The Legal Information Institute Turns 25

PAGE 4

FORUM

CORNELL LAW

Cornell Law School

Lawyers in the Best Sense

Fall 2017

A Photo Essay: Frances Kellor, LL.B. 1897

FACULTY ESSAYS:

Living with Broken Windows: Just Solutions in an Imperfect World by Joseph Margulies

Would a Trump Self-Pardon Precipitate a Constitutional Crisis? by Michael Dorf

The Cornell Law School Class of 2020 by the Numbers

Rediscover the Law School

Reunion Weekend 2018 will be a wonderful opportunity for you to return to Ithaca to visit with the professors and classmates you remember with great fondness and to see the changes that the Law School has made since you were last here.

There is a great selection of programs for you to choose from during this special weekend. Please visit our website or call to make your reservations now. The Law School community looks forward to welcoming you back to Myron Taylor Hall.

Cornell Law School
Reunion weekend 2018

JUNE 7~9

get connected at
www.lawschool.cornell.edu/alumni/reunion/index.cfm
or call 607.255.5251 for more information

FORUM

Fall 2017
Volume 43, No. 2

COVER:
Illustration by
John Hersey

FROM THE DEAN

Dear Alumni and Friends:

With polarizing forces at work in society at large and distrust in institutions at all-time highs, it is more important than ever for people to be able to gather information for themselves from unbiased, objective sources. In this environment, where does the public turn for help finding and understanding the law? The same place it has for the past twenty-five years: Cornell Law School's very own Legal Information Institute (LII).

As the cover story of this issue of the *Cornell Law Forum* explains, LII remains the most widely accessed and trusted online resource for legal information. The article traces how a simple seed of an idea—publishing the law online for free—blossomed into a global free-access-to-law movement that now includes more than forty independent LIIs in dozens of countries.

Over the past quarter of a century, the LII has enabled millions of people to understand and solve problems they encounter in their personal and professional lives. It has helped lawyers to assist tens of millions of clients. It has become a critical resource for officials at all levels of government. In the last year alone, LII was visited by nearly 35 million people from 241 countries and territories. Since January, visits to the site have risen by 20-25 percent. We have noticed that traffic on LII spikes on days when dramatic decisions (or particularly provocative tweets) emerge from Washington, D.C.

The Internet was in its infancy in 1992 when LII was co-founded by Thomas Bruce and Peter Martin, the Jane M.G. Foster Professor of Law, Emeritus and former dean of the Law School. As they would describe it in the March 1994 issue of this magazine, the goal of the new institute was to "connect the full resources of the school with the legal profession, with other law schools, with the world." The novelty of the new venture, according to Bruce and Martin, was the technology involved in making that connection: all of the publications would be electronic. And they would be available to anyone, anywhere, at no cost.

Cornell Law School has benefited greatly by serving as the home of the LII and vice versa. On the one hand, the LII has enhanced the reputation of the Law School

> ***Events of the past year have also helped to highlight the unique role that lawyers fulfill in a nation built on the rule of law. On any number of the most pressing issues of the day—from judicial nominations to immigration—Cornell alumni and faculty have been at the center of the action, on all sides.***

by being the source of objective, trusted, and free legal information for hundreds of millions of people. The LII in turn receives enormous benefits from its location in a world-class law school where it can draw on the expertise of our faculty and hardworking, enthusiastic students. As we look toward the next twenty-five years, I am confident this partnership will continue to produce great things.

In addition to underscoring the value of legal information, events of the past year have also helped to highlight the unique role that lawyers fulfill in a nation built on the rule of law. On any number of the most pressing issues of the day—from judicial nominations to immigration—Cornell alumni and faculty have been at the center of the action, on all sides. And the LII has been there as well, ensuring the public has free access to reliable legal information. The legal profession—and Cornell Law School—have never been more indispensable.

Respectfully,

Eduardo M. Peñalver

Allan R. Tessler Dean and Professor of Law
law.dean@cornell.edu

The Legal Information Institute, A Beacon of Free-Access Law, Turns 25

by IAN MCGULLAM ■ ILLUSTRATION *by* JOHN HERSEY

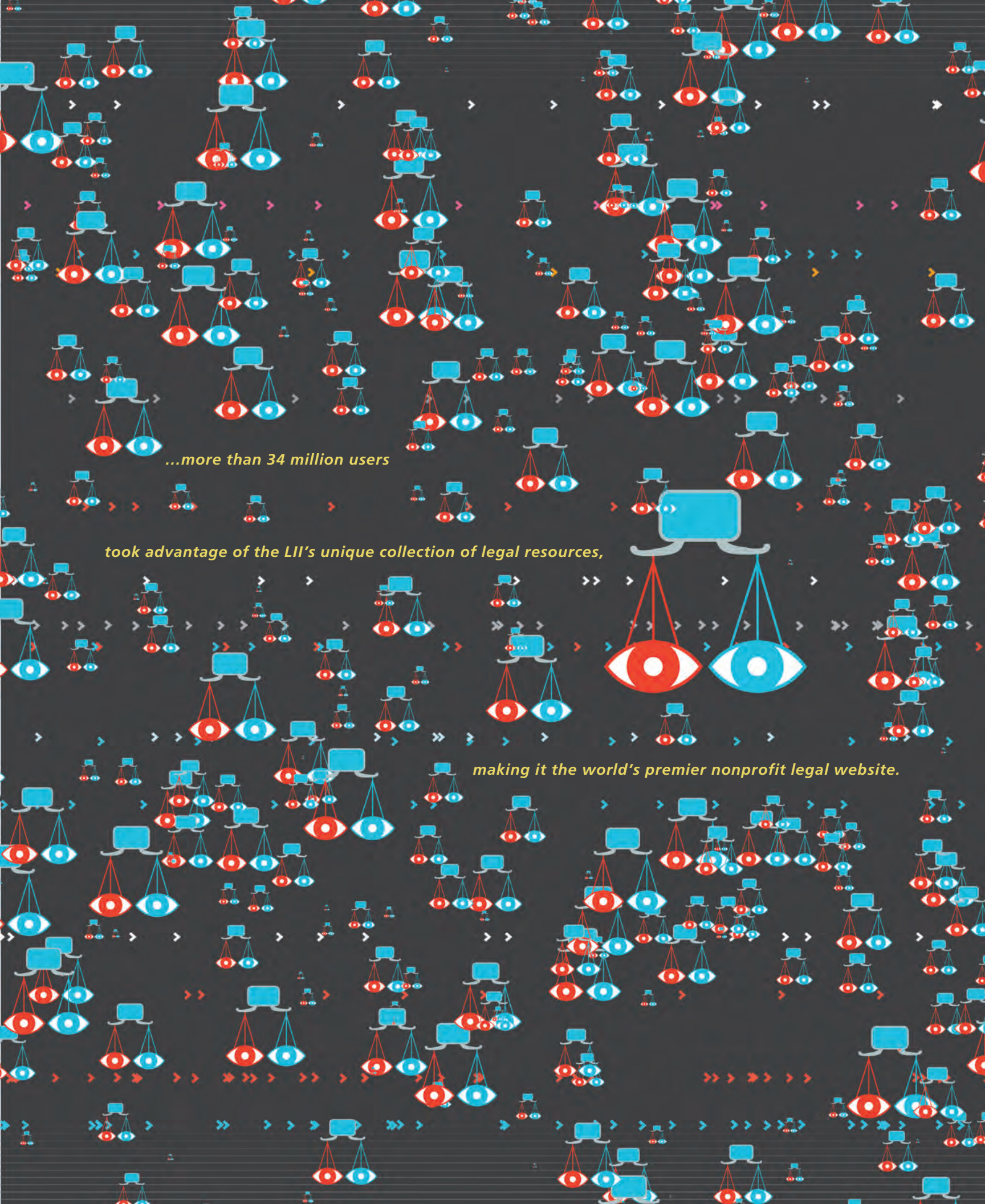
In the beginning, there was the Legal Information Institute (LII). Now, a quarter century into the online age, it's still going strong.

When **Thomas R. Bruce** and **Peter W. Martin**, the Jane M.G. Foster Professor of Law, founded the LII at Cornell Law School in 1992, the World Wide Web was in its infancy. The LII was the world's first web destination for legal information, and something like the thirtieth website of any kind—"one of the very first websites having to do with any subject that wasn't high-energy physics," quips LII Associate Director for Technology **Sara Frug.**

Twenty-five years later, more than 34 million users have taken advantage of the LII's unique collection of legal resources, making it the world's premier nonprofit legal website. What's known to many devotees as simply "the Cornell site" hosts primary texts including the U.S. Code, the Code of Federal Regulations (CFR), the Uniform Commercial Code, and an extensively annotated Constitution. Besides providing access to those government documents, the LII has also produced its own popular resources, such as Wex, the institute's wiki-style community-built legal encyclopedia and dictionary.

Martin, a former dean of the Law School, and Bruce started the institute with a keen interest in exploring how emerging digital concepts like hypertext systems could be used to make the law more accessible. It was a time of enormous upheaval in the commercial legal information sector, and they thought that an academic institution focused on underserved areas like regulations and unencumbered by reams of legacy material might best be able to take advantage of the opportunities the web presented to break the law out from behind subscriptions and paywalls. "In the new environment as I saw it unfolding in the early nineties, it was possible for a law school to be an originator and creator in this world," says Martin, who took emeritus status in 2009.

In part, the LII grew out of frustration over how law schools viewed the Internet at the time. Despite the perennial student fascination with new technology, computers were largely seen as ways to access the commercial subscription services like


...more than 34 million users
took advantage of the LII's unique collection of legal resources,
making it the world's premier nonprofit legal website.

> ***One of the very first websites having to do with any subject that wasn't high-energy physics.***
>
> *— Sara Frug, LII Associate Director for Technology*

Westlaw and Lexis-Nexis. What computer people there were mostly were confined to IT support rather than innovating with the new tools. "The bigger idea was always that there should be a creative space within law schools to play around with this stuff," says Bruce, the sole director of the LII since 2004. "And the question on my mind and Peter's was, how do you make the sort of tent under which some kind of experimental activity can take place?"

Much of the LII's technical work over the years has been aimed at addressing phenomena like what is known internally as Tom's Bar-Bet Theory of the Constitution. According to Bruce, the theory holds that "the Constitution is used to settle bar bets about the law, and very seldom does anyone look further than the Constitution." Rather than just present the texts as they were obtained from the government, the LII tries to make them more understandable. For instance, the institute's team has used neurolinguistic programming software to automatically link to definitions for terms in the CFR, in order to warn users that the terms might have nonobvious or multiple meanings, depending on context. "There's a lot of stuff we build that is not dispositive, but is more in the realm of red light, yellow light, green light flagging of things that might invite further investigation," says Bruce.

Existing under the umbrella of Cornell Law School gives the LII access to one of its most important resources: that hardworking, enthusiastic value proposition known as law students. Every year, teams of associates on the *LII Supreme Court Bulletin* staff publish detailed previews of each case before the Supreme Court ahead of oral arguments. Associates pore over the mountains of often-technical briefs submitted to the high court in order to produce précis of each side's contentions and the legal questions under examination in plain language, allowing both legal professionals and the general reader to follow cases as they proceed. "People can pick up a preview and have a good understanding of what the Court is considering and how that might affect cases that they're working on, or different legal issues that are important to them," says **Laurel Hopkins '18**, the *Bulletin's* editor in chief. "That connects with the LII's broader mission of making legal information readily available to the public."

The LII's most recent ventures into new fields have gotten the institute into the "distressed property business," as Bruce puts it, giving a new home to orphaned legal resources originating outside of Cornell. In May 2016, the LII announced that it had adopted the revolutionary multimedia Supreme Court archive Oyez, securing its future as Oyez founder, **Jerry Goldman**, prepared to retire from the Chicago-Kent College of Law, the archive's home at the time. Goldman's donation of Oyez to Cornell ensured that users would continue to have free access to the archive's crown jewel: a collection of comprehensive audio records for the high court stretching back to when recorders were first installed in the 1950s, complete with synchronized and searchable transcripts and even a light-up gallery of justices to let listeners know who's speaking.

"My thinking was that Oyez should be part of an academic institution," says **Timothy Stanley**, the founder and CEO of the legal resource website Justia, which had already been involved in providing infrastructural and tech support to Oyez. "As LII works with it some more, and starts doing some analysis, that will actually turn out to be the bigger thing. I think it will become a serious Supreme Court research center." (See page 11 for a Q&A with Tim Stanley about the importance of LII and how he helped bring Oyez to LII.)

If Oyez's transfer represented the preservation of a valued resource, the LII's other recent acquisition is more of a resurrection. Frug is heading up efforts to renovate Docket Wrench, an

The 2017-2018 Editorial Board of the *LII Supreme Court Bulletin*

online resource aimed at shining light on comments submitted during the rulemaking process. Launched by the Sunlight Foundation in 2013, the first iteration of Docket Wrench had been aimed at helping journalists sift through the millions of documents submitted by corporations and ordinary citizens during the mandatory public comment periods.

> ***People can pick up a preview and have a good understanding of what the Court is considering and how that might affect cases that they're working on, or different legal issues that are important to them.***
>
> *— Laurel Hopkins '18,*
> LII Supreme Court Bulletin
> *Editor in Chief*

Even back then, Docket Wrench had caught the LII's attention, since it complemented the Cornell institute's approach of focusing on providing access to what Frug calls "the large contact surface with the public"—regulations and enabling legislation—rather than just trying to amass endless collections of case law. "We thought of the Docket Wrench project as a very natural extension of the work we were doing," says Frug. "They were looking at how the rulemaking process actually works and how the collaborative process of the development of rules actually works."

Sunlight eventually deprecated Docket Wrench, a move that the Sunlight Foundation's deputy director, **Alexander Howard**, attributed to it never really having found an audience. The tool got a second chance, though, after Sunlight announced in September 2016 that it was closing down its technology shop, Sunlight Labs, amid an organizational shake-up, and was putting its software projects up for adoption. "The ethos Sunlight has approached our work with from the beginning is that we do things open by default," says Howard. "We share code, we share methodology, we share thinking. And in this case, because it was open-source, they literally could just grab it."

From the earliest days, Bruce and Martin hoped to encourage the growth of other nonprofit law databases.

While a few other attempts in the United States failed to survive, the international Free Access to Law Movement has seen an incredible flowering of nonprofit legal databases around the world.

Grabbing Docket Wrench was only the first step, though. The challenge of working with data on the scale covered by Docket Wrench—some three terabytes of text—was one of the project's attractions for the LII team. However, that also means that scraping all that data from the main Regulations.gov website, as well as separate sites maintained by some nonparticipating federal agencies, involves a lot of time and custom software.

When it's done, though, Frug anticipates that Docket Wrench will find a broader audience at the LII with its focus on executive branch regulations than it had at Sunlight, which had been more oriented toward examining legislative activity. "The traffic to the LII website means that once we link rulemaking activity in Docket Wrench to the parts of the CFR with which it is associated, we will have an easier time building traffic and improving discoverability," she says.

The LII's most obvious users have always been attorneys and people navigating legal issues in their own lives, whether filing for bankruptcy or fighting for veterans' benefits. Another big section is made up of nonlawyers who work with the law and with government regulations professionally—anyone from journalists to tax preparers to probation officers.

The past year, though, has also given LII readership a "Trump bump," as first the 2016 presidential campaign and then controversial moves by **Donald Trump's** administration sent waves of ordinary people searching for unbiased sources so they could read what regulations or the Constitution actually said. Traffic has been up by around 20 percent, with the apex coming in late January as the administration announced travel restrictions on refugees and on citizens of seven mostly Muslim countries, fired Acting Attorney General **Sally Yates** when she resisted defending the travel order, and put **Steve Bannon** on the National Security Council. The site normally averages around 200,000 unique visitors a day; over January 30 and 31, a flood of interest in immigration and national security regulations produced more than 750,000 visits.

The LII has had to scramble to keep up as public attention increases in previously quiet areas of the legal landscape. **Craig**

Newton, the associate director for content development at the LII, says that figuring out where to devote resources requires keeping a keen eye on the headlines and social media—and on Google Analytics, to see what users are looking for when they make their way to the LII and whether they're finding it once they get there.

Sometimes, users inspire the LII to expand its offerings more directly. If you're interested in learning about the Constitution's emoluments clause, you can thank legal affairs journalist **Cristian Farias**. Now a legal columnist at *New York Magazine,* Farias says, "I like to link to the LII because I view it as a public service. I'm not just writing for people who know about the law but also for people that have no idea about the law. If there's a term or an amendment or a statute that would be relevant, I very much want people to click on that link and to go and read it to find out for themselves what the law says."

With questions mounting about whether Trump-controlled business ventures were allowed to receive payments from foreign governments, Farias went looking for the LII's article on the emoluments clause, figuring that his readers would appreciate reading the original for themselves. Only one problem: there was none. Once Farias got in contact with Newton, though, the omission was soon rectified, and Wex became a bit more comprehensive.

Farias had first come to the attention of the LII when Farias was working at the *Huffington Post,* after Newton noticed that Wex was getting consistent spikes in traffic from links in Farias's articles. When the U.S. Court of Appeals for the Ninth Circuit issued an order in January against the Trump administration's travel restrictions, a link in Farias's story on the ruling sent readers flocking to the LII to find out just what is going on when a ruling is issued *per curiam.*

Newton got in touch with Farias on Twitter to say thanks and added, "Just so you know, 2,900 people learned what *en banc* means."

Farias says that he often uses the LII while researching stories, especially to make sure he gets arcane details like rules of court right. Most of the time, this kind of digging just makes for a better story, and the reader doesn't get to peek behind the scenes at all of a writer's background sources. This time, though, Farias felt that it was important enough for his audience to know exactly how the court decision was issued to include a link to Wex. "In this case, it was relevant for people to know that this opinion wasn't by an individual," he said. "It was the court as a whole. It was three judges speaking as one."

Figuring out where to devote resources requires keeping a keen eye on the headlines and social media—and on Google Analytics, to see what users are looking for when they make their way to the LII and whether they're finding it once they get there.

— Craig Newton, Associate Director for Content Development at the LII

From the earliest days, Bruce and Martin hoped to encourage the growth of other nonprofit law databases. While a few other attempts in the United States failed to survive, the international Free Access to Law Movement has seen an incredible flowering of nonprofit legal databases around the world, beginning in Australia and Canada and spreading to dozens of countries in Africa, Asia, Europe, and South America.

Unlike the Cornell LII, many of the international LIIs function as their countries' official legal repositories. Focuses vary according to national circumstances and the particulars of their creation. The Canadian Legal Information Institute (CanLII) started life as a partnership between the University of Montreal's LexUM Laboratory (which later spun off into a private company) and the fourteen provincial and territorial law societies — comparable to U.S. bar associations. CanLII's president and CEO,

> ***We've become the Kleenex of open-access law. It's a brand name that everybody recognizes.***
>
> *— Peter W. Martin*

Xavier Beauchamp-Tremblay, contrasts the approach of his organization to that of the wholly university-operated Australasian Legal Information Institute (AustLII). "We have big incentives to make it very user friendly for the lawyers and notaries, and to embed ourself into the work habits of the legal profession," Beauchamp-Tremblay says of CanLII and its more workaday goals. "AustLII may have approached the free access to law challenge from a different perspective, focusing from the onset on playing a preservation role and exhaustively adding historical cases."

Both CanLII and AustLII developed independently from the Cornell institute, and their decision to adopt the "LII" moniker reflected the organizations' shared ideas. Bruce and Martin were happy to let anyone adopt the acronym. "We've become the Kleenex of open-access law," says Martin. "It's a brand name that everybody recognizes."

The Cornell LII took a much larger role in the development of the LII movement in Africa. By 1995, the local Free Access to Law Movement had already kicked off in postapartheid South Africa when, inspired by reading U.S. Supreme Court decisions on the Cornell LII website, judges from the newly created Constitutional Court got in touch with the University of the Witwatersrand Law School's library in order to get their decisions online. The next year, LII's collaboration with the University of Zambia School of Law produced the continent's first legal information institute.

As the number of African LIIs multiplied, Bruce and the team at Cornell LII helped free-access activists build capacity to get their countries' legal information online and advised them on how best to scope their projects, tempering wishes for comprehensive collections and bleeding-edge technology to the limited resources at hand. In turn, when new LIIs formed, "they always insist on the trademark. It's really considered a prestigious thing that everybody wants to be affiliated with the standard that was first set by the Cornell LII," says **Mariya Badeva-Bright**, the cofounder and project manager of the African Legal Information Institute (AfricanLII), which was started at the University of Cape Town in 2010 in order to promote the growth of LIIs that fit local conditions.

More than most other LIIs, the African databases fill fundamental access needs for their users, and many of them are operated by national governments. "The major difference between the LIIs in Africa and what you have in the United States is that in Africa the governments themselves are having huge difficulties making legal information public," says Badeva-Bright. "Most of the legal information is only available in hard copy. There are no repositories in the way that you have in the United States in terms of disseminating public information freely and openly. So the LIIs help governments to fulfill their basic duty of providing access to legal information."

Back in the United States the Cornell LII still has its own niche to fill as various public entities get better at disseminating the law themselves. Looking back, Martin says, "Our initial insight was that in this highly decentralized legal universe called the United States, there was no place for us to attempt what our colleagues in Canada and Australia did, which was to try to create a comprehensive database for the whole country. Rather, we needed to be far more narrowly focused, and to concentrate our energies on doing what we did in a way that set a standard, and a standard that kept raising the bar." ■

By 1995, the local Free Access to Law Movement had already kicked off in post-apartheid South Africa when, inspired by reading U.S. Supreme Court decisions on the Cornell LII website, judges from the newly created Constitutional Court got in touch with the University of the Witwatersrand Law School's library in order to get their decisions online.

Q&A with Tim Stanley, CEO of Justia

Tim Stanley is a computer programmer, lawyer, and CEO of Justia, which helps lawyers promote their practices online and also makes legal information widely available and accessible without cost. Before starting Justia, Stanley cofounded FindLaw with his wife, Stacy Stern (who also cofounded Justia), and served as its CEO and chairman. Fastcase50 has called him "the computer programming part of legal technology's most karma-endowed couple." He is on the board of directors of Nolo and American LegalNet, and is on the board of trustees of Public.Resource.Org.

What does the Legal Information Institute (LII) mean to you?

To me, LII is the birthplace of free law in the United States. Everything we did at FindLaw and later at Justia have sort of been knockoffs of LII, which kind of led the way. They showed it could be done and that things could look good. And then we just sort of copied them.

How does the Law School benefit from LII?

I think LII has really enhanced the reputation of the Law School. It's made you guys the online tech leaders in law—with ease. Most people on the street, when they think of Cornell Law School they are thinking of the LII because its online presence is so huge.

Why does Justia support LII?

LII really has been the light that—in one way or another—all of the other free law stuff has revolved around.

LII is a no-brainer for me.

You were instrumental in bringing Oyez to LII. Can you explain how that partnership came about?

Justia had been involved with Oyez and its founder, Jerry Goldman, for some time and was providing the site's infrastructure. However, with Jerry retiring from Chicago-Kent College of Law and in light of concerns about who would keep up the site, its future was in question.

My thinking was that Oyez should be part of an academic institution. So I wondered where would it fit and, obviously, LII is easily the best place it could fit.

What are some ways the Law School might leverage Oyez?

In addition to being the authoritative source for all of the Supreme Court's audio recordings, Oyez recently acquired PDFs of all the Court's cases, without any copyright restrictions. As LII works with that case law some more, and starts doing some analysis, and other academics start using it, that may actually turn out to be the bigger thing. I think it will enable LII/Oyez to become a serious Supreme Court research center.

What are some ways in which you would like to see LII expand?

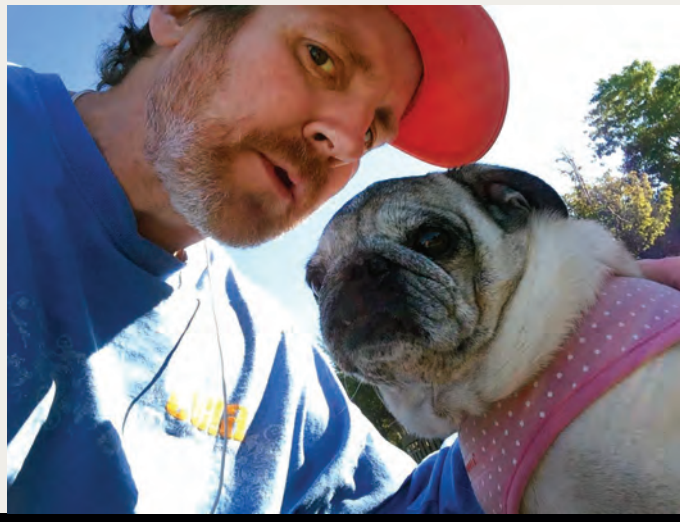
Longer term you might want to have a full set of all the laws, case law, and codes—try to make it the largest free database of U.S. law. I haven't yet seen a really good aggregation of higher-quality legal material. When it has been aggregated, a lot of times it's either segmented off to certain populations or it's a mixture of quality.

What are some of the biggest challenges facing the free law movement over the next five to ten years?

First, I thought that by now, the courts would be publishing easy-to-use, downloadable case law and codes. You have a lot of private legal publishers coming in and taking over sections of the law and online resources on the pretense of providing free stuff. However, they've done it in a way that allows them to control what's being presented and they've taken out a lot of the value adds, like internal page numbers, which you need for citing.

The second big issue is that private publishers are trying to come in and control access to codes and regulations. You have a whole set of codes published by private entities such as trade associations—that many times involve criminal penalties if you don't follow them—that are then incorporated by reference in federal regulations.

But realistically you can't read these regulations unless you join the association and pay say $1,500 a year. That's crazy. However, the real problem isn't the fees these groups charge; it's that they can actually control what the standards are.



A Photo Essay:
Frances Kellor, LL.B. 1897

by KEVIN M. CLERMONT *with* CLOTILDE LE ROY '19

As I sat in Myron Taylor Room 387 during an endless Building Committee meeting, my eyes locked on one image in the class composite picture on the wall just opposite me. It was the forceful intelligence of the gaze that grabbed me, or maybe it was the fact that she was the sole woman in a class with ninety-eight males.

The year of the class composite was not labeled, and the names' calligraphy ink had faded. But some simple detective work yielded **Frances A. Kellor, LL.B.**, of the Class of 1897. She was Cornell University's third female law graduate,[1] one of the Law Department's first LGBT+ students,[2] and certainly among the nationally most prominent of Cornell Law School's early graduates.[3]

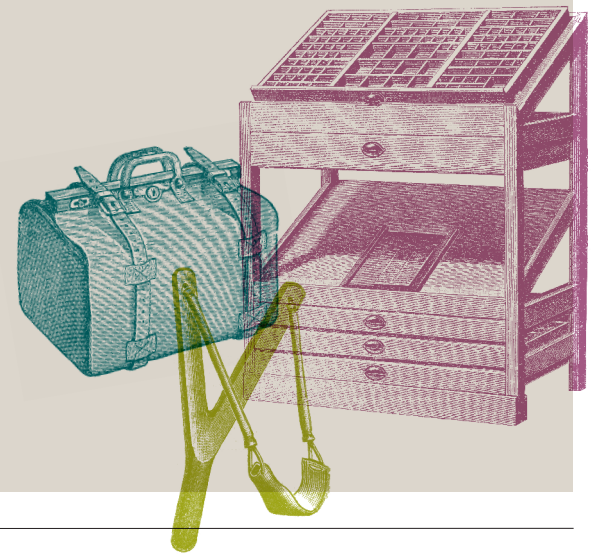
Childhood

Frances Alice Kellor was born in Columbus, Ohio, in 1873. After her father's disappearance, she and her mother moved to Coldwater, Michigan. "Alice" hunted with a slingshot and rifle and helped her laundress mother. Financial hardship caused her to drop out of high school and to become a newspaper typesetter and then reporter. When she was sixteen, she moved in with the wealthy Eddy sisters, who were local social activists and who home-educated her. She also fell under the influence of **Rev. Henry P. Collin**, a devotee of the social gospel movement.

Ithaca

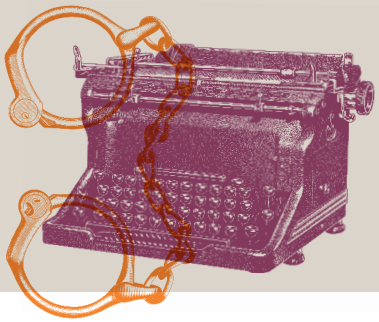
In 1895, Kellor and perhaps Frances Eddy moved to Ithaca, where she enrolled in Cornell's Law Department after passing an entrance exam. Now known as "Frances," Kellor became president of the Women's Debating Club. In 1897 she founded the Women's Boating Club, which lasted until 1933,

After her father's disappearance, she and her mother moved to Coldwater, Michigan. "Alice" hunted with a slingshot and rifle and helped her laundress mother. Financial hardship caused her to drop out of high school and to become a newspaper type-setter and then reporter.



ABOVE: The women's eight-oared crew is pictured with Kellor in the upper right, its famed male coaches **Charles E. Courtney** (seated) and **Frederick Diamond Colson** (LL.B. 1898), and distinguished physician-to-be **Nan Gilbert Seymour** in male attire, to Colson's left.
LEFT: The six-oared crew had Kellor in stroke position, Colson as coxswain, and **Edna M. McNary** (the future Mrs. Colson) two seats behind Kellor.

Kellor's field studies in local and southern prisons yielded her first book,* Experimental Sociology *(1901), which stressed the socio-economic influences on crime.



when it went into hiatus until being revived in 1974 and becoming a varsity sport in 1975. She got a shell and boathouse built. Frances would later coauthor with a former girlfriend *Athletic Games in the Education of Women* (1909), which championed the importance of physical exercise in the emancipation of women.

CHICAGO Kellor's impressive senior thesis, "Criminal Anthropology in Its Relation to Criminal Jurisprudence" (1897), which still resides in the library at Cornell,[4] argued for incorporating the lessons of the new social science of anthropology into criminal law. The die was cast. Although she would use her legal training on a daily basis, Kellor would not be a practicing lawyer. Instead she was off to the University of Chicago for graduate studies in sociology. There she would rail against the genetic theory of crime being pushed by the dominant Italian school of criminal anthropology. Kellor's field studies in local and southern prisons yielded her first book, *Experimental Sociology* (1901), which stressed the socioeconomic influences on crime. She lived and worked in Hull House, the famous settlement house founded by Jane Addams. Kellor also earned extra money as a gymnastics instructor and basketball coach at the university.

ABOVE RIGHT: Kellor reclines on the deck of the *Bremen* crossing the Atlantic, probably in 1920. RIGHT: On an outing, around 1905-1910.

New York City

In 1902 Kellor moved to New York City, a permanent change of location, for further studies at what is now known as the Columbia University School of Social Work. She lived and worked at the Henry Street settlement house. In 1904 she began her lifelong partnership—passionate, playful, and mutually supportive—with the well-to-do progressive **Mary E. Dreier** (1875–1963). A happier personality emerged after she moved in with Dreier, but Kellor remained the same brusque, independent-minded, persistent, pragmatic, down-to-earth, and modest person.

Early Career

Kellor moved into hands-on social work and eloquent social advocacy on behalf of the oppressed—blacks, women, migrants, domestic workers, immigrants, the unemployed, prostitutes, prisoners. She began an outpouring of dozens of books and uncounted articles—including classics such as *Out of Work* (1904, revised 1915), the first empirical (and undercover) study of unemployment and labor conditions in America. And having a gift for organization, she started movements —as director of the new Inter-Municipal Committee on Household Research, as the first executive secretary of the National League for the Protection of Colored Women (one of three organizations that later consolidated to form the National Urban League), as secretary and treasurer of the New York State Commission of Immigration, as chief of the NYS Bureau of Industries and Immigration (first woman head of a NYS bureau), as managing director of the North American Civic League for Immigrants, and as chair of the National Service Committee of the Progressive (Bull Moose) Party. Indeed, she became part of **Theodore Roosevelt's** "Female Brain Trust," with **Jane Addams** and **Florence Kelley**. It is notable that Kellor's heavy political involvement preceded women's right to vote. Roosevelt himself observed: "I always favored woman's suffrage, but only tepidly, until my association with women like Jane Addams and Frances Kellor, who desired it as one means of enabling them to render better and more efficient service, changed me into a zealous instead of a lukewarm adherent of the cause."[5] Later she chaired the Women's Committee of the National [Charles Evans] Hughes Alliance, directed the National Americanization Committee, ran the InterRacial Council, and was president of the powerful American Association of Foreign Language Newspapers.

Mary E. Dreier is in the passenger seat as Kellor drives.

The 1916 Women's Committee for Hughes: Mrs. O'Shaughnessy, Mrs. Mary Antin, Mrs. Maud Wetmore, and Frances Kellor.

Middle Career In addition to her service-based work and legislative reform on behalf of immigrants, Kellor shifted the focus of her scholarship, which culminated in *Immigration and the Future* (1920). She was identified with "Americanization," meaning assimilation and protection, as shown in the poster for one of her pet projects. Today that might be controversial, but no doubt exists as to the goodness of Kellor's attentions.[6] In fact, her aim has been better called "Multicultural Nationalism." She was concerned with the material

1932 NEWSPAPER CLIPPING AT RIGHT, WHOSE CAPTION READ: "The president's wife meets her skipper-husband: Mrs. Roosevelt and a group of her friends visit the President and James, John and Franklin Jr., on Board the Amberjack II." Kellor and Dreier appear in the upper left.

ABOVE: Kellor at work. **RIGHT:** Kellor worked and played (here fishing at Dreier's vacation home in Maine) pretty much up to her death in 1952, at seventy-eight, in New York City.

> ***She could look back over long years of life and feel sure that civilization in this country had grown more humane and intelligent during that time; she could feel sure, too, that she had had a part in making it so.***
>
> *— New York Times*

well-being of immigrants and believed that they could better fight against exploitation and for their economic interests once they adopted some aspects of American life. More specifically, she provided newly arrived immigrants with leaflets and brochures in their native language informing them about the associations and networks that they could rely on to start their new life in America, encouraged immigrants to learn English and civics, and fought prejudice and sought cooperation and understanding between immigrants and long-term Americans.

Late Career In the early 1920s, as Congress stopped the inflow of immigrants, Kellor again shifted her main attention to a newer passion: arbitration. In 1926, she would be a founder of the American Arbitration Association (AAA), effectively running the organization as its first vice president under male figureheads for the rest of her life. She worked tirelessly to educate others about arbitration and to expand its use as an alternative dispute resolution mechanism in the new industrial society, not only for labor and international conflicts but also for all as a matter of peaceful self-regulation. As part of this work, Kellor supported the publication of the *Code of Arbitration Practice and Procedure of the American Arbitration Tribunal* (1931). "Trained as a lawyer and a sociologist, she utilized opportunities afforded by the program of Progressive reform to develop a career that took her from the settlement houses into the upper echelons of the burgeoning administrative state, first locally and then nationally. . . . Having long called for the private sector to play an important role in addressing the nation's social ills, she ultimately looked to the arbitration system being developed by the AAA as a means of furthering her abiding commitment to the quintessentially Progressive project of Americanization."[7]

The *New York Times* noted upon her death, "she could look back over long years of life and feel sure that civilization in this country had grown more humane and intelligent during that time; she could feel sure, too, that she had had a part in making it so."[8] ■

Footnotes

1. The first was Mary Kennedy Brown, LL.B. 1893. See Kevin M. Clermont & Lyndsey Y. Clark, "Mary Kennedy Brown: Our First Woman Lawyer's Dramatic Life," *Cornell L.F.*, Fall 2015, at 10, http://forum.lawschool.cornell.edu/Vol41_No2/Feature-3.cfm. The second was Helen Mae Colgrove, LL.B. 1896, who was a pioneer for women's rights. Julie Regula Jenney, a Michigan Law graduate who in 1920 would become the first woman deputy attorney general of New York, also did postgraduate work at Cornell's Law Department in 1893–1894.
2. See Lillian Faderman, *To Believe in Women: What Lesbians Have Done for America—A History* ch. 8 (1999).
3. Recommended reading: John Kenneth Press, *Founding Mother: Frances Kellor and the Creation of Modern America* (2012); Allison D. Murdach, "Frances Kellor and the Americanization Movement," 53 *Soc. Work* 93 (2008); Sandra K. Partridge, "Frances Kellor, and the American Arbitration Association," *Disp. Resol. J.*, Feb.–Apr. 2012, at 16.
4. Kellor's thesis is available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1327&context=historical_theses.
5. Theodore Roosevelt, *An Autobiography* 180 (1913).
6. See Amalia D. Kessler, "Arbitration and Americanization: The Paternalism of Progressive Procedural Reform," 124 *Yale L.J.* 2904, 2975 (2015) ("While some praise her heroic efforts to help the disempowered [including especially immigrants], others point to the ways she sought to impose her own white, middle-class, and Protestant values on the very people whom she claimed to serve.").
7. Id. at 2974.
8. *N.Y. Times,* Jan. 6, 1952, at 8E (editorial printed two days after her death).

FACULTY ESSAYS *on* TIMELY LEGAL TOPICS

Living with Broken Windows: Just Solutions in an Imperfect World

by JOSEPH MARGULIES ■ BROOM PHOTOGRAPH *by* TEREX

COLLAGE *by* ROBIN AWES EVERETT

Because of how it has been implemented, Broken Windows policing has gotten a very bad name, and deservedly so. But until there is no disorder, police will be in the business of order maintenance.

However much we complain, the fact is that we would not want the police to be without this power, despite the readily foreseeable risk that the power will be abused. The question, therefore, is not whether we like order maintenance, or even whether Broken Windows "works." The question is, How can we deploy it justly? This essay begins to sketch an answer.

You are a baker. Every day, you head to the little shop you bought eleven years ago and bake tray after tray of French pastries. You still get the same thrill when you see the faces of the commuters who hustle through the door on their way to the train. As they enter the shop and smell the pastries, they stand a bit taller and inhale deeply. They smile and you smile.

Except the commuters don't pass through the doors anymore—at least, not in the same numbers. A group of homeless men has begun to gather outside your door every morning. They ask your customers for money, forming a gauntlet that your customers must run. Sometimes they persist, and repeat the request as your patrons hurry away from the shop, eyes averted. Some carry on conversations with people who are not there, and dance with partners others cannot see. Fights occasionally break out. One time a man produced a knife.

You are not cruel to these men or insensitive to their plight. You know that good jobs are hard to find. You chat with them when they come into the shop. They are not rude and appreciate your kindness. They are not bad people, and you know your problems pale next to theirs. You ask them not to harass your customers. They agree, and for a time, things are better. But not for long. You wish we lived in a world without homelessness. Where addicts got help. Where the mentally ill got treatment. Where people could find good jobs. You wish the men well. But in the meantime, you have a business to run and a family to support. So what do you do?

Scholars disagree about whether order-maintenance strategies work, and the evidence is mixed. Yet despite the uncertainty, order-maintenance policing became exceedingly popular in the 1990s. Worse, in the misguided belief that if a little order maintenance is good, a lot must be better, Broken Windows morphed into Zero Tolerance, and this is where things went horribly awry.

This year marks the thirty-fifth anniversary of "Broken Windows," one of the most important criminal justice articles ever written. The authors maintained that a neighborhood's willingness to tolerate low-level, disorderly behavior sends a signal to more predatory offenders that the residents will not enforce the unwritten social rules that keep serious crime at bay. Heeding the signal, predators move in, or so the argument goes. As they do, people abandon the neighborhood, leading to the death of yet another neighborhood. But if the police come down hard on the low-level disorder before the slide begins, they can prevent the descent and preserve the neighborhood. That, at least, is the theory behind Broken Windows, also known as "order-maintenance" or "quality-of-life" policing.

Scholars disagree about whether order-maintenance strategies work, and the evidence is mixed. Yet despite the uncertainty, order-maintenance policing became exceedingly popular in the 1990s. Worse, in the misguided belief that if a little order maintenance is good, a lot must be better, Broken Windows morphed into Zero Tolerance, and this is where things went horribly awry.

Consider the experience in New York City. For most of the peak crime years in New York, the police made substantially more felony than misdemeanor arrests. That changed, however, in 1994, when the NYPD decided to shift to quality-of-life policing. Between 1993 and 2010, misdemeanor arrests in New York nearly doubled while the number of summonses issued by the NYPD increased from about 165,000 to roughly 600,000. This explosion cannot be attributed to a sudden rise in low-level crime; misdemeanor arrest rates soared because of a political choice to target particular conduct.

Since the embrace of order-maintenance policing in New York, misdemeanor arrests have consistently been concentrated in black and Hispanic neighborhoods. Between 1993 and 2010, the number of misdemeanor arrests for whites increased 35 percent. Over the same period, the number increased over 105 percent for blacks, and over 158 percent for Hispanics. Adding insult to this discriminatory injury, the overwhelming number of people caught up in New York City's experiment with order maintenance had no prior criminal record. Routinely, from 1990 to 2012, between 60 and 70 percent of the people arrested on misdemeanors had no prior criminal convictions.

We don't know precisely how many people have been "orderly maintained," but scholars and police researchers put the number of misdemeanor arrests nationwide at about ten million every year. The result has been to sweep a staggering segment of the population into the criminal justice system. The FBI calculates that law enforcement in the United States has made more than a quarter-billion arrests in the past twenty years alone. The FBI master criminal database contains more than seventy-seven million names. Roughly one in three adults has been arrested by age twenty-three.

But none of this helps you answer the question, What do I do about the homeless men assembled outside my bakery?

At best, the police offer an imperfect solution. If the men outside your shop are violating a law, the police can order the men to move along. They can issue a citation, whether civil or criminal. They can arrest the men and take them to the local jail, where they will be processed, sorted, and released, perhaps after serving some relatively brief period in custody. Upon release, they might be ordered not to return to the scene of their "crime." Perhaps they will ignore this command, which will subject them to further arrest, even if their behavior is impeccable. But even if they comply, other men are likely to take their place.

These enforcement rituals obviously do nothing to provide a lasting remedy. Yet in most places, they are all we have. So, at least for now, you call the police—not because order maintenance "works," but because there is no alternative.

Given that order-maintenance policing is inevitable, how should we govern it? Here's a start.

Police Should Use Targeted Enforcement at Microplaces

Crime is hyperconcentrated. Studies across the country show that roughly half the crime in a city takes place at only 4 percent of the street segments; a quarter occurs at about 1.5 percent of the segments. These spots are tiny; a street segment is the area on either side of a street between two street corners, but sometimes the troublesome spot is a single address. But concentrating on a small number of microplaces—what law enforcement calls "hot-spot policing"—is only the first step. Because so much crime occurs at only a handful of places, those who study policing are beginning to look beyond arrests to ask, What is it about this place that makes it different from others, and how do we change it in a way that fixes the problem in a lasting way?

Suppose that drug dealers have begun to operate from the parking lot of a grocery store. Arresting low-level dealers in

the parking lot will have little effect except to engorge the prisons and propel mass incarceration. Rather than simply making more arrests, the parking lot may need environmental changes—lighting and street design, for instance, which permit better natural surveillance of the area. Or it may require closer and more diligent oversight by the manager of the grocery store. The police are not well equipped to provide these solutions, and an official response that does no more than send one young man after another to prison makes the problem worse, not better. Making a bunch of arrests, without more, is like trying to fix a leaky roof by investing in a bigger mop. Sometimes we need a mop, but mostly we need to fix the roof.

Order maintenance can be an integral part of these targeted, problem-solving strategies. Chronic disorder at a particular hot spot can deter communities from making the commitment needed to transform a problem place. Though Broken Windows enforcement is not a lasting solution to a hot spot, it can stabilize a location and thereby create a temporary condition that allows other, superior interventions to take root.

Law Enforcement Should Limit the Impact of Order Maintenance

Since the risk of misuse is so great, we should establish default preferences that minimize the impact of order maintenance. Officers should be encouraged to view arrest as a last resort rather than a first impulse. This encouragement should begin at the academy and be reinforced throughout an officer's career. Officers should conceive of arrest as the last stop on a continuum that begins with polite conversation, proceeds to verbal warnings, escalates to civil sanction, then to criminal citation, and finally, only after other options have been exhausted or proven unworkable, culminates in arrest. There must be no incentives for officers to skip to the last step and make an arrest as a matter of course.

Municipalities Must Strive to Make Order-Maintenance Policing Unnecessary

It is not enough to insist that order maintenance be limited. When a city abandons Zero Tolerance strategies and focuses its energy on the worrisome few, it saves considerable resources. In any morally just scheme, it must use those resources to help bring an end to the conditions from which disorder springs. It is not enough to content ourselves with the knowledge that we plan to arrest only a few who are disorderly, whereupon they will be shipped to places like Rikers Island, out of sight and out of mind.

Within Constitutional Limits, Let the Community Decide

The police should not assume that all disorder is unwelcome. Instead, the police should let the community define objectionable behavior. This is a cornerstone of community policing: if it doesn't matter to the community, it shouldn't matter to the police. This may be a difficult judgment to make. It is possible that no one called the police because the informal social controls in a community have collapsed, and no one takes responsibility for neighborhood well-being, including by calling the police. It is also possible that relations between the police and the community are so strained that residents no longer look to the police for help with their problems.

But these difficulties do not relieve the police of the obligation to try to distinguish between allowable and objectionable disorder—a judgment that in the first instance should be left to the community. The police must try to ascertain and heed the community's opinion about the allowable limits of disorder. They must identify community leaders and engage in responsible, respectful conversations about the needs of the neighborhood. This is not a new obligation; it has been part of the community policing movement since its inception. In addition, the obligation goes both ways; if the community wants to be heard, it has to speak. It must communicate clearly that this disorder is objectionable and that is not.

Of course, deference to the community creates the risk that some people will encourage the police to engage in discriminatory, selective, or vindictive enforcement. This is merely the tension between individual liberty and community solidarity. It is not, in other words, a new problem for the police. As always, they must be mindful that they have been summoned as a legitimate attempt to eliminate disorder, not as an illegitimate attempt to get the state to play favorites in a private grudge. Likewise, because the police sometimes get it wrong, the courts must be open to victims so that they may seek redress for unlawful police action. This, however, is not a new obligation.

Because we live in an imperfect world, we must also live in a world of order-maintenance policing. Giving the police this hammer leads them to uncover innumerable nails. For that reason, order maintenance must be carefully controlled. To restrain it, we should (1) encourage law enforcement to engage in place-based problem solving at hot spots; (2) incentivize law enforcement to conceive of arrest as a failure; (3) direct municipalities to shift resources to alleviate the conditions that contribute to disorder; and (4) ensure law enforcement recognizes the difference between allowable and objectionable disorder. Only if law enforcement takes these obligations seriously can we can learn to live with Broken Windows. ■

Would a Trump Self-Pardon Precipitate a Constitutional Crisis?

FACULTY ESSAYS *on* TIMELY LEGAL TOPICS

by MICHAEL DORF ■ TRUMP PHOTOGRAPH *by* ANDREW H. WALKER

COLLAGE *by* ROBIN AWES EVERETT

Shortly after the news broke that President Trump's advisers were looking into the possibility of the president issuing a pardon to family members, campaign staff, and even himself for crimes he and they may have committed by colluding with Russian government officials or obstructing the investigation into such collusion, I received inquiries from reporters who wanted to know whether a president really could pardon himself. The short answer, I said, is that no one really knows, because no president has had the audacity to try.

That does not mean that the arguments for and against a self-pardoning power are equally balanced. The text of the Constitution does not expressly rule out a self-pardon by the president, but three factors argue against it. First, there is the origin of the word "pardon," which connotes a benefit conferred on others. Second, there is the fundamental principle that no one is above the law. And third, there is the related and equally fundamental principle that no one should be a judge in his own case. Still, given the paucity of directly applicable precedent, the question remains open.

Meanwhile, one of the reporters to whom I spoke also asked me whether an effort by Trump to pardon himself would spark a "constitutional crisis." The answer to that question depends on what one means by "constitutional crisis." If every important but previously undecided constitutional issue that presents itself creates a constitutional crisis, then sure, a Trump self-pardon would precipitate a constitutional crisis.

However, we do better to reserve the term "constitutional crisis" for events that risk leading to a breakdown in the Constitution's mechanisms for peaceful resolution of political conflicts. Judged by that standard, a Trump self-pardon would not cause a constitutional crisis. Unfortunately, other Trump actions may have already placed us far along the road to a constitutional crisis.

What Is a Constitutional Crisis?

Pundits use the term "constitutional crisis" promiscuously to refer to just about any set of circumstances that poses questions to which neither the text of the Constitution nor case law provides a clear answer. Yet as Sanford Levinson and Jack Balkin explained in an insightful 2009 article ("Constitutional Crises," *University of Pennsylvania Law Review,* 157, 3) that usage is unhelpfully broad. "Government institutions are always in conflict," they write. So long as courts and other institutions are capable of resolving or managing such conflict, there is no crisis.

I received inquiries from reporters who wanted to know whether a president really could pardon himself. The short answer, I said, is that no one really knows, because no president has had the audacity to try.

Levinson and Balkin would reserve the term "constitutional crisis" for circumstances that threaten the breakdown of the constitutional order. They identify three types of crisis.

"Type one crises arise when political leaders believe that exigencies require public violation of the Constitution." Levinson and Balkin give the example of President Jefferson's pursuit of the Louisiana Purchase notwithstanding his doubts about the constitutional authority for it. To my mind, a more obvious example can be found in President Lincoln's July 4, 1861, address to a special session of Congress. Honest Abe defended his unilateral suspension of the writ of habeas corpus on the ground that even if it was unconstitutional, the preservation of the Union and the rest of the Constitution demanded it. He asked rhetorically, "Are all the laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated?"

Levinson and Balkin think that Lincoln's suggestion of emergency power does not quite fit their type one because they characterize Lincoln as offering a "controversial interpretation" of the Constitution, rather than asserting the power to violate it. I respectfully disagree about this particular example, but I do not quarrel with the validity of the category more generally.

So much for type one. What about type two? "Type two crises," say Levinson and Balkin, "are situations where fidelity to constitutional forms leads to ruin or disaster." Such a crisis occurs because of a (possibly latent) flaw in the Constitution itself. For example, Levinson and Balkin suggest that prior to the adoption of the 25th Amendment—which allows for the removal of an infirm president—such a crisis might have occurred if a president suffered a debilitating illness or injury: he would remain in office but would be unable to discharge his responsibilities.

Finally, "type three constitutional crises involve situations in which political actors believe that their opponents are taking dangerous and illegal steps that endanger the constitutional foundations of the republic . . . and generally produce . . . extraordinary forms of struggle and opposition that go outside the realm of ordinary political jostling and political brinksmanship." The struggle that culminated in the Civil War is an obvious example, but Levinson and Balkin also point to various others, almost all of which involve states in the South resisting national laws and policies.

Where Does Self-Pardoning Fit?

A presidential self-pardon arguably falls within Levinson and Balkin's type two. If the Constitution permits a president to pardon himself, surely that is a hitherto latent flaw in the Constitution. If the Constitution does not embody the principles that no one is above the law and no one may be a judge in his own case, so much the worse for the Constitution.

Nonetheless, standing alone, a constitutional flaw does not a constitutional crisis make. The Constitution contains many flaws. Article I empowers Congress to issue "Letters of Marque" —essentially a license to commit piracy—even though international law has banned them since the nineteenth century. The Article II requirement that a president be a natural-born citizen exhibits a form of xenophobia that should be repugnant in a nation of immigrants. The Seventh Amendment right to civil jury trial in cases in which the amount in controversy exceeds twenty dollars should but does not include a cost-of-living adjustment. Et cetera. Such flaws do not give rise to crises unless they undermine the constitutional order itself.

To see why the possibility of a self-pardon does not undermine the constitutional order, consider how a Trump self-pardon would likely work. Suppose that special counsel Robert Mueller concludes that the president has committed criminal acts either by colluding with Russia or by obstructing the investigation into such collusion.

As a threshold matter, Mueller would need to determine whether he has the authority to indict and prosecute Trump. Most constitutional lawyers think that a sitting president may not be criminally prosecuted, but a recently discovered memorandum by Ronald Rotunda challenges that view. The memo—which was written in 1998 for independent counsel Kenneth Starr's investigation of President Clinton and unearthed in response to a Freedom of Information Act request by the *New York Times*—specifically lists obstruction of justice as one of the crimes with which a sitting president may be charged. If persuaded by Rotunda's analysis, Mueller could seek a grand jury indictment of Trump immediately.

However, if Mueller adheres to the conventional wisdom, he might seek to indict other members of the Trump family and staff, while simply reporting findings about Trump himself to Congress (as Starr did with respect to Clinton). If Mueller were to follow this course, indictment and prosecution would have to wait until Trump left office—whether by completion of one or two terms, impeachment and conviction, or resignation.

Yet regardless of whether an indictment were to come during or after Trump's presidency, his self-pardon would result in a definitive adjudication. If Trump were indicted on charges for which he had previously pardoned himself, he would argue to the courts

that the pardon precludes prosecution. Mueller or his successor in the matter would respond that the self-pardon is invalid. The courts would resolve the issue one way or the other. Thus, there would be no constitutional crisis, as I told the reporter who asked me the question in the first place.

A Fourth Type: Defiance of Unwritten but Necessary Norms

The Levinson/Balkin categories are somewhat fluid. They note how one kind of crisis can transform into another. Nor are the categories exhaustive. I would offer as a friendly amendment a fourth category: Type four crises involve defiance by powerful political actors of unwritten norms that are not themselves legal obligations but that undergird the constitutional system as a whole. In my view, if Congress had acquiesced in President Roosevelt's Court-packing plan, we would have faced a type four crisis.

But maybe the Court-packing plan shows that type four is really a subset of Levinson and Balkin's type two. After all, Roosevelt and the New Deal Congress could have gotten away with Court packing only because of a latent flaw in the Constitution: Article III specifies that there shall be a Supreme Court, but it does not fix the number of justices. That flaw was exploited during Reconstruction (in order to deny President Andrew Johnson an appointment to the Court) and, under different circumstances, might have precipitated a constitutional crisis.

Nonetheless, I would characterize norm breaking as a distinctive type of crisis. It is true that a constitutional norm only exists as a norm because there is no applicable constitutional rule, and that gap could be thought a flaw in the Constitution. However, it is impossible for constitution writers to incorporate in a constitution every practice needed to make the resulting system work. Thus, most norms do not simply patch flaws. Properly understood, norms are an essential complement to formal legal rules. Accordingly, even if the violation of some norms could be seen as generating a type two constitutional crisis, we will better understand the nature of constitutional crises by treating norm breaking as a distinctive type.

Does Trump's Norm Breaking Presage a Type Four Constitutional Crisis?

Turning back to Trump, would a self-pardon generate a type four constitutional crisis? Even if we assume that a president has the formal authority to grant himself a pardon, there is surely a norm against doing so. Thus, a Trump self-pardon would violate (at least) a constitutional norm. However, for the reasons discussed above, it would not generate a constitutional crisis, because the courts would be capable of resolving any resulting uncertainty.

Unfortunately, Trump is already violating other norms in ways that do threaten a constitutional crisis. I shall mention two.

First, bucking the very strong norm under which responsible political leaders aim to bolster democracy, Trump has repeatedly questioned the integrity of our electoral system. His baseless claim that he would have won the popular vote were it not for voter fraud stands in stark contrast to the actions of every prior president, including the last one to be elected despite losing the popular vote. Concerned about some of what we learned about flaws in the electoral process, George W. Bush signed the Help America Vote Act to strengthen American democracy. By contrast, our current president created a commission to investigate trumped-up claims of voter fraud. The likely outcome will be a pretext for voter suppression. A possible outcome would be a general loss of confidence in the electoral process so that in some future closely contested election, vast numbers of Americans would not accept the result and take to the streets. A type four crisis of norm breaking would thus unleash a type three crisis of political violence.

Second, President Trump has repeatedly sought to undermine the free press by labeling nearly all negative coverage of his presidency "fake news." Of course, every president on occasion expresses dissatisfaction with press coverage. The Nixon administration even attacked the press in general. Nixon's vice president famously and alliteratively called the press "nattering nabobs of negativism." Yet despite such pointed criticism, prior presidents have largely accepted that critical coverage comes with the job. Trump, by contrast, either does not appreciate or does not care about the fact that a vital free press makes democracy possible. In seeking to delegitimate simple reporting of facts, President Trump exercises his own First Amendment rights in the service of undercutting the First Amendment more broadly.

Trump's norm breaking will not destroy American democracy overnight. In that sense, his behavior might be said not to constitute a "crisis," which typically connotes temporal urgency. Yet that very fact may make his behavior especially dangerous. By eroding the norms that undergird our constitutional democracy piece by piece rather than in one fell swoop, Trump may lull the public into believing that he is merely a bad president, rather than the existential threat that he is. We can quibble over whether that does or does not qualify his conduct as sufficient to spark a "constitutional crisis," but in so doing we ought not overlook the danger he poses. ■

Leading Sports Lawyer Mary K. Braza '81 Is Part of the Team

That **Mary Kay Braza '81** is considered one of the leading lawyers in sports law in the nation is no secret. In her thirty-plus years in the business, she has won all the requisite awards—from being named a top lawyer in her field for the past eleven years in *Chambers U.S.A.* to getting cited in *The Best Lawyers in America.*

The auction started at 8:00 a.m. and went back and forth until 1:00 in the morning, but ultimately our group won. When it was announced, the whole courtroom stood up and cheered. People threw their hats in the air, and it was a lot like having a walk-off home run.

— Mary Kay Braza '81

A dealmaker as well as a litigator, Braza—whose maiden name is Mullenhoff—is a partner at Milwaukee-based Foley & Lardner as well as founding member and co-chair of its Sports Industry Team.

In that role Braza says she has "had the advantage of working across a range of issues—from buying and selling professional teams, to litigating antitrust issues related to professional and college sports, to negotiating long-term broadcasting agreements and stadium financing deals, to advising on sports-related start-ups such as an esports league."

She was a strategic adviser to Major League Baseball under former Commissioner **Allan H. "Bud" Selig** for many years. And she has counseled leagues and teams, owners of professional sports franchises, and people who bid on owning a team.

One of Braza's favorite deals was litigated in a steaming hot Texas federal courthouse in the middle of summer—with the courtroom overflowing not just with the usual crowd of lawyers and litigators, but with sports fans and their families dressed in team-boosting T-shirts and regalia and toting picnic baskets and drink coolers.

The case involved the purchase of the Texas Rangers baseball team, and Braza has presented on it in Law School Professor **Charles Whitehead's** deals class.

"One of the leads in our ownership group was Baseball Hall of Fame pitcher **Nolan Ryan**, who was president of the club at the time," she says. "It started with a very reluctant seller, who had leveraged a lot of the assets that he owned in sports and could not repay the debts. He was being forced by his lenders to sell those assets."

The ownership group won a competitive bidding process. "But the price we'd negotiated wasn't going to take out all of the seller's debt, and the lenders weren't happy about that," she says. "We changed the terms to accommodate their requests, but we were still unable to reach a deal. So the team was put into bankruptcy and sold that way. We were the 'stalking horse,' the preferred bidder. Any other bidders would have to better our deal. It was a risk, but we thought we had negotiated a good deal—and obtained financing by then—and that it was unlikely somebody would beat our terms."

The lenders argued that because they had liens on the companies that owned the team, the sale could not take place without their permission. The issue in bankruptcy court was to what extent they could hold up the sale, Braza explains.

"The auction started at 8:00 a.m. and went back and forth until 1:00 in the morning, but ultimately our group won," she says. "When it was announced, the whole courtroom stood up and cheered. People threw their hats in the air, and it was a lot like having a walk-off home run."

Immediately after the sale, the team went to the World Series for the first time ever, and Braza and her family got to go. "It's one of the benefits of doing this work," she says. "You feel like you're part of their team."

> ***From the start, she was extraordinarily strategic and analytic, which made her a wonderful problem solver. In addition to being a brilliant advocate, she had the rare ability to disagree without being disagreeable.***
>
> *— Bob DuPuy '73*

"Mary Kay was an excellent presenter," says Whitehead, "making it clear to students that many of the issues and tools that arise in complex deal structuring apply across industries and transactions. The students were engaged, not simply because the deal was fascinating, but also because of the insight she brought to deals in general."

"I have had the pleasure of working alongside Mary Kay for over thirty-five years," says **Bob DuPuy '73**, a partner at Foley. "From the start, she was extraordinarily strategic and analytic, which made her a wonderful problem solver. In addition to being a brilliant advocate, she had the rare ability to disagree without being disagreeable."

He recounts a New York bankruptcy case Braza worked on as a senior associate, involving the Allis-Chalmers Company, an industrial machinery manufacturer. The bankruptcy judge was well known for taking lawyers to task for the positions they took in court. "She presented the firm's position, which prevailed in a ruling from the bench," he says. "On her way out, the judge told the assembled lawyers he hoped they'd paid attention because that was the way a motion should be presented," says DuPuy.

Of her Cornell experience, Braza says: "I liked the challenge of it and the small size of the classes." Her favorite course: Professor **Faust Rossi's** Trial Techniques, but "I really participated in almost everything the school had to offer, from the *Cornell International Law Journal* to Moot Court."

She also met her husband at Cornell. **James Braza '81** is a lawyer in commercial litigation and construction law at Davis & Kuelthau in Milwaukee. The couple has two daughters, Laura, a New York City theater director, and Carolyn, a digital analytics manager at iHeartRadio. All are ardent Milwaukee Brewers and Green Bay Packers fans.

~LINDA BRANDT MYERS

Stephanie Sharron '92 Talks about Her Passion for Technology

If you've paid for your latte at Starbucks in a mobile payment transaction or pictured yourself in a so-called self-driving car, you're aware of new, connected technologies.

"They're providing individual and commercial customers with fresh insights about their products and services, and delivering more value as a result," says tech fan **Stephanie Sharron '92**, partner at Morrison & Foerster in Palo Alto, California.

"I have a passion for technology, and I also am really interested in some of the policy issues that drive data protection," says Sharron. "To me these new and emerging business models represent the next frontier for technology. They hold a lot of potential for commercial gain. But they also carry risks from both a corporate and a privacy perspective—which is what makes it such an interesting intersection," she says.

A transactional lawyer at MoFo (as the firm is familiarly known), she helps companies structure and negotiate their business partnerships.

"I specialize in helping companies that leverage data through technology," Sharron explains. "Cybersecurity incidents and data breaches are real risks that can affect everything from violations of personal privacy to theft of intellectual property and trade secrets. As transactional lawyers, we build protections into the contracts and negotiate the allocation of risk related to potential breaches in all those areas."

> ***The school's relatively small size 'sealed Cornell for me.' The professors were deeply interested in teaching and in working with students, and the culture of the school was unique in that everybody was collaborative.***
>
> *— Stephanie Sharron '92*

On her radar is an emerging area dubbed the Internet of Things or IoT—devices and other items embedded with sensors, software, and network connectivity that allow them to collect and exchange data. "Data and insights can be gleaned from embedding computing devices in ordinary consumer products that you might have in your home," she explains. "People are even discussing making fabrics, paint, wallpaper, that can pick up information from their environment and deliver new value and services to consumers."

The challenge: "These technologies will surround us in places where traditionally we've had a reasonable expectation of privacy," Sharron points out. "The extent to which we can individually control the collection and use of data about us—whether in our homes, in transit, or at work—and how that data is being used present unique questions for companies and consumers," she asserts.

Sharron was recognized for her work in technology, data protection, and privacy in the U.S. edition of *The Legal 500* (2016–2017) and was ranked among the top information technology and outsourcing attorneys in the United States in *Chambers U.S.A.* (2012–2017).

She grew up in Palo Alto, California, adjacent to the area now called Silicon Valley and double majored in biology and political science as an undergraduate at the University of California, Los Angeles, with the plan to "combine my interest and passion in science and technology with the law and integrate those two worlds," she says.

Her dad had attended Cornell and spoke highly of it, which made her consider it when she was looking at law schools.

The school's relatively small size "sealed Cornell for me," Sharron says. "The professors were deeply interested in teaching and in working with students, and the culture of the school was unique in that everybody was collaborative. The students supported each other in being the best they could be," she recalls.

Professor **Faust Rossi** was influential, as were her classes in intellectual property and conflicts of law, which "interested me because they combined aspects of policy and law."

A particular interest for Sharron nowadays is educating today's students on technology and the law.

"She helped design the technology transactions syllabus that forms a core part of the new Tech LL.M. curriculum at Cornell Tech, and she has taught in Professor **Matthew D'Amore's** class there," notes **Charles Whitehead**, the Myron C. Taylor Alumni Professor of Business Law and director of the school's Law, Technology and Entrepreneurship Program.

"Stephanie's knowledge of tech transaction challenges faced by start-ups is both encyclopedic and practical," says D'Amore. "She brings a real-world sensibility to the classroom, has great rapport with the students, and confidently discusses tech-related issues in diverse areas, from IP to data privacy to employment law."

Stephanie's passion and commitment infuse every area of her life. I saw her dedication when she was managing editor of the* Cornell Law Review, *and I see it today in her attention to her clients, colleagues, and friends.

— Jacquie Duval '92

"Stephanie's passion and commitment infuse every area of her life," says classmate and friend **Jacquie Duval**, partner at Ziff Legal Group. "I saw her dedication when she was managing editor of the *Cornell Law Review*, and I see it today in her attention to her clients, colleagues, and friends. She's also a tireless volunteer for the environment and women's issues and a genuinely kind and loving person."

Sharron began her law career as a dedicated technology transactions lawyer at Wilson Sonsini Goodrich & Rosati in 1992, a time when that practice area wasn't common. In 2008 she joined Orrick, Herrington & Sutcliffe, where she deepened her knowledge of data security and privacy, before leaving to join Morrison & Foerster in 2014.

An active alumna, she has served on the Law School Alumni Association Executive Board and volunteered at her 25th Reunion last year. She and her firm served as hosts to **Eduardo M. Peñalver**, the Allan R. Tessler Dean and Professor of Law, when he toured the Bay Area, and to the Legal Information Institute's 25th Anniversary Panel Program on immigration and the tech sector in September.

Looking ahead, Sharron says: "I think we are going to continue to see a rapid evolution of these new technologies that are collecting more and more data that can be sliced and diced in new and potentially unanticipated ways. But the insights are going to be harder to predict or anticipate by companies and consumers."

"We do have to be thoughtful about how we use them, which is something I try to teach my sixteen- and twenty-year-old children," says Sharron. "If you do that, there are ways to manage some of those risks."

~LINDA BRANDT MYERS

Tony Sammi '98 Takes On Facebook CEO in Copyright Infringement Case

Tony Sammi '98 has faced some challenging witnesses in his legal career, but he had never cross-examined someone with the star power of Facebook CEO **Mark Zuckerberg** until he grilled the billionaire for nearly three hours in a lawsuit claiming that Facebook knowingly acquired a virtual reality company whose products used stolen technology.

While the trial in a packed Dallas courtroom focused on complex issues relating to computer code, copyright law, and nondisclosure agreements, Sammi crystallized the case with a simple question: "If you steal my bike and you paint it and put a bell on it, does that make it your bike?" he asked. Zuckerberg replied, "No."

Sammi proved to the jury that Facebook's acquisition of the virtual reality company Oculus VR was "one of the biggest technology heists ever," as he claimed in his opening remarks. In January 2017, the jury ordered the defendants to pay $500 million in damages to Sammi's clients, ZeniMax Media and id Software, which alleged that one of their former employees illegally used their virtual reality technology when he was hired by Oculus.

"Nobody has ever had Mark Zuckerberg on the stand before," said **Kurt Hemr**, a partner with Skadden, Arps, Slate, Meagher & Flom, who worked on the case with Sammi. "To actually get up there and put hard questions to someone like that takes a certain amount of fearlessness. Tony did a wonderful job."

High technology litigation has become Sammi's specialty, partly because of his bachelor's degree in electrical engineering from the University of Maryland. Although he was attracted to engineering because he "loved trying to figure out how things worked," Sammi, who was an avid fan of *L.A. Law* and other television courtroom dramas, decided he wanted to combine his technical skills with his interest in law.

"As I got more senior in college, I said, 'I want to do something a little bit beyond engineering, and just because I'm a scientist doesn't mean I can't be an orator or a litigator,'" Sammi said.

After graduating, he turned down a job working at Bell Helicopter and instead enrolled in Cornell Law School. Though he initially felt out of place with an engineering degree, Sammi, who was elected president of the Cornell Law Student Association, came to realize that having analytical skills was a valuable resource in his legal training.

"I remember one professor, after one of my first exams, who came up to me and said, 'Do you have a technical background?'" Sammi recalled. "I said, 'Yes, I do.' And he said, 'I can always tell which students have a technical background because they're the only ones who really try and answer the question.'"

> ***Nobody has ever had Mark Zuckerberg on the stand before. To actually get up there and put hard questions to someone like that takes a certain amount of fearlessness. Tony did a wonderful job.***
>
> *— Kurt Hemr*

In 2000, Sammi joined Skadden, Arps, Slate, Meagher & Flom in its New York City office and started working on intellectual property cases. He became a partner in 2010, and this past May, he was named head of the intellectual property litigation group.

One of his first big cases at the firm was a patent infringement lawsuit that would take eight years to litigate. The case involved DataTreasury, a firm that buys patents for the purpose of suing other companies for alleged patent infringement.

DataTreasury had sued more than fifty major banks and financial services companies, claiming they had illegally used its patents. The company had filed a $900 million lawsuit against Sammi's client, Viewpointe Archive Services, the largest check-processing company in the country.

"What we said in our defense was, these patents are invalid, and even if they are valid, we didn't infringe on them because we do things differently," said Sammi, who was named a 2017 Winning Litigator by the *National Law Journal*.

> ***As I got more senior in college, I said, 'I want to do something a little bit beyond engineering, and just because I'm a scientist doesn't mean I can't be an orator or a litigator.'***
>
> *— Tony Sammi '98*

In 2010, a judge in the Eastern District of Texas determined that Viewpointe had zero liability in the case, which was the only one of DataTreasury's lawsuits that ever went to trial. The verdict led banks to lobby Congress to pass the America Invents Act, a 2011 law that protects companies from being disrupted by patent trolls.

Phillip Philbin, a partner with Haynes and Boone in Dallas, who worked on the case, recalls that Sammi played a significant role in preparing the strategy, executing the plan, and presenting the case to the jury. "I would call him a savant of the spoken word," Philbin said. "He is very good at communicating, and he connects with people."

Outside of work, Sammi cofounded the South Asian Bar Association of New York, which does pro bono humanitarian work in the city. Sammi, whose parents immigrated to the United States from India, notes that there are thousands of South Asian lawyers in the New York area, and it hasn't been difficult attracting many of them to volunteer with the association. "It's great to see the increase in the numbers and to see that critical mass turn into something that can help the association with our work," he said. ■

~SHERRIE NEGREA

To have news delivered straight to your inbox, subscribe to our e-Newsletter.

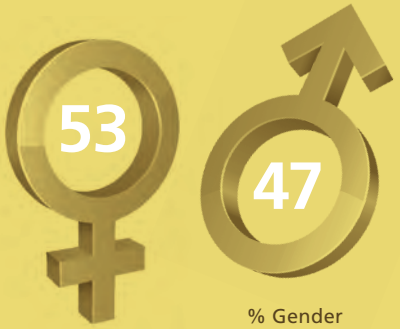
Email your request to
law-communications@cornell.edu

Or follow us on social media:
facebook.com/CornellLawSchool
twitter.com/CornellLaw
www.linkedin.com/groups/1984813

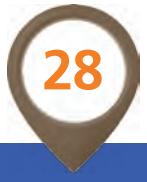
By the Numbers: The Cornell Law School Class of 2020

Class Size

194



% Gender



international students

Median Student Age

Minority Students

82

# of undergrad majors represented

49

78

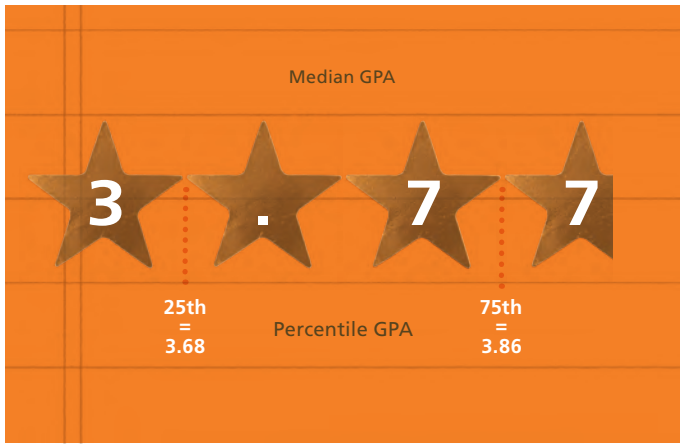
straight from college

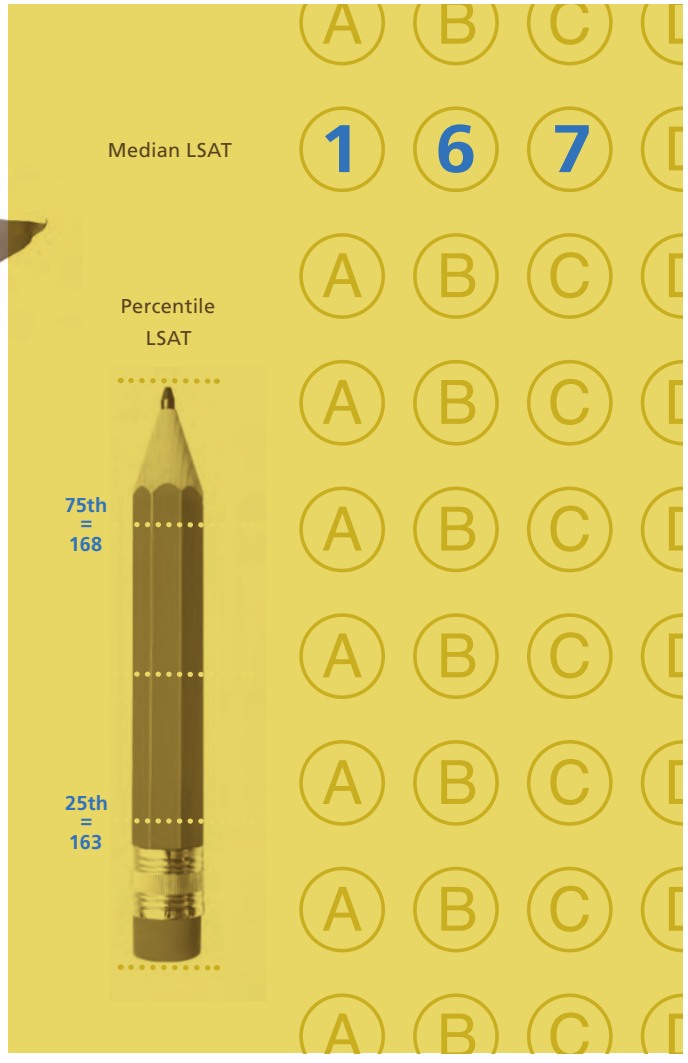
of colleges / universities represented

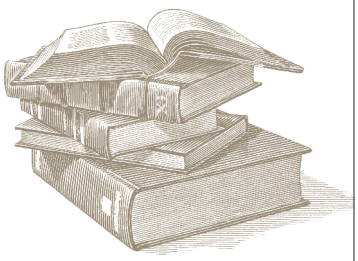
132

graduated from Cornell undergrad

9







Makwanyane Institute Is Launched at Cornell Law School

Fifteen capital defense lawyers from eight African countries arrived at Cornell Law School on June 12 to begin eight days of training on how best to represent death penalty clients in the first session of the Makwanyane Institute.

The institute, named after the landmark 1995 case that abolished the death penalty in South Africa, was developed through the Cornell Center on the Death Penalty Worldwide, which became the first center of its kind in the United States when it was founded last year.

The visiting lawyers were trained by eighteen legal experts who led workshops on issues such as mitigation investigation, wrongful convictions, and techniques in interviewing clients. They also discussed cases they are litigating and collaborated on strategies to abolish the death penalty in their countries.

"This is a great project for a law school—to bring everything here and have Cornell be the host institution," said **Sandra Babcock**, a clinical professor of law who is the center's founder and faculty director. "Our goal is to provide African lawyers with the tools they need to save their clients' lives and bring about systemic change in the criminal justice system."

Babcock created the center after spending nearly a decade working on a project in Malawi to provide legal representation for death row prisoners. In 2007, Malawi abolished the mandatory death sentence for homicides, which meant that prisoners who had received capital punishment could be retried in court.

As a result of the project, the High Court of Malawi has held 150 resentencing hearings that resulted in 120 former

> ***Our goal is to provide African lawyers with the tools they need to save their clients' lives and bring about systemic change in the criminal justice system.***
>
> *— Sandra Babcock*

ABOVE: Capital defense lawyers from eight African countries attended the first session of the Makwanyane Institute.

death row prisoners being released, said Babcock, who worked with several Cornell Law students on the cases. None of the remaining prisoners were resentenced to death, and only one received a life sentence.

During her twenty trips to Malawi, Babcock said she was struck by the barriers to effective legal representation: the lawyers had no experience with the concept of mitigating evidence, they had received little training in basic courtroom skills, they were unaware of how mental health was relevant to capital sentencing, and court opinions were inaccessible because they are not published.

"The institute was born out of my observations of the situation in Malawi, and realizing that colleagues in other African countries were facing similar situations," she said.

Last year, the center received a $3.25 million grant from The Atlantic Philanthropies, founded by Cornell alumnus **Charles F. Feeney '56**, which has helped to support the institute.

Noel Brown, who practices general law in Nigeria, said he came to the institute to learn how to defend his clients more effectively and how to conduct research on legal precedents. What has complicated his work representing capital defendants is that Nigeria is one of two countries in Africa that still have the mandatory death sentence for crimes such as homicide, armed robbery, and kidnapping involving the death of the victim.

Professor Dorf

"It's an art," Brown said. "You have to learn how to navigate the complexities of the legal battleground in the court. Ordinarily, the law says the accused person is innocent until proven guilty, but in practice it's often like he's guilty until proven innocent."

Dziko Malunda, a prosecutor in Malawi, participated in the institute as a trainer, drawing on his experience as a former defense lawyer. Malunda also worked with Babcock on the resentencing project after Malawi abolished the compulsory death penalty.

"The institute will definitely make a difference," Malunda said. "I'm hoping in the long run, it will manage to build capacity of a group of lawyers so they can go back to Africa and fight for abolition of the death penalty altogether."

Trump's proposed rollback of the program known as the Deferred Action for Childhood Arrivals, or DACA, took center stage at a discussion on immigration and executive power.

Panel on Immigration Law Debates Trump's Use of Executive Power

A panel of law professors predicted that the court challenge to President Trump's rescission of legal protections for immigrants who entered the country as children will probably fail, although they said that Congress might act to replace the policy.

Trump's proposed rollback of the program known as the Deferred Action for Childhood Arrivals, or DACA, took center stage at a discussion on immigration and executive power held on September 8 at Cornell Law School. More than 250 people attended the event, while many others listened via live stream.

The panel took place two days after a group of sixteen Democratic attorneys general filed a lawsuit challenging the administration's order rescinding DACA, alleging the decision was based on the president's biased opinions against immigrants and Latinos. Nearly 800,000 immigrants who moved to the United States as children would be affected by the end of the DACA program, although Trump has given Congress six months to reform the policy.

"There have been legislative proposals to help this class of people since at least 2007," said **Stephen Yale-Loehr**, professor of immigration law practice at Cornell Law School, who moderated the panel discussion. "While Congress has not enacted such legislation yet, perhaps the deadline will force Congress to enact something to help them out."

Yale-Loehr pointed out that about 30 percent of all DACA recipients might have some way to obtain relief under current immigration laws. He urged all DACA recipients to consult an immigration lawyer to see if there is a way to legalize their status.

Cornell Law School professors have volunteered to provide legal assistance to Cornell students who are affected by the ongoing changes in immigration law, said **Eduardo M. Peñalver**, the Allan R. Tessler Dean and Professor of Law at Cornell Law School.

"At Cornell Law School, we have a special reverence for the rule of law, which means (among other things) that we have an interest in ensuring that the legal rights of our students, faculty, and staff are fully respected," Peñalver said.

The legal challenge to the proposed DACA rescission is based on five claims, including one alleging that the undocumented immigrants protected by the policy are entitled to equal protection. **Michael Dorf**, the Robert S. Stevens Professor of Law at Cornell Law School, said that claim closely parallels one made in the litigation challenging Trump's proposed travel ban that would prohibit visitors from six predominantly Muslim countries.

According to Dorf, they are essentially saying, "President Trump doesn't just hate Muslims; he also hates Mexicans and has a record of saying so." The attorneys general, he added, are arguing that "the rescission of DACA, though otherwise lawful, is invalid because it's being undertaken for discriminatory motives."

What has weakened that claim, however, is Trump's contradictory statements about the young immigrants protected under DACA, also known as Dreamers, a name taken from the bill proposed in Congress that would shield them from deportation.

"Although the president has been pretty clear with his anti-Muslim statements, he has said things like, 'He loves the Dreamers,'" Dorf said. "So his statements are not quite so clear."

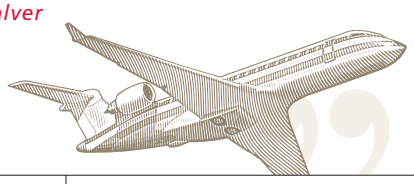
One rationale the courts could use to block the revocation of DACA is the practice courts have followed in treating Trump differently than other presidents, said **Eric Posner**, the Kirkland & Ellis Distinguished Service Professor of Law at the University of Chicago Law School.

This tendency is evident in the way the courts have ruled against Trump's proposed Muslim ban over the past year, Posner said. In cases brought against prior U.S. presidents who have imposed immigration restrictions, the courts have upheld the restrictions, he said.

"It's possible to come up with constitutional arguments to try to block the revocation of DACA," Posner said. "But I just think the only real reason for doing that is this distrust—justified in my view—of Trump."

However, **Ilya Somin**, professor of law at George Mason University, said the argument as to why DACA was legal when it was created by President Obama in 2012 was that it was a discretionary action by a president who chose not to enforce certain laws as vigorously as others. "If it really is something within the discretion of the president," Somin said, "that means that a new president can rescind it anytime he wants."

> ***At Cornell Law School, we have a special reverence for the rule of law, which means (among other things) that we have an interest in ensuring that the legal rights of our students, faculty, and staff are fully respected.***
>
> *— Dean Eduardo M. Peñalver*



Crossing Borders with Maggie Gardner, Newest Assistant Professor of Law

As headlines shout about rising nationalism, **Maggie Gardner** is teaching students how to look across borders. An expert in transnational litigation and civil procedure, Gardner arrived in Ithaca this fall as Cornell Law School's newest assistant professor of law.

"We're going to have this opportunity, not to overstate things, to be in the vanguard of asking what procedure in a modern globalized economy looks like," Gardner says.

"The Supreme Court just keeps grappling with these questions: what do we do when we have foreigners involved in these run-of-the-mill cases? These are questions that are going to be very practical and very important in the coming years."

Gardner bolsters an already vibrant core of scholars at Cornell working on similar issues, including **Barbara J. Holden-Smith**, vice dean and professor of law; **Kevin Clermont**, the Robert D. Ziff Professor of

Law; and **Zachary Clopton**, assistant professor of law. Gardner and Clopton are already seasoned collaborators, having recently filed an amicus curiae brief with the Supreme Court in *Bristol-Myers Squibb Co. v. Superior Court*.

Gardner's recent scholarship argues that U.S. judges aren't as parochial as is often assumed when addressing cases involving foreign parties; rather, they don't have appropriate decision-making rules that would allow them to better handle cross-border cases. "In addition to being smart and perceptive, she is very much a student of actual litigation and actual cases, and so in particular her writing about international litigation is not just idle speculation," says Clopton. "It's a very good account about what's actually going on out in the real world."

Gardner comes to Cornell from Harvard Law School, where she was a Climenko Fellow and Lecturer on Law. A winner of one of Harvard's inaugural Student Government Teaching and Advising awards, she puts great value on actively engaging students and hearing from everyone in the classroom.

Building mentoring relationships with students is another priority. "In many ways, the law school process can be very disorienting and distracting for students, and I care deeply about helping students hold onto the reason they came to law school," says Gardner. "That's one thing that's drawn me to Cornell: the sense that the student body and the school foster a culture of attention to personal missions, to having a sense of purpose beyond grades and achievements."

ABOVE: Maggie Gardner
RIGHT: Matthew D'Amore with Dean Peñalver

Matthew D'Amore Joins Cornell Tech LL.M. Faculty

This summer Cornell Tech welcomed a second full-time professor to its Master of Laws in Law, Technology, and Entrepreneurship program. **Matthew D'Amore**, a Cornell University alumnus with a background in intellectual property, technology, and life sciences, joins the school after more than twenty years at the international law firm Morrison & Foerster.

D'Amore received his B.S., with distinction, from Cornell's College of Agriculture and Life Sciences in 1991, majoring in biology and society. He went on to earn a J.D. from Yale Law School. Subsequently, he spent a year clerking for Hon. **Charles P. Sifton**, then chief judge of the U.S. District Court for the Eastern District of New York.

At Morrison & Foerster, D'Amore served as a partner in the Intellectual Property Group. He advised and represented high-technology and life-sciences clients in the resolution of complex intellectual property disputes and in licensing matters involving e-commerce, transaction processing, Internet content delivery and advertising, interactive television, electronics manufacturing, financial services, medical devices, and biotechnology.

D'Amore has litigated matters across the United States, before the U.S. International Trade Commission, and in the U.S. Court of Appeals for the Federal Circuit, and he is admitted to practice before the U.S. Patent and Trademark Office. He has also been rec-

ognized for his pro bono litigation work in impact litigation for children denied special education services and for citizens deprived of the right to vote.

From 2007 to 2013, he also served as an adjunct professor at the Law School, teaching pretrial litigation and strategy. "I chose Cornell as an undergraduate more than twenty years ago because of its commitment to science, technology, and their impact on society," says D'Amore. "Cornell Tech is dedicated to these ideals, and the Law School program there is a critical and vibrant part of it, training lawyers to serve the emerging NYC tech community. It is tremendously exciting for me to come home to Cornell as part of this new venture." Cornell Tech's Master of Laws in Law, Technology, and Entrepreneurship is the first degree of its kind in the world. In this yearlong immersion in innovation, creativity, and new business development, LL.M. students collaborate with designers, engineers, and business students to create new products and develop new businesses. Students also have ample opportunity to network with the vibrant community of investors, business leaders, and entrepreneurial faculty members that only a city like New York and a university like Cornell can provide.

Jack G. Clarke and Dean Peñalver

> ***As I thought about this day, I reflected about how fortunate my life has been and how important Cornell Law School has been to me.***
>
> *— Jack G. Clarke '52*

Cornell Law School Unveils a Portrait of Benefactor Jack Clarke

On April 24, with spring arriving on campus, Dean Peñalver stood in the lobby of Myron Taylor Hall and spoke about the Law School's three greatest benefactors: **Myron Taylor**, **Jane Foster,** and **Jack G. Clarke '52**, whose portrait stood on an easel beside Peñalver, waiting to be unveiled.

"Jack is quite simply one of the most transformative figures in the history of Cornell Law School," said Peñalver, opening the celebration. "Inspired by the lessons he learned in his career, Jack has invested his Cornell philanthropy in the people and programs that operate on campus and around the world. He's helped make Cornell a more global institution, and though his name is not on a building, his support has been so broad and so deep that his name is virtually synonymous with Cornell Law."

A list of Clarke's greatest gifts followed, as people around the room nodded in agreement: the Clarke Center for International and Comparative Legal Studies, the Clarke Program in East Asian Law and Culture, the Clarke Initiative for Law and Development in the Middle East and North Africa, the Jack G. Clarke Institute for the Study and Practice of Business Law, the Jack G. Clarke Professor of Far East Legal Studies, the Dorothea S. Clarke Professor of Feminist Jurisprudence, the Jack G. Clarke Professor of International and Comparative Law. Then, after praising Clarke as one of only two lifetime members of the Cornell Law School Advisory Council and one of only a small number of Cornell alumni to be named Foremost Benefactors, Peñalver unveiled the portrait to reveal Clarke dressed in a light blue blazer, a speckled tie, and a smile.

"As I thought about this day, I reflected about how fortunate my life has been and how important Cornell Law School has been to me," said Clarke, speaking quietly from the podium. Three months short of his ninetieth birthday, Clarke gave little attention to his accomplishments as a director and negotiator at Exxon, focusing instead on thanking the people who'd meant the most to him: his mother, who raised him on her own after his father died when Jack was two; his wives, Dorothea (who died some twenty years ago) and Grace; his children, grandchildren, and great-grandchildren; his favorite professors, **David Curtiss** and **Rudi Schlesinger**; and his closest colleagues among the Law School staff and faculty.

New J.D. Program at the Cornell Tech Campus on Roosevelt Island

On March 24, the Law School announced the launch of the Program in Information and Technology Law at Cornell Tech. Based at the new Cornell Tech campus on Roosevelt Island in New York City, this innovative program will explore the diverse legal issues raised by information and technology, such as privacy and cybersecurity as well as the constitutional and regulatory implications of new technology and big data.

"The opening of the Cornell Tech campus on Roosevelt Island in the summer of 2017 presents the Law School with an unprecedented opportunity to enhance its technology law curriculum," said Cornell Law School Dean Peñalver. "It provides an exciting new way for our students to study this important area of the law in the heart of the fastest-growing tech market in the country."

Beginning in the spring semester of 2018, Cornell Law School J.D. students will be able to spend a semester taking courses in the Information and Technology Law Program in New York City. The Law School anticipates that up to twenty J.D. students will participate in the program full-time during any given semester.

Cornell Tech campus on Roosevelt Island

Law School Auditorium Dedicated to Elizabeth Storey Landis '48

"From this day forward, this beautiful lecture hall will be known as the Elizabeth Storey Landis Auditorium," said Dean Peñalver on March 24. "It's my pleasure and honor to ensure that the memory of this remarkable Cornell Law School alumna will live on for generations," added Peñalver as he dedicated a lecture hall in Myron Taylor Hall in honor of Landis.

Elizabeth Storey Landis, who graduated from Cornell Law School in 1948, was a trailblazing woman lawyer who dedicated her life's work to African law and independence. Landis also holds the distinction of being the third female editor in chief of the *Law Review* at the Law School, decades before any other law school generated even one female editor in chief. Throughout her career, Landis, who died in 2015, was a consistent supporter of the Law School Annual Fund and made a bequest to Cornell Law School in her will.

To mark the historic occasion, Peñalver unveiled a portrait to be hung in the auditorium, painted by Ithaca artist William Benson. Two of Landis's nephews—Frank and Bill Landis—and their families attended the naming ceremony.

In spite of her qualifications, Landis faced a problem many women law school graduates encountered in the 1940s: she couldn't find a job.

It is my pleasure and honor to ensure that the memory of this remarkable Cornell Law School alumna will live on for generations.

— Dean Eduardo Peñalver

The dedication ceremony for the Landis Auditorium was held in conjunction with Cornell Women's Law Coalition Career Day and the Class of 2020 Admitted Student Day. The keynote speaker for the event was **Leslie Richards-Yellen '84**, president of the National Association of Women Lawyers (NAWL).

"I can assure you that for over 113 years, NAWL has been involved in efforts to push women towards gender equality," said Richards-Yellen, director of

> ***What can you do to be more like Elizabeth Storey Landis? Will your efforts reverberate beyond the walls and the span of your lifetime?***
>
> *— Leslie Richards-Yellen '84*

LEFT: Leslie Richards-Yellen '84 with the portrait of Elizabeth Storey Landis ABOVE: Shawn Gavin

Inclusion–Americas at Hogan Lovells in New York. "Through an avalanche of possibilities, brought on by sustained effort, I believe that we are on the brink of tremendous breakthroughs for women."

The 2015 annual NAWL survey shows that women comprise only 30 percent of law school deans, 24 percent of Fortune 500 general counsels, and 18 percent of law firm equity partners. Yet despite those numbers, Richards-Yellen said she believes there is growing recognition of the value women add to institutions, and she pointed to studies showing that companies with more women on their boards fare better economically.

Referring to Landis, Richards-Yellen challenged the students, faculty, and alumnae at the event to follow in Landis's footsteps and help the career of a woman of another race, ethnicity, sexual orientation, or ability status. "What can you do to be more like Elizabeth Storey Landis?" she asked. "Will your efforts reverberate beyond the walls and the span of your lifetime?"

Shawn Gavin Named Associate Dean for Alumni Affairs and Development

In August, the Law School announced the hiring of its new associate dean for alumni affairs, **Shawn Gavin**. Gavin brings a stellar record of leading development programs to his new role. He comes to Cornell Law School from the highly successful AA&D program at Northwestern Pritzker School of Law, where he served as director of development. Gavin began his new position on October 19.

"Shawn's energy and enthusiasm impressed everyone involved in the search," said **Dean Peñalver**. "The knowledge of the law school world he has developed will allow him to hit the ground running at Cornell and take our program to the next level."

Gavin says he was drawn to Cornell Law School by "its focus on producing graduates who are not only outstanding advocates, but who are prepared for ethical leadership in the upper echelons of the legal profession, business, government, and civil society." He adds that "the school's deeply held values of diversity and community resonate strongly" with him as well.

Previously, Gavin worked as director of development at Northwestern University's School of Education and Social Policy. Before that, he was director of development at Voices for Illinois Children, a child advocacy organization based in Chicago. Gavin has been active in the Chicago Association of Fundraising Professionals for many years, having served as conference organizer, treasurer, and secretary. He has also been a guest speaker at North Park University and Indiana University graduate programs in nonprofit management.

Gavin received his B.S., magna cum laude, from Kalamazoo College. He went on to earn

an M.B.A. at the Kellogg School of Management at Northwestern University.

Looking forward, Gavin notes, "This institution has a rich tradition of philanthropy, and I am honored to help uphold that legacy. Alumni involvement is essential, especially in this time of tremendous change in the legal academy. My goal is to broaden and deepen opportunities for involvement in all of its forms, to help ensure that Cornell Law continues to set the standard for what it means to educate lawyers in the best sense."

Convocation 2017

On May 14, the Cornell Law School Class of 2017 met in Newman Arena for its final convocation. Graduates and their guests were greeted by **Eduardo M. Peñalver**, the Allan R. Tessler Dean and Professor of Law, who delivered the opening address.

Martha E. Pollack, who became the 14th president of Cornell University in April, took to the podium to congratulate the present graduates. She also recognized the twelve students enrolled in the inaugural year of Cornell Tech's law, technology, and entrepreneurship LL.M. program.

The J.D. speaker was **Victor Pinedo** and the LL.M. speaker was **Winnie O. Awino**. The faculty address was delivered by **Sheri Lynn Johnson**, James and Mark Flanagan Professor of Law and assistant director of the Cornell Death Penalty Project, which she cofounded in 1993.

Johnson offered the Class of 2017 three "don't forgets" for the road. First, she said, don't forget who you are. Second, don't forget where you came from. Finally, she told them, don't forget why you went to law school. "I ask all of you to remember why you went to law school and, before you are done as a lawyer, to bend the long moral arc of the universe just a little closer to justice."

> ***I ask all of you to remember why you went to law school and, before you are done as a lawyer, to bend the long moral arc of the universe just a little closer to justice.***
>
> *— Sheri Lynn Johnson*

Cornell Law School Announces the Robert B. Kent Public Interest Fund

Since its founding in 1887, Cornell Law School has cultivated a culture of public service. In May, that commitment was reaffirmed with the launch of the Robert B. Kent Public Interest Fund, established through a $1 million gift made possible by **Robert D. Ziff '92**.

The fund is named in honor of legendary teacher and mentor **Robert B. Kent**, a professor at Cornell Law School from 1981 until his retirement in 1992. The fund will support a distinguished postgraduate public interest fellowship to be known as the Robert B. Kent Public Interest Fellowship. The fellowship will be competitively awarded to a new or recent Cornell Law School graduate who demonstrates exceptional commitment to the field of public interest law. It will provide an opportunity for new attorneys to gain substantive experience in work that will improve the quality and delivery of legal services to the poor, the elderly, the homeless, and those deprived of their civil rights. The new fund will also support other public interest priorities, such as summer Public Interest Fellowships and the Law School's loan forgiveness program, both of which enable Cornell Law School students to consider employment opportunities with nonprofit and government employers.

"Professor Kent was perhaps the best teacher I have ever had, in any subject, at any school," said Ziff. "More relevantly here, he was an attorney who devoted himself to public service in his spare time, including during his time teaching at Boston University, working for the Massachusetts Civil Liberties Union, as well as serving as the reporter for the first Rhode Island Rules of Civil Procedure. Long after I graduated, Professor Kent remained a good friend. It is only fitting that this fund be named after him in the hope that future recipients will follow his example."

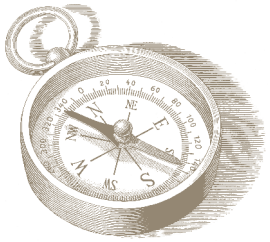
"Public service is at the heart of our identity," says **Dean Peñalver**. "The legal profession has as its core a commitment to the rule of law, and at the center of the rule of law is access to justice. This generous gift made possible by Robert Ziff ensures that the Law School continues to have a robust, world-class public interest program."

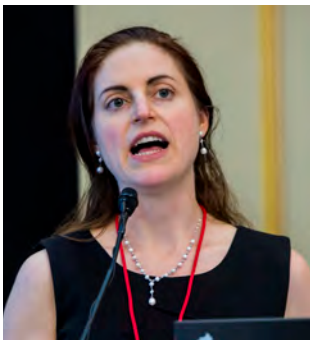
Professor Riles

Meridian 180 Holds Expert Briefing for EU Officials on Nuclear Accidents

As nations search for ways to reduce their greenhouse gas emissions, the long-simmering debate over nuclear power has heated up. Nuclear advocates, opponents, and governments argue over nearly every aspect of the technology, from the cost of construction to the challenge of waste storage to the industry's relationship with nuclear weapons programs.

Professor Kent with students in 1982





Rebecca Slayton

But there has been inadequate discussion of how to compensate victims of nuclear accidents, said **Annelise Riles**, the Jack G. Clarke Professor of Far East Legal Studies and Professor of Anthropology, at an expert briefing in Brussels on May 19.

"Whatever your view of nuclear power is, whatever your view of what the future should be, there needs to be better conversation about how compensation is handled and what the true costs of nuclear power are," she told high-level officials from the European Union and European Commission, as well as activists, scholars, and industry representatives.

The briefing compared approaches to compensation for victims in Japan, the United States, and the Soviet Union

and successor states. It was organized by Cornell's Mario Einaudi Center for International Studies and the Meridian 180 program, which Riles directs. The panelists were members of a multidisciplinary working group on nuclear energy that the two organizations created last year.

More than six years after a series of meltdowns at the Fukushima Daiichi nuclear power plant displaced more than 160,000 residents, the people of Japan still have no idea how much the disaster will cost, reported **Takao Suami**, professor of law at Waseda University in Tokyo.

Rebecca Slayton, assistant professor of science and technology studies at Cornell and associate director of the Judith Reppy Institute for Peace and Conflict Studies, said it was safe to assume that there will be more nuclear accidents, no matter how diligently engineers, operators, and regulators work to prevent them.

"We are calling for the creation of a transnational forum that enables laypersons, experts, and policymakers to discuss nuclear disaster compensation plans before the next disaster occurs," she said.

~JONATHAN MILLER
Einaudi Center

Members of the Class of 2017 who received judicial clerkships

Law School Celebrates Graduates with Clerkships

Two weeks before its 2017 convocation, Cornell Law School celebrated twenty-two soon-to-be graduates who received coveted judicial clerkships. The celebration included a champagne toast by faculty, alumni, and staff at Myron Taylor Hall.

The event was the first of its kind to highlight the growing number of graduates who clerk for judges at all levels of the state and federal court systems across the country. The future clerks were honored by **Dean Peñalver**; **John Blume**, the Samuel F. Leibowitz Professor of Trial Techniques; and Judge **Richard Wesley '74**, of the U.S. Court of Appeals for the Second Circuit.

> ***Securing a judicial clerkship is a 'capstone event' based on years of hard work and academic excellence, both before our students arrive at Cornell and during their time here with us, high above Cayuga's waters.***
>
> *— John Blume*

"Over the last decade, we've definitely seen an increase in the number of clerkships for each graduating class," said **Elizabeth Peck**, assistant dean for judicial engagement and professional development. "Clerkships have become a much greater priority for our institution."

One way the Law School has made a stronger commitment to clerkships was by creating a new position for Peck to help current law students and recent graduates land clerking positions. The Clerkship Celebration, held on April 26, is another way the Law School is highlighting the value of clerkships.

"Securing a judicial clerkship is a 'capstone event' based on years of hard work and academic excellence, both before our students arrive at Cornell and during their time here with us, high above Cayuga's waters," Blume, chair of the Faculty Clerkship Committee, said at the event.

Amelia Courtney Hritz '17, who was also working on a Ph.D. in Cornell's joint program in Developmental Psychology and Law, was one of the graduates honored at the celebration. She will clerk for Judge **Peter Hall '77** of the U.S. Court of Appeals for the

The first-ever 3L class dinner in the Gould Reading Room

Dean Peñalver Hosts the Law School's First 3L Class Dinner

At the opening of Myron Taylor Hall in 1932, the Law School celebrated with speeches in the moot court room, a formal presentation of the building's keys to Cornell president Livingston Farrand, and a buffet luncheon in the library. It took another eighty-five years before the Gould Reading Room hosted its second meal, an April 20 party for the soon-to-be-graduating Class of 2017 and the start of what might become a new Law School tradition.

"We instituted this 3L dinner to celebrate your completion of the J.D. program," said **Dean Peñalver**, who proposed the idea last fall. "This majestic reading room is the spiritual heart of Cornell Law School, and as your time here draws to a close, I can think of no better place for us to come together as a community of students, faculty, and administrators who have worked and studied together for the past three years."

With that, the meal began, and accompanied by the sound of silverware, **Aziz Rana**, professor of law, shared a lesson from his 1L Constitutional Law course: "To be a lawyer is to have a responsibility to the law and the rule of law, even if your work doesn't directly involve politics," he said. "The choices you make will affect everything from corporate culture to the ways that ordinary people, rich or poor, can access justice. And as you go on to your careers, you carry this public obligation."

Next came **Franci J. Blassberg '77**, adjunct professor of law and of counsel to Debevoise & Plimpton, who'd spoken at orientation nearly three years earlier. "What a treat to come full circle with you," she said. Blassberg led a toast, followed by others around the room, and as the Class of 2017 posed for photos of this historic event, the most persuasive evidence of the evening's success was that no one wanted to leave. "Tonight was great," said **Kendyl Keesey '17**, who begins work in the Philadelphia office of Hogan Lovells this fall. "It represents one of the last opportunities I'll have to see all these people in the same room. I know I'm going to miss them desperately."

"Being here tonight, you can see how much the Law School values us as both students and future colleagues," said **Adebola Olofin '17**, who will spend the next two years clerking on the U.S. Court of Appeals for the Fourth Circuit and the U.S. District Court for the Southern District of New York. "Because in a couple of weeks, we'll all be lawyers."

Being here tonight, you can see how much the Law School values us as both students and future colleagues. Because in a couple of weeks, we'll all be lawyers.

— Adebola Olofin '17

Professor Omarova Testifies before Senate Banking Committee

On June 15, Professor **Saule Omarova** testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs. The hearing was titled "Fostering Economic Growth: Midsized, Regional, and Large Institution Perspective." Omarova was the only academic present; all other witnesses were banking industry representatives who advocate rolling back or significantly altering the Dodd-Frank Act's postcrisis systemic-risk regulatory regime.

Omarova began her testimony by emphasizing that any claims by the financial services industry that financial deregulation will "foster economic growth" must be taken with "extreme skepticism." To begin with, she observed, what the industry usually calls "growth" is not growth on the part of the real economy, but mere asset price bubbles in the secondary market. Not only are financial bubbles not real economic growth, she said; they actually harm real growth once they burst.

Omarova also took issue with two demands that she noted recur among the industry's present requests to Congress: first, that currently "arbitrary" regulations be "tailored" on an institution-by-institution basis; and second, that the Dodd-Frank "stress testing" regime be rendered more "transparent" by revealing to banks in advance what the stress tests would be seeking.

Regarding the first demand, Omarova argued that a regime that tailored regulations specifically to particular institutions would be exceedingly expensive if not unadministrable—akin to determining voting ages, drinking ages, driving ages, and the like on a person-by-person basis. On the second demand, Omarova argued that telling her students in advance what questions would appear on their exams would render those exams, too, more "transparent," but also would render them "absolutely useless for their purposes."

Omarova closed her written testimony with the admonishment that if Congress truly wants to foster economic growth, it should take affirmative measures to assure adequate credit flows toward infrastructure and cutting-edge industry, rather than deregulating so as to permit a return to wealth-destroying, bubble-and-bust cycles in secondary markets. To further this point, she referenced a new proposal offered by herself and Professor Robert Hockett to establish what both call a new National Investment Authority.

In "Global Classroom," Students Study Surrogacy Law and Policy in India and the United States

The United States, in particular California, is home to one of the world's largest surrogacy industries. Yet, some states in the United States refuse to enforce contracts between intended parents and surrogates. Advocates in the state of New York are currently working to legalize compensated surrogacy. Meanwhile, half a world away, India's parliament is considering banning the practice. Contributing to these discussions are students in Cornell's International Human Rights Clinic.

During the spring semester, the clinic collaborated with the Transnational Human Rights Seminar at the National Law University in Delhi (NLU-Delhi). Cornell Law's **Sital Kalantry** joined NLU-Delhi professors **Aparna Chandra** and **Mrinal Satish** in creating a "global classroom" where their students could collaborate in studying surrogacy from a transnational and comparative legal perspective. Students from both universities engaged in class discussions through sophisticated video-conferencing technology and examined how to develop larger policy solutions to transnational issues.

Students from the International Human Rights Clinic in India

Over spring break, clinic students traveled to New Delhi to conduct fieldwork alongside their NLU-Delhi counterparts. The students interviewed a variety of stakeholders, including women who work as surrogates, fertility doctors, feminist scholars, nonprofit organizations, and government officials.

"It is a rewarding experience for students," says Kalantry, "to learn how to develop solutions to real-world policy problems using extensive secondary research and primary field data."

Additionally, a team of students in the joint class has interviewed compensated-surrogacy stakeholders in the United States and will produce a legislative policy report on the Child-Parent Security Act, a bill legalizing compensated surrogacy, which is in committee in the New York legislature.

"It was a truly collaborative research project," says **Jaeeun Shin '18**, "with almost twenty students and instructors and teaching assistants from opposite sides of the globe meeting weekly."

"It was a life-changing experience," says **Shannon Nakamoto '18**. "Being in India and speaking directly to those involved in the surrogacy process allowed me to understand how they viewed the ethical issues in light of their social and economic circumstances."

Whitehead Testifies before Congress on Volcker Rule

Professor **Charles K. Whitehead** can typically be found sharing his expertise in capital markets and financial institutions with his students at Cornell Law School and Cornell Tech, but on March 29 he addressed a different audience: members of the United States House of Representatives. As the House Subcommittee on Capital Markets, Securities, and Investment examined the impact of the Volcker Rule, Whitehead was invited to testify in favor of its repeal.

The Volcker Rule is part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Intended to reduce risk in banking in the wake of the 2008 financial crisis, the Rule bans short-term proprietary trading by banks and their affiliates, whether performed directly by those entities or indirectly through investments in hedge funds and private equity funds. In his testimony, Whitehead, the Myron C. Taylor Alumni Professor of Business Law, argued that the Rule addresses "the wrong problem in the wrong way."

Though a principal goal of the Rule was to promote more "traditional" banking business instead of risky trading activities, Whitehead observed, the most significant bank losses during the 2008 crisis resulted not from the proprietary trading activities banned by the Volcker Rule but from traditional extensions of credit, especially loans related to real estate. He also argued that the Rule's attempt to separate commercial banking from investment banking was predicated on a misguided hope that the industry could be returned to an earlier model. He concluded by suggesting that the Rule be replaced. "Imposing strict capital requirements on a banking entity's trading book, without trying to parse the difference between proprietary trading and market-making, will more efficiently accomplish the same ends—namely a reduction in risk taking—that the Volcker Rule originally set out to do."

Clinic Client Dwight Loving Removed from Military Death Row

On January 27, 2017, **President Obama** commuted the sentences of 209 prisoners, including the death sentence of Rochester native **Dwight Loving**. Loving is now serving life in prison after spending almost thirty years on military death row. For twenty-five of those years, he was represented by **John H. Blume**.

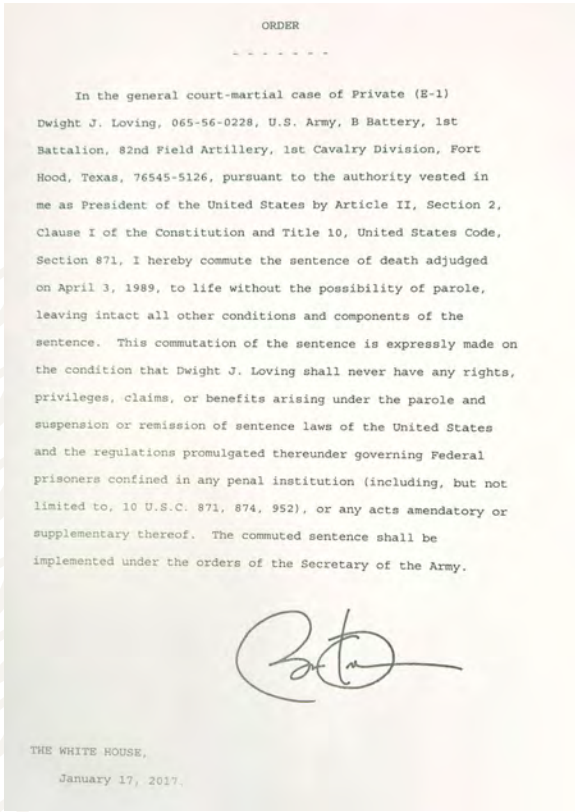
Blume, the Samuel F. Leibowitz Professor of Trial Techniques, director of Clinical, Advocacy, and Skills Programs, and director of the Cornell Death Penalty Project, took on Loving's case a few years after the former Fort Hood private's 1989 conviction for murder and attempted murder. Blume argued the case before the Supreme Court in 1996 and continued to represent Loving in subsequent appeals.

In 1997, when he joined the Law School's faculty, Blume brought Loving's case with him. Since then, students in the Capital Punishment Clinic

have worked on the case, helping to write briefs and interview witnesses. They also assisted in preparing Loving's clemency application, with Blume and lawyer **Teresa Norris** serving as Loving's counsels in the proceedings.

In the clemency petition, the counsels argued that Loving, in his initial trial, was represented by an inexperienced, underfunded counsel who provided inadequate assistance. They also highlighted evidence of racial bias in the military criminal justice system, which has a history of sentencing black soldiers to death in disproportionate numbers. Loving, a black man whose victims were white, was tried before an all-white court-martial panel. Though President Obama provided no explanation for his decision to commute Loving's sentence, Blume suspects that the evidence of "race effects" in Loving's sentencing was the deciding factor.

Blume notes that Loving's successful petition for clemency constitutes the first presidential commutation of a death sentence in more than fifty years. "This was a historic event that we were very happy to be part of."



ORDER

- - - - - - - -

In the general court-martial case of Private (E-1) Dwight J. Loving, 065-56-0228, U.S. Army, B Battery, 1st Battalion, 82nd Field Artillery, 1st Cavalry Division, Fort Hood, Texas, 76545-5126, pursuant to the authority vested in me as President of the United States by Article II, Section 2, Clause I of the Constitution and Title 10, United States Code, Section 871, I hereby commute the sentence of death adjudged on April 3, 1989, to life without the possibility of parole, leaving intact all other conditions and components of the sentence. This commutation of the sentence is expressly made on the condition that Dwight J. Loving shall never have any rights, privileges, claims, or benefits arising under the parole and suspension or remission of sentence laws of the United States and the regulations promulgated thereunder governing Federal prisoners confined in any penal institution (including, but not limited to, 10 U.S.C. 871, 874, 952), or any acts amendatory or supplementary thereof. The commuted sentence shall be implemented under the orders of the Secretary of the Army.

THE WHITE HOUSE,
January 17, 2017.

Courting Success: Joint Degree Combines Law and Psychology

For two human ecology students, an important judicial anniversary offered the chance to meet some of the top legal minds in the nation.

ABOVE: (L to R) Amelia Hritz '17, Justice Sonia Sotomayor, and Caisa Royer '17 LEFT: Letter from President Obama

Amelia Hritz '17 and **Caisa Royer '17**, students in the Ph.D./J.D. program in Developmental Psychology and Law, worked on the team that published a special issue of the *Cornell Law Review* commemorating the 125th anniversary of the U.S. Court of Appeals for the Second Circuit.

"It was a fascinating opportunity to learn how these famous legal minds made their careers and came to have such influence over legal policy," says Royer, who supervised work on the issue as special projects editor.

The Second Circuit is considered one of the most influential in the United States, offering the final decision on hundreds of federal cases each year and setting precedent that influences policy nationwide. The commemorative issue of the *Cornell Law Review* included an in-depth biography of every judge who has served on the court, including three who went on to the U.S. Supreme Court.

Hritz and Royer also met current and former judges, having dinner with Supreme Court Justice Sonia Sotomayor. "She was incredibly gracious," Hritz says.

The Ph.D./J.D. joint-degree program brings together Cornell's top researchers in psychology and law to train the next generation of legal scholars. Over the course of six years, students conduct research and earn their joint degrees. Since its inception five years ago, about a dozen students have entered the program.

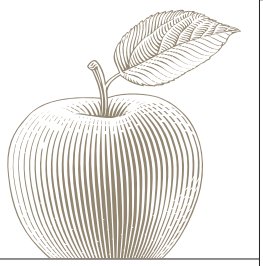
The exposure to world-class researchers in the Department of Human Development and Cornell Law School provides an education like no other, explains **John Blume**, the Samuel F. Leibowitz Professor of Trial Techniques and director of Clinical, Advocacy, and Skills Programs at Cornell Law School.

"Caisa and Amelia have had the opportunity to work with faculty in both departments on a number of groundbreaking projects at the intersection of law and psychology, the results of which have been published in top law journals," says Blume.

Hritz, who served as editor in chief of the *Law Review* this year, believes the program uniquely prepares students to focus on publishing, requiring them to complete two years of study toward a doctorate in psychology before starting law school full-time.

"The experience of working first on my Ph.D. gave me a leg up when I started law school because I had already collaborated with faculty members and published in journals on these topics," she says. "I love the idea of doing research that has practical applications in the law because there is the opportunity for the research to influence what is happening in courts."

~SHERI HALL
Human Ecology magazine



William F. Lee, J.D./M.B.A. '76, Tells the Story of the Smartphone Wars

"You know, it increases the pressure ever so slightly when you're about to open on the first day [of litigation], and the *Wall Street Journal* says it's the 'Trial of the Century,'" observed **William F. Lee, J.D./M.B.A. '76**, at the Law School on February 20, as he regaled students and faculty with his account of the Apple-Samsung trial of 2012.

Lee is a leading intellectual property litigator who has represented a variety of technology-focused clients for more than thirty-five years. He has tried more than 200 cases to verdict and argued more than seventy-five cases, including some of the highest-profile patent cases of the last decade, to the U.S. Court of Appeals for the Federal Circuit and other appellate courts.

In addition to trying the much-scrutinized case between Apple and Samsung in the U.S. District Court in San Jose, California, Lee helped coordinate fifty-nine related cases across fourteen jurisdictions around the world.

William F. Lee

Lee's talk, "The Smartphone Wars," was presented in the Dean's Distinguished Lecture Series, launched this academic year. In his introduction of Lee, **Dean Peñalver** noted, "He has been an invaluable counselor to the Law School's leadership, including both my predecessor and myself, providing us with crucial insight into the direction of the legal marketplace and how Cornell can best position itself to continue to succeed in preparing our students for the practice of law in the twenty-first century."

Lee said that he chose to speak about the Apple-Samsung case because it demonstrates both the critical role that lawyers play when technologies merge and the increasingly

global scope of intellectual property disputes. In addition to trying the much-scrutinized case between Apple and Samsung in the U.S. District Court in San Jose, California, Lee helped coordinate fifty-nine related cases across fourteen jurisdictions around the world.

Much of Lee's lecture addressed how his team told Apple's story. "We think, as lawyers, about the analytical framework for our cases, the things we have to prove, the evidence we have to demonstrate, and that's all critically important," he said. "But equally important, maybe more important if you're doing a jury trial, is, What's the narrative? What's the story around which you build your analytical framework?"

Beth Lyon Provides Training at Mexican Ministry of Foreign Affairs

With U.S. immigration law and procedure shifting and uncertain under the current administration, the Mexican government is investing more resources in understanding how this legal landscape may affect Mexican nationals. Toward that end, **Elía Sosa**, a counselor at the Gender Unit of the Mexican Ministry of Foreign Affairs (SRE), reached out to **Beth Lyon**, clinical professor of law and founder of Cornell's Farmworker Legal Assistance Clinic. From June 14 to 16, Lyon met with SRE officials in Mexico City to provide training and discuss next steps.

Lyon is a national authority on the laws and policies affecting immigrant workers. She has written extensively on domestic and international immigrant and farm worker rights, and generally about the human rights of the poor. The Farmworker Legal Assistance Clinic she founded at Cornell is one of the first and only law clinics in America to serve rural immigrant communities.

"The Mexican government recognizes that the dramatic changes the Trump administration is making (and attempting to make) in U.S. immigration law and procedure have profoundly negative implications for Mexican nationals in this country," she says.

Around fifteen SRE officials attended Lyon's full-day training session on U.S. immigration law and access to justice. The discussion continued in meetings over the next two days.

Lyon adds, "My hope is to create an ongoing relationship between Cornell Law School and the Mexican Secretaría de Relaciones Exteriores, to better support Mexican families living and working in the United States."

> ***My hope is to create an ongoing relationship between Cornell Law School and the Mexican Secretaría de Relaciones Exteriores, to better support Mexican families living and working in the United States.***
>
> *— Beth Lyon*

Beth Lyon

Asylum Clinic Wins Remand for Transgender Client

On July 6, 2017, after months in detention and fearing a return to the country where she had been brutalized, one asylum seeker was given a reason to hope thanks to the work of two Cornell Law School students. **Alla Khodykina '18** and **Gavin Bosch '18**, participants in the Law School's Asylum and Convention Against Torture Appellate Clinic, had worked diligently with their client, a transgender woman who had fled to the United States from Mexico nearly twenty years ago and who now faces deportation. Their compelling arguments won her a second chance to fight for relief.

The client, who was assigned male at birth, says that in Mexico she endured regular beatings and repeated sexual assaults predicated on her feminine appearance and behavior, starting in early childhood.

Following a vicious attack by a gang and then by the police from whom she sought help, the client fled to the United States, where she obtained both humanitarian asylum and permanent residency. However, a 2016 conviction for possessing a small quantity of methamphetamine instigated deportation proceedings.

In immigration court, she appeared alone, without repre-

sentation. Citing her various convictions, as well as evidence that conditions in Mexico had improved for homosexuals, the immigration judge declined to consider humanitarian asylum and denied her relief under the United Nations Convention against Torture.

It was at this point, as she faced deportation, that the Asylum Clinic learned of her predicament and took on her appeal to the Board of Immigration Appeals (BIA). Khodykina and Bosch began work on a brief. Since their client was detained at an ICE-contracted facility in Adelanto, California, the students communicated with her mostly over the phone, though Khodykina did travel to meet her at one point. "Despite our client's limited understanding of immigration law, she was very involved in her own case," she says.

Alla Khodykina

Gavin Bosch

Bosch notes, "One of our biggest struggles was narrowing down which topics to focus on. There were a number of problems with the original immigration judge's decision, but we had to eventually cut some weaker arguments away to create a concise, persuasive document."

In their finished brief, the students argued that the immigration judge had mistakenly conflated sexual orientation with gender identity. They also argued that the BIA should grant their client humanitarian asylum in recognition of the complex trauma she suffered in Mexico and the likelihood that she would likely suffer additional harm should she return.

The brief was successful. The BIA remanded the case to immigration court, where, the students hope, the judge will properly consider their client as transgender and grant her relief from deportation.

Securities Law Clinic Students Head to Capitol Hill

For ten years, Cornell Law School's Securities Law Clinic (SLC) has offered students the opportunity to provide legal services to small investors in upstate New York who have been the victims of investment fraud. This year for the first time, clinic students had the chance to hone their advocacy skills on a much larger stage. In March, SLC adjunct professor **Birgitta Siegel** and five clinic students traveled to Washington, D.C., to take part in the Public Investors Arbitration Bar Association's (PIABA) Hill Day, during which they lobbied congressional offices on issues important to retail investors.

Under the supervision of Siegel and **William Jacobson**, clinical professor of law and director of the SLC, students **Dan Sperling '18**, **Thomas Knecht '17**, **Grigor Lynch '18**, **Arjun Ajjegowda '18**, and **Radin Ahmadian '18** played an active role in PIABA's lobbying effort in support of five major securities law issues intended to protect public investors. Students researched and briefed the issues prior to joining the PIABA group on March 9 in Washington for final preparations with the advocacy attorneys. On March 10, each student teamed up with Siegel or one of PIABA's advocacy attorneys and pitched legislation in back-to-back meetings with members of Congress or their staffers. A particular focus of the effort was opposing any effort to delay implementation of the Department of Labor's Fiduciary Duty Rule.

"PIABA Hill Day was an invaluable experience," said Knecht, "and one of the most rewarding of my law school career. It gave me the opportunity to practice effective verbal communication by advocating on behalf of the public investor. Further, I was

> ***Our students were challenged by the complex, fluid legal issues they researched, and by the chance to practice unique advocacy skills when pitching issues to members of Congress. Students met the challenges and then some.***
>
> *— Birgitta Siegel*

able to network with attorneys from all over the country and make close friendships with my fellow classmates."

The day before the Hill visit, students also met with SEC enforcement attorneys, including **Seth Nadler '10**, a former SLC student. Among the topics examined were those flowing from a recent Tenth Circuit case that voided a decision by an SEC Administrative Law Judge (ALJ), holding that the SEC's ALJs are appointed in violation of the appointments clause, article II of the Constitution.

Siegel commended the students' work before and during the event.

"Our students were challenged by the complex, fluid legal issues they researched," Siegel said, "and by the chance to practice unique advocacy skills when pitching issues to members of Congress. Students met the challenges and then some."

Richard Wesley '74 Receives Federal Bar Council's Learned Hand Medal

"Judging changed me," observed **Hon. Richard Wesley '74**. "It made me a better listener. It taught me respect for divergent views. It called on me to be a witness to human tragedy and triumph." Wesley, a judge of the U.S. Court of Appeals for the Second Circuit and an adjunct professor at Cornell Law School, was speaking at the Federal Bar Council's annual Law Day Dinner, held in New York City on May 9. He had just received the Council's Learned Hand Medal of Excellence in Federal Jurisprudence, a prestigious award whose previous recipients include several Supreme Court justices.

In his remarks, Wesley expressed gratitude to his family and colleagues, observing, "At each [stage of my journey], there was someone who added to my life. I am the sum of their kindness." He expressed special appreciation for his judicial clerks past and present. "I view my own clerks as collaborators," he said. "I expect them to speak their minds. And I must say, they regularly rise to the challenge."

Wesley noted that his clerks have added to the richness of his work as they have joined him in exploring such complex issues as the parameters of the president's war powers on U.S. soil, the possible liability of handgun manufacturers for downstream illegal retail gun sales, and "the mysteries of anti-trust law."

"I cannot adequately describe to you how grateful I am for having these incredible people

ABOVE: Richard Wesley '74 (eighth from left) with Cornell Law alumni LEFT: Securities Law Clinic Students (L to R) Dan Sperling '18, Arjun Ajjegowda '18, Thomas Knecht '17, Grigor Lynch '18, and Radin Ahmadian '18 in front of the Capitol

in my life," he said. "They come to Geneseo and Livonia for but a year, but they never leave us. They marry. They have babies—God, do they have babies—and occasionally they call with sad news, and we cry together. They have incredible life stories. Some have overcome unbelievable adversity. They bring a passion for the law that renews me."

Wesley has been deeply involved in the clerkship program at Cornell Law School, in addition to teaching classes and serving on the Advisory Council. He has mentored clerks from Cornell and elsewhere throughout his judicial career, which began in the New York Supreme Court, continued in the New York State Court of Appeals, and, since 2003, has unfolded in the Second Circuit.

North Korean Escapee Lifts the Veil on His Closed Nation

In this age of extensive global commerce, mass surveillance, and social networking, few countries in the world have maintained the type of enigmatic character often attributed to North Korea.

On February 16, a standing-room crowd in Myron Taylor Hall was given a glimpse of North Korean life when defector "Mr. Kim" told about his life and escape to the United States. His talk opened the *Cornell International Law Journal*'s 2017 symposium.

~ROBERT JOHNSON
Cornell Chronicle

ABOVE: *Cornell International Law Journal* symposium RIGHT: Labor Law Clinic students (L to R) Jordan Benson, Evan Hall, and Austin Case

Robert, on the left, returning to his job, with Jim Meister, union president

Labor Law Clinic Students Settle Case for Terminated Worker

Students in Cornell Law School's Labor Law Clinic recently settled a case involving a terminated worker at a company in the Ithaca area. The case was initiated pursuant to the grievance process in the collective bargaining agreement that required the company to terminate only for just cause.

The final and binding arbitration is the required dispute-resolution mechanism established in the contract between the parties. **Evan Hall '19**, **Jordan Benson '18**, and **Austin Case, M.A. '17**, the ILR School, had spent weeks preparing for the arbitration hearing when the parties were able to amicably resolve the dispute.

"Preparing for an arbitration was challenging and meticulous work," said Benson, "but it was great to see our grievant finally get back to work."

The hearing would have involved cross-examining the company's witnesses and the direct examination of their own witnesses, along with the introduction of relevant documentary evidence. The students had already prepared their opening statement and started their brief before the settlement was reached.

"Helping Robert get his job back was the single most fulfilling thing I've done in law school," said Hall. "I'll always be grateful for the experience."

TOP: Professor Babcock (L) and Professor Brundige
BOTTOM: Professor Babcock and Interim Cornell University President Hunter Rawlings at the Cook Awards

Elizabeth Brundige Receives Cook Award

On March 9, the Cornell community celebrated the twentieth anniversary of its annual Cook Awards with a luncheon in Willard Straight Hall. Among this year's honorees was **Elizabeth Brundige**, associate clinical professor of law and assistant dean for international programs.

The Cook Awards are named in honor of the late **Constance E. Cook '43**, a trailblazing lawyer and Cornell's first woman vice president; and in honor of the late Professor Emerita **Alice E. Cook**, founding member of the Advisory Committee on the Status of Women. The award recognizes individuals for their commitment to women's issues at Cornell and beyond.

Brundige is a leading figure in the Law School's efforts to advance women's rights. From 2012 to 2016, she was executive director of the Avon Global Center for Women and Justice, where she promoted access to justice for women around the world by training female judges, conducting research on gender rights, and issuing reports on violations of women's human rights in New York, Argentina, India, and Zambia. She also founded the Law School's Global Gender Justice Clinic.

Brundige also promotes gender justice in the Cornell community and in Tompkins County. She and her clinic students persuaded the Common Council of the City of Ithaca to adopt a resolution recognizing the right to be free from domestic violence as a human right. ■

John H. Blume, Samuel F. Leibowitz Professor of Trial Techniques; Director of Clinical, Advocacy and Skills Programs; and Director of the Cornell Death Penalty Project

Sheri Lynn Johnson, James and Mark Flanagan Professor of Law

"The Pre-Furman Juvenile Death Penalty in South Carolina: Young, Black Life Was Cheap," ***South Carolina Law Review*** **68, no. 3 (2017)**

Capital punishment in this country, and in South Carolina, has its roots in racial subjugation, stereotype, and animosity. The extreme disparities we report here have dampened due to the combined effects of decreasing levels of open racial antagonism, the reforms of the modern death penalty, including categorical exemptions for juveniles and persons with intellectual disabilities and prohibition of the imposition of the death penalty for the crime of rape, and the (small) increase in diversity in capital juries. But dampened does not mean eradicated. Significant disparities in the administration of capital punishment persist today. The color of a defendant's skin, and the color of the victim's skin, are still the strongest predictors of whether capital punishment will be sought and imposed. No less neutral an authority than the Government Accounting Office has concluded that in studies of capital punishment, findings of statistically significant racial disparity, particularly race of victim disparity, are ubiquitous. Similarly, while gross racial stereotyping and animosity are less common in modern death penalty cases, some instances still occur, and many, many cases involve only slightly disguised racism on the part of judges, jurors, prosecutors, and defense counsel. To imagine that a punishment whose history is so steeped in racism can ever be administered in a race-neutral way is more than color blindness, and more than wishful thinking; it is willful blindness.

Josh Chafetz, Professor of Law

"Unprecedented? Judicial Confirmation Battles and the Search for a Usable Past," ***Harvard Law Review*** **(forthcoming)**

Recent years have seen intense conflicts over federal judicial appointments, culminating in Senate Republicans' 2016 refusal to consider the nomination of Merrick Garland to the Supreme Court, Senate Democrats' 2017 filibuster of Neil Gorsuch's nomination to the same seat, and Republicans' triggering of the "nuclear option" to confirm Gorsuch. At every stage in this process, political actors on both sides have accused one another of "unprecedented" behavior.

This article, written for the 2017 Supreme Court issue of the *Harvard Law Review*, examines these disputes and their histories, with an eye toward understanding the ways in which discussions of (un) precedentedness work in constitutional politics.

Part 1 examines recent conflicts in judicial appointments, beginning in the George W. Bush administration and running through the 2017 elimination of the filibuster for all nominees. It focuses on the discourse surrounding these reforms, noting that at every turn, accusations of "unprecedented" behavior have flown in all directions and have served as justifications for countermeasures, which are in turn characterized as unprecedented. Part 2 then reconstructs two pasts—two precedential pathways —for recent events, one drawing on the history of legislative obstruction and the other on the history of confirmation politics. The purpose of these historical narratives is not to adjudicate particular claims of unprecedentedness but rather to highlight the ways in which any claim of (un)precedentedness involves particular, contestable

constructions of the past. The article concludes with some thoughts about why we might prefer some available pasts to others.

Kevin M. Clermont, Robert D. Ziff Professor of Law

"Limiting the Last-in-Time Rule for Judgments," ***Review of Litigation*** **36, no. 1 (2017)**

A troublesome problem arises when there are two binding but inconsistent judgments: say the plaintiff loses on a claim (or issue) in the defendant's state and then, in a second action back home, wins on the same claim (or issue). American law generally holds that the later judgment is the one entitled to preclusive effects. In the leading article on the problem, then-Professor Ruth Bader Ginsburg suggested that our last-in-time rule should not apply if the U.S. Supreme Court declined to review the second court's decision against giving full faith and credit. Although that suggestion is unsound, the last-in-time rule indeed should not apply if the first judgment is American and the second judgment comes from a foreign-nation court. To establish those contentions, this article must go to the depths of *res judicata* and conflicts law, not only here under our last-in-time rule but also abroad where a first-in-time rule reigns. The article resurfaces from the depths to rearrange the puzzle pieces into a simple reformulation—an elaboration rather than an amendment—of the American law on inconsistent judgments.

Zachary D. Clopton, Assistant Professor of Law

"Diagonal Public Enforcement," ***Stanford Law Review*** **(forthcoming);** ***Cornell Legal Studies Research Paper,*** **no. 17-30 (2017)**

Civics class teaches the traditional mode of law enforcement: the legislature adopts a regulatory statute and the executive enforces it in the courts. But in an increasingly interconnected world, a nontraditional form of regulatory litigation is possible in which public enforcers from one government enforce laws adopted by a second government in the second government's courts. One government provides the executive, while a different government provides the legislature and judiciary. Clopton calls this unusual form of interstate relations "diagonal public enforcement."

Although diagonal public enforcement has escaped systematic study, one can find examples in American courts going back more than a century. Foreign governments have used American courts to enforce federal antitrust laws, state environmental laws, and civil rights statutes, among others. Just last term, the Supreme Court heard a case in which the European Commission sued American tobacco companies in a New York federal court under the federal RICO statute. Diagonal public enforcement occurs within the U.S. system as well. States routinely enforce federal laws in federal courts, and opportunities exist for states to enforce sister-state laws, especially with respect to climate change and other cross-border issues.

Although diagonal public enforcement has escaped systematic study, one can find examples in American courts going back more than a century.

Despite these examples, diagonal public enforcement appears to some as a category error: why would legislatures ever rely on foreign governments to enforce domestic law, and why would foreign executives take up the offer? In light of these questions, this article attempts to demystify diagonal public enforcement by exploring when it would be consistent with the rational pursuit of legislative and executive interests. Legislatures are likely to authorize diagonal public enforcement in order to increase deterrence or influence global regulation. Executives are likely to "forum shop" for diagonal options in order to achieve better outcomes in foreign courts. These predictions explain existing patterns of enforcement, and they are suggestive of a larger role for diagonal public enforcement in the coming years.

Finally, this article critically evaluates the costs and benefits of diagonal public enforcement at the interstate, intrastate, and individual levels. At first glance, diagonal public enforcement may seem to raise common concerns about the diffusion of regulatory authority, the extraterritorial reach of domestic law, and the interference in foreign sovereign relationships. However, upon closer scrutiny, diagonal public enforcement turns out to have the capacity to improve enforcement efficacy, promote the public interest, protect foreign and minority interests, and nudge gridlocked institutions; though, of course, this will depend on conscientious institutional design.

I would be horrified to live in a society in which all abortion was illegal, and I would be similarly (if not equally) horrified to live in a society in which people believed that late-term abortion raised no moral concerns.

Sherry F. Colb, Professor of Law and Charles Evans Hughes Scholar

"Beyond the Human Fetus: A Reflection on Abortion and Sentience," review of Charles C. Camosy, *Beyond the Abortion Wars* (2015), in *Horizons: The Journal of the College Theology Society* (June 2017)

In *Beyond the Abortion Wars* Charles C. Camosy has written a refreshingly open-minded book about abortion. Camosy views the abortion issue as one on which neither the "extreme" pro-life view (that all abortion should be illegal) nor the "extreme" pro-choice view (that all abortion should be legal) ought to prevail. Despite being an adherent of the latter "extreme" view, I would say that a middle position on the morality of abortion is sensible. I would be horrified to live in a society in which all abortion was illegal, and I would be similarly (if not equally) horrified to live in a society in which people believed that late-term abortion raised no moral concerns. I regard the dividing line between the abortions that raise few moral concerns and those that raise serious moral concerns as sentience.

Sentience is the capacity to experience feelings such as pain and suffering. When a fetus has sentience, she has something that entitles her to moral consideration. I believe Camosy has respect for this moral line (although he would prohibit more abortions than are implicated by it), given his highlighting of the period when a fetus can respond to external stimuli, so from his perspective as well as mine, the important questions include (1) whether nonsentient fetuses should also receive moral consideration and (2) whether the law ought to reflect the moral consideration to which sentient fetuses are entitled. I would also attend to the implications of sentience for the rights of nonhuman animals, creatures who tend to be disregarded by the people whose responses to polls about abortion Camosy uses as signals for how we might think about the legal and moral issues.

Maggie Gardner, Assistant Professor of Law

"Parochial Procedure," *Stanford Law Review* 69, no. 4 (2017)

The federal courts are often accused of being too parochial, favoring U.S. parties over foreigners and U.S. law over relevant foreign or international law. According to what this article terms the "parochial critique," the courts' U.S.-centrism generates unnecessary friction with allies, regulatory conflict, and access-to-justice gaps. This parochialism is assumed to reflect the preferences of individual judges: persuade judges to like international law and transnational cases better, the standard story goes, and the courts will reach more cosmopolitan results.

This article challenges that assumption. It argues instead that parochial doctrines can develop even in the absence of parochial judges. Our sometimes-parochial procedure may be the unintended result of decision making pressures that mount over time within poorly designed doctrines. As such, it reflects not so much the personal views of individual judges but the limits of institutional capacity, the realities of behavioral decision making, and the path dependence of the common law. This article shows how open-ended decision making in the midst of complexity encourages the use of heuristics that tend to emphasize the local, the familiar, and the concrete. These decisionmaking shortcuts, by disfavoring the foreign, put a parochial thumb on the scale—but that tilt is not limited to individual cases. Rather, it is locked in and amplified through the accumulation of precedent, as later judges rely on existing decisions to resolve new cases. Over time, even judges with positive conceptions of international law and transnational order will find themselves, in applying these doctrines, consistently favoring U.S. litigants over foreigners and U.S. law over foreign or international law.

To explore this theory, this article traces the evolution of four procedural doctrines: discovery of foreign evidence, *forum non conveniens*, service of process abroad, and the recognition of foreign judgments. The decision making pressures outlined here can explain why the first two doctrines (framed as open-ended standards) are often criticized as parochial, while the latter two (framed in more rule-like terms) are not. And if

that account is at least plausible, it supports the primary claim of this article: the occasional parochialism of our courts does not necessarily reflect the personal prejudices of our judges. If so, then avoiding the costs of parochialism will require structural, not just personal, solutions.

James Grimmelmann, Professor of Law, Cornell Tech

"Real + Imaginary = Complex: Toward a Better Property Course," ***Journal of Legal Education*** **66, no. 4 (2017)**

"Property" in most law schools means real property: the dense, illogical, and special-purpose body of land law. But this is wrong: property also comes in personal, intangible, and intellectual flavors—all of them more important to modern lawyers than land. Real property is deeply unrepresentative of property law, and focusing our teaching on it sells the subject short. A better property course would fully embrace these other forms of property as real property's equals. Escaping the traditional but labyrinthine classifications of real property frees teachers to bring out the underlying conceptual coherence and unity of property law. The resulting course is easier to teach, more enjoyable for students, and more relevant to legal practice.

There is no excuse not to switch.

Robert C. Hockett, Edward Cornell Professor of Law

Saule Omarova, Professor of Law

"The Finance Franchise," ***Cornell Law Review*** **102, no. 5 (2017)**

The dominant view of banks and other financial institutions is that they function primarily as intermediaries, managing flows of scarce funds from those who have accumulated them to those who have need of them and can pay for their use. This understanding pervades textbooks, scholarly writings, and policy discussions—yet it is fundamentally false as a description of how a modern financial system works. Finance today is no more primarily "intermediated" than it is preaccumulated or scarce.

This article challenges the outdated narrative of finance as intermediated scarce private capital and maps the basic structure and dynamics of the financial system as it actually operates. It begins by developing a three-part taxonomy of ways to model financial flows—what we call the "credit-intermediation," "credit-multiplication," and "credit-generation" models of finance. It shows that only the last model captures the core dynamic of a complex modern financial system, and that the ultimate source of credit-generation in any such system is the sovereign public, acting primarily through its central bank and treasury. It then traces the operation of this dynamic throughout the financial system, from the banking sector, through the capital and "shadow banking" markets, all the way out to the "disruptive" frontier of peer-to-peer digital finance.

What emerges from this retracing of the financial system's operative logic is a comprehensive view of modern finance as a public-private franchise arrangement. On this view, the sovereign public acts effectively as franchisor, licensing private financial institutions to earn rents as franchisees in dispensing a vital public resource: the public's monetized full faith and credit. The article concludes by drawing out some of the potentially transformative analytic and normative implications of a paradigmatic shift from the orthodox theory of financial intermediation to the franchise view of finance.

Jeffrey J. Rachlinski, Henry Allen Mark Professor of Law (with coauthor Andrew J. Wistrich)

"Judging the Judiciary by the Numbers: Empirical Research on Judges," ***Annual Review of Law and Social Science*** **13 (2017)**

Do judges make decisions that are truly impartial? A wide range of experimental and field studies reveal that several extralegal factors influence judicial decision making. Demographic characteristics of judges and litigants affect judges' decisions. Judges also rely heavily on intuitive reasoning in deciding cases, making them vulnerable to the use of mental shortcuts that can lead to mistakes. Furthermore, judges sometimes rely on facts outside the record and rule more favorably toward litigants who are more sympathetic or with whom they share demographic characteristics. On the whole, judges are excellent decision makers, and sometimes resist common errors of judgment that influence ordinary adults. The weight of the evidence, however, suggests that judges are vulnerable to systematic deviations from the ideal of judicial impartiality. ■

Cornell Law School Enjoys Robust Philanthropic Year

Reunion-year gifts supported every purpose at the Law School, including public interest law, Law School scholarships, the Law School Annual Fund, and the renovation of Hughes Hall.

Fiscal 2017 was a great year for Cornell Law School. Total giving to all designations from July 1, 2016, to June 30, 2017, rang in at more than $23,110,000—the second-highest amount ever. Cornell Law School's alumni and friends distributed their philanthropic dollars liberally: unrestricted giving to the Law School Annual Fund and the Law School Annual Fund for Scholarship was very strong, and Cornell's university-wide scholarship challenge attracted several multiyear commitments. Reunion-year giving was the greatest ever and featured seven-figure gift commitments respectively to the field of public interest law and the Hughes Hall reconstruction project, as well as planned gifts designated variously to unrestricted institutional endowment, scholarships, and facilities.

Cornell Law School's annual report, *Great to Greater: The Year in Philanthropy 2017*, will describe those gifts and others, and will recognize the Law School's benefactors at every giving level. As a prelude to that publication later this year, we offer the following précis of philanthropy.

Thanks to a strong fourth quarter, the Law School Annual Fund outpaced its $2.6M goal to reach a new dollar record of $2,744,293. This support came from 2,068 donors, who gave at every level. Participation fell slightly for gifts from $20 to $500, yet increased for gifts from $1,000 to $10,000, and the bottom line bettered everyone's expectations. Similarly, the Law School Annual Fund for Scholarship continued its success in funding tuition-assistance grants for students currently enrolled in the J.D. program. Almost 400 donors made gifts to the Law School Annual Fund for Scholarship, contributing altogether $412,419. In addition to new gifts and commitments at the $25,000 President's Circle level, donors supported the Law School Annual Fund for Scholarship at the Peace Tower ($5,000) and the Dean's Circle ($10,000) levels.

The Law Firm Challenge contributed to the annual fund's bottom line even as it attracted gifts to multiple designations at the Law School. Total giving by Law School alumni at the eleven participating firms in fiscal 2017 was $985,508. Law School alumni at Latham & Watkins set the standard for aggregate dollars at $403,313. For the second consecutive year, Law School alumni at Morgan Lewis participated at the highest rate: all twenty-five made a gift to the Law School, thereby setting the bar at a perfect 100 percent.

Reunion-year giving broke nearly every record as Law School classes ending in "7" and "2" made more than $14.7M in new gifts and gift

commitments to mark their respective milestones. The **Class of 2017** established a new dollar record for a graduating Law School class by making gifts and commitments of $41,256. The **Class of 2012** set a new "dollars & donors" threshold for a 5th Reunion Law School class by raising $15,889 from fifty-four donors. Also achieving new high-water marks for "dollars & donors" were the **Class of 1972** (45th Reunion, $2,332,486 from sixty-eight donors) and the **Class of 1967** (50th Reunion, $1,233,552 from sixty-three donors). Planned gifts bolstered the gift totals for these classes (see below for details). The **Class of 1952** claimed yet another Reunion-year giving record by raising $2,409,250 from seventeen donors in honor of its 65th Reunion. The **Class of '52** now holds the Reunion-year dollar records for the 55th, 60th, and 65th Reunions. Setting a new dollar record for any Law School class in any Reunion year, the **Class of 1992** stepped up boldly in honor of its 25th Reunion with $7,093,550 in new gifts and commitments.

Reunion-year gifts supported every purpose at the Law School, including public interest law, Law School scholarships, the Law School Annual Fund, and the renovation of Hughes Hall. **Robert D. Ziff '92** established an endowment fund in honor of former Cornell Law School faculty member **Robert B. Kent**, who passed away in 2015. The Robert B. Kent Public Interest Fund will provide a Public Interest Fellowship (PIF) grant each year, as well as resources for the Public Interest Low Income Protection Plan. Like other Cornell 1Ls and 2Ls who receive PIF grants, the Kent Fellow will work in a summer legal internship at a nonprofit organization that delivers effective legal services to the poor, the homeless, the elderly, and/or persons deprived of their civil rights. The Kent Public Interest Fund will also help to underwrite the costs of the expanded PIF program, which will include Cornell Law School students who serve in judicial clerkships during their 1L or 2L summer. The Class of 1972 collectively established a new scholarship endowment fund to mark its 45th Reunion. The Cornell Law School Class of 1972 Scholarship will provide a grant to a J.D. candidate of academic merit. Donors to the new fund expressed their hope that classmates would participate in building a fund that will honor their memory of the transformational time they spent at Cornell. On the strength of leadership gift commitments by **Michael I. Wolfson '67** and **Marc Goldberg '67**, the Class of 1967 established an endowment for the Cornell Law School Class of 1967 Scholarship, also to be awarded at the discretion of the Allan R. Tessler Dean on the basis of academic merit.

The Cornell Law School Class of 1972 Scholarship will provide a grant to a J.D. candidate of academic merit. Donors to the new fund expressed their hope that classmates would participate in building a fund that will honor their memory of the transformational time they spent at Cornell.

Jia "Jonathan" Zhu '92 and spouse, **Ruyin "Ruby" Ye, M.S. '90, Ph.D. '92**, made a leadership gift to facilities that will fund a prominent public space in the new Hughes Hall. The Jonathan and Ruby Zhu Faculty Workshop Room is a flexible space that is designed and equipped to accommodate lectures, conferences, and other student and faculty events. At nearly 1,400 square feet, the Zhu Faculty Workshop Room is the largest single space in the reconstructed Hughes wing.

Also in support of the Hughes Hall project, **Jack L. Lewis '69** and **Barbara B. Lewis, B.S. '65, M.A.T. '67**, provided a leadership gift to dedicate the new International and Graduate Legal Studies Reception Office in honor of legendary Cornell Law School professor **Rudolf B. Schlesinger**. Cornell Law School graduates of the late 1940s through the mid-1970s remember Professor Schlesinger as an exuberant, inspiring teacher and masterful lecturer. As the founder of comparative law in the American law curriculum, Schlesinger continues to influence legal scholars today—and the impression he made on the students of twenty-seven Cornell Law School classes is indelible. The Hughes Hall project continues to attract a range of gifts, including one from **John G. Snyder '86** and **Kimberly Snyder '17** to dedicate the Alumni Affairs & Development meeting room on the ground level. **Jerold R. Ruderman '67** and spouse,

Hon. Terry Jane Ruderman, M.A.T. '67, made a leadership gift to dedicate the ground-floor conference room that adjoins the vestibule of Hughes Hall's new main entrance. Earlier in fiscal 2017, **C. Evan Stewart '77** dedicated the new seminar room in Hughes in honor of his father, **Charles Thorp Stewart, A.B. '40**. Recently, **Milton G. Strom '67** and spouse Barbara A. Strom dedicated one of the new Hughes Hall interview rooms in memory of Dolly and Harold Strom.

Law School scholarships attracted several new gifts, thanks in part to Cornell's scholarship challenge. Offering to match gifts to scholarship endowment at a one-to-four ratio for gifts and gift commitments of at least $200,000, the scholarship challenge enables new and existing funds to make generous annual grants by providing current-year cash. Several Law School alumni leveraged the challenge to garner $10,000 per year in matching funds for the five years of their respective pledge periods. **Thomas J. Heiden '71** and **Jane W. Heiden** enhanced the existing endowment of the Jane W. and Thomas J. Heiden J.D. '71 Law Scholarship by this means, as did two anonymous donors to the Cornell Law School Class of 1985 Scholarship. **Anthony M. Radice '69** also continued to build the endowment of the Marcus A. Radice Scholarship by signing on to the scholarship challenge. With less than 30 percent of the matching funds remaining, Cornell Law School hopes to secure additional gift commitments under these favorable terms. Also during the second half of fiscal 2017, **Wayne P. Merkelson '75** established the Merkelson Family Law Scholarship, awarded at the discretion of the Allan R. Tessler Dean on the basis of academic merit.

Offering to match gifts to scholarship endowment at a one-to-four ratio for gifts and gift commitments of at least $200,000, the scholarship challenge enables new and existing funds to make generous annual grants by providing current-year cash.

More Law School alumni made planned gifts during the second half of fiscal 2017 that will provide essential resources in future years. **Karl J. Ege '72** advised the Law School that his bequest, defined in honor of his 45th Reunion, will provide endowment funding for a Law School scholarship. **Robin Tait, A.B. '51**, advised the Law School of his bequest to endow the Tait Brothers Dean's Discretionary Fund, intended to provide support to members of the Cornell Law School faculty, as well as to visiting scholars, and to underwrite a Distinguished Lecture series named for Ezra Cornell. The latter event will bring scholars and/or public figures of national or international status to the Law School to speak on topics related to law, legal theory, or legal history. Many Law School alumni have designated future bequests from their respective estates to scholarships at Cornell Law School, including **Michael I. Wolfson '67**, **John E. Holobinko '67**, **Mark A. Underberg '81**, **Stephen R. Lewinstein '67**, **J. David Moran '73**, and **William Kaplin '67**. In addition to bequests, Law School alumni and friends also assigned life insurance policies, IRA rollover gifts, and charitable gift annuities to the Law School. Including realized bequests from **Elizabeth Storey Landis '48**, **Lorene Jorgensen Bow '52**, **Jean B. Hesby**, **Alvin D. Lurie '44**, and **Donald E. Snyder '52**, planned gifts and planned gift commitments to Cornell Law School during fiscal 2017 totaled more than $9.2M.

Great to Greater: The Year in Philanthropy 2017 is scheduled to appear before the end of calendar 2017 and will offer a more complete acknowledgment of Cornell Law School's many benefactors.

Dean's Advisory Council Welcomes New Members

The Law School Dean's Advisory Council welcomed five new members for the 2017–2018 academic year. **F. Gregory Barnhart '76**, **Peter W. Hall '77**, **Andrew R. McGaan '86**, **Philana W. Y. Poon '92**, and **Francis S. L. Wang '72** began the four-year term on July 1, 2017. Continuing members of the Law School Dean's Advisory Council welcome Greg, Peter, Andy, Philana, and Frank to their new roles as consultants and advisers to Cornell Law School's Allan R. Tessler Dean and Professor of Law, **Eduardo M. Peñalver**.

Greg Barnhart has been widely recognized as one of America's leading trial lawyers. He has been listed in *The Best Lawyers in America* for the last twenty years and was named *Best Lawyers*' "Lawyer of the Year" for personal injury litigation in Florida in 2010 and 2015. He has also been listed since 2006 as a Florida Super Lawyer and as a "Top 100" Florida Super Lawyer. He has been ranked as one of *Florida Trend's* "Legal Elite," as well as a "Top Lawyer" in the *South Florida Legal Guide* and a "Top 100 Trial Lawyer" with the National Trial Lawyers.

Greg Barnhart

Barnhart is a past president of the Florida Justice Association, and a past president of the Federal Bar Association. He has been appointed several times by different Florida governors to Florida's Judicial Nominating Commissions, which is the body that selects judicial candidates in Florida for appointment by the governor to the trial and appellate benches. Barnhart has also been selected for membership in the prestigious International Academy of Trial Lawyers and the American College of Trial Lawyers.

Barnhart has won more than eighty verdicts and settlements of more than $1 million. His wins include some of the highest verdicts in Florida in cases as diverse as products liability, medical malpractice, aircraft and boating crashes, commercial disputes, and will contests. With 29 lawyers and 140 employees, Barnhart's firm, Searcy Denney Scarola Barnhart & Shipley, is one of the largest trial firms in Florida. Currently his firm is winning verdicts against Big Tobacco and Big Pharma and in other cases of national interest.

Greg Barnhart is a regular speaker at seminars for trial lawyers held in Florida and nationwide and is the recipient of the Al J. Cone Lifetime Achievement Award from the Florida Justice Association and Distinguished Lecturer awards from the American Association for Justice.

Hon. Peter W. Hall of the U.S. Court of Appeals for the Second Circuit was nominated by President George W. Bush on December 9, 2003, and confirmed by the United States Senate on June 24, 2004. He received commission on July 7, 2004.

Hall received a B.A. with honors in English from the University of North Carolina at Chapel Hill in 1971. He completed an M.A. at the University of North Carolina at Chapel Hill in 1975 and is a member of the Cornell Law School Class of 1977.

Hon. Peter W. Hall

Hall served as law clerk for Hon. Albert W. Coffrin of the U.S. District Court for the District of Vermont during the court's 1977–1978 term. After his clerkship, he served as Assistant U.S. Attorney for the District of Vermont from 1978 to 1982; and as First Assistant U.S. Attorney, District of Vermont, from 1982 to 1986. Before his appointment to the judiciary, Hall engaged in the private practice of law in Vermont from 1986 to 2001, and during that period served as president of the Vermont Bar Association (1995–1996). In 1997, Hall was elected a Fellow of the American College of Trial Lawyers. Immediately before his appointment to the U.S. Court of Appeals for the Second Circuit, he was the U.S. Attorney for the District of Vermont (2001–2004).

Andy McGaan is a trial lawyer in the Chicago office of Kirkland & Ellis. *The National Law Journal* named him one of "the nation's best litigators." He is a Fellow of the American College of Trial Lawyers, a Fellow of Litigation Counsel of America, and an inaugural member of the Legal 500 Hall of Fame. He has tried cases throughout the country involving product liability, bankruptcy, securities fraud, employee noncompete agreements, and other commercial disputes. Law360 named him a "product liability MVP." He is a graduate of Cornell's College of Arts & Sciences, A.B. '83, as well as the Law School Class of '86, and serves on the Law School Dean's Special Leadership Committee. In 2016, he served as co-chair

Andy McGaan

of his J.D. class's 30th Reunion and established the McGaan O'Dwyer Law Scholarship in memory of his late wife, Pamela O'Dwyer McGaan, a B.S. '87 graduate of Cornell's College of Human Ecology. McGaan is a board member of the

Christian Century magazine; serves the Fourth Presbyterian Church of Chicago as clerk of session; and is president of the Kirkland & Ellis Foundation. He lives in Chicago with his three children. When he is not getting on airplanes to travel for work, he is getting on airplanes to follow the Grateful Dead in all its current incarnations.

Philana Poon joined the Hong Kong Jockey Club (HKJC) in June 2015 as executive director of legal and compliance. She is a member of the Board of Management, as well as HKJC's company secretary. Philana has overall responsibility for HKJC's Legal Services Department, Compliance Department, and Corporate Secretariat.

Philana Poon

Poon has more than twenty years of postqualification experience both in-house and in private practice. Prior to joining HKJC, she held various senior positions within the PCCW-HKT Group, including group general counsel and company secretary. She has a wealth of experience in mergers and acquisitions, corporate finance transactions, corporate governance, and advising on Hong Kong Listing Rules and the Securities and Futures Ordinance.

Poon is an independent nonexecutive director of Forgame Holdings, a company listed on the Hong Kong Stock Exchange, and from 2012 to 2014 was an independent nonexecutive director of AZ Electronic Materials, a company formerly listed on the London Stock Exchange.

Poon earned a Bachelor of Commerce degree from the University of Toronto and is a member of the Cornell Law School J.D. Class of 1992. In 2014, she was named by *Asian Legal Business* as Hong Kong's In-House Lawyer of the Year, and in 2016, as Hong Kong's Woman Lawyer of the Year.

Francis S. L. Wang is one of the founding governors and currently serves as the president and chairman of the Board of Governors of the International Association of Law Schools. He is the executive director of the Wang Family Foundation. Wang is dean emeritus and professor of law at the Kenneth Wang School of Law, Soochow University, Suzhou, China, where he serves as the honorary chair of the university's Board of Regents.

Wang has taught for many years at the University of California, Berkeley, both in its Department of Rhetoric and in the Law School's Jurisprudence and Social Policy program. He is a visiting professor of law and distinguished scholar-in-residence at the University of the Pacific, McGeorge School of Law, where he also serves on its International Advisory Board. He is a

Francis S. L. Wang

cofounder and senior counsel of the War Crimes Studies Center at U.C. Berkeley, which is now part of the WSD Handa Center at Stanford University and the East-West Center in Hawaii. He is one of the founders of the Advisory Council to the Human Rights Resource Centre, a university-based research institute headquartered in Jakarta, Indonesia, with supporting centers at universities throughout the ASEAN countries.

Wang is a member of the Scholastic Council for Academic Excellence and holds an honorary doctorate in law from the Far Eastern Federal University in Vladivostok, Russia. He is a member of the Board of Advisors of the C. V. Starr East Asian Library at U.C. Berkeley and co-chairs the Chinese Jurisprudence Commission. He has served on numerous other professional, business, and nonprofit boards. He is a Fellow of the Nigerian Institute of Advanced Legal Studies, and an Honorary Bencher of the Honorable Society of King's Inns.

Cornell Law School is grateful for the volunteer service of Frank, Philana, Andy, Peter, and Greg as Advisory Council members, and renews its thanks to all the continuing members of the Law School Dean's Advisory Council.

REUNION 2017

Old and New Friends Return to Campus for a Record-Setting Reunion 2017

On the evening of June 8, as alumni and families filled the Student Commons, **Dean Peñalver** stepped up to the lectern to introduce the university's fourteenth president. "**Martha E. Pollack** came to our Law School Convocation as her first official act," said Peñalver, after describing Pollack's background in computer science and her efforts on behalf of women and people of color in science, technology, engineering, and mathematics. "In all my interactions with her, I've come away deeply impressed by her respect for lawyers, for the practice of the law, and for the work of the Law School. Her presence tonight is further evidence of her appreciation of the importance of the Law School to Cornell University."

It was a momentous occasion, and standing before the crowd, Pollack couldn't resist quoting from Andrew Dickson White's 1885 report to the university trustees. "I know that's a quote you've heard many times, but bear with me," she said, scanning the room. "'Pettifoggers' is not a word I get to use every day! In any case, knowing the high reputation of this school, I am sure there is not a single pettifogger among you. More than 130 years later, the Law School remains true to A. D. White's founding vision, continuing to train its students rigorously and to encourage a public-spirited and ethical approach to the law."

Then, as glasses were raised and toasts offered, Reunion 2017 began.

It was the best of times, and following the opening reception, alumni spilled into the courtyard, sharing stories with old and new friends. "I just get

> ***More than 130 years later, the Law School remains true to A.D. White's founding vision, continuing to train its students rigorously and to encourage a public-spirited and ethical approack to the law.***
>
> *— Martha E. Pollack*

TOP: John Byrne '07 (L) and Gene Lee '92 BOTTOM: 2017 LL.M. graduates (L to R) Cécile Ressault, Leah Daniels, Paloma Carreno-Londono, Charlotte Bocage, and Line Chataud

happy when I think of the Law School," said **George Bernstein, LL.B. '57**, one of two alumni celebrating their 60th Reunion, who remembers learning to drink martinis in a senior seminar overlooking Cayuga Lake. "I loved everything about the Law School. I loved the building, I loved the atmosphere, I loved the people, I loved the experience. It was a very close-knit group—you didn't feel like you were competing, there was so much that we did together. There was a warmth that I didn't feel in college, and when I look at the building now, I just feel wonderful. I always thought it was the most beautiful building on campus. Still do."

"I was in the Business School and the Law School, so we were here year-round for four years," said **Bruce Coggeshall '67**, pointing toward Hughes Hall, where he and his wife, Phyllis, lived in the first-floor head resident's apartment. Their first year was also the first year for **Faust Rossi**, who joined the class dinner at Statler Hall, and the first year for **Ernie Roberts**, who made a strong impression on Coggeshall from day one. "He introduced himself, saying, 'I'm Ernie Roberts, and I'm here from Villanova. Is anybody here from Villanova?' Two guys put their hands up, and he grilled them for the rest of the class. That's how we learned not to raise our hands."

Attendees told tales until it was too late to tell any more, and when they woke up the next morning, there was a full day of events ahead of them, including a faculty lunch in the courtyard, a State of the Law School Address in the Elizabeth Landis Auditorium, tee time at the Robert Trent Jones Golf Course, a guided tour of the new academic wing, and a continuing education class on the topic "The Cloud, Metadata, Social Networking, and You: How Technology Is Changing the Practice of Law." **Kevin M. Clermont** led a presentation on the renovation of Hughes Hall, **W. Bradley Wendel** co-taught a CLE class on the topic "Business Ethics and the Law," and following a wine tasting cohosted by the Law School and Cornell's Johnson Graduate School of Management, alumni traveled across campus and across town for their Reunion-class dinners.

TOP LEFT: Sarah Estabrook '17 (L) and Nicole Gonzalez '17 TOP RIGHT: James Keightley '67 BOTTOM LEFT: Randall Odza '67 and Rita Odza BOTTOM RIGHT: (L to R) Steve Snyder '72, Terry Calvani '72, Faye Snyder, Arthur Peabody '72, Natalie Walker '07, Keith Nusbaum (spouse), Phyllis Coggeshall, Bruce Coggeshill '67, Bob Wilson '67, Laurie Wilson

"That was my highlight, going to Statler for the class dinner," said **David Hughes '72**, who traveled from Washington, D.C. "Our group is different from the classes that came four or five years later. We had fewer than ten women in our class, which is ridiculous to think of today. And a number of older classmates, who had been in the armed forces—some had actually been to Vietnam—came to law school with a much more adult approach than the rest of us. It made for a very unusual mix, to say the least, but it's turned out to be a very easygoing group."

"It's a nice, tight class," agreed **James DeMent '72**, who lives in Houston. "Law school was hard, and we were poor. But over time, you forget how terrified you were as a 1L. You come back, and when you return to the scene of the crime, it brings back all these rose-colored memories. So we tell our stories, and we feel fondly for one another and fondly for the Law School, because we recognize that wherever our careers have taken us, it all started here. When you really trace it back, wherever you've gone, Cornell Law was your point of departure."

As darkness fell, conversations moved indoors, and after a good night's sleep, alumni rolled out of bed for a Reunion breakfast in the Purcell Courtyard before heading toward the State of the University Address by President Pollack, the lesson in "How to Handle Your First Pro Bono Deportation Case" by **Stephen Yale-Loehr** and **Estelle McKee**,

> ***Our group is different from the classes that came four or five years later. We had fewer than ten women in our class, which is ridiculous to think of today.***
>
> *— David Hughes '72*

TOP LEFT: (L to R) Winter Torres '07, Stephanie Sharron '92, Professor Sital Kalantry, Allison Harlow Fumai '02, and Rachel Skaistis '97 TOP RIGHT: Debra Frank '77 and Franci Blassberg '77 BOTTOM: Dean Eduardo Peñalver (2nd from L) with members of the Class of 1977 (L to R) John Kallaugher, Marion Bachrach, Len Kennedy, Evan Stewart, Jay Rakow, Debra Frank, Franci Blassberg, Hon. Peter Hall, Valerie Armento, and Robin Vogel

hear that Torres lives in Denver, and before the party moved from dining to dancing, he came over to join the conversation. As class reunion co-chair, he'd been part of setting new fundraising records by the Class of 1952, the Class of 1967, the Class of 1972, the Class of 1992, the Class of

and the natural history hike through Robert H. Treman State Park. The Johnson School's **Risa Mish '88** shared her wisdom on the topic "Building Resilience" in business, law, and life, and Professor **Sital Kalantry** moderated an alumnae panel titled "Women in Law Practice: Challenges and Opportunities," complete with iClickers for real-time responses and the announcement of the Law School's newest organization: the Alumnae Law Coalition of Cornell.

"The climate has changed so much over the past twenty-five years, and to talk with women who paved the way for me and my peers was very moving," said **Kristen Stanley '07**, who focuses her career on capital appeals, and named the panel discussion as one of her highlights. "It was a chance to think about how privileged I've been, even in the face of considerable obstacles, and how much it means to have found a cause that's important to me on a core, heart level.

TOP LEFT: (L to R) Keith Nusbaum, Andrea Stein '07, and Natalie Walker '07 TOP RIGHT: Daniel Duval '02 (L) and Stephanie Sharron '92 LEFT: (L to R) Shep Guryan '67, Joan Guryan, Bruce Coggeshall '67, and Phyllis Coggeshall

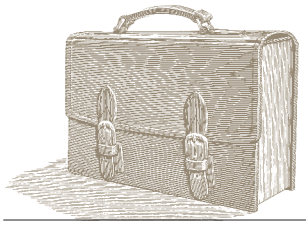
And powerful—to be able to tap into that and know I'm doing something that's deeply meaningful, something I found here at Cornell."

Back in the day, Stanley and her closest friends—**Amy Phillips '07**, **Summer Sylva '07**, and **Winter Torres '07**—bonded at the start of their 1L year. A decade later, they sat together under the big tent of Saturday's All-Class Cocktail and Roving Dinner Reception, catching up on public interest work, family, and life. "We've seen each other in pairs, but the four of us haven't been together in ten years," said Torres, who sat on the "Women in Law Practice" panel. "We used to sit next to each other in class, and we led our respective affinity groups. That's what I learned from my peers here: that advocating for causes and making a difference in people's lives is an important definition of success."

Sitting at a nearby table, **Chris Nenno '12** was surprised to

At the Reunion events, people of all classes have been happy to engage in discussion, share career stories, and offer encouragement to someone who's just entered the senior associate ranks at a big law firm.

— Chris Nenno '12



2012, the Class of 2017, and the entire 2017 Reunion.

"We had a pretty tight-knit class, and a number of us have stayed in touch since graduation," said Nenno, who moved from Washington, D.C., to Denver in February. "At the Reunion events, people of all classes have been happy to engage in discussion, share career stories, and offer encouragement to someone who's just entered the senior associate ranks at a big law firm. Coming back to campus for the Reunion has reinforced the sense of Cornell community for me."

"I've had a great time," he continued, "and I'm planning to return in 2022."

Richard John Inaugurates Course on Working as a General Counsel

In a first for the Law School, **Richard John**, adjunct professor of law, is opening the semester with a new course highlighting in-house practice. With the three-credit, twice-weekly "Functions of the General Counsel," Professor John and a dozen alumni lecturers will cover the full range of experience, from managing a legal department to leading an internal investigation, representing a government entity, and reporting to a board of directors.

"The course is going to provide a good blend of theory and practice from people who have worked in the field," says John, who spent nine years as general counsel at Intertek Testing Services. "When you begin law school, so much of your curriculum is focused on litigation and case law. But if you go in-house, the emphasis becomes much broader and the work far more hands-on, more transactional. Before I went to Intertek, I'd been practicing for twenty years, and I thought I had a very good understanding of the company. And every day I spent there, I realized there was so much more to learn. It was really eye-opening, and that's one of the things I hope this course will convey."

Each week will focus on a critical piece of working in-house, beginning in September with a discussion about effectively supporting the mission of the organization and ending in December with a class on how the role of in-house counsel will change over the next ten years. On Tuesdays, John will outline a specific challenge faced by general counsels; on Thursdays, alumni experts will lecture on their real-world experience tackling those challenges and the different kinds of tools needed for success.

"There's a big difference between working for a firm, where you're living in that billable hours environment, and working in-house," says **Madelyn Wessel**, Cornell University counsel and secretary of the corporation, who joins John for a class on representing not-for-profits. "When you're in-house, you're living with your clients, so you get to really understand the issues that affect them. You're part of the organization you represent, and you have a lot more skin in the game, which makes it a very intense relationship. In-house lawyering, especially at not-for-profit or governmental entities, can be profoundly interesting on an intellectual level as well as a morally engaging way to have a career. In-house practice generally is a major area of opportunity for

> ***In-house lawyering, especially at not-for-profit or governmental entities, can be profoundly interesting on an intellectual level as well as a morally engaging way to have a career.***
>
> *— Madelyn Wessel*

lawyers, and one that is often not contemplated as an option by new graduates."

"Oftentimes, a company will call outside counsel after a given decision has been made on a legal matter," says **Tim Bixler '93**, former vice president and general counsel at International Rectifier, who will present a class on leading internal investigations. "For me, the difference in being general counsel is that song from *Hamilton*—

> ***As in-house counsel, you need to be far more of a generalist. It's a broader look, rather than the focused approach of an outside counsel.***
>
> *— Richard John*

you get to be in 'The Room Where It Happens.' If general counsels are good, they'll have a seat at the table where decisions are made. They'll influence those decisions, help shape them from a legal perspective, and really make things happen. That's very different from what most people do in private practice, and in my mind, it's one of the best things about being a general counsel."

For John, who currently works in private practice and represents District 4 on the Tompkins County Legislature, effectively moving from outside to inside counsel requires mastering a new set of skills: how to integrate a knowledge of the entire company, collaborate with every department, and understand the entire range of legal issues. "As in-house counsel, you need to be far more of a generalist," he says. "It's a broader look, rather than the focused approach of an outside counsel. It can be more intellectually rigorous, and if you see yourself as a problem-solver, there's never going to be a shortage of problems for an in-house counsel to work on."

"I think this course is going to bridge the gap, and I think it's going to be a lot of fun," continues John. "You hate to say that about a law school course, but given the lecturers we have coming in, I think it's really true."

In addition to Bixler and Wessel, LAW 6485: Functions of the General Counsel features guest speakers **Gary Bahler '76**, general counsel at Foot Locker; **Michael Brizel '80**, executive vice president and general counsel at FreshDirect; **Ross Charap '73**, partner at Akerman Law Firm and former in-house counsel at the American Society of Composers, Authors and Publishers; **Andrew Feinberg '89**, president and chief operating officer at Brightcove; **Lance Griffin '91**, principal counsel at the Walt Disney Company; **Robert Ingato '85**, executive vice president and general counsel at Wolters Kluwer; **Richard Parr '82**, vice president and general counsel at HCR ManorCare; **Judith Reinsdorf '89**, executive vice president and general counsel at Johnson Controls; and **Randy Samuels '89**, senior

vice president and general counsel at Topcon America Corporation.

Alumni Association Welcomes New Members of Executive Board

Cornell Law School's Alumni Association welcomed six new members to its Executive Board of Directors for the three-year term that began on July 1, 2017. Recruited from classes of the past thirty years, the new members are **Adam Augusiak-Boro '13**, **Tamim Bazzi, LL.M. '09**, **Eric B. Fastiff '95**, **Barbara J. Riesberg '92**, **Tejuana Roberts '10**, and **Leslie A. Wheelock, J.D./M.B.A. '84**.

Adam Augusiak-Boro

Tamim Bazzi

Adam Augusiak-Boro is an associate in the Restructuring and Recapitalization Group at Moelis & Company, and represents creditors and debtors in connection with a wide variety of restructuring, recapitalization, and liability management transactions. He has significant experience in in-court and out-of-court restructuring processes, as well as mergers and acquisitions and capital raises. Augusiak-Boro was previously an associate at Paul, Weiss, Rifkind, Wharton & Garrison, focusing on mergers and acquisitions, and was a legal second at a large New York City–based private equity fund. Augusiak-Boro is a 2010 graduate of Cornell's College of Arts and Sciences and a 2013 graduate of Cornell Law School.

Tamim Bazzi is an associate at Cooley, where his practice focuses on corporate and securities law, with an emphasis on the representation of emerging-growth companies and venture capital investors. Prior to joining the firm, he was an associate for three years at an investment group, where his practice focused primarily on fund formation and private equity transactions. Bazzi is a graduate of Cornell Law School, Institut d'Études Politiques de Paris, and Université de Paris II Panthéon–Assas.

Eric Fastiff is a partner at Lieff Cabraser Heimann & Bernstein, and chair of the firm's Antitrust, Intellectual Property, and Commercial Litigation Practice Group. He has practiced commercial litigation for the past twenty-one years, working on numerous cases involving the drug, food, technology, finance, and natural resource industries. He also represents businesses in commercial disputes with their suppliers and competitors. His clients include governments, businesses, individuals, and consumer groups.

Fastiff serves as co-lead counsel in the California Cipro litigation, represents the Charles Schwab Corporation in a suit against several major banks for allegedly manipulating the London Interbank Offered Rate, and successfully led the prosecution of a two-week arbitration on behalf of a client that alleged both intellectual property and breach of contract claims. Fastiff's notable successes include representing businesses that purchased TFT-LCD panels and products in litigation charging that the world's leading TFT-LCD manufacturers conspired to fix prices. The litigation resulted in settlements totaling over $470 million.

Fastiff has published and edited several works. For several years, he was the general editor of *California Class Actions Practice and Procedures* and continues to serve on the Editorial Advisory Board of the *Journal of Generic Medicines*. He is active in the local community, serving on the boards of trustees of a nursing home for the aged and impoverished, a low-income housing apartment complex, an elementary school, and a nonprofit organization that helps low-income employees maximize their salaries.

Eric Fastiff

Fastiff is a graduate of Tufts University, the London School of Economics, and Cornell Law School.

Barbara Riesberg is a commercial litigator with twenty-five years of experience. Riesberg focuses her practice primarily on complex commercial litigation in state and federal courts, including trials and appeals, as well as securities arbitration. Her past and present clients are corporations, public entities, and individuals. Riesberg regularly litigates a variety of business issues, including shareholder disputes, enforcement of noncompete agreements, securities issues, receivership, commercial foreclosure, property development, and other real estate disputes. She also counsels her clients on strategies designed to avoid protracted and costly litigation.

Barbara Riesberg

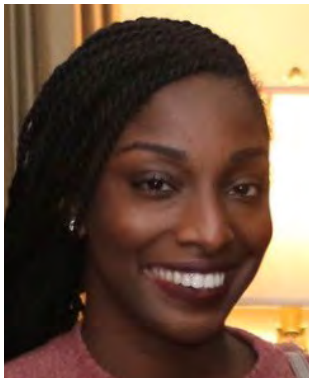
Riesberg also has a wealth of experience in municipal legal issues and previously acted as a special assistant town attorney for the Town of Medley, Florida. In addition to providing litigation services, she counseled the town on comprehensive land-use planning, amendments to the town's zoning code as well as a variety of legal issues arising on a daily basis.

Currently, Riesberg is the chapter director for IvyLife-Miami. In addition, she recently chaired a legislative task force for the Florida Bar Business Law Section to amend the Proceedings Supplementary statute and related judgment collection statutes. She previously served as vice chair of a Florida Bar Grievance Committee, chair of the Florida Bar Business Law Section, Business Litigation Committee, as well as chair of the Florida Bar Business Law Section, State and Federal Judicial Liaison Committee. She is also a past president of the Women's Chamber of Commerce of Miami-Dade County.

Riesberg is included in the most recent edition of *Best Lawyers in America* in the Commercial Litigation category. In addition, she has regularly been included in *Florida Trend*'s "Legal Elite," been recognized both as a "Super Lawyer" by *Florida Super Lawyers* and as a "Top Lawyer" by the *South Florida Legal Guide*, the region's primary legal services publication. She is also rated "AV" by Martindale-Hubbell, the highest rating available.

Riesberg graduated magna cum laude from the University of Pittsburgh in 1989, and obtained her law degree from Cornell Law School in 1992. She is admitted to practice before all Florida state courts, the U.S. District Court for both the Southern and Middle Districts of Florida, and the U.S. Court of Appeals for the Eleventh Circuit.

Tejuana Roberts is an assistant general counsel at the Fashion Institute of Technology. At FIT, Roberts is a generalist transactional and advisory attorney, addressing



Tejuana Roberts

issues for a variety of clients across the university ranging from the drafting and negotiation of all contract types, reviewing matters involving international programs, advising on compliance and regulatory considerations, and developing university-wide policies. Prior to joining FIT, Roberts completed a fellowship at Princeton University, also serving as assistant university counsel. Before that, Roberts was a corporate associate with the New York City office of the law firm Davis Polk & Wardwell, where she worked on a variety of matters pertaining to investment management, securities, mergers, acquisitions, and project financings. Roberts is a member of the Alumnae Law Coalition of Cornell and a mentor with the Practicing Attorneys for Law Students Program. She served as a NACUA editorial board member for the *Journal of College and University Law* and was a steering committee member of Davis Polk's Black Affinity Group. Roberts received her undergraduate degree from Binghamton University, magna cum laude. Roberts graduated from the Law School in 2010 and was an articles editor for the *Cornell Law Review*.

Leslie Wheelock is the former department officer and director of the Office of Tribal Relations at the U.S. Department of Agriculture. During her term at the USDA, Wheelock served as principal adviser to the secretary and other USDA executives on matters relating to the USDA and its programs utilized by American Indian and Alaska Native tribes, trib-

al organizations, tribal colleges and universities, and tribal citizens.

Wheelock previously served as director of economic policy at the National Congress of American Indians. During her tenure at NCAI, she worked on a variety of economic development initiatives, involving small business, financial literacy, rural infrastructure, access to capital, expansion of broadband to Indian Country, and agriculture. She also previously served at the Smithsonian National Museum of the American Indian in Washington, D.C., as a manager on the National Mall transition team and as a strategic planning consultant on cultural and intellectual property. Wheelock currently serves on the National Council for the museum

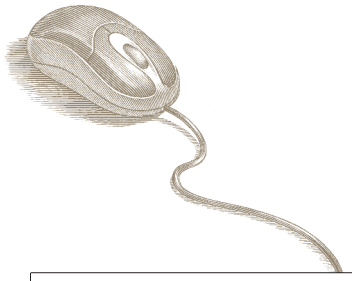
Leslie Wheelock

and on the board of directors for the Smithsonian Indian Museum in New York City.

Prior to her move into public service, Wheelock accumulated more than twenty years of executive legal and management experience in U.S. and international corporate technology and telecommunications corporations. She is a member of the respective bars of New York, Connecticut, and Washington, D.C. Wheelock was born and raised in Indiana, and her home and family are on the Oneida Reservation in Oneida, Wisconsin.

Alumni Authors

Race to Judgment is a "reality-fiction" debut novel loosely based on a number of high-profile cases handled by the author, federal trial court judge **Frederic Block '59**, over his twenty-three years on the federal bench in Brooklyn. This fast-paced legal thriller and powerful urban drama is based partly on fact and seething racial tensions and political corruption. The novel tracks the rise of the fictional African American civil rights protagonist Ken Williams (in real life, the recently deceased Brooklyn District Attorney Ken Thompson) from his days as an Assistant U.S. Attorney through his meteoric rise to unseat the long-term, corrupt Brooklyn DA because of a spate of phony convictions against black defendants, including another one of the judge's real cases (JoJo Jones in the book) for the murder of a Hasidic rabbi. Williams's dramatic courtroom antics (with the aid of his colorful private eye) result in JoJo's exoneration after sixteen years behind bars. In addition, Williams defends a young black guidance counselor accused of killing the rabbi's son many years ago, and champions the cause of a young Hasidic woman raped by her father. As a hobby, Williams plays jazz piano and writes country songs composed by the author, which are reproduced in the book and can be heard on e-books and online. It doesn't get any more "New York" than *Race to Judgment*! ■



You can now search for fellow Cornell lawyers by name, class year, city, state, or area of expertise. You can also update your contact information so your classmates can find you!

Class Notes are Online

Search for news on your classmates and other Cornell Law School alumni.

You can also submit your own notes through the Law School website:

lawschool.cornell.edu/alumni/classnotes/index.cfm

In Memoriam

Robert C. Barnum, LL.B. '48

Frank N. Beckwith, LL.B. '48

Ira W. Berman, LL.B. '55

Henry B. Bobrow '52

Frank C. Bowers '51

Robert F. Brodegaard '75

J. Walter Corcoran, LL.B. '64

Herbert A. Cummins '61

Wilbur R. Dameron '49

Daniel A. Deshon '86

Andrew M. Di Pietro '61

John W. Fulreader '58

Ronald N. Gottlieb '54

Mark H. Gruber '81

Rev. Ralph M. Peter Harter '72

Monica Lewis Johnson '98

Matthew B. Landon '97

William P. Noyes '55

Andrew J. O'Rourke '78

William D. Peek '50

Sinclair Powell '49

David S. Ritter, LL.B. '59

Michael W. Rosati '68

Vincent S. Rospond, LL.B. '58

William B. Rozell '68

Leonard R. Snyder '51

Roy J. Stewart '63

Hon. Roger G. Strand, LL.B. '61

William C. Taylor '61

Richard B. Thaler, LL.B. '56

David Smith Ritter

Retired Judge and Middletown native David Smith Ritter passed away on August 4, 2017, in Newburgh, New York. Born in Middletown in 1934, Ritter graduated from Middletown High School in 1952. He received his bachelor's degree from Union College in 1956 and graduated with honors from Cornell Law School in 1959. After Cornell, Ritter won the Federal Practice Award, and joined the U.S. Attorney General's office where he served under Attorneys General William Rodgers and Robert Kennedy.

From Washington, D.C., he returned to Middletown with his young and growing family in 1962, where he joined the firm of Bull, Morreale, Ingrassia, Ritter & Williams. In the late 1960s, he also served as confidential legal secretary to the honorable Supreme Court Justice Clare J. Hoyt. During the 1970s, Ritter rose through the ranks of the Orange County District Attorney's Office to Chief Assistant District Attorney. During this period he prosecuted two high profile and controversial cases. After the sudden death in office of Abraham Weissman, the Orange County District Attorney in 1974, Ritter ran for office and won.

After serving five years as district attorney, Ritter was elected county court judge in 1981. In 1983, he presided over the Brinks Murder Trial, a case which garnered international attention. He was elected a Supreme Court judge in 1985, and was appointed by Governor Mario Cuomo as a special judge to preside over the bribery and conspiracy trial of Bronx Democratic Leader Stanley Friedman. He was appointed administrative judge of the 9th Judicial District in 1988, and associate justice of the second department of the Appellate Division in 1990, a position from which he fully retired in 2010.

FORUM
Fall 2017
Volume 43, No. 2

Christopher David Brouwer
EDITOR

Michael Heise
FACULTY EDITOR

Martha P. Fitzgerald
ASSOCIATE DEAN FOR COMMUNICATIONS

Marian Rogers
COPY EDITOR

Robin Awes Everett
DESIGN DIRECTOR

Shannon Williamson
DESIGNER

Kenneth Berkowitz, Christopher Brouwer, Sheri Hall, Robert Johnson, John Lauricella, Owen Lubozynski, Ian McGullam, Linda Brandt Myers, Sherrie Negrea
CONTRIBUTING WRITERS

Heather Ainsworth (inside front cover); Robert Barker (inside front cover, pp. 2, 3, 24); Bettmann (p. 17); Michael Chia (p. 44); Cornell University Archives (p. 14); Cornell University Photographers—Robert Barker (pp. 24, 54), David Burbank (pp. 7, 36, 39), Lindsay France (p. 69), Chris Kitchen (pp. 7, 20, 40, 43, 50), Jason Koski (inside front cover, pp. 4, 39, 41, 45, 60, 70), Patrick Shanahan (inside front cover, pp. 9, 42, 65, 66, 67, 68), Simon Wheeler (p. 37); Robin Awes Everett (pp. 51, 53); John Hersey (front cover, pp. 1, 5, 8); Nina Hien (back cover Instagram images); Gary Hodges (p. 6); Ofer Leshed (back cover Instagram images); Library of Congress (pp. 17-18); Jack McCoy (p. 53); Schlesinger Library, Harvard University (pp. 15, 18); John Sheltron (p. 51); Tim Stanley (p. 11); terex (p. 21); Andrew H. Walker (p. 25)
PHOTOS AND ILLUSTRATIONS

QMC Group
PRINTER

The editors thank the faculty, staff, alumni, and students of Cornell Law School for their cooperation in the production of this publication. Select articles in the "Briefs" section reprinted courtesy of *Cornell Chronicle*.

Cornell Law School publishes *Cornell Law Forum* two times per year. It is an eco-friendly publication. Business and editorial offices are located in 119 Myron Taylor Hall, Ithaca, NY 14853-4901 (phone: 607-255-6499; email: brouwer@cornell.edu).

On the Web: www.forum.law.cornell.edu
Forum online: forum.lawschool.cornell.edu

My scholarship helped me realize my dream

As I come from a working class background, being admitted to Cornell Law School was truly a dream come true. The generosity of the Ress family through the Lewis and Esta Ress Scholarship helped me realize that dream. Knowing that I'd been given a unique opportunity, I worked very hard and took full advantage of every experience, from participating in several legal clinics to running the *Cornell Journal of Law and Public Policy* as editor in chief. Along the way, I developed an interest in litigation, and, following law school, I clerked for one year before joining Seward & Kissel's litigation group in New York City. None of this would have been possible without the Ress family. Their generosity inspires me to give back to Cornell Law School every chance I get.

Daniel E. Guzmán '11
Seward & Kissel

Cornell Law School
Lawyers in the Best Sense

Myron Taylor Hall
Ithaca, New York 14853-4901

Change Service requested

www.lawschool.cornell.edu