embodies a kind of rough common sense, based in experience, that cannot be captured in theoretical abstractions. To quote Burke again: "The science of government being . . . so practical in itself, and intended for such practical purposes, a matter which requires experience, and even more experience than any person can gain in his whole life, . . . it is with infinite caution that any man ought to venture upon pulling down an edifice, which has answered in any tolerable degree for ages the common purposes of society."

ORIGINALISM, THE COMMON LAW, AND CANDOR

Originalism's trump card—the principal reason it is taken seriously, despite its manifold and repeatedly-identified weaknesses—is the seeming lack of a plausible opponent. "Living constitutionalism" is too vague, too manipulable.

But if the living Constitution is a common law Constitution, then originalism can no longer claim to be the only game in town. The common law has been around for centuries. In non-constitutional areas like torts, contracts, and property, the common law has limited judges' discretion and guided the behavior of individuals. And while the common law does not always provide crystal-clear answers, it is false to say that a common law system, based on precedent, is endlessly manipulable.

A common law approach is superior to originalism in at least four ways.

- The common law approach is more workable. Originalism requires judges and lawyers to be historians. The common law approach requires judges and lawyers to be—judges and lawyers. Reasoning from precedent, with occasional resort to basic notions of fairness and policy, is what judges and lawyers do. They have done it for a long time in the non-constitutional areas that are governed by the common law.

• The common law approach is more justifiable. The common law ideology gives a plausible explanation for why we should follow precedent. One might disagree, to a greater or lesser extent, with that ideology. Perhaps abstract reason is better than Burke allows; perhaps we should be more willing to make changes based on our theoretical constructions. Sometimes the past is not a storehouse of wisdom; it might be the product of sheer happenstance, or, worse, accumulated injustice. But there is unquestionably something to the Burkean arguments. And to the extent those arguments are exaggerated, the common law approach has enough flexibility to allow a greater role for abstract ideas of fairness and policy and a smaller role for precedent.

Originalists, by contrast, do not have an answer to Thomas Jefferson's famous question: why should we allow people who lived long ago, in a different world, to decide fundamental questions about our government and society today? Originalists do not draw on the accumulated wisdom of previous generations in the way that the common law does. For an originalist, the command was issued when a provision became part of the Constitution, and our unequivocal obligation is to follow that command. But why? It is one thing to be commanded by a legislature we elected last year. It is quite another to be commanded by people who assembled in the late eighteenth century.

• The common law approach is what we actually do. Originalists' America—in which states can segregate schools, the federal government can discriminate against anybody, any government can discriminate against women, state legislatures can be malapportioned, states needn't comply with most of the Bill of Rights, and Social Security is unconstitutional—doesn't look much like the country we inhabit. In controversial areas at least, the governing principles of constitutional law are the product of precedents, not of the text or the original understandings. And in the actual practice of constitutional law, precedents and arguments about fairness and policy are dominant.

• The common law approach is more candid. This is an important and easily underrated virtue of the common law approach, especially compared to originalism.

The common law approach explicitly envisions that judges will be influenced by their own views about fairness and social policy. Common law judges have operated that way for centuries. This doesn't mean that judges can do what they want. Judgments of that kind can operate only in a limited area—the area left open by precedent, or in the circumstances in which it is appropriate to overrule a precedent. But because it is legitimate to make judgments of fairness and policy, in a common law system those judgments can be openly avowed and defended, and therefore can be openly criticized.

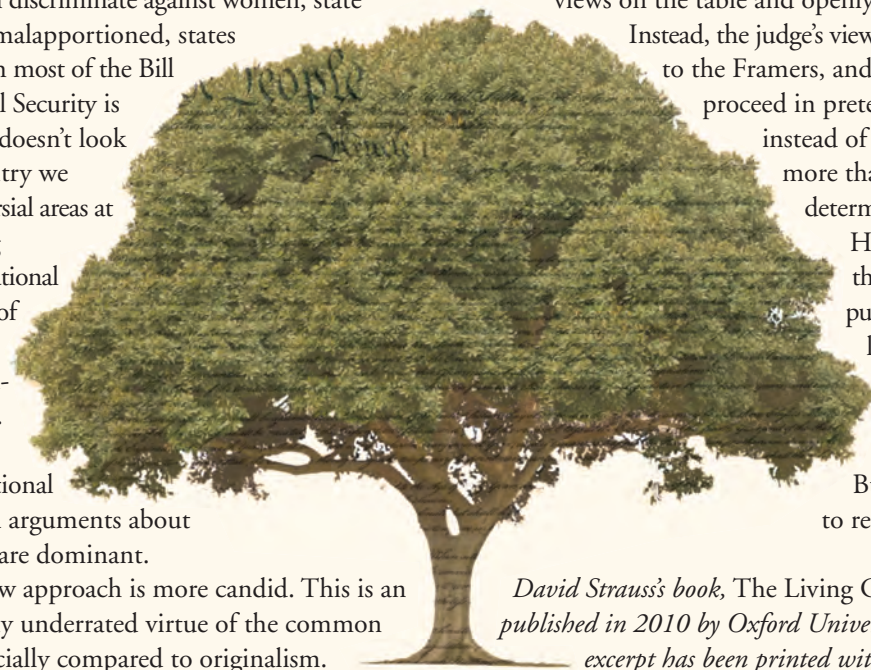
Originalism is different. An originalist claims to be following orders. An originalist cannot be influenced by his or her own judgments about fairness or social policy—to allow that kind of influence is, for an originalist, a lawless act of usurpation. An originalist has to insist that she is just enforcing the original understanding of the Second Amendment, or the Free Exercise Clause of the First Amendment, and that her own views about gun control or religious liberty have nothing whatever to do with her decision.

That is an invitation to be disingenuous. Originalism, as applied to the controversial provisions of our Constitution, is shot through with indeterminacy—resulting from, among other things, the problems of ascertaining the original understandings and of applying those understandings to the modern world once they've been ascertained. In the face of that indeterminacy, it will be difficult for any judge to sideline his or her strongly held views about the underlying issue. But originalism forbids the judge from putting those views on the table and openly defending them.

Instead, the judge's views have to be attributed to the Framers, and the debate has to proceed in pretend-historical terms, instead of in terms of what is, more than likely, actually determining the outcome.

Having said all that, though, the proof is in the pudding, and the common law constitution cannot be effectively defended until we see it in operation.

But for that, you'll have to read the book. ■



David Strauss's book, The Living Constitution, was published in 2010 by Oxford University Press, and this excerpt has been printed with their permission.

FINDING THE PERFECT FIT

HOW THE LAW SCHOOL'S MODERN RECRUITING TACTICS ATTRACTED ONE OF THE BEST CLASSES YET

By Robin I. Mordfin



Applying to law school no longer involves sitting down with a 2,000-page copy of *Barron's Guide to Law Schools* and a pad of paper and creating a wish list. Today, aspiring law students gather information from a huge variety of electronic sources, including blogs, websites, podcasts, and discussion boards. Before they even download their online applications, many have already learned about the accessibility of faculty, practice area-specific course offerings, and judicial clerkship placement at hundreds of schools. From the applicant perspective, things have changed. Prospective students are much savvier, and far better informed—or think they are—than ever before.

But inside the Admissions Office at the University of Chicago Law School, many things remain the same as they

always have. Naturally, the Law School has moved much of the information that used to be in print onto the web, and new communications and marketing technologies—chats, tweets, Facebook pages—are used to reach out to students. But the essence of the admissions process works much as it has for decades.

“We read every application thoroughly, and then we often read them again,” explains Jayme McKellop, Associate Director of Admissions for the Law School. “Usually, at least two of us read each application in its entirety. We do not ignore any application because of an LSAT score, a GPA, or any other criteria.”

Which is how the Law School has always worked. While some law schools may have formulae that simply admit or

reject students based on their LSAT score and GPA, the Law School considers every application. These days, there are a lot of them. The Law School received nearly 5,600 applications this past year for spots in the Class of 2013.

The process is so careful and individualized because the admissions staff is looking for more than pure numerical excellence. As similar as law schools can look from the outside, it turns out that they are quite different from each other, and finding the right fit between student and law school is a crucial factor in whether a student will have a good experience. “We are a unique and special place,” explains Karla Vargas, Director of Financial Aid at the Law School. “Is everyone who applies here right for the school? No, of course not. But we get more and more outstanding students applying each year. It is our job to figure out whether they are right for the school, and just as important, whether the school is right for them.”



Dean Michael Schill visits with a student at Coffee Mess.

This was an excellent year in the Admissions Office. Yield—the number of students who accepted initial offers in the 1L class—was up an extraordinary 25 percent over the year before, with both fewer offers extended and more offers accepted. Applications were up more than 3 percent, with an acceptance rate of 15 percent, down from 18 percent last year. The incoming class will be more diverse than any in the Law School’s history—35 percent of the 1Ls will be students of color, and, for the first time, 10 percent will be African American.

The entering class is more academically qualified and interesting than ever. For example, just listing the median numeric credentials of this class will make most alumni shake their heads. As of August 1, the Class of 2013 boasts

a median LSAT of 171 (98th percentile) and a median GPA of 3.78. These numbers have held steady now through two admissions cycles, and the GPA number has increased a great deal in only a short time—the median GPA of the Class of 2011 was 3.68. At Chicago Law, of course, numbers aren’t everything—the entering class also comes with a wealth of experience. Fully two-thirds of the

“Usually, at least two of us read each application in its entirety. We do not ignore any application because of an LSAT score, a GPA, or any other criteria.”

entering class will come in with post-college work experience or graduate education. They come from 36 states and 102 undergraduate schools. They include Teach for America and Peace Corps alumni, military veterans, professional artists and musicians, athletes, and Eagle Scouts. (You can learn more about them on our inside back cover.)

It is hard to know exactly why this admissions cycle turned out so well for Chicago Law, but a few things surely helped. This April saw record attendance at Admitted Students Weekend, which has always been a reliable way to get admitted students to sign on the dotted line. New technologies were used to reach out to potential students, and several student organizations helped recruit admitted students who might be their future members. The Admissions Office also has some fantastic new staff members, and the Law School students who helped with the admissions process were particularly instrumental. And the Law School’s rise to number five in the *US News & World Report* rankings—which occurred shortly after Admitted Students Weekend and before the response deadline—certainly didn’t hurt.

“Our Student Admissions Committee this year was exceptional,” says Ann K. Perry, Assistant Dean of Admissions at the Law School. “They were very enthusiastic about everything.” The students agree. “It was a great experience,” says Ben Schuster, ’10, who was on the Student Admissions Committee. “It was a lot of fun talking with prospective and admitted students, hearing their questions, describing life at the Law School. I really enjoyed it.”

Using student organizations to recruit is not a new idea, but the combination of enthusiastic students and easy electronic outreach has made it a potent tool. This year, for

example, the members of the Black Law Students Association (BLSA), under the leadership of Malaika Durham Tyson, '11, reached out to admitted African American students individually. BLSA members offered to answer questions and talk about their experiences—and came out in force for Admitted Students Weekend. Similar outreach efforts were made by the Latino/a Law Student Association, the Asian Pacific American Law Student Association, OutLaw (the



Current student outreach is important to admitted students.

LGBT student group), the Dallin Oaks Society (the Mormon student group), and the Law Women's Caucus.

Alumni also get involved. Alumni Admissions Committee volunteers are matched with admitted students to answer questions about the Law School. "Every year, when we survey our admitted students, several say that their conversations with alumni were the determinative factor in the decision to attend Chicago. Our alumni are one of our strongest resources," McKellop notes.

Last—but certainly not least—the faculty get involved in recruiting. Dean Michael Schill traveled coast to coast to seven Wine Messes for admitted students, making sure that they all knew how much the Law School—and its new Dean—wanted them to join our community. Several faculty members sent individualized emails to admitted students and engaged in further communications with them answering questions about the Law School. "I routinely hear from admitted students that they are pleasantly surprised to hear from some of our most popular professors. Students enjoy this interaction as it reinforces the accessibility of our faculty," says Perry.

Reaching out to admitted students to answer their questions and show them what Chicago Law is really like is one of the most important things the Admissions Office

does. The Admissions Office maintains a dedicated, password-protected page on the website for admitted students, which provides a plethora of details on events and information available to them, including Admitted Students Weekend, a guide to Hyde Park, an Admitted Student Handbook, video tours of the city, a slew of FAQs, and—new this year—online chats with Law School faculty, staff, and students.



Assistant Professor Rosalind Dixon, at right, welcomes new students.

"The chats were very successful," notes Perry. "Everyone involved really enjoyed them and we put a lot of useful information out there." Chats were held weekly from February through April, and included discussions with Professors Lior Strahilevitz and Tom Ginsburg, Dean of Students Michele Baker Richardson, the associate dean and a director from the Office of Career Services, various students, and others from the school. Topics ranged from financial aid and fellowships to student organizations, curriculum, and judicial clerkships. "One of the advantages of the chats," notes Vargas, "is that we can make sure the admitted students are getting accurate information and the right answers to their questions."

In the Internet age, countering incorrect impressions is becoming an even more critical part of the responsibilities of the Admissions Office. With so many independent law-school related message boards, websites, and chat rooms available, many potential students are gathering erroneous information.

"It is one of our significant challenges," McKellop says. "Rather than emailing one of us in the Admissions Office, or reading our website, students often rely on inaccurate information from anonymous sources." Such incorrect information can include how and why students have been

admitted, data on scholarship awards, student life, and job placement. The list goes on and on.

Changes in personnel and even in physical space have helped the Admissions Office rise to this challenge. Vargas arrived at the Law School in February with more than five years of law school-specific financial aid advising experience. Her ability to talk one on one with applicants and guide them through the complex processes has greatly improved



The Law School's new corn hole game was a hit at Admitted Students Weekend.

the Law School's ability to get students to matriculate. The new Student Services Suite in the library has a lovely waiting area where prospective students can peruse Law School materials, talk to current students, and generally be made to feel welcome. Kevin Petty, the new Admissions and Financial Aid Coordinator, and Stacy Glover, the veteran Admissions Coordinator, serve both as welcoming faces and friendly phone voices to thousands of inquiring applicants and admitted students every year. "Kevin and Stacy make all our applicants feel that they are being treated like people, rather than numbers on a file," says Perry. "Their unflappable nature makes our extremely busy office run smoothly."

This personal attention is absolutely necessary for dealing with today's prospective students. "Applicants have very different expectations than in the past," McKellop continues. "Students no longer send in their applications and simply wait for decisions to come in the mail. Recruiting admitted students requires a thoughtful communication

plan and individualized conversations. Applicants want consistent and prompt interaction. They can watch their application move through the admissions process with our online status checker. They can see when their application has gone under review. We tell them when to expect the next round of decisions through our Twitter feed. They want up-to-the-minute information, so we work hard to give them that."

Not surprisingly, students have greater concerns about funding their legal education and are more reluctant to take on debt in light of the changing legal market. "Another difference is that they negotiate more," Vargas notes. "Now when an accepted student gets a financial-aid package—and everyone gets some package that enables them to pay to attend the Law School—some students will counter the offer by showing us what they were offered from other schools."

Still, as the application process has evolved, some things the Law School has offered to admitted students for years are just as valuable as ever.

"Admitted Students Weekend is great," Schuster says. "Not only is it fun, but once you get students here they want to attend this school. Once they see the facilities, the students, how friendly everyone is, and how great the community is, it's really persuasive. A lot of good things separate the University of Chicago from the rest of the law schools."

Financial aid plays a big role in admissions, as it has for decades. New programs to alleviate debt for students seeking to work in public interest and government jobs, such as the Heerey Fellowships and Hormel Public Interest Program, encourage an ever-wider variety of students to choose Chicago Law. Beginning in the fall, the addition of the new Rubenstein Scholars program (see page 2) will greatly increase the Law School's ability to attract the very best students.

So while many aspects of the admissions process continue to change from year to year, the basics remain the same: Consider every application, find students who will thrive at the Law School, and give applicants the information they need to make the best possible decision. The staff of the Admissions Office does an exemplary job in these areas, and, as you would expect, they do it in quintessential Chicago Law style.

"I don't think this happens at other law schools," Schuster notes. "But you see Ann Perry and her staff in the Green Lounge, or some other part of the Law School, every day talking to students. The Admissions Office isn't just about getting students into the Law School. They are a vital part of our school and everyone feels that way." ■



A CULTURE *of* RESPECT ACROSS THE IDEOLOGICAL SPECTRUM

By Lynn Safranek

Professor Martha Nussbaum, the Ernst Freund Distinguished Service Professor of Law and Ethics, can count on students to provide unvarnished criticism of her work and ideas, just as she expects them not to hold back when discussing hot-button issues such as abortion and same-sex marriage.

“The Law School’s culture of respect allows conservative and liberal students alike to articulate their views in a way that might be much more difficult at other law schools,” she said. “We all learn a great deal from these debates.”

The University of Chicago Law School fosters an environment where students across the ideological spectrum can express their viewpoints without fear of scorn or ridicule. Rather than just token individuals, all parts of the ideological spectrum, including the center, have strong representation in the student body and on the faculty. Students and faculty alike are drawn to the Law School for a long-standing reputation of welcoming a diversity of ideas, a feature that provides fertile ground for engaging debates.

After all, the Law School was the home of President Barack Obama, who taught Constitutional Law as a Senior Lecturer, as well as former Professor and current

U.S. Supreme Court Justice Antonin Scalia, who helped Chicago Law students organize its chapter of the Federalist Society. The Law School’s faculty continually makes news on ideologically diverse topics, whether it’s Nussbaum discussing sexual orientation and the law on Chicago Public Radio, Richard Epstein blogging on *Forbes.com* in defense of BP, Geof Stone talking about judicial activism in *The Huffington Post*, or Eric Posner writing an op-ed on the situation in Gaza in the *Wall Street Journal*.

Students of every stripe report feeling comfortable in the knowledge that their views are supported and appreciated. As they have for decades, student organizations invite nationally recognized speakers for talks over the lunch hour—about eight to 10 each week—that may include a debate or panel discussion with an ideologically opposed professor or another invited speaker. Part of the speaker’s time is reserved to take student questions.

On any given day, lines of students snake down the Law School hallway and into various classrooms where students will spend the lunch hour diving into the hottest and most politically charged legal issues of the day. One room might host a panel discussion on immigration reform while next

door speakers debate human rights and the limits of international law, the economics of hate crime legislation, or the SEC's case against Goldman Sachs. When students ask tough questions, speakers answer with opinions that aren't agreeable to everyone. But the lunch hour ends with the satisfaction that ideas were debated and shared.

Student organizations will often work together to host speakers. For example, during last year's Diversity Week, the Black Law Students Association joined the Muslim Law Students Association, the Federalist Society and three other groups to host a panel on educational diversity. Marisa Maleck, '11, president of the Federalist Society, said the group's best events last year were cosponsored with the American Constitution Society, an organization with opposing viewpoints. One such co sponsored event

Students of every stripe report feeling comfortable in the knowledge that their views are supported and appreciated.

was a discussion about appellate adjudication with Judges Alex Kozinski and Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

Some of the more controversial speakers might have received an unwelcome reaction at other schools, but their lectures are well attended at the Law School and without incident. For example, former Department of Justice official John Yoo, author of the so-called "torture memos," debated former Georgia Congressman Robert Barr in February about presidential powers and civil liberties in wartime. Despite the rowdy response Yoo has received at other universities, Maleck had no worries about the debate being disrupted by Law students.

"The room was packed and the questions were just the type you'd expect from Chicago students—it was an intellectually engaged discussion!" Maleck said.

More student groups are being formed to promote debate. Last year, Adi Habbu, '10, founded a student organization called Jefferson's Salon as a liberal version of the Edmund Burke Society, the Law School's conservative parliamentary-style debate group. Habbu said Jefferson's Salon was founded not to compete with the Burke Society but out of respect for it.

"The Burke Society has been such a great institution on campus," Habbu said. "They have managed to bring

students together regularly to discuss various issues. We really liked this idea and we assumed the only reason the liberals did not have a similar institution was because we were too stubborn to admit it was a great idea!"

The debate topics of the two groups take different angles. Whereas a standard Burke Society topic might be "Resolved: This House Prefers Order to Liberty," a typical Jefferson's Salon debate from last year was "Capital Punishment: (Too) Tough on Crime?" The groups have



Coffee Mess is an ideal setting for casual debate.



A student learns more after a talk by Judge Frank Easterbrook, '73, and Professor Martha Nussbaum.

respect for each other. At least one Burke Society member has shown up to every Jefferson's Salon meeting, Habbu said. The students found that their viewpoints aren't so divergent.

"At the conversation on immigration reform, one of the Burke members suggested that a guest-worker program may be the best alternative to grapple with the immigration issue," Habbu said. "That was a fantastic debate because it shows you how close the conservatives and liberals are on various issues. It provides a healthy respect for the arguments on the other side."

Habbu, also past president of the Law School Democrats, points to a spirited debate he had as another example of the Law School's culture of respect. It occurred after the Law School Democrats organized a trip to a nearby shooting range. After receiving some questions, he posted a lengthy message on the Law School's listserv explaining the motivation behind the event.

He wrote about the need for liberals to develop greater empathy for gun rights as a path to developing policy that will protect the rights of gun owners without compromising safety. He explained that the trip would build liberals' credibility and provide some common ground.

Later, another student replied to the listserv, saying he loved the idea of a gun trip, but thought Habbu's email relied too heavily on a caricature of what it meant to be a liberal. Not all liberals, he argued, adopt the assumed liberal positions. Habbu responded with a reply of his own and an invitation to continue the debate over coffee.

This debate over divergent ideas carries over into classroom discussions. Richard H. McAdams, the Bernard D. Meltzer

Professor of Law, said he has noticed an atmosphere of respectful disagreement in class, including when students are discussing controversial topics.

"Our students do not aim to win points with those on their side by being dismissive of the other side, but instead try to make a good, often novel, argument," McAdams said. "The ethos is to be thoughtful, not knee jerk."

Nussbaum said students' ideological diversity benefits the classroom experience. She recalled a debate about polygamy arising while she taught the Religion Clauses several years ago.

"Our Mormon students contributed a very valuable historical perspective, and then joined in an analysis of polygamy as a contemporary issue often linked to same-sex marriage," Nussbaum said. "The classroom is definitely enriched by having a wide range of student opinions."

Jack Snyder, '10, the past president of the Federalist Society, was a part of a similar experience in Professor Adam Samaha's Constitutional Law class when discussion turned to the Free Exercise and Establishment Clauses of the First Amendment.



The classrooms are always filled to capacity for lunchtime talks.

“Obviously, religion is a very sensitive subject, and our class delved into a number of very difficult questions, and necessarily so because the leading cases confront many controversial issues,” Snyder said. “But the class discussion was uniformly respectful and high minded without dodging any of the tough questions. Of course, Professor Samaha and his superb teaching deserve the bulk of the credit, but the school’s culture was an indispensable part of the success of the class.”

Students carry this respect into their personal lives, as well, and don’t base lines of friendship on beliefs or politics. Maleck says one of her best friends is the president of OutLaw, the Law School’s LGBT group, and some of her other friends are on the ACS board. Snyder said he never saw ideology get in the way of a friendship.

“People here are comfortable in their beliefs,” he said, “and have enough respect for one another to get past such differences.”



Students wait in line for food before heading to a lunchtime lecture.



Political philosopher Michael Walzer shared time with students after delivering the 2010 Dewey Lecture.

A sample of the diverse group of speakers invited to the Law School in 2009-10:

Judge Lynn S. Adelman, United States District Court for the Eastern District of Wisconsin

Stuart Anderson, Executive Director of the National Foundation for American Policy

Robert Barr, former Georgia Congressman

John Bolton, former U.S. Ambassador to the United Nations

Judge Ruben Castillo, U.S. District Court for the Northern District of Illinois

Judge Jacqueline P. Cox, U.S. Bankruptcy Court for the Northern District of Illinois

Justice Allison Eid, '91, Colorado Supreme Court

Patrick Fitzgerald, U.S. Attorney, Northern District of Illinois

Clarke Forsythe, Americans United for Life

Sandra Froman, former president of the National Rifle Association

Ruth Gavison, Israeli law professor at Hebrew University

Michael Greve, American Enterprise Institute

Judge Ronald A. Guzman, U.S. District Court for the Northern District of Illinois

Jeffrey Haas, '67, a founder of People’s Law Office

Raja Krishnamoorthi, former Deputy Illinois State Treasurer

Chief Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit

Chief Judge Michael McCuskey, U.S. District Court for the Central District of Illinois

Judge Abner Mikva, '51, former director of the Law School’s Mandel Legal Aid Clinic

Thomas Perez, Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice

Judge William H. Pryor Jr., United States Court of Appeals for the Eleventh Circuit

Kwame Raoul, Illinois state senator

Judge Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit

David Scheffer, the first U.S. Ambassador-at-Large for War Crimes Issues

Howard Shapiro, longtime general counsel for Playboy Enterprises, Inc.

Harvey Silverglate, Boston attorney and author of *Three Felonies a Day: How the Feds Target the Innocent*

Margaret Stapleton, '71, Shriver National Center on Poverty Law

Robin Steinberg, founder and executive director of the Bronx Defenders

Judge Deanell Reece Tacha, United States Court of Appeals for the Tenth Circuit

Judge Timothy Tymkovich, United States Court of Appeals for the Tenth Circuit

Amelia (Amy) Uelmen, Director of the Institute on Religion, Law & Lawyer’s Work at Fordham University

John Yoo, former official in the U.S. Department of Justice



PROFESSOR KAGAN AT CHICAGO: A REMINISCENCE

By Marsha Ferziger Nagorsky, '95

This summer, the world watched Supreme Court nominee Elena Kagan in her confirmation hearings and found her to be a funny, brilliant presence—calm and collected, intimidating and impressive. I watched along with the world and marveled at how far my old professor has come, and yet, how little she has changed.

I was not among the half of my class to have Professor Kagan for Civil Procedure II (I had our other short-listener, Judge Diane Wood), so my first real experience with her was when she judged my 1L moot court argument. I know we argued before a three-judge panel, but all I can remember is Professor Kagan, that distinctive voice bearing down on me like a freight train. The case involved some complex

procedural issue, and I made the mistake of trying to turn it into a constitutional matter. “Ms. Ferziger,” she intoned, pointing a pen in my general direction, “are you actually trying to argue that there’s a connection between . . .” That connection is lost to history, but I can hear the amused disdain in her voice to this day. Susan Epstein, ’95, was my (much more accomplished) opponent that day, and she remembers, “I thought Professor Kagan did a great job of asking incisive questions as she weighed the issues we presented.” All I remember is that I was making a ridiculous argument, and she took me seriously as an advocate anyway. Afterwards, I tried to apologize to her for being so wrong on the law, and she laughed. “You’re a

1L. You're supposed to get it wrong most of the time. You'll get better." Those wise words gave me a lot of comfort and immediately turned me into a Kagan fan.

I tried mightily to get into the famed Kagan seminar on decision making in the Supreme Court, but never managed it. I took my only class with her in my third year, Con Law III: Equal Protection. It was the only time she taught it at the Law School, and it must have been a tough class



to teach—serious race and gender issues at a time when the student body was full of high emotions about both. She was a truly wonderful teacher. She was whip-smart, of course, but more importantly, she had deep knowledge of the subject matter and an incredible ability to make

connections across the course by bringing back issues raised and points argued weeks before. She paced the front of the classroom, making me think about old issues in new ways, making arcane Supreme Court decisions come alive. And she was funny. Very funny. It was one of my favorite law school classes.

My classmate Linda Simon, '95, remembers, "Professor Kagan was a great teacher because she really used the Socratic method correctly. Kagan was especially good at backing off just a half a step in her questioning to enable the student to develop an understanding." Simon also says that "Kagan kept her ideology out of the classroom, which I think really made her classroom an open place for students, a place where all students felt comfortable expressing their views. She was also incredibly approachable and accessible, which could have been a function of her young age at the time."

Professor Kagan didn't seem very young to me then, but looking back now, I realize that she was in her early thirties. When I was that age, I had been working at the Law School for five years and still couldn't bring myself to call Professor Helms by his first name. She, on the other hand, commanded a classroom—at the very beginning

of her academic career—better than almost anyone I'd ever seen, teaching with a confidence and grace that I am still striving for in my second decade at the front of the room.

Her course evaluations prove that I'm not just seeing her teaching through Supreme Court-colored glasses. In the very first class she taught at the Law School, her Fall 1991 Labor Law course, she scored an 8.5 or higher (out of 10) in every category but one—and that was "quality of casebook." Her Winter 1992 Con Law II class scored even better—over 9 in everything. No professor's marks were higher that quarter, and on a faculty renowned for and extraordinarily serious about teaching, that's quite remarkable. Her course evaluations throughout her time at the Law School continued this trend; she was always among the very best. The Class of 1993 even gave her their faculty teaching award—at the end of her second year of teaching.

If I had only known Professor Kagan as my professor for a single class, I doubt I'd have such fond memories of her. Instead, I remember her as perhaps the member of the faculty most interested in and involved with student life. She seemed to be everywhere that I was. I remember talking to her at Wine Mess, saying hi in the Green Lounge, even running into her once on Michigan Avenue. She was game to participate in any student activity. You've all seen the photo of her playing softball—that was at the annual



student-faculty game on the back lawn, and she played every year. She was enthusiastic, and she was good. Perhaps you've also seen the photo of her playing in the student-faculty trivia match at Admitted Students Weekend. I was on the student teams that played against her, and she never worried about looking dumb, even when it led to a photo of her in the Phoenix trying frantically to remember the names of the judges for moot court finals the previous year. She played to win, and she was good. She came to the Chicago Law Foundation auction every year, and her item was always one of the most highly sought after. I know this, because I was part of a group that paid big money for it my 2L and 3L years. It was a poker night at her house, and the stories you hear are true—she is a ruthless poker player, and she is great. She provided the beer and pizza (and the pizza always arrived quite a bit after the beer, the better to loosen our tongues for law school gossip) and took all our money. And we thanked her for it!

But my strongest memory of Professor Kagan by far is from February 1995, from the Law School Musical. In a

scene toward the end of the show, three students, playing professors Baird, Lessig, and Epstein, were discussing (in their own unique speech patterns) various elements of the show's plot, when Professor Kagan (the real one) strode onto the stage sporting a leather jacket and sunglasses. She announced that things were going to change around the Law School now that she had tenure, and all the professors scurried to make her happy. As they left, she turned to the audience and said, "You know, some people say this school is dominated by a patriarchy, but I just don't see it that way. When I'm through with this place, it'll be a Kaganarchy!" She paused, lowered her shades, and said, "It's good to be the Kagan." Exit stage right. And the crowd went wild.

Ed Walters, '96, who wrote the scene, remembers, "She was the same in rehearsals as she was in class—very well prepared, good on her feet, and very funny. Her scene was a parody of her already-steep career trajectory. Safe to say that she suffered this better than any of our current Supreme Court justices would have. After this harrowing experience, I doubt that she's very nervous about Senate



Solicitor General Kagan being sworn in for her Supreme Court confirmation hearing.

confirmation hearings, or anything she'll face on the bench.”

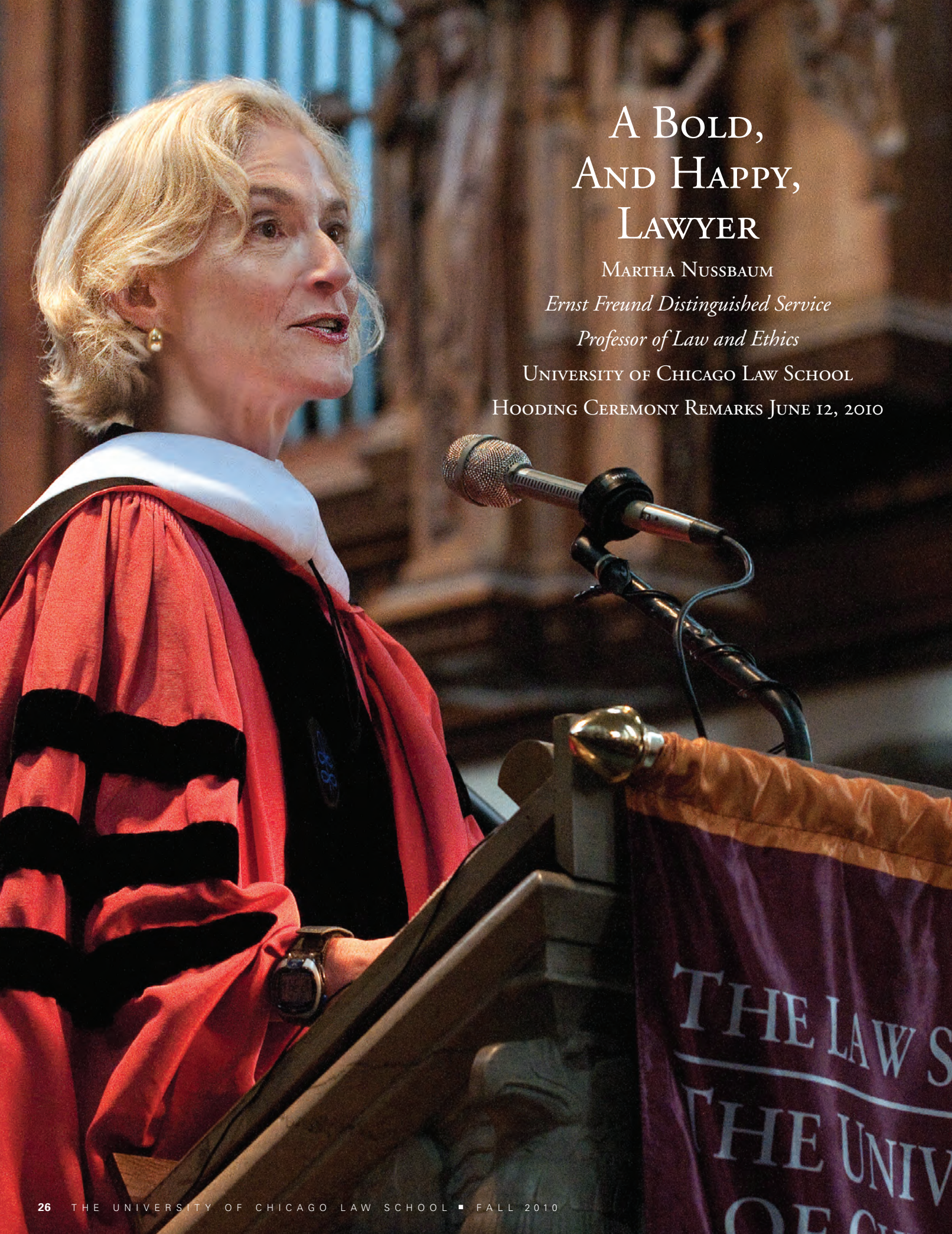
Professor Kagan left the Law School at the same time I did, in 1995, though at the time I thought she'd return and I wouldn't. I was honored to introduce her to my parents at graduation, and I hope she said some nice things to them about me. I saw her again a few years ago at a memorial service, and she was kind enough to spend a few moments catching up with me. She was, at the time, the dean at Harvard Law, and thousands of students had passed through her classrooms in the many intervening years. I was flattered that she remembered me at all. I suppose, however, that I wasn't surprised. Professor Kagan always cared about her students and always had an amazing memory. Watching her at the confirmation hearings, hearing her unique voice answering question after question, everything came flooding back. The woman I saw in the Senate hot seat was just as I remembered her: confident, brilliant, deft, charming, hilarious, wise, warm, and self-deprecating. Despite the fact that Professor Kagan is now Justice Kagan, she really hasn't changed a bit. ■



The author with one of her favorite professors at Graduation 1995.



Professor Kagan and Professor Dan Shaviro competing in the student-faculty trivia contest.



A BOLD,
AND HAPPY,
LAWYER

MARTHA NUSSBAUM

Ernst Freund Distinguished Service

Professor of Law and Ethics

UNIVERSITY OF CHICAGO LAW SCHOOL

HOODING CEREMONY REMARKS JUNE 12, 2010

THE LAW S
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Graduates of the class of 2010, all our warmest congratulations go out to you and your loved ones on this happy day. You have completed a rigorous education at our great law school, and you are embarking on a wide range of exciting careers. What to say to a group so high achieving, with such promise in store?

When Dean Schill invited me to give this talk, he must have known that I would find some way to talk about the ancient Greek philosophers. Perhaps, though, he would not have expected me to choose one of the most shocking and countercultural of them all, Hipparchia. I think we may fairly call her a lawyer as well, since philosophers in



the Cynic/Stoic tradition liked to call themselves “lawyers for humanity.” As we’ll see, she became quite famous for putting forward arguments that the other side could not answer. So, let’s think of Hipparchia as the first female lawyer. I want to use this story to think about the challenges facing all young lawyers, male and female. But first the story.

In the fourth century BCE, in Maroneia, a prosperous commercial city known for its wine industry, Hipparchia was born into a wealthy middle-class family. Women in that part of Greece at that time were heavily restricted; they hardly even went outdoors, and they rarely learned to read and write. But Hipparchia would have none of these restrictions. She educated herself by every means she could—and when the time for arranged marriage came, she rejected all the suitors chosen by her parents and fell in love with a poor itinerant philosopher named Crates.

Crates also had a major disability, being what in those days was called a “hunchback,” so he was multiply unacceptable to polite Greek society. But Hipparchia kept refusing all others and leaning on her parents to get them to let her marry him. One day, Crates came to see her. He stood up, took off all his clothes, and said, “Here is your suitor. These are his possessions. Choose accordingly. You won’t be my partner unless you adopt the same way of life.” Hipparchia chose him—and quite a lot more. According to the story, she ran away from home, adopted unisex clothing, and traveled around Greece with Crates. She even had sex with him in public, a part of her life that still occasions shock.

Hipparchia and Crates had a particular fondness for dinner parties known as *symposia*—which, in the ancient Greek world, were central locations of lively public debate. They were also sources of free food, which was pretty important, since the pair never had a steady income source. At these symposia they tried to get people arguing productively

Don’t follow a path just because that is what people expect of you. Follow your own path.

about issues of the day. One time, Hipparchia had a public debate with a famous big shot named Theodorus the Atheist. When she refuted him, and he saw that he could not reply, he tried to tear off her cloak. But, says the historian, “Hipparchia was not ashamed or alarmed the way a woman would usually be.” Later in the same exchange, after the attempted cloak-ripping, Theodorus insulted Hipparchia again, saying that she had abandoned the proper female life of weaving at the loom. She replied, “Do you suppose that I have deliberated badly about my own life, if, instead of wasting time on weaving, I used it for education?” “These and countless other stories,” the historian summarizes, “are told about this female philosopher.”

There are many lessons to be learned from Hipparchia’s story, large and small. Never turn down free food is one moral that might be extracted. Or we could pursue the serious issue of how to define sexual freedom and what to say about legal protection for sex outside the home—the issue on which both ancient and modern critics have found Hipparchia shocking and even depraved. Instead, however, I’m going to focus on some implications of her story for the legal careers that lie ahead of you, extracting from her life six messages for young lawyers.

1. Don't follow a path just because that is what people expect of you. Follow your own path. Hipparchia would have been utterly miserable if she had listened to her parents and followed traditional social norms. It took a lot of courage—and, no doubt, some suffering—to carve out a new path that was all her own, but the result was a life she could look back on as both happy and justifiable in the light of reason. You are all setting out into a life you have chosen as a general matter, but the daily particularities of it will involve many aspects that you have not precisely chosen, conventional expectations that can all too easily lead one along and sap individuality and self-creation. So as you go on from day to day, remember how she proudly says, “Do you suppose that I have deliberated badly about my own life?” and try to live up to the voice in each of you that poses that same question.

2. Don't be excessively influenced by money. Money is nice, but Hipparchia's choice of relative poverty over material comfort had rich rewards. Her story reminds us that there is always some free food around, and being too concerned about the material future could chill the spirit of adventure and lead to narrow choices. Hipparchia did not, like so many people, ask about money first and way of life second.

She established goals first and then somehow came up with the money to pursue them. Applicants to law school typically list a wider range of career plans than those that they actually pursue after they graduate. The reality of debt and the chilling effect of the recent financial crisis now seem to be influencing choices even during law school

Each person needs to figure out how his or her life can productively touch lives outside the privileged community to which most young lawyers belong.

itself, as people pursue “safe” courses that lead naturally to remunerative jobs. It requires courage to stick with a plan to do public service or some other relatively low-pay option or to explore a new and risky path. But if that is what you really want to do, no salary is worth the sacrifice. And if that is what you used to want to do, ask yourself, in a quiet moment, whether you have changed course for reasons internal to your own life plan or for merely extrinsic reasons.



3. When you encounter opposition, don't be cowed, and don't be ashamed of who you are. You have just finished three years of education in a law school that teaches you to value good arguments and to make them, even when power and authority are on the other side. So you have been trained to behave like Hipparchia: refute the powerful big



shot, and don't worry about what happens next. In life outside the Law School, however, differences of power are ubiquitous, and these differences can all too easily dampen the rational ardor of the young arguer. These days, a woman who makes an argument refuting a senior partner would probably not get her clothes ripped off, although similar things did happen with impunity not so long ago. But she—and her male counterpart—might well offend the powerful, and the fear of giving offense chills reason. Do not be chilled. This is very difficult, but be tough and persevere.

4. Think about the whole world, and somehow find a way to be a citizen of the world. Hipparchia and Crates left their hometown and traveled all over the Greek world because the philosophical movement of which they were a part invented the idea of global citizenship and always tried to remind people of their responsibilities to all humanity, meaning people of all classes and groups in their own nation and also people in other nations. (Out of this school grew our first doctrines of just and unjust war, as well as accounts of our duties to help people in other nations who are suffering from natural disasters, and so forth.) Crates wrote a poem that expressed this ideal eloquently: "My native land does not have just one tower or one roof. Its citadel is as wide as

the whole world, and all of us can spend our lives there."

The job of lawyer can be practiced in an insular way. But it offers countless opportunities to be a world citizen: international work with a firm, engagement in issues that have a global dimension, but, also, work in your own community that helps bridge gaps of class and opportunity



—creative philanthropy. Each person needs to figure out how his or her life can productively touch lives outside the privileged community to which most young lawyers belong. But this is another issue that is quickly lost from view under pressure of time. So now, before you are overwhelmed, is the time to think hard about how your life can in some manner contribute to humanity as a whole.

5. Continue your education. Hipparchia's whole life was one of curiosity and exploration. Having rejected the traditional woman's life of weaving and sitting at home, she went out into the world determined to educate herself, and she continue to educate herself her whole life long, looking for good arguments, trying out her own, experimenting in new ways of living. In that same spirit, you can regard this day as not the end of your education but its beginning. That's a hard one to remember when you are overworked, so that's why it is so important to think about your continuing education now, and build into your life various ways to continue to explore.

How, you ask, could a busy ambitious young person possibly continue an education while determined to do good work in a very demanding job? Well, it might be by something as simple as listening to a series of audiobooks

during your workouts or your morning and evening commutes. It might be through a community project that you pursue outside work—or a pro bono project you pursue within work. It might be through an organization with which you get involved, and in connection with which you might eventually even find time to travel to places you’ve never visited. Or it might be in a determination to try out new intellectual approaches in your work: if you’ve so far had a passion for philosophy, learn some economics. If you’ve focused on our rich offerings in law and economics, learn more history and philosophy. There’s no end to the list of productive ways to continue your education. The only bad answer to the challenge is not to take it up at all. As Hipparchia said, “Do you think I deliberated badly about my own life, . . . when I devoted my time to education?”

6. Don’t forget the spirit of love and joy. If there is anything that stands out in this remarkable life, it is a spirit of delight that animates it as a whole. Hipparchia is obviously having

a great deal of fun, and she adores the life she has chosen. Moreover, the adversity and material hardship she faced did not rob her of her sense of humor: think of her high-spirited defiance of Theodorus, the famous big shot who, it turns out, can’t even defend his own arguments except by physical violence. Delight and humor are the first casualties, often, of overwork and anxiety, two problems that are likely to beset the budding legal career. But joy makes everything you do—every argument, every new proposal—so much more powerful. To follow this piece of advice requires considerable self-knowledge, since every prescription for joy is highly individual. So think of the ways that you can keep spaces in your life for joy, and be determined that this spirit will animate your work as a whole.

On this happy day, go into the future in that spirit of adventure and delight, never stop learning, and you too will be able to say to all challengers, “Do you think I have deliberated badly about my own life?” ■



ROBERT B. BARNETT, '71, RECEIVES DISTINGUISHED ALUMNUS AWARD

At the Hooding Ceremony, the Law School awarded Robert B. Barnett, '71, the 2010 Distinguished Alumnus Award in honor of his extraordinary legal career and exemplary service to the Law School.

Barnett graduated from the Law School in 1971 after receiving his bachelor's from the University of Wisconsin in Madison. He clerked for Judge John Minor Wisdom of the Fifth Circuit and Justice Byron R. White of the Supreme Court. He served as legislative assistant to Senator Walter F. Mondale of Minnesota and then joined Williams & Connolly in 1975. At Williams & Connolly, Barnett's principal practice involves representing major corporations in litigation matters, corporate work, contracts, crisis management, transactions, government relations, and media relations.

Barnett is one of the Law School's most dedicated alumni. He has served on the Law School Visiting Committee and been a reliable sounding board for Law School deans for decades.

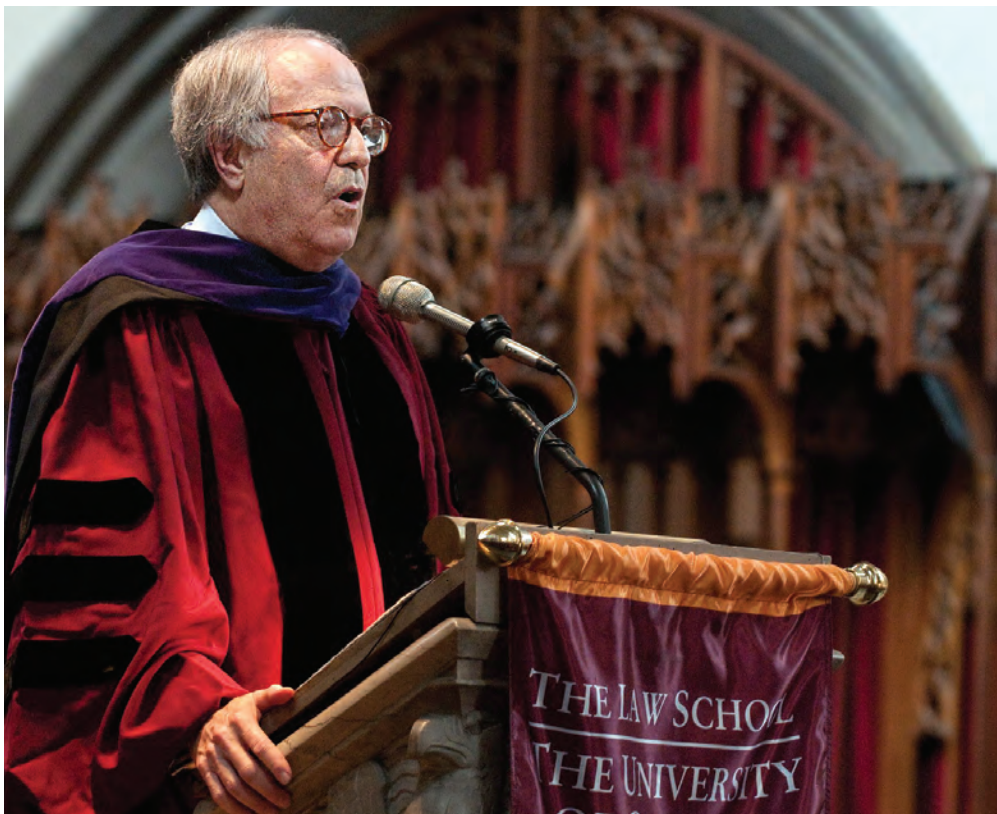
"Bob Barnett has not only been a great example of the quintessential Chicago-trained lawyer, but also a stellar mentor and role model to the many Chicago alumni who have worked with him at Williams & Connolly and in the D.C. legal community," said Dean Michael Schill.

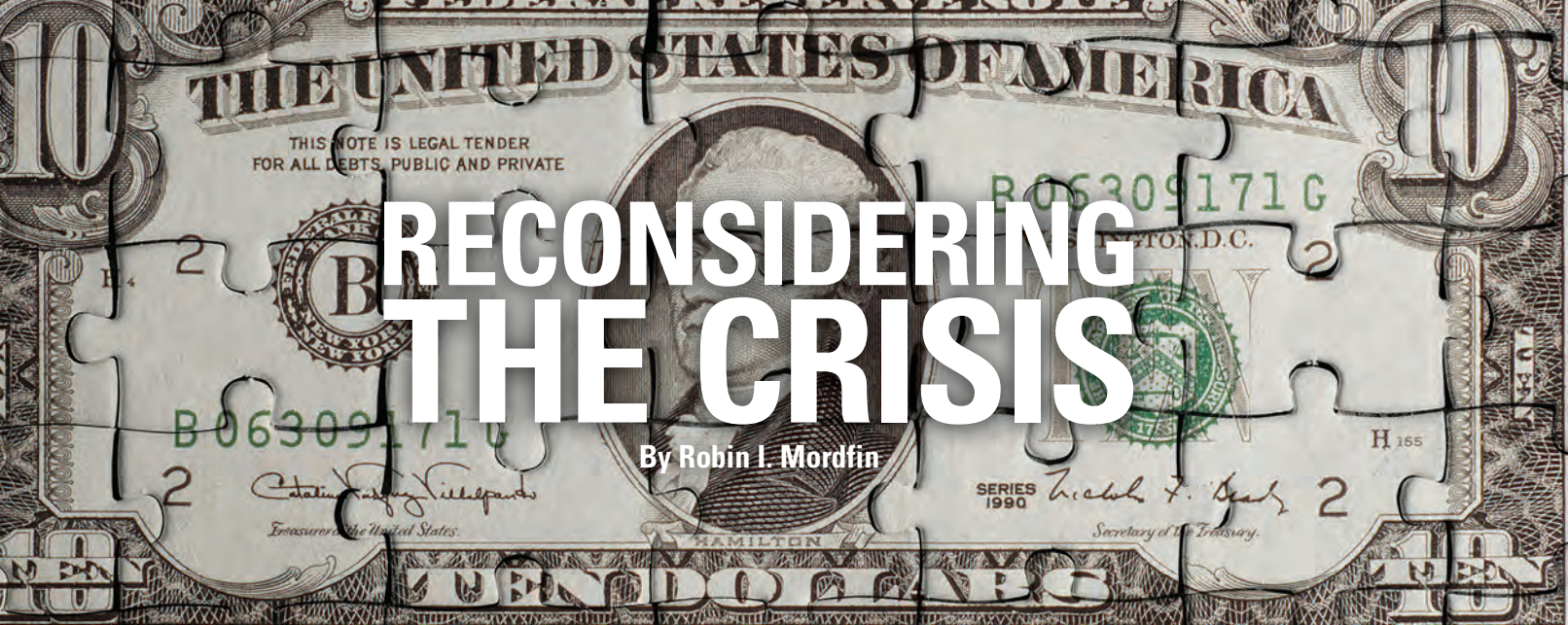
Barnett is also one of the premier authors' representatives in the world. His clients have included Barack Obama, Bill Clinton, George W. Bush, Hillary Rodham Clinton, Sarah Palin, Edward M. Kennedy, Bob Woodward, James Patterson, Mary Higgins Clark, Tim Russert, Tony Blair, Benazir Bhutto, and Queen Noor. Barnett also has represented scores of television news correspondents and producers, including Brian Williams, Lesley Stahl, Sam Donaldson, Dr. Sanjay Gupta, Christiane Amanpour, Andrea Mitchell, and his wife, Rita Braver of CBS News.

Barnett is well known and well respected for his service to clients across the political spectrum. He has helped a

number of former government officials transition to the private sector, including Bill Clinton, George W. Bush, Madeleine Albright, Karl Rove, and James Baker. He topped *Washingtonian Magazine's* list of "Washington's Best Lawyers" and was listed as one of "The 100 Most Influential Lawyers in America" by *The National Law Journal*. As the *Washington Post* noted, "To list Barnett as a signifier of Washington connectedness is like calling the sun a symbol of heat."

Barnett received his award during the Law School's Hooding Ceremony and addressed the graduating class with a great deal of grace, eloquence, and humor.





RECONSIDERING THE CRISIS

By Robin I. Mordfin

This past May, the Law School brought together a small number of senior academics, jurists, private practitioners, and regulators to discuss an issue of critical importance, “Are Markets Efficient? Legal Implications of Economic Theories of Market Behavior.” The summit was the third in a series of invitation-only meetings that began in 2007 to consider pressing issues of law and economics.

“The populist theory for the crash is that it was caused by greedy, reckless, stupid bankers and homebuyers,” Posner began.

The first, which was held in November 2007 in Chicago, considered the question “Have U.S. Laws and Regulations Kept Up with Market Forces?” That first University of Chicago Law School Summit seemingly foreshadowed the financial meltdown that occurred less than a year later. The events of the fall of 2008 provided the topic for the second Summit, entitled “The New World of Securities, Financial Markets, and Regulation,” which was held in February 2009 in New York. Sessions at the second Summit were labeled simply “What Happened?” “What Worked and What Didn’t?” and “Where Should We Go from Here?”

The 2010 gathering began on Thursday, May 6, at the Chicago Club with a keynote talk by Judge Richard A. Posner. A pioneer in the study of law and economics, the judge presented a stimulating talk, “What We Have Learned from the Crisis, Its Causes and Prevention.”

“The populist theory for the crash is that it was caused

by greedy, reckless, stupid bankers and homebuyers,” Posner began. “But I don’t think we can understand the crisis without understanding the monetary policy created by Alan Greenspan.”

“Excessive deregulation and a lack of enforcement of the existing regulations are a cause,” he continued. “But so are mistakes by Congress.”



Richard A. Posner speaks at the Chicago Club.

The judge began by explaining how Greenspan’s lowering and holding interest rates overstimulated the economy, which led to excessive credit and a resulting rise in housing prices. All these together led to a housing and credit bubble that ultimately burst. Credit froze, which means the economy froze, and the government was forced to step in.

“The regulation for banking has to be stricter than it is for other industries,” Posner explained. “And this is where I have changed my opinion.”

The judge went on to explain that for years he supported deregulating the banking industry, without adequately

realizing that the consequences of its failure are enormously more far-reaching than for any other industry. While the airline industry, for example, can become deregulated, risky, and eventually broke, its bankruptcy, unlike that of the banking industry, cannot bring down the entire economy. “The riskiness of banking has microeconomic significance,” Posner went on. “Everything in business is geared to the availability of credit, and if the banking industry falls apart, credit goes away, and the economy can grind to a halt. Deregulation went too far in the financial sector,” Posner emphasized, “because financial bankruptcies create externalities that other industries do not.”

“The economists think that the recession is over when the gross domestic product goes up,” Posner noted. “Well, in 1933 the GDP was growing, and unemployment was at 25 percent, so that is not really the right way to look at this.”

The issue of “dumb” consumers was also discussed. While the press and others present the rash of home foreclosures as the result of incompetent purchasers, there are other ways of looking at purchasers’ behavior. Because many of these foreclosures took place on mortgages with very small, or even no, down payments, the actual financial losses to these owners were often minimal.

“If a buyer didn’t put up a down payment, or put up only a small one, how much has he lost?” Posner asked. “He may even have spent less than he would have on rent.”

But with the market’s collapse, many are demanding more government intervention and new regulations, which Posner does not support. What is needed, he explained, is for the existing regulations to be properly enforced. The judge pointed out that in addition to requiring the Federal Reserve Bank to obtain a better understanding of the bank failures, the Securities and Exchange Commission (SEC) needs to regulate the shadow banks more effectively. The SEC has never been interested in solvency issues—look at their failure to regulate Lehman Brothers.

But while proper enforcement would improve the future safety of our economy, there are still enormous problems with the multinational entities that now populate the banking industry, because assets in foreign countries cannot be regulated by the United States.

“The economists think that the recession is over when the gross domestic product goes up,” Posner noted. “Well, in 1933 the GDP was growing, and unemployment was at 25 percent, so that is not really the right way to look at this. You have to look at the unemployment rate and at the level of political unrest, along with all the other indicators. If you consider the European crisis as well, you will realize that we are still in recession.” Judge Posner was kind enough to sign copies of his latest book for all attendees.

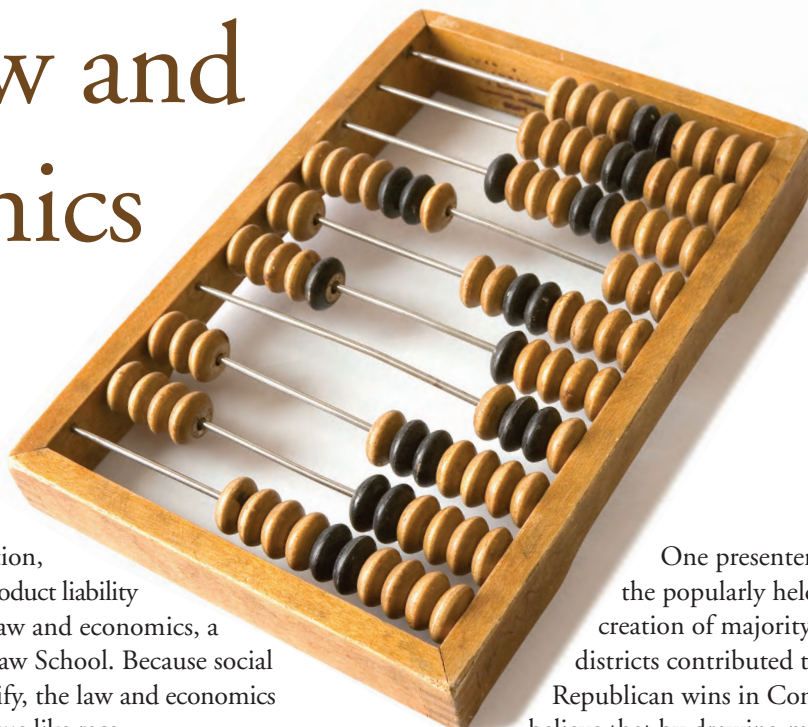
On Friday, May 7, the Summit participants continued their discussions at the Gleacher Center, in two sessions, titled “Efficient Market Hypotheses versus Behavioral Economics—Which is the Best Guide?” and “What Are the Implications for Law, Finance, Accounting, and Regulatory Reform?”

Sidley Austin partner and chairman Tom Cole, ’75; Cravath, Swaine & Moore partner Philip Gelston; Delaware Supreme Court Justice Jack Jacobs; and David Zarfes, Associate Dean for Corporate and Legal Affairs and Schwartz Lecturer at the Law School, developed the summits in order to underline the commitment of the Law School to the field of law and economics. This year’s Summit was a thought-provoking gathering that will likely generate continued discussion among the group of participants and beyond. ■



The Law and Economics of Race

BY ROBIN I. MORDFIN



Advances in bank regulation, international trade, or product liability often are grounded in law and economics, a field of study held dear to the Law School. Because social factors can be difficult to quantify, the law and economics lens isn't turned as often on an issue like race.

Law School professors confronted this challenge in May by gathering economists from across the country for the conference *The Law and Economics of Race*. Their goal was to share research and findings that would provide stronger social science foundations for law and policy affected by race. The *Journal of Legal Studies* will publish a special symposium issue based on presentations that were made at the conference.

It is no surprise that the Law School's law and economics scholars have taken a strong interest in race—Nobel Laureate and University of Chicago Professor Gary Becker, who has strong connections to the Law School, has long been a leader in applying economics to social issues. His 1971 book *The Economics of Discrimination* was groundbreaking in its use of economic analysis to demonstrate employment discrimination's economic effects. Employment discrimination was a topic of discussion at the recent Law School conference, but it wasn't the only one.

Presenters at *The Law and Economics of Race* conference, organized by Richard McAdams, the Bernard D. Meltzer Professor of Law, and Thomas Miles, Professor of Law, also shared breakthrough research on the happiness gap between blacks and whites, employment in black men and women as it correlates to marriage and fertility, and the way race affects which judges are approached to approve or deny wiretap applications, among other topics.

One presenter challenged the popularly held idea that the creation of majority-minority voter districts contributed to the 1994 Republican wins in Congress. Many believe that by drawing majority-minority

districts, the districts surrounding those new districts become whiter, and consequently, become more Republican. Ebonya Washington, Professor of Economics at Yale University, found no evidence that this is true while researching her paper *The Mythical Tradeoff between Black Representatives and Black Policy Interests*. Alternatively, she found that Southern states that created more majority-black or majority-Latino districts saw their delegations grow increasingly liberal.

In a discussion about homogeneity and diversity, Richard Brooks of Yale Law School described his ongoing research into comfort zones and the distance people of different races prefer to keep from each other. Brooks and other researchers placed a group of black men, a group of white men, and a black family on a Martha's Vineyard beach. When other beachgoers arrived, the researchers measured the distances between people and the test groups. The researchers found that men require a larger comfort zone than women. However, the assumption that more diversity would require a larger comfort zone was incorrect.

Betsey Stevenson and Justin Wolfers, both of the Wharton School of Business at the University of Pennsylvania, tackled the abstract topic of happiness by focusing on the measures of subjective wellbeing. Research in the 1970s showed what they called an "astonishingly large" racial gap in happiness. Their preliminary research has shown that the racial happiness gap still exists but is narrowing. Happiness rising with

income level occurs less often for blacks than for whites and the greatest gains in happiness were made by people with the highest education levels. The study looked beyond race and concluded that married and divorced people are happier than widowed or never-married people.

Steven Raphael, Professor of Public Policy at the University of California-Berkeley, took a close look at employment statistics for black and white men and women. Today, black women are more likely to work than their male counterparts—and they are more likely to complete their educations. This increase in black women’s employment, and a decrease in black men’s employment, correlates with a decline in marriage and fertility, according to Raphael. White women are similarly affected by a drop in fertility and increase in employment. Additionally, white women

Happiness rising with income level occurs less often for blacks than for whites and the greatest gains in happiness were made by people with the highest education levels.

with and without children are more likely to work as white male employment declines.

The employment discrimination discussion also included a presentation by Peter Siegelman, Professor of Law at the University of Connecticut, on his paper *The Compromised Worker and the Limits of Employment Discrimination Law*. Considering the vexing question of why plaintiffs do poorly in employment discrimination cases, Siegelman offered a

new suggestion: that a substantial fraction of all such cases are brought by compromised workers—employees whose own failings could plausibly explain the adverse treatment about which they complained.

Thomas Miles of the Law School took a detailed look at the process of obtaining judicial approval to conduct wiretap surveillance and the role the race of the prosecutor requesting the wire tap and the race of the judge play in the process. In theory, the race of the judge should not play a role in the approval of wiretaps. However, studying the approval of wiretaps in federal criminal investigations from 1997 to 2007, Miles found that black judges receive substantially fewer wiretap applications than other judges, even though black judges do not approve such requests at different rates than other judges.

David Abrams of the University of Pennsylvania Law School looked at the Circuit Court of Cook County and measured the between-judge variation in the difference in incarceration rates and sentences lengths between black and white defendants. He and the coauthors of the research found statistically significant between-judge variation in incarceration rates, although not in sentence lengths. On the same topic of sentencing, Max Schanzenbach of the Northwestern University School of Law examined the role of judicial discretion in the United States Sentencing Guidelines in his paper *Racial Disparities, Judicial Discretion and the United States Sentencing Guidelines*. He found evidence that the Supreme Court’s recent decision to make the Guidelines merely advisory has increased racial disparity.

The presenters demonstrated problems that had not been sufficiently identified earlier, or which still needed more study for understanding. Suggestions for solutions in some areas were put forward, but perhaps the take-away from the conference is how much more remains to be studied. ■



NEW FACULTY PROFILE

Laura M. Weinrib

By Lynn Safranek

As a legal historian, Laura Weinrib hopes her scholarship will challenge people to rethink their assumptions and biases about the present as well as the past. She believes that



Laura M. Weinrib

highlighting the complexities and contingencies of history can open space for new approaches to today's social problems.

Weinrib will bring her insights to Chicago Law students this year when she joins the Law School's faculty, initially as an Instructor in Law while she completes her PhD in history at Princeton University, then in July 2011 as an Assistant Professor of Law.

"History is one of the most powerful means of evaluating the complicated relationship between law and the broader social world," Weinrib said. In tracing the development of law-related advocacy and ideas, she looks for lost alternatives to entrenched legal concepts. "With temporal and critical distance, we can see how lawyers, judges, and activists have transformed legal categories, culturally and doctrinally—and how those reconfigured categories have, in turn, constrained the choices available to subsequent actors."

Weinrib comes to the Law School from the New York University School of Law, where she was a Samuel I. Goliieb Fellow in Legal History. She holds an AB and AM from Harvard University and a JD from Harvard Law School. Before beginning her graduate studies in history, she clerked for Judge Thomas Ambro of the United States Court of Appeals for the Third Circuit.

Her PhD thesis examines the emergence of a libertarian model of free speech in the United States between World War I and World War II, an interest that began during law school, when she was editor of the *Harvard Civil Rights–Civil Liberties Law Review*. "Today, self-described civil libertarians clash over issues like hate speech and campaign finance reform, which seem to pit a strong American commitment to dignity and equality against an even more powerful allegiance to liberty," she says. "What I have

discovered in my research is that our modern notion of civil liberties as freedom from state interference with private behavior and expression was a much contested development; as recently as the interwar period, organizations like the ACLU were devoted, above all, to social and economic equality, and they enlisted state support in accomplishing those goals."

Weinrib's other recent scholarship includes a book with a personal angle, published in fall 2009 by Syracuse University Press. Entitled *Nitzotz* ("Spark"), it examines an underground newspaper of the same name, circulated in the Dachau-Kaufering concentration camp and edited by her grandfather, Shlomo (Frenkel) Shafir. The articles within *Nitzotz*, which were devoted to political and ideological discussion, challenge the prevailing historical assumption that rational assessment of the future was impossible under such abject conditions.

Weinrib says she found it particularly gratifying to have completed the book during her grandfather's lifetime. "Working with him to prepare the manuscript, I have seen how strong and enduring his wartime idealism was," she says. "His commitment to writing as an instrument of political change shaped his life and his career as a journalist and historian."

At the Law School, Weinrib will teach labor law, constitutional law, family law, and legal history. In future research she expects to explore a broad range of topics, such as 20th-century family law, American legal thought, and the history of privacy.

A Minneapolis native, Weinrib says she is looking forward to returning to the Midwest after spending 15 years in the Northeast. She also is eager to join the Law School's intellectual community. Weinrib says she was initially attracted to the Law School for its well-known intellectual intensity and academic rigor. A visit made that reputation come to life.

"I was most struck by the vibrancy of the place—the curiosity, richness of dialogue, and openness to new ideas among professors and students alike," she says. "The faculty is genuinely committed to engaging with and improving each other's work. I feel tremendously fortunate to be joining the Law School community."

FACULTY SCHOLARSHIP 2009-2010

DANIEL ABEBE

Assistant Professor of Law

"International Agreements, Internal Heterogeneity, and Climate Change: The 'Two Chinas' Problem," 50 *Virginia Journal of International Law* 325 (2010) (with Jonathan Masur).

ALBERT ALSCHULER

Julius Kreeger Professor of Law and Criminology, Emeritus

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DOUGLAS BAIRD

Harry A. Bigelow Distinguished Service Professor of Law

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OMRI BEN-SHAHAR

Frank and Bernice J. Greenberg Professor of Law

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ANU BRADFORD

Assistant Professor of Law

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EMILY BUSS

Mark and Barbara Fried Professor of Law and Kanter Director of Policy Initiatives

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MARY ANNE CASE

Arnold I. Shure Professor of Law

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ADAM COX
Professor of Law

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KENNETH DAM
Max Pam Professor Emeritus of American & Foreign Law and Senior Lecturer

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ROSALIND DIXON
Assistant Professor of Law

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FRANK EASTERBROOK
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RICHARD EPSTEIN
James Parker Hall Distinguished Service Professor of Law

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AZIZ HUQ

Assistant Professor of Law

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DENNIS HUTCHINSON

Senior Lecturer in Law and William Rainey Harper Professor in the College, Master of the New Collegiate Division, and Associate Dean of the College

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ALISON LACROIX

Assistant Professor of Law

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BRIAN LEITER

John P. Wilson Professor of Law and Director, Center for Law, Philosophy, and Human Values

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JEFF LESLIE

Paul J. Tierney Director, Housing Initiative, Clinical Professor of Law and Faculty Director of Curriculum

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SAUL LEVMORE

William B. Graham Distinguished Service Professor of Law

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ANUP MALANI

Professor of Law and Aaron Director Research Scholar

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JONATHAN MASUR

Assistant Professor of Law

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RICHARD MCADAMS
Bernard D. Meltzer
Professor of Law

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MARTHA NUSSBAUM
Ernst Freund Distinguished Service Professor of Law and Ethics

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RANDAL PICKER

Paul H. and Theo Leffmann Professor of Commercial Law; Senior Fellow, the Computation Institute of the University of Chicago and Argonne National Laboratory

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ERIC POSNER

Kirkland & Ellis Professor of Law

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RICHARD POSNER

Senior Lecturer in Law

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JULIE ROIN
Seymour Logan Professor
of Law

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ADAM SAMAHA
Professor of Law

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Dean and Harry N. Wyatt
Professor of Law

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GEOFFREY STONE
Edward H. Levi Distinguished
Service Professor

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LIOR STRAHILEVITZ
Deputy Dean and Professor
of Law

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DAVID STRAUSS
Gerald Ratner Distinguished
Service Professor of Law

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MATTHEW TOKSON
Kauffman Fellow and
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DAVID WEISBACH
Walter J. Blum Professor of
Law and Kearney Director
of the Program in Law and
Economics

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DIANE WOOD
Senior Lecturer in Law

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Discovering an Emerging World of Law in War Crimes Court

By Lynn Safranek

In 2006, Théoneste Bagosora was a retired colonel and former chief of staff in Rwanda's defense ministry. He also was the highest-ranking military authority accused of promoting the 1994 mass killing of an estimated 800,000 people.

Allison Stowell, formerly Benne, was a former associate news producer from St. Louis inspired to study law by the desire to have a more direct impact on the world. In 2006, she finished her first year at the University of Chicago Law School.

That their paths would cross seems far-fetched, even impossible. But Stowell, '08, found an opportunity through the Law School that made it possible for her to be a part of the court that found Bagosora responsible for authorizing acts of genocide.



Allison Stowell, '08, (at right) and her roommate in Arusha, Tanzania.

Though the Law School has no formal partnership with the International Criminal Tribunal for Rwanda (ICTR), each year since 2002 one or more students, mostly first-years, have been selected to participate in its summer internship program. Students like Stowell travel to Arusha, Tanzania, for the summer and spend their days researching issues that come before the court. This unique experience has been shared by eleven Law students, thus far.

"The Law School has some momentum with the Rwanda Tribunal. Our students have great experiences interning and they're eager to encourage more students to apply when they return from Tanzania," said Lois Casaleggi, Senior Director in the Office of Career Services. "The Tribunal also has had good experiences with our students. The Chicago Law applicants stand out because the Tribunal knows our students do good work."

In addition to the Rwanda internships, two Chicago Law alumni currently are working on the staffs of the Yugoslavia and Rwanda tribunals. Those alumni and those who have interned on the Rwanda Tribunal share a common interest in international human rights, an area of law that has long appealed to Chicago Law students.

Student interest in the Tribunals also dovetails with the Law School's pursuit of opportunities for students in human rights internships. Assistant Professor Rosalind Dixon started an International Human Rights Internship Program two years ago that places first- and second-year students in internships in Australia, India, and South Africa. Students work with organizations that tackle diverse issues, such as women's rights, Aboriginal empowerment, prison reform, and media freedom.

"We're looking for new partnerships with human rights organizations so the Law School can expand the International Human Rights Internship Program," Casaleggi said. "Last summer students worked for organizations on three different continents. This is invaluable experience that could shape the courses of their lives."

International law, in general, is gaining strength at the Law School with the recent addition of several faculty members who specialize in the area. Among the many facets of international law, their areas of experience include European Union law, international antitrust law, and comparative constitutional law, and they are researching topics such as the enforcement of climate treaties and the political economy of socioeconomic rights. Their addition to the

faculty has provided students even greater resources for learning about complex international law issues.

When Matt McCarthy, '08, was a student at the Law School, he fostered his interest in international law by reviving the dormant International Law Society. He is now an Associate Legal Officer for the International Criminal Tribunal for Yugoslavia (ICTY). He lives in the Netherlands and serves on a staff of lawyers working for a panel of trial judges at The Hague. The Tribunal handles cases related to war crimes committed in the Balkans in the 1990s.

McCarthy knew early in law school that he wanted to pursue a career in international law. To cultivate that interest, McCarthy and the rest of the International Law Society invited speakers that would expose them to different aspects of practicing and understanding international law. One of the most influential of those speakers was David Scheffer, the first United States Ambassador-at-Large for War Crimes, who helped create the ICTY.

McCarthy, who would like to work in the Office of War Crimes someday, charted his future based on the career

paths of Scheffer and other ambassadors who followed in that position. After graduation, McCarthy clerked on the Washington Court of Appeals in Tacoma, where he helped to write published cases and handled criminal appeals. Meanwhile, he applied for positions within the ICTY. He was hired about a year ago as an Associate Legal Officer to work in the Chambers section of the court. In the job, he researches law on motions submitted during trial, writes about how the law applies to the case, and keeps track of the facts of the case. Part of what he finds so satisfying about working on the Yugoslavia tribunal is the feeling that he's charting new territory.

"It's definitely one of the most interesting and most rapidly developing fields in international law," McCarthy said. "After the Nuremberg Trials, there wasn't another international war tribunal until the International Criminal Tribunal for Yugoslavia started 50 years later."

(Below) Clothes of victims at the Murambi Genocide Memorial, where 40,000 people were killed in three days.





Matt McCarthy, '08, seated at left in court at the International Criminal Tribunal for Yugoslavia. (Courtesy of the ICTY)

(Below) The exterior of the Murambi Genocide Memorial.

McCarthy's experience at the Law School influences his work at the Tribunal on a daily basis. One major influence was Eric Posner, the Kirkland & Ellis Professor of Law, who shared McCarthy's interest in the direction of international law and who taught McCarthy to cast a skeptical eye on accepted arguments. From Posner and others at the Law School, McCarthy said he learned to regularly question viewpoints and argue his opinion rather than automatically accept what others said.

"At the ICTY, lawyers from every kind of legal system are in one place shaping a new body of law," he said. "Something that carried over very well from the University of Chicago to the Tribunal is that you discuss and debate ideas."

McCarthy has a contract with the Yugoslavia Tribunal into 2011. His contract is eligible for extension, however the Yugoslavia Tribunal is in its waning days. It is mandated to close by 2014, barring the arrest of outstanding fugitives. After his time with the Tribunal ends, McCarthy hopes to pursue a career in the U.S. Department of Justice.

Similar to how McCarthy viewed his work on the ICTY,



Stowell saw her summer in Rwanda as an opportunity to take part in shaping international criminal law. In one instance, a defendant associated with Bagosora's case moved for severance in circumstances that made the issue one of first impression for the court. Stowell was involved in researching the motion.

"The work I did, performed in a court with limited resources, contrasted with the academic discussions about the formation of international law I had participated in just weeks prior in a Public International Law class," she said. "I changed some opinions and perceptions I had gained in class."

Stowell first heard about the ICTR internship from the Law School's Office of Career Services, and she applied after hearing from past Chicago Law interns about their experiences. At the end of her first year of law school, she traveled from Chicago to Arusha, Tanzania—a trek that took 24 hours.

Stowell had heard that past visitors to Arusha had brought their own lightbulbs, toilet paper, and soap. But the town had modernized by the time Stowell arrived. Life wasn't rudimentary, but it was different than home. The shower and electricity worked only occasionally in the



Stowell's view from her apartment balcony in Arusha, Tanzania.

apartment Stowell shared with her roommate, an intern from Spain. Their landlord was a man she and others called Papa Guta, who was rumored to be a former gamekeeper. One day, Papa Guta knocked on Stowell's door and handed her a black plastic sack. "Impala," he said, pointing to his bounty. The next night, interns from Spain and France joined Stowell for an impala feast.

"We ignored the fact that the electricity had been out all day, overcooked the meat on a hot plate to compensate for the lack of refrigeration, and ate well," she said. "It wasn't bad."

Stowell's work in Africa didn't end with her internship. The next summer, Mayer Brown, where Stowell worked after graduating, sent her to Rwanda for three weeks to research *gacaca*, a system of community justice intended to hasten the Rwanda legal proceedings and promote reconciliation. She recently finished a clerkship with the Hon. Susan P. Read, '72, on the New York Court of Appeals, and has returned to Mayer Brown where she hopes to pursue the firm's pro bono opportunities, including a broad range of projects involving international law.

The most memorable part about living in Arusha for Jeff Crapko, '11, was the day-to-day interactions with the locals. When he interned at the ICTR in 2009, Crapko liked spending his free time with two Tanzanian men who worked with him on the Tribunal in non-legal capacities. He still keeps in contact with the men.

"It's always a valuable experience to make friends from a culture and region that isn't your own," Crapko said.

Carolyn Tan, '11, interned at the Tribunal the same summer as Crapko. Her courses in criminal law, legal research and writing, and her first-year elective, public international law, were the most helpful in preparing her, she said. The internship allowed her to gain valuable practical experience in international criminal law. Her life also was enriched in other ways—before she left Tanzania, she climbed Mount Kilimanjaro.

Crapko enriched his experience at the Tribunal by traveling to the Rwanda Genocide Memorial in Kigali, Rwanda. The site includes a haunting property where 40,000 people were killed in one day during the genocide. His experiences working on the Tribunal and visiting the memorial aren't ones he will soon forget.

"I don't think there is any replacement for the type of education you can receive by working on the legal work associated with the Rwandan Genocide, reading protected witness transcripts, and traveling to Rwanda to see the country for yourself," Crapko said.

If the past is any indication, more Chicago Law students will have similar experiences in years to come.

"Even for people who want to go into the private sector, working at the Tribunal demonstrates a lot of very employable qualities," Casaleggi said. "It shows they're hard workers, they're not afraid of challenges, and they can hit the ground running." ■

Thank you from the Associate Dean for External Affairs

THANK YOU to all of you who made a gift to the Law School during the 2009-2010 fiscal year. Our graduates remain loyal to their alma mater, as evidenced by a 34% alumni participation rate (which puts us in the top five for national law schools). I am also happy to report that the dollars raised this past year increased 5% to more than \$3.6 million. Given the previous year's economic downturn, this is a nice rebound.

Through your personal gifts, you are helping to maintain the excellence of your institution; excellence which benefited you and currently supports today's students and faculty. I applaud those who understand the value of giving back to an institution that is committed to providing an excellent, unique, and second-to-none legal education.

A new year has started and I hope you will continue to support the Law School. And, for those who have lapsed a year, please consider renewing your Annual Fund contribution. All gifts are important and collectively make a difference!

Thank you again and best wishes,

Jonathan S. Stern



Please make your 2010–2011 Annual Fund gift by calling (773) 702-5971. You can also make a gift online at <http://alumniandfriends.uchicago.edu/>

Thank You Reunion 2010 Classes

MORE THAN 850 ALUMNI AND FRIENDS RETURNED TO CAMPUS FOR REUNION WEEKEND; AN ALL-TIME RECORD! NEARLY \$2,000,000 WAS RAISED BY THE REUNION CLASSES TO SUPPORT THE LAW SCHOOL ANNUAL FUND, STUDENT SCHOLARSHIP AID, FACULTY RESEARCH AND THE MANDEL LEGAL AID CLINIC. NEARLY 50% OF OUR REUNION CELEBRANTS MADE A GIFT IN HONOR OF THEIR REUNION.

NONE OF THIS WOULD HAVE BEEN POSSIBLE WITHOUT THE HARD WORK AND EFFORTS OF THE REUNION CHAIRS AND SEVERAL HUNDRED COMMITTEE MEMBERS WHO WORKED TIRELESSLY ON THE REUNION CAMPAIGN, GENERATING EXCITEMENT AND PARTICIPATION AMONG ALL CLASS MEMBERS.

CLASS YEAR	PARTICIPATION RATE	TOTAL CASH AND PLEDGES RAISED
1955	50%	\$95,845
1960	49%	\$29,825
1965	67%	\$330,197
1970	51%	\$80,850
1975	46%	\$358,227
1980	45%	\$255,071
1985	43%	\$340,320
1990	53%	\$331,280
1995	38%	\$86,935
2000	57%	\$104,301
2005	45%	\$27,196

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JO DESHA LUCAS 1921–2010

On May 9, 2010, The Law School lost one of its longest-serving faculty members. Jo Desha Lucas, Arnold I. Shure Professor of Urban Law, Emeritus, left us after spending nearly sixty years at the Law School—more than half our history. Even at age 88, Professor Lucas was still very much an active part of the Chicago Law family. He continued coming in to the Law School until shortly before his death and was working on a new edition of his admiralty casebook with Professor Randy Schmidt.

Professor Lucas was warmly remembered at a memorial service on June 17 at the Law School where friends, family, and several members of the Law School community spoke. Dean Michael Schill began the proceedings by sharing some of the comments he had received from alumni about Professor Lucas. Alumni remember Professor Lucas as a wonderful classroom teacher—several took Admiralty, though they had no interest in the subject, just to take another course with him. Others remember the courses he taught in American Indian Law—at their request. In their notes to Dean Schill,

they say he was “a uniquely informative and entertaining educator,” “outstanding in all respects,” and that he “taught the law not only with great skill, but with uncommon grace.”

Many of his former students fondly remember him outside the classroom as well. They say he was “a joy to be around,” “nice to a fault to us all,” and “a wonderfully wry man.” Three years ago, he joined members of the class of 1957 at their 50th Reunion. The conversation turned to the fact that virtually all of the alumni in attendance had come to the Law School on scholarships, and they were delighted to realize that Professor Lucas, then Dean of Students, had been instrumental in making sure they got those scholarships. It was a long-awaited opportunity to thank him.

Nearly every alumnus who wrote to Dean Schill brought up the mint juleps. For many decades, it was Professor Lucas’s tradition to take over the bar at Wine Mess just before the Kentucky Derby and demonstrate the proper method for making mint juleps. Alumni who never even had him for class have said they remember this as clear as day and that it

is one of their fondest memories of law school. One alum remembers the demonstration thusly: "When he made mint juleps for us, he had all the ingredients including special bourbon, powdered sugar, ice, and mint. After he showed us how to make one properly, he then said, 'well I don't really like sugar in my drink very much, and I can do without the mint, and ice really isn't necessary,' and then he drank a nice tall shot of straight bourbon."

Below we have reprinted a piece about Professor Lucas that ran in the Fall 1986 issue of the Law School Record. We have also included here some of the many photos we have from his time at the Law School, and, of course, his famous mint julep recipe. We hope you will enjoy this tribute to our fine colleague, teacher, and friend. Professor Lucas represented many of the best things we like to believe the Law School is, and we will miss him very much.

A conversation with Jo Desha Lucas is both a pleasure and a problem. It is a pleasure to listen to his voice, with its measured tones and southern accent that more than thirty years of life in Chicago have failed to bury. It is enjoyable just to talk with this courteous gentleman, who will converse amusingly on almost any topic. His incisive wit is so gently expressed that the casual listener will impale himself on its barbs without even having realized he has done so. Only a twitch at the corner of his mouth reveals that Lucas is enjoying the joke. The problem lies in



getting him to talk about his own achievements. Professor Lucas is a modest man who sees no need to push himself to the forefront of the world's attention.

Jo Desha Lucas, the Arnold I. Shure Professor of Urban Law, is the only southerner on the Law School's faculty. Born and raised in Richmond, Virginia, he is a descendant of the distinguished Desha family (then pronounced "de shay")



of Kentucky. Joseph Desha was a member of Congress and a brigadier general in the War of 1812. From 1820 to 1824 he was also governor of Kentucky. Professor Lucas is not named for him, however, but for Joseph's grandson, Jo Desha, so called because his father, the governor's son, had been named Lucius Junius Brutus. Lucius had vowed that his own children would all have monosyllabic names. The first Jo is distinguished for having fought the last duel in Kentucky, shooting a Yankee who had insulted him in a bar. The shooting was not fatal. Not all the Deshas were so considerate of their adversaries, however. Jack Desha was convicted of murder during his father's term of office as governor. Joseph Desha pardoned him, thereby causing a juicy scandal. Professor Lucas relates this tale with evident enjoyment.

Lucas is also proud of his ties to The University of Chicago. Through a collateral branch of his family he is distantly related to Sophonisba Breckenridge, who was the first woman graduate of the Law School in 1904 and a pioneer in the Chicago School of Civics and Philanthropy, which later grew into the University's School of Social Service Administration. Jo Desha Lucas first came to the Law School in the fall of 1952, from Columbia University, where he had just received his LLM degree. He had graduated from the University of Virginia with the LLB degree in 1951. He began his career at the Law School as a Bigelow teaching fellow, but in December of 1952, Sims Carter, the Dean of Students, suffered a heart attack and was forced to resign his post. The Dean of the Law School, Edward Levi, wanted the position to go to a faculty member. Jo Lucas was appointed and became Assistant Professor of Law. He took up his duties in January 1953. He remained

Dean of Students until 1961, when he went back to full-time teaching and research, as Professor of Law.

For generations of students, Jo Desha Lucas was not only the professor who taught them courses in State and Local Government and Law Revision, he was also the figure they turned to on all matters of admissions and scholarships and for formal advice. Former students of his remember him fondly for his practical and sympathetic help as Dean of Students and for his classes, peppered with anecdotes and colorful imagery. He was Chairman of the Admissions Committee and the Grades, Rules, and Requirements Committee, but neither committee met a single time



during those nine years. One of his tasks was to deal with the large number of petitions for readmission from those who had failed their first year. At that time the pool of candidates applying to law schools was much smaller than today and entry requirements were more relaxed. Nevertheless, only those who could meet the high academic standards

demanding by the University of Chicago Law School could continue their career beyond the first year.

To current generations of students Jo Lucas is one of the more reclusive figures in the Law School, thought of as having “something to do with *Moore’s Federal Practice*.” In fact they are correct, but his involvement is much more than just “something.” He has been the major reviser of the work first brought out in the 1930s by James William Moore, while the latter was a member of the Law School faculty. One of the two standard works on federal civil procedure, the *Federal Practice* has grown over the years



from its original four-volume size to more than twenty volumes. For many years all the annual supplements to the work were written by Professor Lucas alone. Although these annual updates are now written by a team of six or seven scholars, Professor Lucas is still the chief editor and reads and edits the whole work. If pressed, Professor Lucas will admit that he has written more than half of the revisions to the original work. Lucas’s work is vitally important to the practice of law. No practicing lawyer can be without a treatise on federal practice and procedure. Jo Lucas knows the worth of what he does, but this very private man refuses to seek public acclaim for his work.



Professor Lucas has had a long and abiding interest in how local governments work and the rules that control them. His courses on state and local government and taxation probe the problems of state and city government at a local level and examine the rules that affect the individual most directly and immediately. In 1982 Lucas was appointed the Arnold I. Shure Professor of Urban Law. This professorship was established in 1971 in honor of Arnold Shure, who graduated from the Law School in 1929.

As one of the leading authorities in the field of practice and procedure, Lucas is a member and former chairman of the Illinois Supreme Court Rules Committee and has also served as Reporter to the Advisory Committee on Appellate Rules for the federal courts. He is also an expert in maritime law and a third edition of his *Cases in Admiralty*, a standard work in the field, is currently in preparation.

Jo Lucas’s southern heritage, wonderful, dry humor, and his years of close involvement with the students come together in the Making of the Perfect Mint Julep, a ritual he has occasionally performed for the students’ enjoyment



at the Law School Wine Mess, held the day before the Kentucky Derby. Dressed in a white linen suit, using sterling julep cups and a sterling hammer to crush the ice, he solemnly demonstrates the best way of creating a mint julep. It begins with crushing the mint in the cups with a little sugar, and includes the choice of the correct newspaper to insulate the ice-filled cups from the table. The *Louisville Courier-Journal* is the paper of choice if the mint has been bruised; if it has been crushed, the *Richmond Times-Dispatch* is the preferred publication. Throughout the demonstration Lucas maintains a solemn and dignified mien. Past generations of students still recall with amusement the unexpected climax to the ritual.

Jo Desha Lucas has offered to invent a complete new history of his life and family, full of drama and swashbuckling adventure, that he feels would be “much more exciting” than the truth. This quiet, modest, reserved, witty, eccentric, scholarly man has a story all his own. Why improve on the truth? ♣



JO DESHA'S MINT JULEP RECIPE

Ingredients (for one drink):

- 5 fresh mint leaves plus one sprig
- 1 cup finely shaved/crushed ice
- 4 oz. bourbon whiskey
- 1 lump sugar
- 1 short straw
- 1 silver mint julep cup
- 1 wooden muddler
- 1 thick newspaper (preferably the *Louisville Courier-Journal* or *Richmond Times-Dispatch*)



Process:

1. Place cup on at least ½” newspaper.
2. Place the mint leaves at the bottom of the cup with the sugar and then muddle them together.
3. Add the ice, packed down into the cup, and then pour the bourbon on top of the ice.
4. Add the mint sprig and insert the short straw through the ice near the straw so as “to tickle your nose.”

Alumni

In Memoriam

1937

Harker T. Stanton
February 21, 2010

Stanton, a Senate Committee lawyer, died in Olney, Maryland. He was 95. A graduate of the College, he was an attorney at various Chicago firms before departing to Washington, where he joined the Department of Agriculture and the Senate legislative counsel in 1943. In 1951, Stanton was appointed staff director and general counsel for the U.S. Senate Committee on Agriculture and Forestry, a position he held until 1974. A volunteer driver for Meals on Wheels, he also tutored with the Literacy Council of Montgomery County, cofounded the Glenwood Recreation Club, and was a member of Silver Spring's St. John the Evangelist Catholic Church for more than three decades.

1940

Saul I. Stern
March 30, 2010

Stern, a longtime member and former chair of the Maryland State Planning Commission, died in Washington. He was 94. A World War II veteran, he founded Stern Office Furniture with his brother and developed the store into one of the largest office-furniture and design providers in the United States before selling it in 1984. A founding member of the National Jewish Democratic

Council, Stern fundraised for several Jewish charities as well as the Democratic Party.

Named to Maryland's state planning commission in the 1950s, he served in that post until the 1980s. In 2001 he and his son endowed a civic engagement professorship at the University of Maryland's School of Public Policy.

1942

Mordecai Abromowitz
May 11, 2010

Abromowitz died in Winter Haven, Florida. He was 91.

1943

Ross D. Netherton, Jr.
April 30, 2010

A legal specialist in transportation, land-use planning, and the environment, Netherton died in Arlington, Virginia. A World War II veteran who served in China, Burma, and India, he spent 27 years in the Army Reserve, retiring as a colonel in 1973. Netherton, a graduate of the College, researched and taught law for more than four decades, holding posts at Chicago-Kent College of Law and American University's Washington School of Law. He headed research and writing programs for several national organizations, including the U.S. departments of the Interior and Transportation, the American Bar Association, and various congressional study commissions. An honorary life member of the Falls Church Historical Commission and member of the Northern Virginia Association of Historians, Netherton wrote several works

about Virginia, including histories of Arlington and Fairfax counties coauthored with his wife. He received numerous professional awards for his historical preservation research.

1948

Donald B. Cronson
December 24, 2009

Cronson, a distinguished judge, died in his home in Gstaad, Switzerland.

1949

Arnold A. Silvestri
June 16, 2010

Silvestri died in Palm Beach, Florida. A native of Rome, Italy, he came to the United States at age 12 and served in the Coast Guard during World War II. Silvestri practiced law in Chicago for many years, retiring in 2005. A former president of the Goodman Theatre, he also enjoyed opera.

1950

Donald J. Dreyfus
January 8, 2009

Dreyfus died in Cardiff-by-the-Sea, California. He was 84.

1952

James A. Blumberg
April 26, 2010

1954

James E. Cheeks
May 2, 2010

Cheeks, a former executive vice president at Research Institute of America, died in New York. He was 79. A Cleveland native, Cheeks wrote several business

books, including *How to Compensate Executives* and *Wealth Creation for Small Business Owners*. He enjoyed history, classical music, and travel, including regular trips to Provence, France, with his wife, MaryGrace.

Robert A. Kelso
February 13, 2010

Kelso, the fifth generation in his family to practice law in New Albany, Indiana, died there. He was 79. A graduate of the College, he served as the New Albany city attorney under former mayor Garnett Inman and was a member of the Indiana State Board of Law Examiners and the Indiana and Floyd County bar associations. An accomplished boater and golfer who retired January of this year, Kelso won multiple championships at two local country clubs.

Erroll E. Murphy
January 30, 2010

1959

William H. Nightingale
April 28, 2010

Nightingale, an attorney, died in Seattle. He was 81. A Coast Guard lieutenant in the early 1950s, he lost much of his hearing when a cannon fired next to his ears. He was later blinded in a farming accident at age 27. Nightingale learned Braille and used a guide dog, earning his law degree and opening a private practice in Seattle with his brother-in-law. A longtime Olympia, Washington, resident, he later worked for the state as an administrative law judge deciding appeals on liquor control and employment-security

issues. Nightingale was an avid fisherman who won many Lions Club derbies, as well as a basketball fan who won radio station KIRO's Super Sonic Nut of the Year award in the mid-1970s.

1961

John A. Mitchel *May 3, 2010*

Mitchell died in Santa Fe, New Mexico. He was 73. Mitchell practiced law with his father in Santa Fe before the two founded First Northern Savings and Loan together, the first savings and loan company in northern New Mexico. In 1965 he began working with the Taos Ski Valley, where he served as president and was board chair for the past 21 years. Founder of Santa Fe's Historical Neighborhood Association, Mitchell also served on the Museum of New Mexico Board of Regents and was a key leader for an area legal advocacy group to help abused and neglected children. A philanthropist, he supported St. Elizabeth Shelter, St. Vincent Hospital, and recent efforts to improve local public schools.

1962

Robert A. Janoski *August 1, 2009*

Janoski died in Northfield, Illinois. He was 71.

1963

Dennis Kops *May 14, 2010*

Kops was a self-employed attorney. He was born in Brooklyn, New York, son of the late Norman Lester and Sylvia Komasaroff Kops. He is survived by his wife, Daixa Elsy Gonzalez Kops; his three sons, Mitchell, Matthew, and Marc Kops; and three brothers, Myron, Ian, and Randy Kops.

1967

Edward H. Flitton III *March 27, 2010*

Flitton, an attorney, died suddenly in Colorado Springs, Colorado. He was 67. During his 24 years with legal firm Holland & Hart LLP, Flitton served several leadership roles, including managing partner, a position he held from 2000–2006. A member of the American Bar Association's executive committee for the law practice management section, he was also a fellow, trustee, and current president of the American College of Law Practice Management.

1968

Michael G. Mallin *March 26, 2010*

A specialist in Canadian income-tax law, Mallin died of colon cancer in Toronto, Canada. He was 67. Mallin began his career working for CCH Canadian, Ltd., and Arthur Anderson Chartered Accountants, teaching the details of Canadian taxation to many young professionals. In the mid-1980s, he founded Edit Operations Corp., a publisher

of annual corporate and personal income-tax guides. A decade later, he moved to Tortola in the British Virgin Islands, where he continued to edit tax manuals and also serve as treasurer of several local organizations, including the Hotel and Commerce Association, the Humane Society, and the Belmont Association, of which he was also president.

1974

Keith A. Klopfenstein *February 27, 2010*

Klopfenstein, an attorney, died of a heart attack in Oak Park, Illinois. He was 60. An Air Force veteran, Klopfenstein served in Panama as an attorney. He and his wife started a family there, then moved to Oak Park, where they lived for the past 30 years.

1976

Lawrence Dillard *January 17, 2009*

1990

Frederick H. Cohen *May 4, 2010*

Cohen, an attorney, died of complications from kidney cancer in Chicago. He was 45. A principal at Chicago firm Goldberg, Kohn Ltd. since 1992, Cohen won a 2004 pro-bono class-action lawsuit that pushed Illinois to provide better medical treatment to low-income children. Recipient of an Equal Justice Award from the Sargent Shriver National

Center for Poverty Law, he argued the case while undergoing cancer treatment. He and a colleague later won the largest False Claims Act judgment in U.S. history when they argued against Amerigroup, a company found to be discriminating against pregnant women. Director of the Public Interest Law Initiative until this past March, Cohen helped create his firm's pro-bono program. He was also an accomplished guitarist and poker player who participated in the 2009 World Series of Poker.

2008

Grant R. Folland *February 20, 2010*

Folland, a litigation associate at Jenner & Block LLP, died in a snowmobile accident at Lake Tomahawk, Wisconsin. He was 29. A member of the Illinois Bar and the Lesbian and Gay Bar Association of Chicago, Folland interned for the Washington Office on Latin America and at the U.S. State Department with the U.S. Mission to the Organization of American States before earning his law degree. He also served as an extern at the National Immigrant Justice Center. Folland enjoyed museums, art, and music.

Class Notes Section – REDACTED

for issues of privacy

An Investment Career Grounded in Law School Learning

Terry Diamond, '63, came to the Law School with a keen interest in business, and his interest was more than satisfied by great professors and great opportunities. "I'm sure I took every course that Walter Blum taught," he recalls, "and most of Stanley Kaplan's courses, too.



Terry Diamond, '63

Then, as today, the Law School's faculty was exceptionally skilled at blending theory and practice, and at challenging students to find the best in themselves. All that, plus the opportunity to take business and economics courses

throughout the University, gave me the grounding to do what I really wanted to do in my life."

Not long after graduation, Diamond landed a job with Lehman Brothers, and his subsequent career in investment management ultimately led him to cofound Talon Asset Management in 1983. Originally formed as a brokerage firm, Chicago-based Talon grew into a company that now manages more than a billion dollars divided among hedge funds, individually managed accounts, private equity, and venture capital. As of March 31 of this year, \$10,000 invested with Talon ten years earlier would be worth considerably more than twice as much as the same amount invested in the Russell 3000 index.

"We don't try to predict the market," Diamond says, "but we act on the substantive indicators that we see." Thus, Talon put the brakes on investing in 1998 and 1999 when Diamond and his team saw signs that the tech-stock bubble was near to bursting, and they did so again in August of 2007 as they noticed that access to credit was tightening. Both moves proved timely, and in this regard, too, Diamond says his experience at the Law School made a big difference: "There's no question that the Law School taught me how to think, and particularly how to identify the critical variables in a situation. In the investment

business we're inundated with data—our best decisions happen when we're able to discern what's really important and then act on it."

Diamond attributes Talon's success to personnel who are not just very smart, but who also work together very well as a team. Although he is still actively involved in investment decisions, he also sees himself as a mentor to Talon's next-generation leadership. "That's something I really enjoy—passing on knowledge and insights that I've gained over the years to younger people," he says.

He maintains his own vitality in part by a vigorous physical regimen. For many years, he and his wife Marilyn climbed mountains together around the world, including Himalayan peaks, Mount Kilimanjaro, and volcanic calderas in Mexico. Today they ski in winter and hike and bicycle in summer, often in mountainous areas around Jackson Hole, Wyoming.

To prepare for their mountain ascents, they were known to run up the steps of their high-rise apartment building bearing backpacks filled with rocks. "Our neighbors thought we were nuts," Diamond says, "but we found then, as we still do today, that staying fit keeps us mentally refreshed for our more 'normal' activities." Among other things, Diamond is a member of the Chairman's Circle of the Chicago Council on Global Affairs and he serves on the steering Committee of CARA, an organization dedicated to training and facilitating employment for the homeless. Marilyn Diamond co-chairs the Chicago/Casablanca Sister Cities International Program, is on the board of the University of Chicago's Harris School of Public Policy, and serves on the executive board of the Chicago Council of Global Affairs, among other civic contributions. They are also kept happily busy by six grandchildren.

Mr. Diamond also makes time to give back to the Law School, as a former member of the Visiting Committee, a regular reunion volunteer and chair, and a consistent, generous donor. "So much of what I am blessed to enjoy today traces back to my time at the University of Chicago Law School," he observes. "My education there made it possible for me to do something I really like doing, and to do it with a reasonable level of success. Of course I'm going to show my appreciation for all that, in whatever ways I can."

Nurturing Education to Help a Struggling Nation

Last fall, R. Michael Smith, '75, assumed the roles of General Counsel to the American University of Afghanistan (AUAF) and special assistant to the university's president. AUAF is Afghanistan's only private, independent, nonsectarian, coeducational university based on the American liberal arts model.



Smith's involvement in Afghanistan began in 2003, when he was asked by a law-firm colleague to help in a pro bono project to create a new commercial code for Afghanistan. Smith led the part of that project related to his career-long specialization in labor and employment law.

After visiting Afghanistan and meeting with government ministers and with President Karzai, Smith developed a commitment to the country's success that led him into many other ventures, including participating pro bono in the defense of more than twenty Afghan detainees at Guantanamo Bay; representing Afghanistan in lawsuits related to the events of September 11, 2001; serving on the boards of directors of organizations that include the Afghan-American Chamber of Commerce and the Afghan Trusted Network; and creating Project Afghanistan, a partnership between Kabul University and his college alma mater, Colgate.

"The Afghan people are strong, accomplished, hard-working, and proud. Most importantly for this moment, they are amazingly resilient. I wanted to help them in whatever ways I could to make the best future for their country," Smith says.

In his current role, he is establishing policies to guide the administration at AUAF, which accepted its first students in 2006. He advises the university's president and administrators on day-to-day matters and carries out many administrative functions on the president's behalf. He says he admires the students at AUAF, who have overcome numerous hardships in order to pursue a college education. "Most of them,

especially the women, risked their lives to study during the Taliban regime, and they now attend classes after working full-time during the day to support their families," he observes.

Afghanistan today is a different place than he encountered on earlier visits, Smith says—far less secure and seemingly more fragile as a nation. He recalls that when he began representing Guantanamo detainees in 2005, he traveled freely around the country and into Pakistan to meet and talk with the detainees' families. Today, by contrast, it is unsafe for him to leave his residence and venture into many areas of Kabul unless he's accompanied by an armed security guard. "It's a hundred and eighty degrees different now. The insurgents are a threat everywhere," he observes.

He had hoped to bring his wife to be with him in Afghanistan as the last of their three children leaves home for college this year, but has had to reconsider. "Security concerns would severely limit her freedom of movement. I won't ask her to join me," he says.

In part, he blames rampant corruption for the continuing destabilization of Afghanistan, citing a recent poll showing that a substantial majority of Afghans view corruption as a far greater problem than the Taliban. "About five percent of people here support the Taliban. It's their own government's serious shortcomings that they dislike and worry about most. If corruption was curtailed, the insurgency would wither on the vine," Smith says.

Smith cites two factors as having influenced his commitment to Afghanistan and its people. "My mother was an avid and engaged traveler," he recalls. "If there was somewhere interesting to go, her bags were packed. I think some of that rubbed off on me."

"And then," he adds, "there was my time at the University of Chicago Law School, which was the most intellectually exhilarating period of my life. It may sound perverse, but I loved every minute of law school, challenging and harsh as it sometimes was. I think it brought out the best in me. I feel the same about my work with Afghanistan—the challenges I've taken on have invigorated me in ways similar to my days at the Law School. I'd like to see this country succeed, and I know it can."

Active in the National Association of College and University Attorneys, he wants to become a general counsel at a U.S. university after his work at AUAF ends later this year.

Advising from Experience

Anna Ivey, '97, heads a successful, growing business helping aspiring law students gain admission to the schools of their choice. She's the author of *The Ivey Guide to Law School Admissions: Straight Advice on Essays, Resumes, Interviews, and More*. If you haven't seen her, heard her, or read about her, you might not have been paying attention:



Anna Ivey, '97

she appears frequently on television and radio and articles by her or featuring her have appeared in more than 50 publications. More media attention can be expected when the updated version of her book is released this summer.

She comes by the core of her expertise the old-fashioned way, having earned it as the Law School's former dean of admissions, a position she assumed when she was just 27 years old. Today, Ivey Consulting, with a staff of 13, aids not just aspiring law students but also college and MBA applicants. It's a full-service, boutique-type firm with a limited clientele, Ivey says: "We do a lot of assessment and coaching with our clients, looking at them as whole people and not just applicants, trying to help them achieve the best fit for their strengths and career goals."

Considerable breadth in Ivey's own background helps her relate to her clients' needs and interests. Raised in Germany (her father is German, her mother American), she came to the United States for high school and attended Columbia (spending her junior year at Cambridge, where she won a prize for exceptional undergraduate history scholarship) before entering the Law School. After law school she worked for two top Los Angeles firms, helping arrange financing for films starring

actors that included Samuel L. Jackson, Paul Newman, Bruce Willis, Kevin Spacey, and Renee Zellweger. Naturally bilingual, she has also studied French, Latin, Greek, Aramaic, and Mandarin Chinese.

And she has her own law-school admission story to tell. After applying to several top schools, she made a visit to the University of Chicago to check in on her younger sister, a first-year undergraduate. "I loved the place immediately," she recalls. "I got it in my head that this was where I had to go to law school." So she and her sister hunted down an e-mail address for then-dean of admissions Dick Badger, '68—not an easy thing to find in 1994, before today's Internet saturation. She e-mailed Dean Badger telling him of her love for Chicago. He called her the next day, spoke with her briefly, and accepted her.

"As it happens, by entering Law School directly after college I violated the advice I now give my clients. But it worked out for me. I never lost my infatuation with Chicago for one moment, as a student or at any time afterward," she says. "It's such a great law school, and it's where I really learned how to think, from great professors and brilliant fellow students alike."

Watching the Law School from her current professional vantage point, Ivey says she remains impressed: "The combination of venerable scholars like Dick Helms, Diane Wood, and Richard Epstein, along with an amazingly strong young faculty, keep Chicago as a top destination, and I can honestly say that no law school anywhere has done a better job than Chicago at using new media such as blogs, podcasts, and Twitter to establish its brand, communicate its uniqueness, and attract and inform potential students. My association with the Law School continues to help me look very good in the eyes of my clients."

The clients, she suspects, will keep coming. "When I got started in this business, it wasn't an industry like it is now," she recalls. "But today, school admissions of one sort or another seem to be on everyone's mind. Back when I was a lawyer, I hesitated about telling people what I did for a living because that was often a good way to stop a conversation in its tracks. Today I hesitate for the opposite reason—once someone knows what I do, we're likely headed for a long, long discussion."

Finding Sweet Success Overseas

An old saying has it that the only thing better than a good friend is a good friend bearing chocolate. If that's the case, then there can be no better friend than Steven Wallace, '86, who for more than fifteen years has been producing some of the world's most delicious chocolate products at his Ghana-based company, the Omanhene Cocoa Bean Company.



Ghana, for two reasons. First, Wallace went there as an AFS Intercultural Programs student when he was in high school and developed strong feelings for the country and its people. Second, Ghanaian cocoa beans are widely agreed to be among the best anywhere: *Financial Times*, for example, describes them as “the finest cocoa in the world.”

Wallace's approach to the business makes him a good friend to the people of Ghana, too. Other chocolate makers buy Ghanaian beans and process them outside the country, but all of Omanhene's production takes place within Ghana. “We like to think that processing the beans on-site at their freshest makes for better chocolate,” Wallace explains, “and it also matters to me that more of the money from this resource stays in the country and that we're providing an example of the possibilities for entrepreneurship in a country that is striving to encourage business formation.”

Becoming a chocolatier was not a career goal for Wallace. In college, he considered journalism, and that ambition got a heady boost when, on his first day as an intern at a Washington DC radio station, Ronald Reagan was shot in an assassination attempt. “It was an all-hands-on-deck occurrence, and as a nineteen-year-old I was covering parts of the story and even creating segments that

were given airtime,” he recalls.

When he came to the Law School, it was as much as a way to expand his understanding of the world as it was with the intention of practicing law, but his law school experience inspired him to give law a shot, and after graduation he returned to DC to join a boutique tax firm.

There, walking on K Street one sunny afternoon, he encountered Linda Benfield, '85, with whom he had worked closely on two productions of the Law School Musical. She asked him to help her with a theatrical production she was organizing for the DC bar, he agreed, they spent the next few months working together, and the rest is a history that includes three children and a cozy home in Whitefish Bay, Wisconsin. (He travels to Ghana a few times each year for the business and manages aspects of it from its Milwaukee office; she's a partner at Foley & Lardner in Milwaukee.)

Wallace first went to Ghana to explore possibilities for creating the business in 1991. It was not until almost four years later that Omanhene introduced its first product. “Those first few years were really tough,” he recalls. “Lots of doubts and lots of frustrations. Somewhat to my surprise, I don't think there was anything that helped me through it more than my education at the Law School. It gave me confidence that I could trust my analysis that the business could succeed, even when old hands in the chocolate business were doubting me. It helped me understand the larger context of Ghanaian laws and practices, which sometimes seemed irrational and counter-productive but had an understandable basis in the country's history and politics. It helped me structure the crucial agreements I entered into with suppliers and many others. And maybe most importantly, I figured that if I had been able to hold my own when questioned by completely brilliant professors, I could withstand the regular grillings by government ministers and others who doubted everything about me, from my real intentions to, sometimes, my sanity.”

Alumni who want to assess Wallace's judgment for themselves—and perhaps further endear themselves to their friends—can order a selection of Omanhene's products at the company's website, www.omanhene.com.



MEET THE CLASS OF 2013

GENERAL STATISTICS:

102 undergrad institutions

36 states represented

50 undergraduate majors

18 Master's degrees

42 countries lived in/worked in

18 languages spoken

FUN FACTS:

7 Eagle Scouts

5 Teach For America alumni

4 military veterans

2 Peace Corps alumni

2 varsity swimmers

2 triathletes

2 professional radio station DJs

2 professional violinists

1 Green Bay Packers employee

1 high school wrestling coach

1 Division I varsity football team captain

1 first chair oboist

1 stained glass apprentice

1 wildlife foundation volunteer in Namibia

1 professional opera singer

1 white water rafting guide

1 motorized scooter enthusiast

1 Irish dancing champion

1 amateur pastry chef

1 competitive ice dancer

1 Mexican rock cover band guitar player

1 BiblioAddict Blog founder

1 UCONN Blog founder

1 Chicago Mercantile Exchange trading assistant

1 Federal Reserve Bank of Dallas economic research analyst

1 House of Representatives Committee on Financial Services staff associate

1 Disney World industrial engineer

1 ABC news production assistant


1 karate teacher

1 Tae Kwon Do 1st Dan black belt

1 snow board instructor

1 Blagojevich staffer





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