Real-Life Lessons in Litigation

*Storming the Court: How a Band of Yale Law Students Sued the President—and Won*
*Scribner, 2005*

Telling a story is seldom simple.

In *Storming the Court*, Brandt Goldstein '92 recounts how a group of Yale law students and then-professor Harold Hongju Koh sued the U.S. government on behalf of Haitian refugees being held at Guantánamo in the early 1990s. Goldstein was at the Law School during that period, and even witnessed some of the events that his book describes (though he didn’t work on the case). Nevertheless, as he worked on the book over a five-year period, he found himself confronting dozens of questions about how to tell the story.

Goldstein decided to write a “nonfiction novel”—on the model of *In Cold Blood* and *A Civil Action*—meaning that he sought to draw the reader in “through character, through incident, and through scenes.” *Storming the Court* recreates specific conversations and describes the feelings and responses of numerous participants as this complicated litigation moved through the courts. It also follows Yvonne Pascal, a Haitian democracy activist who was tortured in her home country and eventually, because of the lawsuit, made it to the United States.

To gather all the details he needed to craft his scenes, Goldstein conducted hundreds of hours of interviews. He met Dean Harold Koh whenever Koh had free time—interviewing him on a highway in New Hampshire, on an Amtrak train, and in an airport terminal. He had about a hundred conversations with Lisa Daugaard ’95, one of the students who first wanted to bring the case. “Sometimes I was asking her questions as asinine as ‘What was the weather like? What did you eat that day?’” says Goldstein, “all in the hope of finding that magic detail that would make the scene.” The notes from his interviews piled up beside sheaves of documents relating to the court proceedings. “My apartment became like a document storage warehouse,” he says.

Goldstein could also draw on his understanding of his characters from years of acquaintance with them.
before he even started writing. “I knew Ray Brescia pretty darn well from our Friday-afternoon football games,” says Goldstein, referring to another student active in the case. “He knocked me flat on my back.” So when he introduces Brescia ’92 as a character in *Storming the Court*, Goldstein writes, “He could be touchy, showing an aggressive streak in the Law School’s Friday-afternoon football games.”

But writing about people he knew also came with a liability. “I found myself wanting to protect them,” says Goldstein. “I found myself not wanting to write about flaws, about everything that makes us human. The result is that in the first couple of drafts of this book, my readers told me that everyone was a superman, and I needed to write them as full, rounded characters.”

Another challenge was to convey all the legal background of a complex piece of litigation—one involving “foreign policy and the White House and the Constitution and the Administrative Procedure Act,” without producing a “dry policy study.” Goldstein’s tool for this was the ax of revision. “There are huge, huge sections of this book that never made it to print, because I decided that the reader didn’t need to know about this or that area of law. There was the issue of self-executing treaties. I wrote twenty pages on this. It then became ten, then five, then one, then a paragraph, then one line, then I cut it.” He also sought to put his legal lessons into the mouths of his characters; for instance, in the first chapter he describes Koh lecturing his students on forum shopping, which turns out to be pivotal in the case.

What motivated Goldstein to tell this story? First, there was the quality of the story itself. Goldstein calls it “a great story of idealism and passion, and a David-Goliath fight for justice.” But he also wrote from a lingering regret that he hadn’t taken part in the story as it happened. “It nagged at me that I was not involved,” he says. Goldstein considered Koh a role model, but at the time of the Haitian case, Goldstein was deeply involved in a study of panhandlers in New Haven and felt he couldn’t take on any more work. One passage in the book describes how Koh was disappointed that some of his students hadn’t participated in the case. Though Goldstein didn’t name any of these students, “One of the people I wasn’t naming was myself.”

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**Bruce Ackerman**

*The Failure of the Founding Fathers*

*Harvard University Press, 2005*

Ackerman ’67, Sterling Professor of Law and Political Science, presents a revised understanding of the early days of two great institutions that continue to have a major impact on American history: the plebiscitarian presidency and a Supreme Court that struggles to put the presidency’s claims of popular mandate into constitutional perspective.

**Akhil Amar**

*America’s Constitution: A Biography*

*Random House, 2005*

Amar ’84, Southmayd Professor of Law, gives the first comprehensive account of one of the world’s greatest political texts. This “biography” of America’s framing document explains not only what the Constitution says but also why the Constitution says it. Amar gives unconventional wisdom about the Constitution and its significance throughout the nation’s history.
Books in Print

Here’s just a sampling of the many books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. If possible, please send us two review copies of your book: one for the Lillian Goldman Law Library and one for the Alumni Reading Room.

Mohamed A. Almulhim
Middle East Oil: A Redistribution of Values Arising from the Oil Industry
University Press of America, 1991
Almulhim ’65 LLM, ’70 JSD makes an important contribution to the clarification of the policies of the larger community of humankind about an extraordinarily important set of problems; and explores, recommends, and foretells imminent changes in both national and international law.

Jack Balkin, Editor
What Roe v. Wade Should Have Said
New York University Press, 2005
Balkin, Knight Professor of Constitutional Law and the First Amendment, provides the introduction to this book about what the Roe v. Wade opinion means three decades after it was first announced. In addition to Balkin, contributors include Akhil Amar ’84, Southmayd Professor of Law; Jeffrey Rosen ’85; Jed Rubenfeld, Robert R. Slaughter Professor of Law; Reva Siegel ’85, Nicholas deB. Katzenbach Professor of Law; and Mark Tushnet ’71.

Noah Feldman
Divided by God: America’s Church-State Problem and What We Should Do About It
Farrar, Straus and Giroux, 2005
Feldman ’97 shows that church-state matters in the United States have reached a crisis, and he looks to our nation’s past to show how it might be resolved.

Owen Fiss
The Irony of Free Speech
Harvard University Press/Big Apple Tuttle-Mori Agency, Malaysia, 2004
In this Chinese language edition, Fiss, Sterling Professor of Law, reframes the debate over free speech to reflect the First Amendment’s role in ensuring open debate.

Chris Goodrich
Faith Is a Verb: On the Home Front with Habitat for Humanity
Gimlet Eye Books, 2005
Goodrich ’87 MSL argues that Habitat’s Christian-based message to “build dreams together” transcends religious, economic, cultural, and national boundaries. Goodrich found that Habitat erases the distinction between “giving” and “getting” and represents a path out of modern materialism and self-centeredness.

Duffy Graham
The Consciousness of the Litigator
University of Michigan Press, 2005
Graham ’89 investigates the role of the lawyer in modern American political and social life and in the judicial process, and plumbs lawyers’ perceptions of themselves, their work, and, especially, their sense of right and wrong. He sheds light on the unique and little-examined subject of the moral mind of the litigator.

Kevin Keenan
Invasion of Privacy: A Reference Handbook
ABC-CLIO, 2005
As part of the Contemporary World Issues series, Keenan ’02 provides an overview of the development of privacy rights and the abuses that spurred their growth; explains the legal right to privacy; examines an array of privacy issues affecting many parts of the world; and focuses on issues of particular concern in the United States.

Timothy D. Lytton, Editor
Suing the Gun Industry: A Battle at the Crossroads of Gun Control & Mass Torts
University of Michigan Press, 2005
Lytton ’91 examines litigation against the gun industry from the perspectives of law, political science, public health, and criminology. He analyzes the complexities of gun litigation and its implications for gun control and tort reform in a way that is accessible to a general audience and helpful to policymakers.
Peter Schuck’s new book is a collection of essays on topics at the forefront of political discussion, ranging from affirmative action to the war in Iraq. But the book is unified by his consistent, if seemingly oxymoronic, approach: He calls himself a “militant moderate.”

Schuck, Simeon E. Baldwin Professor of Law, points out that the term “moderate” is often used “for people who seem to have milque-toast views or people who are trying to split the difference. I don’t think that’s what a moderate like myself is doing at all. I conceive of moderation as a quality of mind and temperament. It has a very pragmatic streak, one that is suspicious of grand theory and understands that multiple, conflicting values are at stake, one that is empirically grounded, one that hesitates to dismiss fellow citizens’ opinions, and one that is prepared to reassess views on the basis of new information.”

Schuck is concerned that the ideologies of the left and the right have left a “chasm” in civil debate. He identifies the predominance of liberal ideology on law school campuses as an example. “It is harmful,” he says, “because we’re not forced to hone our views as carefully as we should against contrary positions.”

Schuck admits that his own militant moderate approach could be called an ideology, even if it’s an ideology that relentlessly questions its own assumptions. “I think being self-conscious about one’s ideological style is of some value at this point in time,” says Schuck.

One of the essays in his book argues for major changes in affirmative action by banning it in the public sector, but allowing it in the private sector—an approach that defies both conventional liberal and conservative ideologies. Schuck explains that he supported affirmative action when it was first enacted, but that over time he has applied the methods of a militant moderate to evaluate the program. “I now have come to a very different view of the matter, but one that I think is based on experience, on understanding how these programs actually work, and on a better understanding of American society.”
of a group of lawyers but also on communities and private citizens. His book is both a deftly plotted page-turner and a meditation on the life of the law, the organism that is a law firm, and the consequences for those who come within its powerful orbit.

Susan Rose-Ackerman
From Elections to Democracy: Building Accountable Government in Hungary and Poland
Cambridge University Press, 2005

Rose-Ackerman, Henry R. Luce Professor of Jurisprudence, provides a study that documents the weaknesses of public oversight and participation in policymaking in Hungary and Poland.

Gretchen Rubin
Forty Ways to Look at JFK
Ballantine Books, 2005

Rubin ’94 highlights JFK’s high ideals, trenchant wit, glamorous family, and unforgettable charisma; she also examines his relationship with the public, his manipulation of the press, and his use of imagery.

Roberto P. Saba, Editor
Los límites de la democracia
Seminario en Latinoamérica de Teoría Constitucional y Política, 2005

This book gathers 18 papers from different law professors from the Americas who explore some of the most serious challenges facing democracy in the region. Edited by Saba ’95 LLM, ’00 JSD, it reflects the discussions maintained at SELA 2005 by a group of legal scholars from the U.S., Mexico, Puerto Rico, Colombia, Peru, Brazil, Paraguay, Chile, and Argentina that has been meeting for the past ten years.

Austin Sarat
Mercy on Trial: What It Means to Stop an Execution
Princeton University Press, 2005

In this compelling and timely work, Sarat ’88 provides the first book-length work on executive clemency. He turns our focus from questions of guilt and innocence to the very meaning of mercy, arguing that mercy itself is on trial.

Susan Scafidi
Who Owns Culture? Appropriation and Authenticity in American Law
Rutgers University Press, 2005

Scafidi ’93 offers the first comprehensive analysis of cultural authorship and appropriation within American Law. From indigenous art to Linux, she takes the reader on a tour of the no-man’s-land between law and culture, pausing to ask: What prompts us to offer legal protection to works of literature, but not folklore?

Jim Wooten
The Employee Retirement Income Security Act of 1974: A Political History
University of California Press, the Milbank Memorial Fund, and the Employee Benefit Research Institute, 2005

This study of the Employment Retirement Income Security Act of 1974, produced by Wooten ’89, explains in detail how public officials in the executive branch and Congress overcame strong opposition from business and organized labor to pass landmark legislation regulating employer-sponsored retirement and health plans.

 ALSO OF NOTE

Vicki L. Been and Robert Ellickson ’66, Walter E. Meyer Professor of Property and Urban Law, Editors
Land Use Controls: Cases and Materials, Third Edition
Aspen Publishers, 2005

Vincent Johnson ’79 LLM
Mastering Torts, Third Edition
Carolina Academic Press, 2005

Vincent Johnson
Teaching Torts, Third Edition
Carolina Academic Press, 2005

Vincent Johnson, Alan Gunn
Studies in American Tort Law, Third Edition
Carolina Academic Press, 2005