

# Yale Law Report

THE ALUMNI MAGAZINE OF YALE LAW SCHOOL  
WINTER 2020

From Lawyers to Leaders:  
Alumni Weekend 2019

Thousands Meet  
in the Virtual Courtyard

Graduates Remember Investigation  
into JFK's Assassination



**The Power of People:  
Mentorship Stories  
Demonstrate  
Two-Way Street**

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### Decades Later, YLS Graduates Remember Investigation into JFK's Assassination

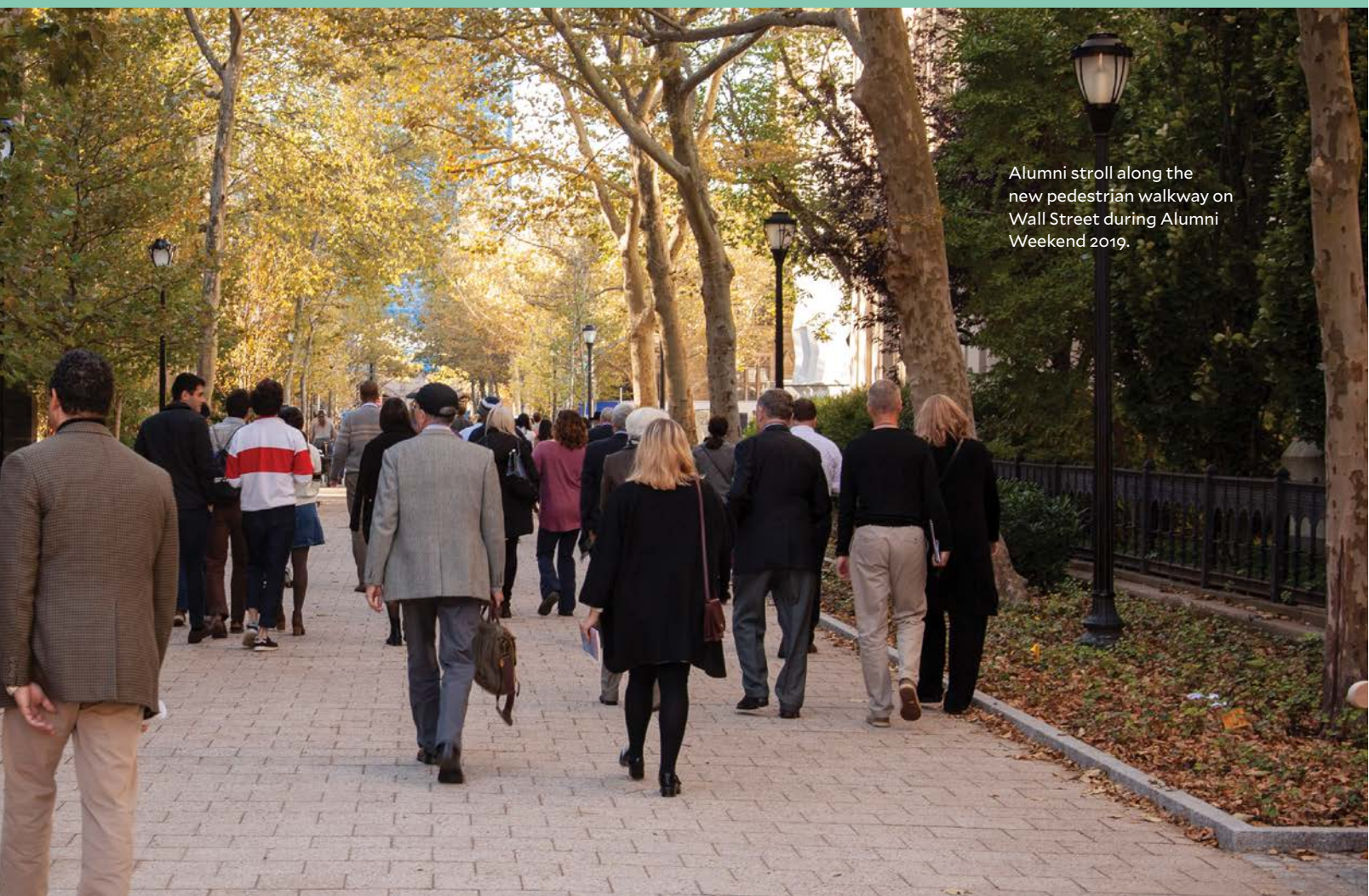
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**ON THE COVER:** Mentorship pairs Katharine Huffman '96 and Andrea Nill Sánchez '14 and Nick Turner '96 and Erin Drake '20; photos by Sam Stuart



Alumni stroll along the new pedestrian walkway on Wall Street during Alumni Weekend 2019.



Dean Gerken with Linda Rottenberg '93 (center) and Ben Heineman '71, the 2019 Award of Merit recipients

## Dear Graduates and Friends of Yale Law School:

It was wonderful to welcome so many of you back to New Haven this past October. Alumni Weekend was both inspiring and joyful. At each of the events I attended, I was moved by the fierce love you have for the Law School and the affection and admiration you have for one another.

This weekend gave us an opportunity to connect our past and present. But it also gave us a chance to look to the future.

One of those chances came when we honored our remarkable Award of Merit recipients, Ben Heineman '71 and Linda Rottenberg '93. Their careers make clear that a Yale Law School diploma serves as an all-purpose leadership degree. Our graduates work in virtually every sector of society, and whether our students pursue a traditional or non-traditional career path, we must equip them to lead in a rapidly changing world. As Dean, I hope you will work with me to ensure that we train our graduates as lawyers and leaders and prepare them for their last jobs, not just their first ones.

Throughout the weekend, I also saw students and alumni swapping stories and sharing their experiences. These moments serve as an important reminder of the need to develop a strong mentorship program that will light up the many career paths available to our students. As I said during my "State of the School" address, I am deeply grateful to so many of you for lending a helping hand to our students, particularly the many first-generation professionals in our midst.

That's why I am thrilled that we have launched The Courtyard, the Law School's first-ever online engagement community and alumni directory. This innovative platform enables our community to connect with each other while taking our mentorship efforts to the next level. I hope you will take a moment to join the more than 1,600 people who have already signed up by visiting [thecourtyard.law.yale.edu](http://thecourtyard.law.yale.edu).

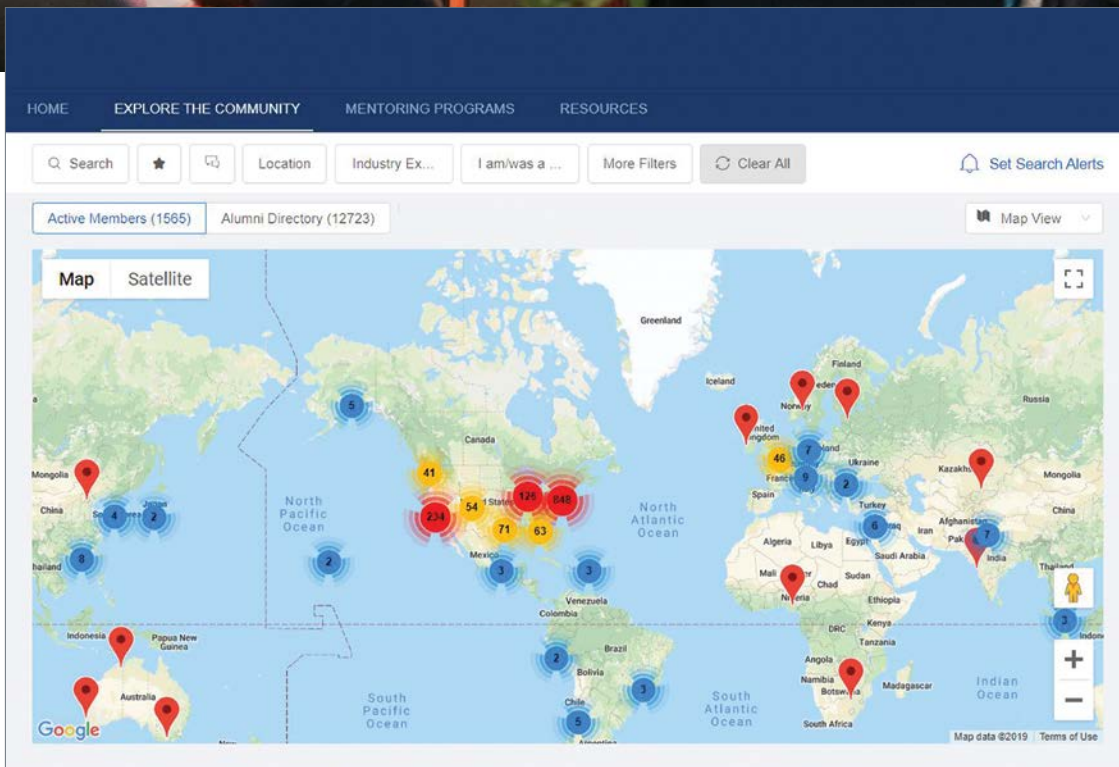
Again, it was lovely to see so many of you back on campus, and I look forward to connecting with many of you in the coming year.

Warmly,

A handwritten signature in black ink that reads "Heather K. Gerken".

Heather Gerken, Dean and Sol & Lillian Goldman Professor of Law  
[heather.k.gerken@yale.edu](mailto:heather.k.gerken@yale.edu)

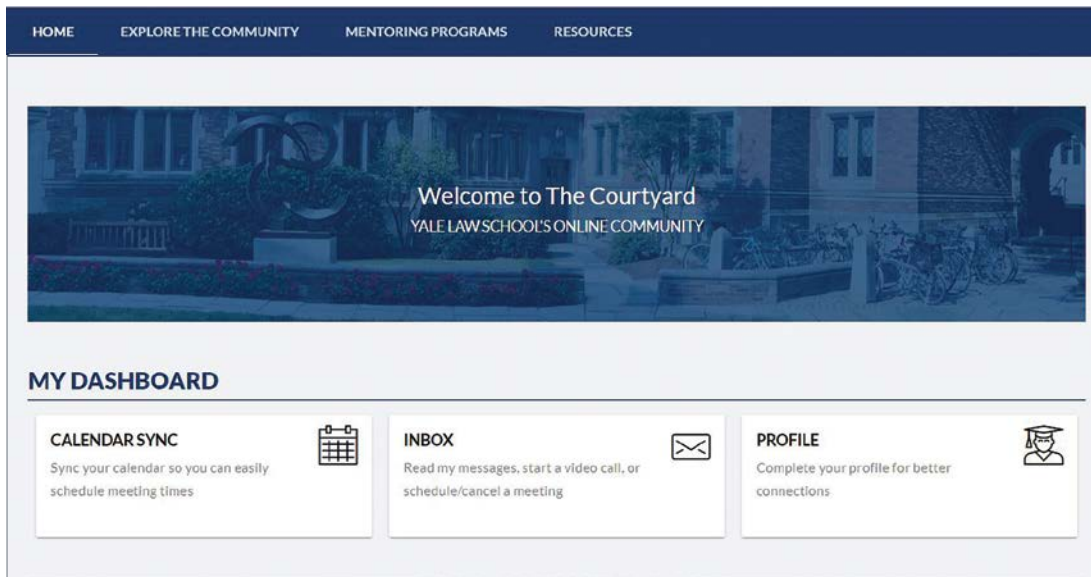
# OPENING STATEMENT



(above) Dean Heather Gerken introduces alumni to The Courtyard at an event in D.C. last summer; (left) Users can search for alumni by geographic location, practice area, employment, and membership in small groups, student organizations, law journals, and clinics.

# Thousands Meet in the Virtual Courtyard

A new online tool is connecting Yale Law alumni like never before



## Courtyard Features

- Message** alumni directly
- Schedule** meetings
- Conduct** video chats
- Display** geographic map of alumni
- Invite** alumni to events on campus
- Update** community on student org activities

## Courtyard Statistics

- 1,656 alumni** participating
- 262 cities** where alumni live
- 4,067 employers** for which alumni have worked
- 105 areas of expertise** represented

**This year, Yale Law School** alumni have begun to reconnect in a completely new way with the launch of The Courtyard, the Law School's first-ever online engagement community and alumni directory.

The platform provides new and exciting ways for YLS alumni to forge connections with one another and strengthen ties that were first built in New Haven. The Courtyard will also ensure that students who come to the Law School without professional networks have access to a robust system of support and mentorship.

Within the first few weeks of rolling out The Courtyard, more than 1,600 alumni had signed up.

"As I've traveled across the country, so many of our wonderful alumni have talked about their strong desire to connect with each other and to pay forward the help they received while they were at Law School," said Dean Heather Gerken. "The Courtyard is an innovative way to build community within our alumni body and develop a mentorship platform that will make a huge difference in the lives of our students and graduates."

As more graduates sign up each day, they are discovering an array of special features that make it easy for alumni to connect with each other to ask questions,

seek advice, make business development referrals, and find mentors and peers in their field. Courtyard users can search for each other by practice area, geographic location, current and past employment, and membership in small groups, student organizations, law journals, and clinics. From there, alumni can choose to message each other directly through the platform, schedule meetings, and even conduct video chats. Current students will join the platform this spring, and in 2020 the Law School will launch a mentorship match program to help students and young alumni find mentors as they embark on their careers. The Courtyard also allows a high level of customization and privacy, with the ability for users to control their level of visibility and engagement.

"The Courtyard will matter a great deal for this community. It will help our alumni find each other and our students find their way. The Law School's alumni community is one of our great strengths. This is a chance to build on something that is already pretty remarkable," said Gerken.

To join the fast-growing network of Yale Law School alumni, visit [thecourtyard.law.yale.edu](http://thecourtyard.law.yale.edu)

SCHOOL  
NEWS



Dr. Ezekiel K. Emanuel (left) and Rahm Emanuel

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# Solomon Center Hosts Landmark Healthcare Conference

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**The Solomon Center** for Health Law and Policy held a landmark conference on the Affordable Care Act (ACA) in September, hosted with the Healthcare Transformation Institute at the University of Pennsylvania's Perelman School of Medicine. The event marked the upcoming 10th anniversary of the ACA being signed into law by bringing together a remarkable array of high-profile speakers, including Rahm Emanuel (former Chief of Staff to President Obama), Donald Verrilli (former U.S. Solicitor General), and Kathleen Sebelius (former Secretary of the U.S. Department of Health and Human Services). Over the course of two days, panels and keynotes—including one by Connecticut Senator Chris Murphy—examined the ACA's enactment and implementation, considered its successes and shortcomings across policy and politics, and reflected on the future of American health care given the law's transformative impact.

"The Affordable Care Act is the most important and the most resilient health care legislation in American history. It has changed our policy, politics, and the law in innumerable ways," said Yale Law School Professor Abbe R. Gluck '00, who leads the Solomon Center as its faculty director. "The conference brought together a spectacular and unprecedented assemblage of government officials and academic experts to reflect on a decade of the ACA, and it was very meaningful to have them all with us at the Solomon Center." The conference also marked the fifth anniversary of the Center.

In addition, the event connected to the upcoming release of *The Trillion Dollar Revolution: How the Affordable Care Act Transformed Politics, Law, and Health Care in America*, which will be published on March 3, 2020. Edited by Professor Gluck and Dr. Ezekiel J. Emanuel, University of Pennsylvania Professor and Vice Provost for Global Initiatives, as well as a key architect of the ACA, the book features an all-star lineup of health care experts, policymakers, lawyers, and scholars, including former House Majority Leader Eric Cantor (who led the Republicans in the House during the ACA's first years), Peter Orszag (Director of the Office of Management and Budget under President Obama), and former U.S. Solicitor General Paul Clement (who argued against the ACA in the Supreme Court).



Kathleen Sebelius



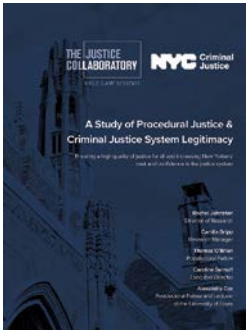
Abbe R. Gluck '00

The conference kicked off with a lively keynote discussion between Rahm Emanuel and his brother, Dr. Emanuel, marking the first time Rahm Emanuel has spoken at length about the law in public. The brothers' conversation offered a rare behind-the-scenes view of the debates inside the White House around the strategy for passing the ACA. In closing, Rahm Emanuel predicted that, while further reform is likely, wholesale change to the American health care system—such as Medicare for All—is not: "People want reform, not revolution."

Kathleen Sebelius, the Secretary of the U.S. Department of Health and Human Services for the first four years of the ACA's existence, discussed the extreme political obstacles the administration faced in implementing the law, while emphasizing the resilience of the ACA and its impact on millions of Americans.



To watch videos from the conference, visit [vimeo.com/showcase/6372731](https://vimeo.com/showcase/6372731).



### Justice Collaboratory Releases Report on NYC Citizen Engagement with Government

**The study**, conducted from 2017–2018 by the Justice Collaboratory and the New York City Mayor’s Office of Criminal Justice, focused on three broad themes: residents’ perceptions of and involvement in the life of their neighborhoods; knowledge of municipal services and participation in city government; and perceptions of fairness, in residents’ dealings with the New York Police Department.



(below, from left) John Morley ’06 and Dalia Blass; Roberta Romano ’80, Blass, and Morley



### Corporate Law Center Holds Colloquium and Roundtable

**In December**, the Center for the Study of Corporate Law held its annual Weil, Gotshal & Manges Roundtable, co-sponsored this year by the Society of Investment Law. The 2019–2020 Roundtable was in commemoration of John Bogle, the founder of The Vanguard Group, and included a keynote with Dalia Blass and Professor John D. Morley ’06.

Throughout the semester, CCL also welcomed leading members of the corporate bar, business and

investment communities, judges and regulators for the Marvin A. Chirelstein Colloquium on Contemporary Issues in Law and Business.

In the fall, the Colloquium included talks by David Richter ’92, Chief Business Officer of Lime; Joanna Calne Hendon ’91, Partner, Spears & Imes LLP; Todd A. Maron, former General Counsel of Tesla; and Mark Campisano ’80, Vice President, Tax, Pacific Life Insurance Company.

### Justice Collaboratory, Center for Policing Equity Release Five-Step Policy Plan

**The Justice Collaboratory** and the Center for Policing Equity released a five-step action plan to reform policing in America. Titled “Re-imagining Public Safety: Prevent Harm and Lead with the Truth,” the plan details a set of recommendations backed by data and experience that will enhance law enforcement legitimacy and foster public trust. The plan was released in advance of the 2020 presidential election with the goal of making these concepts part of the ongoing national dialogue.

“We must move the conversation concerning police reform away from worn out crime control strategies (including implementing better or more humane ways to carry out the older vision) and instead invest in building trust and legitimacy in the system as a whole,” said Tracey L. Meares, Walton Hale Hamilton Professor of Law and a Founding Director of the Justice Collaboratory at Yale.

The action plan focuses on four core principles — safety, dignity, parsimony, and equity. To read the plan, visit [law.yale.edu/justice-collaboratory](http://law.yale.edu/justice-collaboratory).



## VISITORS



Kagan

## Justice Kagan Delivers 2019 Anderson Lecture

**In a wide-ranging conversation** with Dean Heather Gerken, U.S. Supreme Court Justice Elena Kagan spoke on September 11, 2019, during the 2019–2020 Robert P. Anderson Memorial Fellowship Lecture.

Justice Kagan reflected on her time as a new law student at Harvard, telling the audience that she truly did not know what she wanted to do after graduating. What she did know was that she loved the “intellectual puzzle” of the law and that it was a craft that had a real-world impact.

“You could tell right off the bat that this was something that mattered in the world, that you could make a difference using your lawyerly skills,” said Kagan.

Speaking about the varied career path that led to the country’s top court, Justice Kagan told the audience that nearly every job she landed was unexpected. She urged students in the audience to find a balance between having a plan, but not being so wedded to it that they miss out on exciting or challenging opportunities.

“A lot is just serendipity and luck,” said Kagan. “You should be open to the possibility of the complete disruption of your plans, and you should look out for good opportunities and take more risks than you think you should.”

Gerken also asked Justice Kagan about what it is like to be on the court — which is meant to be a neutral arbitrator — in a time when no one believes in neutrality. “I wonder how you think about the court’s role as it negotiates this really turbulent period in our politics?” Gerken asked.

“I love the cases where we can put our heads together and kind of come up with something that is acceptable to a broad sweep of us or where things are just scrambled and everybody is doing things that are unpredictable,” said Kagan. “A court is a court, it is not another partisan institution.”



Thomas

## Rosenkranz Originalism Conference Features Justice Thomas ’74

**The inaugural** Rosenkranz Originalism Conference was held at the Law School on October 25, 2019, featuring a keynote address by U.S. Supreme Court Justice Clarence Thomas ’74.

The conference included two crossfire-style events with Professors Akhil Reed Amar ’84 and Steven G. Calabresi ’83. One featured University of Virginia Professor of Law Saikrishna Prakash ’93, the other University of St. Thomas School of Law Professor Michael Stokes Paulsen ’85.

Justice Thomas’s keynote candidly discussed his upbringing, life at the Law School and on the Court, and his beliefs about originalism.

For Justice Thomas, originalism is the only legitimate method of Constitutional interpretation, and it provides stability to the republic. Failing to interpret laws based on their meaning when they were enacted “usurps power from the people,” he said. Judges who are unelected, he said, should not wield so much power in a democratic republic.

The Rosenkranz Originalism Conference at Yale Law School brings prominent academics and jurists to Yale for a day-long conference each semester to discuss and debate various approaches to and critiques of originalism in constitutional thought and practice. The initiative is led by Visiting Professor Steven G. Calabresi ’83 and Professor Akhil Reed Amar ’84 and is sponsored by Nicholas Quinn Rosenkranz ’99, Professor of Law at Georgetown.



**Ruth Rubio Marín**, Professor of Constitutional Law at the Universidad de Sevilla, gave the 2019 Gruber Distinguished Lecture in Women’s Rights on September 12, 2019, titled “On Constitutionalism and Women’s Citizenship.”



**Jerome A. Cohen ’55**, a professor at NYU School of Law and founding director of its U.S.-Asia Law Institute, gave a talk on October 23 titled “The U.S.-China Crisis: Can Law Help?” The event was sponsored by the Paul Tsai China Center.

## Women at 50 Yale 150

In 2019–20, Yale is commemorating the 50th anniversary of coeducation in Yale College and the 150th anniversary of women students at the university. The Law School hosted a number of events to mark the occasion, including Justice Sotomayor's conversation with Dean Gerken [see page 33], a panel sponsored by the Gruber Program on "The Promise of Women's Enfranchisement: The 19th Amendment of the United States Constitution, 1920–2020," and an exhibit at the Law Library on Judge Ellen Bree Burns '47.



### CONFERENCES



(left to right) Alejandro Madrazo '03 LLM, '06 JSD; Professor Paul Kahn '80; Martín Böhmer '90 LLM, '12 JSD; and Celeste Braga Beatove, speaking on the cultural analysis of law.

## Seminar Returns to Argentina with Gender and Equality Focus

**Legal scholars** from Yale Law School and 14 countries convened in Buenos Aires in June for the 24th annual Seminario en Latinoamérica de Teoría Constitucional y Política (SELA), this year addressing the topic of gender and equality.

The seminar brought together more than 120 scholars from Latin America, the United States, and Spain

to present and debate academic papers. Participants from the Law School included Carol Rose, George Priest, Robert Post '77, Reva Siegel '86, Owen Fiss, Daniel Markovits '00, Douglas NeJaime, Paul Kahn '80, Teresa Miguel-Stearns, Gordon Silverstein, Sara Lulo, and Mindy Roseman.

## CLINIC ROUNDUP



Students and faculty from the Worker and Immigrant Rights Advocacy Clinic (WIRAC) attended the DACA arguments at the U.S. Supreme Court: (left to right) Professor Michael Wishnie '93, Professor Marisol Orihuela '08, Armando Ghinaglia Socorro '21, Professor Muneer Ahmad, Laura Kokotailo '20, Edgar Melgar '21, Camila Bustos '21, and Ramis Wadood '21.

### The Class of 2022

- 212 J.D. students
- 49% students of color
- 54% women
- 25% first in family to attend graduate or professional school
- 11% first in family to graduate from college
- From 11 different countries, 34 different states, and 78 different undergraduate institutions
- Worked and lived in 65 different countries
- Read and speak 29 different languages
- Hold 49 advanced graduate degrees in subjects that range from medieval and Renaissance literature to health policy and global health

## WIRAC Case Heard Before Supreme Court in Suit Defending DACA

**On November 11, 2019**, the U.S. Supreme Court heard arguments in a case brought by the Worker and Immigrant Rights Advocacy Clinic (WIRAC) and co-counsel, along with other related cases, challenging the Trump Administration's rescission of the Deferred Action for Childhood Arrivals (DACA) program. The case, which could affect more than 700,000 individuals enrolled in the DACA program, alleges that the government failed to abide by basic principles of federal administrative law when it terminated the program.

"It is high time that the Supreme Court considered the enormous cost that the rescission of DACA would inflict upon individuals with DACA, their families, their workplaces, and their communities," said Ramis Wadood '21, law student intern in WIRAC at Yale Law School. "The government has consistently sought to evade accountability for its arbitrary and capricious decision to terminate DACA. We hope that the Court will hold this administration to account."

*Batalla Vidal v. McAleenan*, the first lawsuit that sought to challenge the termination of DACA, was brought by six New York DACA recipients and the

advocacy organization Make the Road New York. WIRAC and co-counsel secured the first national injunction to halt the termination of the program in 2018. In June 2019, the Supreme Court granted certiorari in *Batalla Vidal* and other related cases, and consolidated them. At issue in the case is whether the government's justification for terminating DACA rested on an erroneous legal conclusion or, if not, otherwise complied with the Administrative Procedure Act.

"By terminating DACA, President Trump has deliberately upended the lives of hundreds of thousands of young people. His administration chooses to hide behind a poorly reasoned, inadequately explained legal determination. That is a violation of this country's administrative law and cannot stand," said Camila Bustos '21, law student intern in WIRAC at Yale Law School.

For now, injunctions from three U.S. district courts keep DACA in place for current recipients, allowing them to renew their protections under the program. The *Batalla Vidal* plaintiffs are represented by WIRAC, the National Immigration Law Center, and Make the Road New York.

## SFALP Students Assist in Blocking ‘Public Charge’ Rule

**Students from the San Francisco** Affirmative Litigation Project (SFALP) assisted in securing a major ruling with nationwide ramifications for immigrant families.

On October 11, 2019, a federal judge granted an injunction blocking a newly revised “public charge” rule from being applied to residents in California, Maine, Pennsylvania, Oregon, and the District of Columbia. The City and County of San Francisco and County of Santa Clara jointly filed the first case this summer seeking to block the new rule with a motion for preliminary injunction to stop the rule from taking effect. In conjunction with orders issued by a federal judge in New York in separate cases brought by New York State and others, as well as a nationwide injunction issued by a federal court in Washington, the rule has been blocked from taking effect nationwide.

For decades, “public charge” has meant an individual who was “primarily dependent” on the government for survival. A public charge has not meant someone who merely receives some publicly funded, supplemental benefits.

Once the case was filed, attorneys worked around the clock on an expedited briefing schedule, backed by a small army of SFALP students who operated behind the scenes to craft legal arguments, comb through hundreds of pages of legislative history, and brainstorm questions the judge might ask at oral argument.

Rewriting nearly 140 years of legal precedent, the new rule, without authorization from Congress or the reasoned analysis required by statute, unlawfully eliminates the “primarily dependent” requirement and broadens the benefits considered to determine if someone is a public charge. It adds in health benefits like Medicaid and food stamps in an amount as low as 50 cents a day, according to the lawsuit.

## SFALP Helps Block ‘Conscience Rule’ Nationwide

**With help from SFALP**, San Francisco took the Trump administration to court over the so-called “conscience rule” that would have denied critical medical care to patients. On November 19, 2019, a federal court issued a summary judgment order invalidating the rule nationwide. The lawsuit asserts that the Department of Health and Human Services exceeded its statutory authority by creating the rule and violated the

Administrative Procedure Act, the spending clause, separation of powers principles, and other provisions of the U.S. Constitution. The Judge held that all claims were ripe and all parties had standing, and then proceeded to vacate the rule nationwide on the basis that it violated the Administrative Procedure Act and was “not in accordance with law” because the definitions exceeded the scope of the underlying statutes.

## Appellate Litigation Project Prevails in Third Circuit

**Students in the Law School’s** Appellate Litigation Project (ALP) earned a victory in August for a former prisoner seeking to press Eighth Amendment and First Amendment claims in court.

In a precedential decision issued on August 12, 2019, the U.S. Court of Appeals for the Third Circuit agreed with the ALP and held that “a prisoner exhausts his administrative remedies” — allowing him to pursue judicial action — “as soon as the prison fails to respond to a properly submitted grievance in a timely fashion.”

Paul Shifflett, the plaintiff, sued several doctors and his prison’s health administrator, alleging Eighth Amendment deliberate-indifference and First Amendment retaliation claims. Shifflett suffered a broken jaw after being attacked in prison, and he repeatedly sought medical care and pain relief for his injuries. After unsuccessfully filing grievances within the prison system, Shifflett filed suit in the Eastern District of Pennsylvania. The District Court dismissed Shifflett’s case, finding that he failed to exhaust his administrative remedies within the prison system before filing suit and that his claims lacked merit.

After Shifflett appealed, the Third Circuit appointed the Appellate Litigation Project to represent him. Clinic students Elise Wander ’19, Sebastian Brady ’19, and Alexis Zhang ’20 drafted briefs under the supervision of Visiting Clinical Lecturers Benjamin Daniels and Tadhg Dooley, members of Wiggin and Dana LLP’s Appellate Practice Group. The team argued that the exhaustion requirement did not apply, because the prison’s extended failure to respond to Shifflett’s grievances, despite the time limits prescribed by its own policies, rendered any administrative remedy functionally “unavailable.”

## SFALP Helps Obtain \$305 Million Lead Paint Settlement

**Students in SFALP** helped San Francisco and nine other localities achieve a landmark victory in litigation against lead paint companies. The clinic aided the San Francisco City Attorney and his counterparts across California reach a \$305 million settlement with the corporations involved.



## Ludwig Center Report Advocates for Accessible Banking Features

On November 6, 2019, the Ludwig Center for Community and Economic Development at Yale Law School, together with the Program for Recovery and Community Health at the Yale Department of Psychiatry and the Connecticut Mental Health Center Foundation, Inc., presented a report, “Banking for All: Why Financial Institutions Need to Offer Supportive Banking Features,” to an audience of bankers, mental health advocates,

consumer advocates, and legal aid attorneys. Brittany Farr ’19 and Brian Cash M. Arch. ’19, both alumni of the Community and Economic Development Clinic, and Annie Harper of the Yale School of Medicine coauthored the report.

The Banking for All report proposes three banking features that can make banking more accessible: customized alerts; self-imposed spending limits; and third-party view-only account access.



## ACLU, Law Clinic Secure Major Victory in Education Rights Case

Over the summer, the ACLU Foundation of Southern California announced a major class action settlement in an education rights case supported by the Yale Law School Education Adequacy Project (EAP) Clinic, ending a practice in which routine misbehavior in school put children in a diversion program similar to criminal probation.

In collaboration with the ACLU, the EAP Clinic participated in the case at its inception, including pre-litigation research and analysis, legal drafting, and litigation strategy.

“Children deserve to be inspired and empowered in our public schools — not handcuffed and criminalized,” said Matt Nguyen ’19, who is an alumnus of the EAP Clinic. “Today’s landmark victory represents a crucial step in dismantling the school-to-prison pipeline and in building a more equitable future for kids across California.”

“Creating learning environments conducive to the success of all California children is essential,” said Brandon Levin ’21, who is an alumnus of the EAP Clinic. “The clinic is fortunate to have been able to contribute to this effort.”

Nguyen and Levin, both Southern California natives, were principal architects of the ACLU-EAP partnership. Their collaboration with Torres-Guillén brought the EAP Clinic’s pro bono consultancy to ACLU litigation. Other EAP members who worked on this matter include co-directors Lydia Fuller ’19 and Sesenu Woldemariam ’19, Arjun Ramamurti ’18, Justin Smallwood ’19, John Gonzalez ’20, Katrin Márquez ’20, and Megan Mumford ’20. Clinical professors David Rosen ’69, Alex Knopp, and Alex Taubes ’15 supervised the EAP effort.

*“Today’s landmark victory represents a crucial step in dismantling the school-to-prison pipeline and in building a more equitable future for kids across California.”*

MATT NGUYEN ’19



U.S. Senator Richard Blumenthal '73, attorney Diana Blank '13, and Immigrant Rights Clinic client Sujitno Sajuti spoke at a press conference on May 31, 2019.

## Immigrant Rights Clinic Secures Deferred Action for Client

**The Legal Assistance** Immigrant Rights Clinic — a partnership between Yale Law School and the New Haven Legal Assistance Association — won a major victory in May when its client secured deportation protections. Sujitno Sajuti, who came to the United States to pursue an education in 1989, had spent 19 months in sanctuary at the Unitarian Universalist Church in Meriden, Connecticut, while the clinic worked to secure a U Visa application on his behalf.

Following the September 11 attacks, Sajuti was one of the thousands of Muslim and Arab immigrants required to register with the government as part of the National Security Entry-Exit Registration System (NSEERS) program. When he reported for registration, he was interrogated by immigration officials and denied his right to an attorney. Sajuti's participation in that program led directly to his deportation proceedings.

"While this is a major cause for celebration for Mr. Sajuti," said Alaa Chaker '20, a student on the legal team, "his story remains an all too common one for many immigrants in this country who fall through the cracks of a complex legal system with limited access to affordable, quality legal representation."

## Judge Sides with Ethics Bureau

**A federal appeals court** agreed with the Ethics Bureau at Yale that the military judge in the USS Cole bombing case acted improperly, ruling that years of proceedings under that judge must be thrown out.

At issue was the judge on the case against Abd Rahim Hussein Muhammed Al-Nashiri, the alleged mastermind of the deadly attack of the U.S. warship in 2000 and a Guantanamo detainee. Colonel Vance Spath presided over the case while secretly pursuing a job as an immigration judge with the Department of Justice. The Ethics Bureau's amicus brief argued that Spath had a conflict of interest because he was seeking the job while regularly hearing from the department's lawyers in court. Professional conduct rules prohibit judges from presiding over cases involving their potential employers, even if it only creates the appearance of a conflict. Moreover, the bureau argued, Spath had a particular financial interest in convicting Al-Nashiri because former Attorney General Jeff Sessions, who led the Department of Justice at the time, had publicly

***"The D.C. Circuit's decision ... underscores that judges may not take lightly the duty to recuse — an obligation that protects the due process rights of litigants and safeguards the legitimacy of the courts."***

PAUL SHORTELL '20

called for Al-Nashiri's conviction. Under these conditions, according to the bureau, Spath violated ethics rules and deprived Al-Nashiri of due process of law.

The court sided with the Ethics Bureau and Al-Nashiri, granting his petition on April 16 and vacating all of the orders Spath issued in the case since applying for the immigration judge job in 2015. Spath stopped presiding over the case when he got the new job last year.

"The D.C. Circuit's decision ... underscores that judges may not take lightly the duty to recuse — an obligation that protects the due process rights of litigants and safeguards the legitimacy of the courts," said Paul Shortell '20, who wrote the brief with Elise Grifka Wander '19.

## Housing Clinic Scores Connecticut Supreme Court Win for Mortgage Borrowers

**The Housing Clinic scored a victory** for homeowners in *U.S. Bank v. Blowers* when the Connecticut Supreme Court broadened what sort of bank misconduct mortgage borrowers can raise when defending against a foreclosure action.

“In its decision, the Connecticut Supreme Court said, for the first time definitively at the appellate level, that all your dealings with your mortgage company, if they’re related at all to the foreclosure, are fair game for defenses and counterclaims,” said Visiting Clinical Lecturer in Law Jeffrey Gentes, who is also a Managing Attorney at the Connecticut Fair Housing Center.

In a separate case, the Connecticut Supreme Court also cited a brief written by the Housing Clinic when it ruled that landlords may not include “extraneous and irrelevant charges” in eviction paperwork, affirming that tenants of subsidized housing have a right to know how much they must pay to keep their homes.

In *Presidential Village, LLC v. Perkins*, the court ruled that landlords seeking to evict tenants of subsidized housing for nonpayment of rent can only list the amount of back rent owed, not legal or other fees, in notices to tenants. Yale Law School’s Jerome N. Frank Legal Services Organization, which includes the Housing Clinic, led five other legal services organizations to file an amicus brief in support of the tenant.

Students contributing to the brief were Mark Andriola ’19, Colin Antaya ’19, Bethany Hill ’18, James Horner ’19, Nathan Leys ’20, and Jesse Williams ’20.

## Federal Court Rejects Motion to Dismiss in Veterans Clinic Class Action

**On November 7, 2019, a federal judge** denied the Secretary of the Navy’s request to dismiss a nationwide class action lawsuit on behalf of thousands of Iraq and Afghanistan Navy and Marine Corps veterans. These veterans, who received less-than-Honorable discharges, have symptoms of service-connected post-traumatic stress disorder (PTSD), traumatic brain injury, or other mental health conditions. In addition to denying the government’s motion, Senior Judge Charles S. Haight, Jr. of the District of Connecticut ordered the case to proceed to discovery. He also directed the Navy to reconsider the requests to upgrade to Honorable the discharge characterizations of plaintiff Tyson Manker and of John Doe, a member of organizational plaintiff National Veterans Council for Legal Redress (NVCLR).

In March 2018, Manker, a veteran of the 2003 invasion of Iraq, and NVCLR filed a federal class action lawsuit on behalf of former Marines and sailors with less-than-Honorable (“bad paper”) discharges. The lawsuit seeks to ensure the fair treatment of veterans when they apply to have their service characterizations changed.

The plaintiffs in this case are represented jointly by the Yale Law School Veterans Legal Services Clinic and Jenner & Block LLP.

## DoD Ordered to Turn Over Documents on Military Sexual Assault

**On July 12, 2019, the U.S. District Court in Connecticut** rejected multiple Defense Department arguments and ordered the government to disclose key documents related to bias in the military justice system, in a lawsuit brought by Protect our Defenders and the Connecticut Veterans Legal Center. The plaintiffs are represented by the Veterans Legal Services Clinic at the Law School.

The litigation sought to compel the Department of Defense (DoD) to release records related to gender and racial disparities within the military justice system and the military record correction boards’ handling of cases involving sexual assault and harassment.

**“The Court’s decision today is another step towards justice for veterans who served their country and came home only to face daunting hurdles in seeking care for the wounds of war.”**

SAMANTHA PELTZ ’20

## ***MFIA Launches Journalism Support Network, Challenges Drone Law, and Helps Unseal Court Opinion***

**Among its recent activities** supporting journalism and newsgatherers, the Law School's Media Freedom and Information Access Clinic (MFIA) has launched a new press freedom initiative and is representing journalists in two First Amendment matters.

### **Free Expression Legal Network**

**MFIA and the Reporters Committee** for Freedom of the Press announced in September the launch of the Free Expression Legal Network (FELN), a coalition of law school clinicians and academic non-clinicians who provide pro bono legal support for public interest journalism.

At its launch, FELN includes 22 law school clinics that provide students hands-on experience representing journalists and documentary filmmakers, among others. The network also includes two dozen law professors who frequently write and research in the areas of free expression, media law, and government transparency.

"FELN will allow new clinics to lean on the expertise of more established programs, while helping members collaborate on projects and defend the constitutional rights of free speech and a free press," said David A. Schulz '78, co-director of MFIA and co-chair of the FELN steering committee. "The network will strive to be an integral element in the continued protection of an informed citizenry and the free flow of information that is essential to a government accountable to the people."

### **Texas Drone Law**

**MFIA represents the National Press Photographers Association, the Texas Press Association, and an independent journalist** in a lawsuit filed on September 26, 2019, challenging a Texas law that makes it a crime for journalists and others to use drones for newsgathering and other similar activities.

Texas's drone law — Texas Government Code Chapter 423 — criminalizes the use of drones to capture images of a person or privately-owned real property and imposes civil penalties on journalists for their use, regardless of where the drone is located.

The suit alleges that the law violates the First Amendment because it is a restriction on speech that is not narrowly tailored in furtherance of a substantial governmental interest. The suit also argues that the law violates the Supremacy Clause because it infringes upon the FAA's exclusive primacy over national airspace. The real purpose of the law, the suit argues, is

to suppress news coverage of potentially dangerous or embarrassing conditions at these sites of public interest. This includes, for example, the negative environmental impacts of some oil, gas, and chemical manufacturing facilities.

### **Stand Against 'Secret Law' Unseals Court Opinion**

**MFIA has prevailed** in an important skirmish in the ongoing battle against "secret law."

Acting on behalf of *New York Times* national security reporter Charlie Savage '03 MSL, MFIA convinced the United States Court of Appeals in Washington, D.C., to make public previously sealed portions of an opinion issued last year.

The issue involved the classified portions of a May 2018 judicial opinion in *Doe v. Mattis* that the court sealed from public inspection. The redactions were so extensive that it was impossible to determine the court's basis for rejecting the government's theories about executive branch power in the case. MFIA argued that providing a ruling while withholding the court's legal reasoning violates the public's First Amendment right of access to judicial records.

The reliance on redactions to remove classified facts created a form of secret law because it concealed the legal rule the court used to determine their reasoning in the case, according to MFIA legal fellow Charles Crain.

Savage credited "the vision and hard work of the MFIA clinic at Yale Law School" with this success in the fight against secret law.

***“The very notion of ‘Secret Law’ is repugnant to our constitutional form of government and is prohibited by the First Amendment.”***

MFIA LEGAL FELLOW CHARLES CRAIN



## Gruber Rule of Law Clinic Works on 2020 Census, Prison Gerrymandering, and DACA

### 2020 Census

The Peter Gruber Rule of Law Clinic continued its work toward a fair 2020 census. The Clinic and the law firm of Jenner & Block represented the Center for Popular Democracy Action (CPD Action) and the City of Newburgh, NY to file a lawsuit on November 26, 2019, in federal court challenging five structural deficiencies in the U.S. Census Bureau's final operational plans for the 2020 Census.

"The Census Bureau's five design decisions challenged in this lawsuit each violate the Constitution's requirement that the government conduct an 'actual enumeration,' as well as statutory prohibitions on arbitrary and capricious action by federal agencies," said Geng Ngarmboonanant '21, a law student intern in the Clinic. "The stakes are high for the communities who need political representation and federal funding the most."

### Prison Gerrymandering

The Clinic helped the NAACP win an important ruling in December that allows its federal suit *NAACP et al. v. Merrill* challenging Connecticut's discriminatory practice of counting incarcerated people where they are imprisoned, rather than in their home districts, to proceed. This marks the first time any federal



Professor Michael J. Wishnie '93; Bradford Berry '88, NAACP General Counsel; Ben Alter '18; Jeremy Creelan '96; and Georgia Travers '21 at the NAACP national convention in July



Members of the Peter Gruber Rule of Law Clinic and co-counsel outside the Second Circuit during the day of arguments for the prison gerrymandering case

appeals court has held that plaintiffs alleging such a practice — known as "prison gerrymandering" — can move forward.

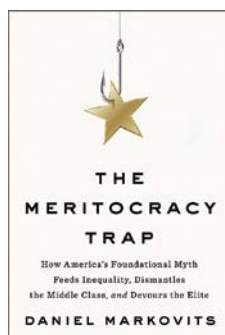
### Amicus Brief on DACA

In October, the Clinic filed an amicus brief on behalf of a bipartisan group of 51 former national security officials in the challenge to the Trump Administration's rescission of the Deferred Action for Childhood Arrivals ("DACA") program, which is currently pending before the Supreme Court.

The brief argues that the current administration's immigration enforcement rationale for its decision to rescind DACA is not based on any factual evidence, and did not undergo standard agency processes for determining policy. It also argues that available evidence indicates that rescinding DACA will actually do substantial harm to the country's national security and foreign policy.

### Foot Soldier in the Sands Award

The Clinic's work was recognized with an award from the NAACP. It received the Foot Soldier in the Sands Award for representing the organization in lawsuits pressing for voting rights, equal representation, and a fair and accurate 2020 census. Michael J. Wishnie '93, the William O. Douglas Clinical Professor of Law, accepted the award on July 22 on behalf of the clinic at the NAACP national convention in Detroit. Bradford Berry '88, the NAACP's General Counsel, presented the award at an event at which Stacey Abrams '99 was the keynote speaker. The award, given annually at the national convention by the NAACP's legal department, recognizes attorneys "who have gone above and beyond the call of duty," on behalf of the organization and its civil rights agenda through pro-bono contributions of legal expertise.



Daniel Markovits  
**The Meritocracy Trap:  
 How America's Foundational  
 Myth Feeds Inequality,  
 Dismantles the Middle Class,  
 and Devours the Elite**  
 Penguin Press, 2019



# The Gilded Cage of Meritocracy

The human cost of the current hierarchy

**Meritocracy** — the idea that a person's hard work and abilities determine one's rewards in society — sits at the very center of the American ideal. But meritocracy is a failure, writes Guido Calabresi Professor of Law Daniel Markovits '00 in his book *The Meritocracy Trap: How America's Foundational Myth Feeds Inequality, Dismantles the Middle Class, and Devours the Elite*.

In a time of profound political polarization, the concept of meritocracy continues to be idealized by both sides of the political spectrum. It promises equality and opportunity by opening elite status to everyone based on their talents and ambitions. But Markovits argues that meritocracy no longer operates as we think it does. In his book, Markovits explains how rising inequality, class conflict, discrimination, and social and political dysfunction are all the end product of our current beliefs about meritocracy.

*These divisions, Markovits says, sow discord that has led to our divided political climate. As the current system hastens inequality, “it drives the middle class to resent the establishment and seduce the elite to cling to the corrupt prerogatives of caste.”*

Meritocracy fails because it both oppresses the middle class and hurts the elite, he writes. Most of all, the differences in the way the elite educate their children affects how hugely disadvantaged children in lower income brackets are compared to their richer counterparts. Middle-class children cannot afford the expense of an elite education and face discrimination in the labor market without one. Rich children enter a grueling and competitive education regimen from a young age, resulting in record high rates of depression and anxiety in young adults. Once adults in the labor force, they suffer burnout from the pace and pressures of an elite workplace.

These divisions, Markovits says, sow discord that has led to our divided political climate. As the current system hastens inequality, “it drives the middle class to resent the establishment and seduce the elite to cling to the corrupt prerogatives of caste.”

To address the meritocracy trap, Markovits advocates for reforms to both education and work.

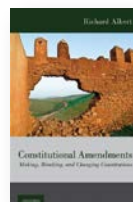
More open and inclusive education and less competitive admissions policies would increase social mobility and opportunity. Returning mid-skilled labor to the center of the economy through changing regressive tax policies and enacting reforms to encourage employers to create mid-skilled jobs, for example, could “reestablish the middle class in its central role in economic and social life.”

But reforming the current system will not come easily or quickly, Markovits explains.

“The meritocracy trap was constructed over generations and will take generations to dismantle,” he writes. Such changes, if enacted together and working over time, could help shore up the middle class and reduce societal divisions. “A more equal social and economic order would therefore make everyone — both the rich and the rest — better off,” Markovits says.

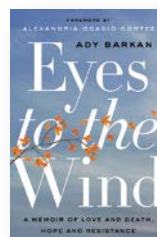
## SURVEY OF BOOKS

Here’s just a sampling of the many other books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. Please contact us: [lawreport@yale.edu](mailto:lawreport@yale.edu).



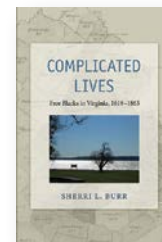
Richard Albert  
**Constitutional Amendments:  
Making, Breaking,  
and Changing Constitutions**  
*Oxford University Press, 2019*

Albert ’03 offers a blend of theory and practice to answer three important questions: What is an amendment, what are amendments for, and how should constitutional designers build the procedures of constitutional change? The book provides a blueprint for building and improving the rules of constitutional change and a roadmap to navigate the intellectual universe of amendment.



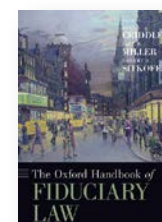
Ady Barkan  
**Eyes to the Wind:  
A Memoir of Love and Death,  
Hope and Resistance**  
*Atria Books, 2019*

This powerful memoir by Barkan ’10 traces his battle with ALS and rise as a prominent figure in the progressive movement. Barkan finished this memoir, a memento for his son Carl, using Eyegaze technology that lets him use a tablet computer with only his power of sight. This story of hope and resistance is Barkan’s final message about the power of progressive change in the bleakest moments.



Sherri Burr  
**Complicated Lives:  
Free Blacks in Virginia,  
1619–1865**  
*Carolina Academic Press, 2019*

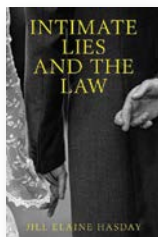
Through her research, Burr ’85 disproves the assumption that all Blacks in the South before the Civil War were slaves. In fact, many were indentured servants. Burr’s book looks at the lives of Free Blacks through the lens of her own ancestors and others.



Evan J. Criddle, Paul B. Miller,  
and Robert H. Sitkoff, eds.  
**The Oxford Handbook  
of Fiduciary Law**  
*Oxford University Press, 2019*

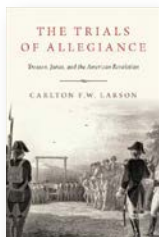
Criddle ’03 and co-editors have curated a collection of essays that cover a range of topics centered on fiduciary law. The book examines 18 different fields of law, including agency law, trust law, corporate law, pension law, bankruptcy law, family law, employment law, legal representation, health care, and international law.

## SURVEY OF BOOKS



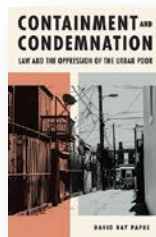
Jill Elaine Hasday  
**Intimate Lies and the Law**  
*Oxford University Press, 2019*

Hasday '97 examines deception in intimate relationships and the overlooked but far-reaching body of laws that govern this duplicity. She argues the law has placed too much emphasis on protecting intimate deceivers and that it can do more to recognize, prevent, and redress the injuries intimate deception can inflict.



Carlton F.W. Larson  
**The Trials of Allegiance: Treason, Juries, and the American Revolution**  
*Oxford University Press, 2019*

Larson '00 analyzes the American Revolution from the perspective of the law of treason, connecting the topic to the power to detain, the authority of military commissions, and the composition of juries. The author drew from extensive archival research in Pennsylvania.



David Ray Papke  
**Containment and Condemnation: Law and the Oppression of the Urban Poor**  
*Michigan State University Press, 2019*

This book examines how law works for, against, and with regard to the urban poor. Papke '73 argues that legal proceedings and institutions can create, expand, and perpetuate contemporary urban poverty.



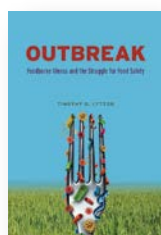
Jennifer Prah Ruger  
**Global Health Justice and Governance**  
*Oxford University Press, 2018*

Prah Ruger '11 MSL presents a new theory of global health justice and governance. The book reveals gaps in existing attempts to address health issues through in-depth analysis of current theories and presents a vision for a new global health architecture.



Brian C. Kalt  
**Unable: The Law, Politics, and Limits of Section 4 of the Twenty-Fifth Amendment**  
*Oxford University Press, 2019*

Kalt '97 provides an in-depth explanation of the 25th Amendment, which has become a frequent topic of public discussion. Dispelling inaccuracies, the book offers a clear understanding of presidential incapacity under the Amendment. Kalt provides hypothetical scenarios and their outcomes.



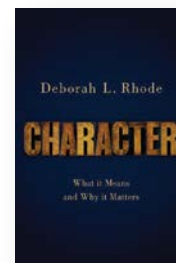
Timothy D. Lytton  
**Outbreak: Foodborne Illness and the Struggle for Food Safety**  
*University of Chicago Press, 2019*

Lytton '91 analyzes the U.S. food system through examining efforts to reduce foodborne illness. Each chapter explores a different facet of this system: its origins, the influence of media on public perception and policy, a select history of government regulation, and enduring problems with managing food safety. Lytton offers practical reforms to strengthen the food safety system's capacity to learn from mistakes and identify cost-effective food safety efforts capable of producing public health benefits.



Peter Pfister, et al.  
**Eva & Otto: Resistance, Refugees, and Love in the Time of Hitler**  
*Purdue University Press, 2019*

Pfister '73 and fellow family members drew from diaries and letters to tell this true story of Eva Lewinski Pfister (1910–1991) and Otto Pfister (1900–1985). The pair worked with a German political group that resisted and fought against Hitler in Germany before 1933 and then in exile in Paris before the German invasion of France in May 1940. As revealed in recently declassified records, Eva and Otto later worked with the U.S. Office of Strategic Services (OSS) in support of the Allied war effort.



Deborah L. Rhode  
**Character: What it Means and Why it Matters**  
*Oxford University Press, 2019*

Rhode '77 provides a comprehensive account of character in the legal field. Drawing on portraits of individuals from Mother Teresa to Thurgood Marshall, the author argues for the importance of fostering good character.

## SPOTLIGHT

## Project or System?

Paul W. Kahn reconceptualizes the nature of legal order

In his new book, *Origins of Order: Project and System in the American Legal Imagination*, Robert W. Winner Professor of Law and the Humanities Paul W. Kahn '80 examines how two different concepts of order—project and system—shape the American social imagination.



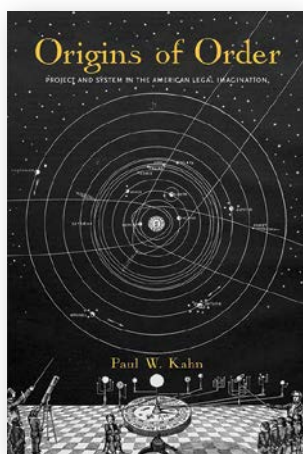
In a project, order is the result of an intentional act; in a system, order is immanent. In the former, order is constructed according to a plan or idea; in the latter, order is discovered in the world. These competing perspectives echo the great theological debates of the medieval era about the nature of God's relationship to the world. Is the order of the world to be accounted for by God's intention or does the world display an immanent order of reason? By 1776, these concepts of project and system were being applied to social phenomena.

That was the year of the Declaration of Independence, which declared politics to be a project of the people. It was also the year of Adam Smith's *Wealth of Nations*, which described the economy as a system following an immanent order that was the result of no one's intention. From then on, scholars and judges have been arguing whether society should be approached as project or system.

Kahn uses these two concepts to explore the American legal tradition. He shows that the revolutionary tradition of project carries forward in American law through the middle of the 19th century. The concept of project provides an organizing idea for the emerging constitutionalism and the practice of judicial review. Around the time of the Civil War, however, the concept of system becomes the organizing principle

of the legal order. The written constitution — the product of a project — is displaced from attention by the “unwritten constitution,” which is the spontaneous order that develops as the law of a free people. “System informs the growth of the social sciences and animates the birth of the new American law school under Christopher Langdell at Harvard,” Kahn said. “By the end of the century, we lose the idea that the Revolutionary project represented a break with British law, as constitutionalism and common law converge as similar systems.”

Kahn's philosophical inquiry into project and system suggests a range of continuing investigations into contemporary legal issues, including the nature of international law, the reasons for jurisprudential disagreement, the nature of criminal responsibility, the competition between interpretive approaches, and the grounds of the regulatory state.



Paul W. Kahn  
**Origins of Order:  
Project and System in  
the American Legal  
Imagination**

Yale University Press, 2019

## American Higher Education

A discussion of the role of universities in a rapidly changing nation

**Sterling Professor of Law Anthony T. Kronman '75** argues that the feverish egalitarianism gripping college campuses today is out of place in institutions devoted to the promotion of excellence and the education of young people for leading roles in our vibrant democracy.



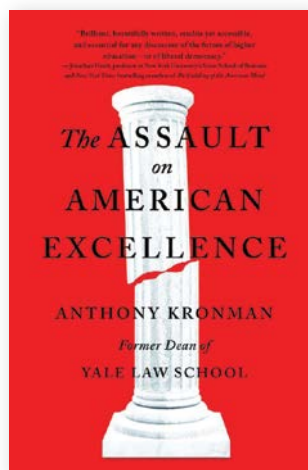
Kronman is no stranger to recent controversies on American campuses. In his time at Yale, he has watched students march to protest the names of campus buildings and seen colleagues resign over emails about Halloween costumes. But where many see only the suppression of free speech, the coddling of students, and the drive to bury the imperfect parts of our past, Kronman recognizes in these on-campus clashes a deeper threat to our democracy.

As Kronman argues in *The Assault on American Excellence*, the founders of our nation understood that in order for this country to have a robust democratic government, its citizens must be resilient, independent minded, and able to win arguments not on the basis of emotion but reason instead.

Kronman examines today's campus debates in the light of America's historic values, drawing on figures like Alexis de Tocqueville and John Adams to show how these modern controversies threaten the best of our intellectual traditions. His tone is warm and optimistic, that of a humanist and a lover of the humanities who is passionate about educating students

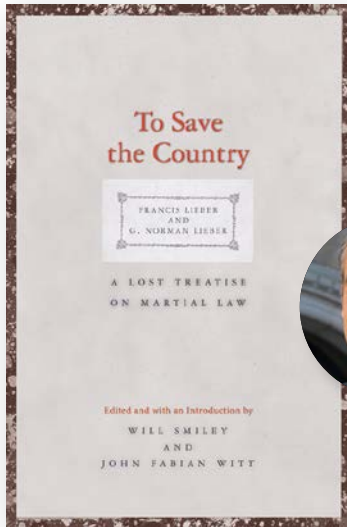
capable of living up to the demanding requirements of our fractious and robust democracy.

*The Assault on American Excellence* makes the argument that to produce the leaders our democracy needs, our colleges and universities must respect their historical commitment to the advancement of excellence and the pursuit of truth. In remaining faithful to this responsibility, they serve themselves and the larger society as well.



Anthony T. Kronman  
**The Assault on  
American Excellence**

Free Press, 2019



John Fabian Witt and  
Will Smiley, eds.

**To Save the Country:  
A Lost Treatise  
on Martial Law**

*Yale University Press, 2019*



## Rediscovering a Lost Treatise on Martial Law

Insight into the Civil War

For a century, a manuscript by Francis Lieber, political theorist and legal adviser to Abraham Lincoln, lay lost in the recesses of the National Archives — until it was discovered by Allen H. Duffy Class of 1960 Professor of Law John Fabian Witt '99 and Will Smiley '14.

Drafted by Lieber and his son, G. Norman Lieber, the manuscript grapples with the use of emergency powers during the Civil War and with the role of law and emergency constitutionalism more generally. Smiley and Witt also found a previously unknown fragmentary edition of General Orders No. 100,

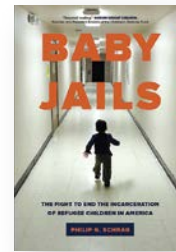
Lincoln's 1863 instruction to Union soldiers in 1863 dictating conduct during wartime, annotated in Francis Lieber's hand.

The two manuscripts are collected in a new book edited by Smiley and Witt, *To Save the Country: A Lost Treatise on Martial Law*.

The manuscript found by Smiley and Witt was started by Francis Lieber and expanded after the war, but remained disorganized after his death in 1872, "more a collection of arguments and insights than a coherent text," according to the editors. Lieber's son Norman, who served as Judge Advocate General and as the chair of the law department at West Point, worked on it further. At some point, Norman put away the manuscript. He died in 1923. The manuscript ended up in the papers of the Judge Advocate General.

"The Liebers' Civil War experience helped them see how the constitutional norms of the republic...would shape and condition the ways in which emergencies play out in constitutional democracies," write Smiley and Witt in their introduction to the Liebers' work.

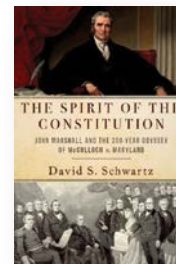
According to Smiley and Witt, the newly found manuscripts "substantially revise the tradition of American thinking about moments of emergency." Influenced by John Locke, the Liebers argue in their writing on martial law and emergencies for a continuation of the fierce mandate set out in Article 5 of General Orders No. 100: "To save the country is paramount to all other considerations." But the manuscripts add a powerful constraint: the public reason of the country's constitutional order. To violate the basic reason of the republic was not to save the country at all, but to destroy it. The result was a fierce and distinctive liberalism that the Liebers believed had proven itself up to the task of governing in a time of grave crisis.



Philip G. Schrag  
**Baby Jails:  
The Fight to End  
the Incarceration of  
Refugee Children**

*University of California Press, 2020*

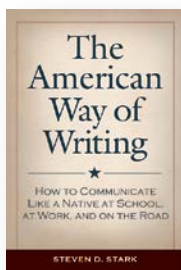
*Baby Jails* is a 30-year history of the legal and political struggle of immigrant and refugee advocates resisting the detention of migrant children. Schrag '67, the director of Georgetown Law's asylum law clinic, gives insight into the troubling legacy of jailing and separating families and children that began with the Reagan administration. Following the historical exposé, he provides recommendations for reform.



David S. Schwartz  
**The Spirit of  
the Constitution:  
John Marshall and  
the 200-Year Odyssey of  
*McCulloch v. Maryland***

*Oxford University Press, 2019*

Although *McCulloch's* doctrine of implied powers has long been considered foundational in questions of judicial supremacy and federalism, Schwartz '86 shows how *McCulloch* has been interpreted, or ignored, to fit the varying spirits of the Constitution. His analysis of the 200-year legacy of the case reaffirms the case's importance in constitutional law but unveils the ambiguity of the original position taken by the Marshall Court.



Steven D. Stark  
**The American  
 Way of Writing**  
*Praeger, 2019*

Stark '79 provides a roadmap for non-native English speakers who want to become better communicators in the American context. He explores how American English is shaped by the distinct culture and geography of the United States and also offers a window into the use of English in different professional contexts.

Joseph Amiel '62  
**Fearsome Destiny:  
 Brothers and Sisters**  
*Lambent Publishing LLC, 2019*

Michael Bennet '93  
**The Land of Flickering Lights:  
 Restoring America in an  
 Age of Broken Politics**  
*Atlantic Monthly Press, 2019*

Alan Dershowitz '62  
**Guilt by Association:  
 The Challenge of  
 Proving Innocence  
 in the Age of #MeToo**  
*Hot Books, 2019*

Reginald Dwayne Betts '16  
**Felon: Poems**  
*W.W. Norton & Company, 2019*

Ronan Farrow '09  
**Catch and Kill:  
 Lies, Spies, and a Conspiracy  
 to Protect Predators**  
*Little, Brown and Company, 2019*

## ALSO OF NOTE

Jonathan Greenberg '89 MSL  
**America 2034:  
 Utopia Rising**  
*Informing to Empower Media, 2019*

Richard L. Kaplan '76  
**Elder Law in a Nutshell,  
 7th ed.**  
*West Academic, 2019*

Uwe Kischel '93 LLM  
**Comparative Law**  
*Oxford University Press, 2019*

Jerry L. Mashaw  
**Reasoned Administration  
 and Democratic Legitimacy:  
 How Administrative Law  
 Supports Democratic  
 Government**  
*Cambridge University Press, 2018*

Beverly Parsons,  
 Lovely Dhillon '90,  
 Matt Keene, eds.  
**Visionary Evaluation for  
 a Sustainable, Equitable Future**  
*Information Age Publishing, 2019*

Lisa Schenck '98 LLM, '07 JSD  
**Modern Military Justice:  
 Cases and Materials (3rd ed.)**  
*West Academic, 2019*

Alexander Shapiro '91  
**The Consolations of History:  
 Themes of Progress and  
 Potential in Richard Wagner's  
 Götterdämmerung**  
*Routledge, 2019*

Gus Speth '69  
**What We Have Instead**  
*Shires Press, 2019*

Allan Topol '65  
**The Washington Operator**  
*Independent, 2019*

Kim Treiger-Bar-Am '89  
**Positive Freedom and the Law**  
*Routledge, 2019*

Hardy Wieting Jr. '68  
**30 Birds**  
*C-G-L Press, 2019*



Daniel C. Esty, ed.  
**A Better Planet:  
 40 Big Ideas for a Sustainable Future**  
*Yale University Press, 2019*

## Bipartisan Solutions to Climate Change



**Hillhouse Professor of Environmental Law and Policy Daniel C. Esty '86** brings together more than 40 leading scholars and practitioners to provide a sweeping sense of new pathways to a sustainable future. Reframing the polarized debate on environmental policy, the book focuses on modernizing the approach to ecological protection through actionable, bipartisan solutions based on analytical research. It systematically reassesses how to balance environmental progress and economic security without losing sight of the imperative to find sustainable solutions to contemporary challenges. Esty and company write to invigorate a spirit of creative thinking and reform by laying the groundwork for big ideas for a sustainable future. They invite readers to reflect on the concepts and join the conversation at [environment.yale.edu/dialogue](http://environment.yale.edu/dialogue).

# STUDENT PRIZES 2018–2019

## Charles G. Albom Prize

Awarded annually to a student who demonstrates excellence in the area of judicial and/or administrative appellate advocacy in connection with a Law School clinical program

**Meghan E. Brooks '19**

**Eli J. Jacobs '19**

**Healy Ko '19**

**Catherine M. Martinez '19**

**Hannah N. Schoen '19**

## Burton H. Brody Prize

Awarded for the best paper on constitutional privacy

**Emma E. McDermott '19**

“An Aristotelian Purpose for Privacy”

## The Joseph A. Chubb Competition Prize

Awarded for excellence in legal draftsmanship

**First Prize: Aaron Z. Roper '19**

Brief for Petitioners, *Box v. Planned Parenthood of Indiana and Kentucky*

**Second Prize: Simon C. Brewer '20**

Brief for the Floyd Abrams Institute for Freedom of Expression as Amicus Curiae in Support of Appellees, *Rucho v. Common Cause*

## Barry S. Cohen Prize

Awarded for the best paper on a subject related to literature and the law

**Peter L. Beck '19**

“Property’s Favorite Metaphor Does Not Work: Problems With the ‘Bundle of Sticks’”

## Felix S. Cohen Prize

Awarded for the best paper on subject relating to legal philosophy

**Arthur Jek-K Lau '19**

“Private Law Proportionality”

**Ela A. Leshem '20**

“Jury Selection as Election: A New Framework for Peremptory Strikes”

## Edgar M. Cullen Prize

Awarded for the best paper by a first-year student

**Matthew C. Quallen '21**

“A Confederacy of Minds: Yale Law School, Sectionalism, and the Civil War”

## Thomas I. Emerson Prize

Awarded for a distinguished paper or project on a subject related to legislation

**Megan N. Mumford '20**

“Mind the Overlap: Coordinating Implicit Overlaps in Agency Jurisdiction”

**Shlomo Klapper '20, Soren J. Schmidt '20,**

**Tor O. Tarantola '20**

“Ordinary Meaning According to Ordinary People”

## Ambrose Gherini Prize

Awarded for the best paper in the field of International Law, either public or private

**Johanna Aleria P. Lorenzo '19 JSD**

“International Financial Institutions and International Sustainable Development Law: The Role of Safeguard Systems and Non-State Actors”

## Margaret Gruter Prize

Awarded for the best paper on how ethology, biology, and related behavior sciences may deepen our understanding of law

**Emma E. McDermott '19**

“Sexual Racism: Desire, Malleability, and Morality”

## Jerome Sayles Hess Prize for International Law

Awarded for the student who demonstrates excellence in the area of international law

**Shikha Garg '19**

**Srinath Reddy Kethireddy '19**

## Quintin Johnstone Prize in Real Property Law, Established by the CATIC Foundation

Awarded to a second- or third-year student at the Law School who has demonstrated excellence in the area of real property law

**Peter L. Damrosch '20**

“Public Rights of First Refusal”

## Florence M. Kelly '37 Family Law Prize

Awarded to the student who demonstrates exceptional interest or achievement in the area of family law

**Andrew C. DeGuglielmo '21**

“They Are Not Your Children: In Defense of the Indian Child Welfare Act”

## William T. Ketcham, Jr. Prize

Awarded for the best paper in the field of private international law

**Gershon Hasin '19 LL.M.**

“The Developing Global Order for Space Resources”

## Khosla Memorial Fund for Human Dignity Prize

Awarded to the student who best demonstrates an active engagement in advancing the values of human dignity in the international arena

**Dylan R. Kolhoff '19**

**Carrie M. O'Connor '19**

## Raphael Lemkin Prize

Awarded for a paper in the field of international human rights

**Simon K. Zhen '19**

“Combating Censorship in China: Forcing China’s Hand Through the WTO and Collective Action”

## Stephen J. Massey Prize

Awarded to the student who best exemplifies, in work on behalf of clients and in other community service, the values of the Jerome N. Frank Legal Services Organization at Yale Law School

**Dana V. Bolger '19**

**Amy Bridge Hausmann '19**

**Kate A. Logue '19**

**Alyssa J. Peterson '19**

## Judge William E. Miller Prize

Awarded for the best paper concerning the Bill of Rights

**Brian W. McGrail '19**

“The Grayned Remedial Doctrine for Impermissible Classification Statutes”



### C. LaRue Munson Prize

Awarded for excellence in the investigation, preparation, and (where permitted under the Legal Internship Rule) presentation of civil, criminal, or administrative law cases, under a Law School clinical program

**Nicole G. Brambila '19**

**Salil H. Dudani '19**

**Illyana Green '19**

**Jon B. Petkun '19**

**Saul Ramirez '19**

### Joseph Parker Prize

Awarded for the best paper on a subject relating to legal history or Roman law

**Laura F. Savarese '19**

“The Freedmen’s Bureau in Maryland: An Early Experiment in Legal Aid”

**Scott Stern '20**

“The Complexity of Complicity: Incarceration, Eugenic Sterilization, and the League of Women Voters”

### Israel H. Peres Prize

Awarded for the best student Note or Comment appearing in The Yale Law Journal

**Helen E. White '18**

“Making Black Lives Matter: Properly Valuing the Rights of the Marginalized in Constitutional Torts”

### Edward D. Robbins Memorial Prize

Awarded to the best third-year student contribution to a law journal other than The Yale Law Journal

**Matteo Godi '18**

“Administrative Regulation of Arbitration”

### Benjamin Scharps Prize

Awarded for the best paper by a third-year student

**Catherine L. Crooke '19**

“The Duality of Refugeehood: Normalizing the Group Determination of Refugee Status”

### Colby Townsend Prize

Awarded for the best paper by a second-year student

**Scott Stern '20**

“No Greater Agony than Bearing an Untold Story: Uncovering and Understanding Sexual Assault Trials in the Jim Crow South”

### William K.S. Wang Prize

Awarded to recognize superior performance in the introductory corporate law course

**Jeff Gordon '21**

**Jonathan W. Sarnoff '20**

**Simon K. Zhen '19**

### Francis Wayland Prize

Awarded to the student showing greatest proficiency in preparing and presenting a case in negotiation, arbitration, and litigation

**Kendyl A. Clausen '19**

**Chris W. Looney '19**

**David N. Murdter '19**

**Joe N. Nania '19**

**Jeff C. Zalesin '19**

### Judge Ralph K. Winter Prize

Awarded annually to the best student paper written in law and economics.

**Daniel B. Listwa '19**

“Covenanting to Cooperate: Good Faith for the Alternative Entity”

**Zachary J. Lustbader '21**

“Regulating the Market for Markets”

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### BARRISTERS' UNION PRIZES

#### John Fletcher Caskey Prize

For the best presentation of a case on final trial in the Thomas Swan Barristers' Union

**Jordan Alston-Harmon '21**

#### John Currier Gallagher Prize

For the student showing most proficiency in the presentation of a case on final trial in the Thomas Swan Barristers' Union

**Allison Durkin '21**

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### MOOT COURT PRIZES

#### FALL 2018

#### Benjamin N. Cardozo Prize

Awarded for the best brief submitted by a student in Moot Court

**Brian W. McGrail '19**

#### Potter Stewart Prize

Awarded each term to the student team that presents the best overall argument in Moot Court

**Thomas E. Hopson '20** and

**Brian McGrail '19**

### Harlan Fiske Stone Prize

Awarded for the best oral argument by a student in Moot Court

**Brandon H. Thomas '19**

### SPRING 2019

#### A. Leon Higginbotham Prize

Awarded for the best brief submitted by a student in Moot Court (spring semester)

**Kelsey A. Stimson '20**

#### Potter Stewart Prize

Awarded each term to the student team that presents the best overall argument in Moot Court

**Christine C. Smith '19** and

**Zach Fields '20**

#### Thurman Arnold Appellate Competition Prize

Awarded annually for the best student argument in advanced Moot Court competition

**Zach Fields '20**

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### YALE LAW JOURNAL

#### Michael Egger Prize

Awarded on recommendation of the Board of Officers for the best student Note or Comment in The Yale Law Journal on current social problems

**Thomas M. Scott-Railton '18**

“A Legal Sanctuary: How the Religious Freedom Restoration Act Could Protect Sanctuary Churches”

Prize-winning papers have been posted to a digital repository at [digitalcommons.law.yale.edu/ylsspps\\_papers/](https://digitalcommons.law.yale.edu/ylsspps_papers/)

# OUR FACULTY



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# How the Courts Influence Public Schools

Justin Driver is a Professor of Law at Yale Law School

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*Driver, who joined Yale from the University of Chicago Law School, studies constitutional law, constitutional theory, and education law. His debut book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, was published in 2018. *The Schoolhouse Gate* has received acclaim from both popular publications and law reviews across the country. The New York Times called it “indispensable,” and the Washington Post labeled it “masterful.” Berkeley Law Dean Erwin Chemerinsky deemed it “magnificent” in the Michigan Law Review, and the Yale Law Journal declared it “destined to influence the field for years to come.” In addition to being named a Notable Nonfiction Book of the Year by the Washington Post and an Editors’ Choice by the New York Times Book Review, it was a finalist for the American Bar Association’s Silver Gavel Award and was shortlisted for Phi Beta Kappa’s Ralph Waldo Emerson Book Award.*

*Upon Professor Driver’s arrival in New Haven, we sat down with him to discuss *The Schoolhouse Gate*’s contributions to legal scholarship.*

## **Yale Law Report** What are the central aims of *The Schoolhouse Gate*?

**Justin Driver** At its heart, *The Schoolhouse Gate* analyzes the intersection of two vital American institutions: the public school and the Supreme Court. I argue that it is impossible to understand either institution without contemplating the other. In fleshing out this claim, the book provides a panoramic view of students’ constitutional rights — including matters involving freedom of speech, due process, equal protection, cruel and unusual punishment, criminal procedure, free exercise, and the Establishment Clause. After stepping back to take in the wide array of contentious instances where the Court has evaluated students’ rights, it becomes possible to appreciate that the public school is the nation’s most significant site of constitutional interpretation. I seek to reinvigorate the field of education law, and — more broadly — to transform dominant understandings of the Supreme Court’s role in American society.

## **How have the courts changed and influenced public schools?**

One of the book’s primary goals is to demonstrate how the Supreme Court’s education decisions have suc-

cessfully vindicated students’ constitutional rights, even though majorities bitterly opposed those rights being protected. Recovering the Court’s counter-majoritarian capacity pushes against modern scholarly sensibilities, as many distinguished constitutional theorists express profound doubts about both the ability and the wisdom of the Court seeking to safeguard minority rights. Consider two prominent examples of the judiciary successfully swimming against the tide of public opinion. First, in 1969, *Tinker v. Des Moines Independent Community School District* protected student speech in the context of protests against the Vietnam War.



Justin Driver gave a book talk on *The Schoolhouse Gate* at Yale Law School on October 29, 2019.

Writing for the Court, Justice Fortas — in a passage that supplied the title for my book — proclaimed: “It can hardly be argued that...students... shed their constitutional rights...at the schoolhouse gate.” But, in fact, contemporaneous polling data indicated that most Americans thought students should not enjoy free speech rights. Second, in 1982, *Plyler v. Doe* invalidated a Texas measure that sought to exclude unauthorized immigrants from public schools. While Texas was the first state in the nation to adopt such a statute, we know very well today that many other states would have followed suit — had the Court not effectively interred the movement. As a result, many children across the nation have been able to receive an education who otherwise would have been denied one.

page 26 →

For a more detailed listing of faculty scholarship and activities, visit [law.yale.edu/facultynews](http://law.yale.edu/facultynews)

DRIVER (CONTINUED)

→ How the Courts Influence Public Schools (from page 25)  
*Tinker* and *Plyler v. Doe* thus challenged prevailing conceptions, and in so doing shaped current realities. In this sense, education decisions have influenced not only American public schools, but America itself.

**Are there any cases on the horizon that you are following that may have an impact on the landscape of public education?**

There are two major issues that the Supreme Court seems poised to settle that I address in *The Schoolhouse Gate*. First, sooner or later, the Court will decide whether transgender students have the right to use restrooms that are congruent with their gender identities. Although lower courts initially resolved these cases on a statutory basis, lower courts are now considering these claims under the Equal Protection Clause. Second, I hope that the Court will agree to reconsider *Ingraham v. Wright*, its 5-4 decision from 1977 that refused to rein in even egregious inflictions of corporal punishment in schools. Although many people now believe that the practice no longer exists, I am sorry to report that teachers and school administrators continue to strike students with foreign objects in more than 15 states, most prevalently in the deep South. Students are the sole remaining group of people who government officials may hit with impunity. If I have any single ambition for *The Schoolhouse Gate*, I hope it elevates the salience of this archaic practice, and persuades the Court to abolish it.



On Twitter  
**Richmond Law**  
 @URLawSchool  
 September 13, 2019

Prof. James Forman Jr. (@jformanjr) of @YaleLawSch sat down with students from the Criminal Law Society, Black Law Students Association, and the Student Bar Association to explore issues surrounding mass incarceration.

KYSAR

**Kysar Wins Teaching Award**

**Douglas Kysar**, Deputy Dean and Joseph M. Field '55 Professor of Law, was among the winners of Yale School of Management's 2018-19 MBA for Executives Teaching Awards. Kysar is an Adjunct Professor at SOM, where he has taught on climate change. Faculty were honored in each of the MBA for Executives program's three focus areas — healthcare, sustainability, and asset management. Kysar was honored in the sustainability focus area.



**Douglas Kysar**

Kysar said it is especially gratifying to be honored by the program's students, whom he knew to be talented, smart, diverse, and committed. "What I didn't expect was for the students to also be so fun, so compelling, and so downright inspiring," he said. "It was a privilege to work with them."  
 Kysar also received the award in 2017.

BALKIN

**Balkin Receives Funding to Study Digital Public Sphere**

The **John S. and James L. Knight Foundation** announced a commitment of nearly \$50 million in research to better understand how technology is transforming our democracy and the way we receive and engage with information. Amid a growing debate over technology's role in our democracy, these investments will help ensure society is equipped to make evidence-based decisions on how to govern and manage the now-digital public square.



**Jack Balkin**

Jack Balkin, Knight Professor of Constitutional Law and the First Amendment and Director of the Information Society Project at Yale Law School, will receive \$2 million from the Knight Foundation to launch a new ISP initiative. Balkin's Project on Governing the Digital Public Sphere will produce legal and policy recommendations to improve the functioning of the digital public sphere. Looking at external and internal governance, the initiative will study topics from antitrust and privacy to content moderation and digital propaganda.

Knight's investment will fund new, cross-disciplinary research at 11 American universities and research institutions, including the creation of five new centers of study. In addition, Knight has opened a new funding opportunity for policy and legal research addressing major, ongoing debates about the rules that should govern social media and technology companies.

The other Yale recipient is Fiona Scott Morton, the Theodore Nierenberg Professor of Economics, who has received an investment to study competition and antitrust in the digital economy. The funding will support the launch and development of the Thurman Arnold Project at the Yale School of Management.

FORMAN

**Legal Assistance Association Honors James Forman Jr. '92**



**James Forman Jr.**

**James Forman Jr. '92**, the J. Skelly Wright Professor of Law at Yale Law School, was honored by New Haven Legal Assistance Association at its Equal Access to Justice Reception on June 11, 2019. The organization, which exists to provide high quality legal services to individuals and groups who face barriers in obtaining these services, annually recognizes honorees who share its commitment to justice.

FISS

## Professor Fiss Receives Honorary Doctorate from the University of Chile



Sterling Professor Emeritus of Law Owen M. Fiss and University of Chile Rector Ennio Vivaldi at a ceremony honoring Fiss with an honorary doctorate

The University of Chile awarded an honorary doctorate to Sterling Professor Emeritus of Law Owen M. Fiss, recognizing his contributions to human rights in Latin America and to legal scholarship in general. Fiss received the Honoris Causa on June 13, 2019, at the University's Santiago campus in a ceremony attended by students, faculty, and university officials.

University Rector Ennio Vivaldi praised Fiss's work to advance human rights in the aftermath of dictatorships, calling this work invaluable for building democracy in the region. In his introductory comments, University of Chile Law School Dean Pablo Ruiz-Tagle noted the long history of collaboration between Yale Law School and the University of Chile that was spearheaded by Fiss. This collaboration includes the Latin American Linkages student exchange program and SELA (Seminario en Latinoamérica de Teoría Constitucional y Política).

At the conclusion of the ceremony, Fiss delivered the keynote address, "Mill on Free Speech," an examination of John Stuart Mill's 1859 essay "On Liberty." In his talk, Fiss described how Mill defended free speech not simply because it does not cause harm to others — key to the formulation of Mill's principle of individual liberty — but because free speech is necessary to test the worth of one's beliefs.

"Only through free and open discussion can we learn whether our views are true or false," Fiss said. "No one is infallible, and if even after free and open discussion an individual adheres to the same beliefs, that individual will do so with a new appreciation and even firmer conviction of their truth."

LISCOW

## Zachary Liscow and Leah Brooks on Cost of Highway Construction

A paper co-written by Associate Professor of Law Zachary Liscow '15 suggests why Interstate highway construction costs have tripled over time, and the reasons have quickly drawn the attention of observers who follow infrastructure.



Zachary Liscow

The paper "Infrastructure Costs" was co-written with economist Leah Brooks of George Washington University. In the paper, Liscow and Brooks analyze data from the Federal Highway Administration and find that one mile of Interstate highway construction in the 1980s costs three times what it did in the 1960s, adjusted for inflation.

There are two main reasons, the authors conclude. First is the combination of rising incomes and higher house prices. "A richer population may demand more highways, no matter the cost," according to a Brookings Institute summary.

The second explanation is what Liscow and Brooks call citizen voice — a combination of legislative and judicial changes, as well as environmental and homeowner-led movements — that increased the ability of citizens to directly affect government decision making. As a result, environmental reviews required in later years have added time to planning and construction processes. Read the paper at [ylaw.us/386up8g](http://ylaw.us/386up8g)



Harold Hongju Koh

KOH &amp; RESNIK

## Professors Koh, Resnik Sign Amicus Brief in Separation of Powers Case

As part of a group of constitutional scholars, Professors Harold Hongju Koh and Judith Resnik signed an amicus brief in September in federal court arguing that a congressional committee has Article III standing to enforce a subpoena against the executive branch.



Judith Resnik

The brief was filed in a high-profile legal case in U.S. District Court in Washington, D.C., *Committee on Ways & Means v. Treasury Department*. The case centers around whether the House Committee on Ways & Means can subpoena the President's tax returns as part of an investigation.



Professor Tracey Meares (far left) moderated a panel on Approaching Police Violence: A Writers' Conversation in September at Yale as part of the 2019 Windham Campbell Prizes Festival. The panelists were David Chariandy, Raghu Karnad, and Rebecca Solnit.



Susan Rose Ackerman, Henry R. Luce Professor Emeritus of Jurisprudence, participated in an international seminar on June 12-13, 2019 at the Institut de Recerca TransJus of the Universitat de Barcelona on corruption, good governance, and artificial intelligence. She gave the inaugural lecture of the conference, titled "Corruption and Government."

*The Atlantic*

Anne Alstott '87 and Ganesh Sitaraman in "When Millions Can't Afford to Retire, the U.S. Needs a Better Option," July 11, 2019:

"A public option for retirement savings could go a long way toward addressing the retirement crisis in America. Instead of placing risks on individuals and then nudging them to save a few dollars more, the public option would offer universal access to a simple, effective annuity. And it would be a way to help millions of Americans reclaim their retirement years from the anxiety of making ends meet."



Gideon Yaffe giving the Wesley Newcomb Hohfeld Inaugural Lecture

## Q&A Professor Yaffe on Philosophy and Psychology of Criminal Justice

*Gideon Yaffe is Wesley Newcomb Hohfeld Professor of Jurisprudence, Professor of Philosophy, and Professor of Psychology at Yale. His research interests include the philosophy of law, particularly criminal law; the study of metaphysics including causation, free will, and personal identity; and the study of intention and the theory of action. In September, Yaffe gave the inaugural Wesley Newcomb Hohfeld Lecture.*

**Yale Law Report** In your lecture on "The Norm-Shift Theory of Punishment," you discussed the importance of a definition of punishment in order to have a just system of punishment. Why is this the case?

**Gideon Yaffe** The government frequently wants to do things to people that they don't want done to them — taxes, fees, licenses, quarantines, punishments, etc. When what the government has in mind is a punishment, it has to abide by a bunch of rules.

Because the label "punishment" comes with these additional restrictions, sometimes the government wants to avoid abiding by the restrictions. We've seen this in action: In the Supreme Court case of *Smith v. Doe*, the government of Alaska wanted to force sex offenders to register even when their offenses preceded the creation of the registries. That would be a violation of the ex post facto clause of the Constitution — if forced registration is punishment. If we are going to have a just system of punishment — one where the government abides by the restrictions on punishment, restrictions that don't apply to other things — we need to know when the government is cheating by denying the label "punishment" to what it wants to do to people.

The idea of my lecture was motivated by a simple observation: a very important difference between being incarcerated by the government for an offense, and being kidnapped by a mob as revenge for the offense, is that when you're incarcerated it's illegal for you to escape; not so when you're kidnapped. The idea that legal change is a defining feature of government punishment has a lot of implications.

**You worked on a study that used brain scans to determine whether people were in a knowing or reckless state of mind. What did the study find?**

That study was part of a strand of my research aimed at using neuroscience to give insight into issues that matter to criminal adjudication and punishment. Our question was whether we could sort people into standard mens rea categories based solely on their brain activity. We ask jurors to do this in trials: they need to figure out, for instance, whether the defendant knew that there was 100 pounds of marijuana in his trunk when he drove across the border, or was, instead, just aware of a risk of the possibility. In a sense, we ask jurors to read minds. We wanted to know whether we could perform that same mind-reading task not by looking at behavior and testimony and the usual things that jurors use, but, instead, by looking just at brain activity. We scanned people's brains while they played a game where they needed to decide whether to carry a suitcase across the border when they either knew that it contained contraband, or were merely aware of a risk that it did. Then we tried to use the information we recorded about their brain activity, all by itself, to sort them into these two mens rea categories. We could do it with high accuracy in some conditions, but not in all. So the study was a kind of proof of concept: brain scanners can read criminal minds, although not all the time,

## YAFFE (CONTINUED)

and not without help. There's a lot more work on this kind of thing to be done.

**You wrote an op-ed in October for Slate about juveniles in the court system. Why is disenfranchisement a better reason for different treatment than brain development?**

The op-ed took the central idea from a recent book of mine (*The Age of Culpability: Children and the Nature of Criminal Responsibility*) and explained its implications for a case before the Supreme Court concerned with the sentences for people who committed terrible crimes as juveniles. I don't think they should be given life without parole sentences, even when such a sentence would be appropriate for an adult who committed the same crime. Kids are owed a break. What it is about kids that warrants leniency, in comparison to otherwise identical adults, for criminal behavior?

I don't think that psychological or neural immaturity is the answer. My suggestion is that what really matters is political rights. We deny kids political rights—notably the right to vote, but also full, unadulterated rights to freedom of speech—even when they are plenty mature to participate fully in politics. So when we are contemplating punishing them for their crimes, we are contemplating using full government force against second-class citizens. The book argues that when you are a second-class citizen of this kind you are reduced in criminal culpability. I think if this point were front and center in the legal system (which it is not!) it would provide a better and more secure foundation for leniency towards child criminals.

## GLUCK

## Gluck Named Adviser for American Law Institute Publication



**Abbe R. Gluck**

The American Law Institute has named Abbe R. Gluck '00, Professor of Law and Faculty Director of the Solomon Center for Health Law and Policy, an adviser for the institute's new publication, *Restatement of the Law Third, Torts: Concluding Provisions*.

*Torts: Concluding Provisions* will address medical liability, vicarious liability, wrongful death, survival actions, and other topics not addressed in the previous edition, plus topics updated from the last publication.

## LANGBEIN

## Langbein Wins Frankel Fiduciary Prize



**John H. Langbein**

The Institute for the Fiduciary Standard announced on August 8, 2019 that Sterling Professor Emeritus of Law and Legal History John H. Langbein has been awarded the 2019 Frankel Fiduciary Prize. Langbein is a leading authority on fiduciary law and a distinguished scholar of legal history.

He teaches and writes in four fields: probate and trust law; pension and employee benefit law (ERISA); Anglo-American, European legal history; and modern comparative law.

The Frankel Fiduciary Prize Selection Committee announced the prize through a statement by Deborah A. DeMott, David F. Cavers Professor of Law, Duke Law and Chair of the Committee:

"John Langbein was a compelling choice as the recipient of this year's Frankel Fiduciary Prize. His innovative scholarship led the way to the prudent investor rule, which modernized fiduciary investing to the benefit of millions. Professor Langbein has made noteworthy contributions to scholarship in all of the fields on which he has focused, ones that invigorate debate and reorient a field. The Selection Committee is delighted to recognize his accomplishments over a distinguished career."



**Professor Akhil Amar '84** was filmed at the Law School in October for a documentary about the Electoral College.



**Professor Bill Eskridge '78** gave the 2019 Cutler Lecture at William & Mary Law School in October. William and Mary Law Dean Davison M. Douglas '83 looked on as Professor Eskridge spoke about "Why Marriage Equality Prevailed—and Lessons for Other Social Movements."

## Hartford Courant

**Ian Ayres '86 and Brendan Costello '19** in "Temporary restraining orders in Connecticut don't always take effect; that needs to change," October 6, 2019:

"Our study provides evidence that a Yale Law School program, where students provide clerical assistance and reminder phone calls to applicants, is associated with an 11 percentage point increase in in-hand service."



**Innovation Snowballing and Climate Law**, 95 Wash. U. L. Rev. 385 (2017) (by Zachary Liscow '15 and Quentin Karpilow '18) was selected as one of the five environmental law articles of the year by leading professors and practitioners and reprinted in the *Land Use and Environment Law Review*.



## NeJaime Gives Inaugural Anne Urowsky Lecture

**Douglas NeJaime**, the Anne Urowsky Professor of Law at Yale Law School, gave the inaugural Anne Urowsky Lecture on October 28, 2019. In his lecture titled “The Constitution of Parenthood,” NeJaime challenged the conventional assumption that the Constitution protects only biological parent-child relationships and made an affirmative case for constitutional protection of nonbiological parents.

Family law in a growing number of states legally recognizes nonbiological parents in a range of families — including nonmarital families, families headed by same-sex couples, and families formed through assisted reproduction. But in some states, nonbiological parents who have not adopted are treated as legal strangers to their children, according to NeJaime. When these parents turn to the Constitution by asserting a liberty interest in their parent-child relationship, NeJaime has found through his scholarship that they often find no relief. Supreme Court precedents from the 1970s and 1980s involving the rights of unmarried fathers and the status of foster parents have led courts to conclude that only biological parents possess a right to parental recognition protected by the Due Process Clause.



**Cristina Rodríguez '00** opened Smith College's 2019–20 Presidential Colloquium series with a talk on “The President, Immigration Law, and the Politics of Constitutional Structure.” The event, which was held in conjunction with Smith's observance of Constitution Day, was held on September 19.

### KOHLER-HAUSMANN

## Kohler-Hausmann Receives Tenure; Secures Ruling in Class Action Lawsuit

**Issa Kohler-Hausmann '08** was promoted to Professor of Law in December. Her primary research interests are in criminal law, sociology of law, empirical legal studies, social and legal theory. Her book *Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing* (Princeton, 2018) is a mixed method multi-year study of New York City's lower criminal courts in the era of mass misdemeanor arrests.



**Issa Kohler-Hausmann**

Kohler-Hausmann and partners recently won a major ruling in federal court for the constitutional rights of people sentenced to life in prison for crimes committed as children and who, after serving the minimum sentence required by the legislature, are denied parole despite showing clear signs of rehabilitation.

The plaintiffs in the class action case were all sentenced to indeterminate sentences of some number of years to life with the possibility of parole after hav-

ing committed serious offenses in New York while they were under the age of 18. The lawsuit is against the New York State Board of Parole and argues that people serving parole-eligible life sentences for crimes committed as children must be provided a “realistic and meaningful opportunity for release based on current demonstrated maturity and rehabilitation.”

Ruling on a motion to dismiss, U.S. District Court Judge Vincent L. Briccetti sided with the plaintiffs holding that “an Eighth Amendment right attaches to life-sentenced juvenile offenders' parole proceedings” and that “the Constitution mandates” that the parole process “must amount to a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” The court also held that the Board must follow procedures sufficient to provide plaintiffs a meaningful opportunity for release.

Kohler-Hausmann and Gilbert are working with the firm Cravath, Swaine & Moore LLP in representing the plaintiffs.



DINEEN

## Yale Law School Mourns the Passing of Francis X. Dineen '61

**Francis X. Dineen '61 LLB**, former Visiting Clinical Lecturer in Law at Yale Law School, died on September 25, 2019 at the age of 84. As Senior Counsel at New Haven Legal Assistance Association (NHLAA), he was one of the longest-serving legal services lawyers in the country. He received his A.B. from Dartmouth and his LL.B. from Yale Law School.

Dineen was one of two lawyers hired in 1963 to run Community Progress, Inc. in New Haven, a model of the Kennedy administration's Office of Economic Opportunity funded by the Ford Foundation.

He began teaching and supervising Yale Law School students in 1964 as director of New Haven's Municipal Legal Aid Bureau, working with approximately 20 volunteer Yale Law students on a large number of civil cases. In June 1966, the Legal Aid Bureau merged with NHLAA, and Dineen became Deputy Director, a title he held for more than 30 years.

Dineen was involved in many landmark cases, including the Supreme Court case *Boddie v. Connecticut*, which established the right to free access to the courts in cases of fundamental rights. As a result, every state and the federal system have established fee waiver mechanisms. Dineen is also credited with reinventing landlord/tenant practice in Connecticut. Dineen began teaching at the Law School in 1977 and taught Trial Practice as well as Civil Legal Assistance. He taught in the Landlord-Tenant Clinic beginning in 1985.

"Frank Dineen was a wonderful colleague to the Law School's clinical faculty, and a role model for law students," said Stephen Wizner, William O. Douglas Clinical Professor Emeritus of Law. "He devoted his life to providing legal assistance to the poor and disadvantaged, and to teaching students the skills and ethics of being effective and socially responsible lawyers. He has left his mark on generations of law students through his teaching and by the example of his life."

Dineen was the recipient of numerous awards during his career, including the Distinguished Service Award from Yale University and Yale Law School in 1981, for his work in legal services and with Yale Law students; and the Charles J. Parker Legal Services Award from the Connecticut Bar Association for his work in legal services. He was also designated a James W. Cooper Fellow by the Connecticut Bar Foundation in 1994.

When he was awarded the Distinguished Service Award, Dineen spoke of being drawn to legal services work out of compassion for the underprivileged and poor and his concern that the legal system be fair and available to all.

"A system of justice which systematically excludes a large segment of the population from its coverage is immoral," he said. "We cannot tolerate such a system."



# *from* LAWYERS...



Dean Heather Gerken in conversation with Justice Sonia Sotomayor '79 in Woolsey Hall

# *... to* LEADERS

**This year’s reunion highlighted Yale Law School alumni who are not only esteemed in the legal world but have set themselves apart as leaders. The weekend included an appearance by U.S. Supreme Court Justice Sonia Sotomayor ’79 and the presentation of the Award of Merit to Ben Heineman ’71 and Linda Rottenberg ’93.**

Returning to New Haven for her 40th reunion, Justice Sotomayor spoke to a packed house at Woolsey Hall on Saturday, October 19. In a conversation with Dean Heather Gerken, the Justice talked about her road to becoming a lawyer, her passion for inspiring young children, and how she views the Court and her role on it today.

The Justice also discussed her new children’s book, *Just Ask*. A diabetic since childhood, Sotomayor described the impetus behind the book—to encourage children who have different life conditions to bring conversations with their peers instead of feeling ashamed.

She also related her path to becoming a leader for change in the legal world. “We as lawyers can work at reforming the things in law that we think are wrong. That’s why I became a lawyer. To make those changes,” she said.

Earlier on Saturday, Gerken presented the 2019 Award of Merit to Heineman and Rottenberg, praising their work as leaders in the legal profession.

“They have spent their careers focused on purpose over process and profits, both inside and outside of the legal profession,” Dean Gerken said about the award recipients. “They don’t just make us proud, they’ve inspired us to reimagine what a Yale Law School education should look like and where it can lead.”

The Award of Merit recognizes alumni or longtime faculty of Yale Law School who have made a substantial contribution to public service or to the legal profession.

Heineman was GE’s Senior Vice President-General Counsel from 1987–2003, and then Senior Vice President for Law and Public Affairs from 2004 until his retirement at the end of 2005.

Rottenberg is the cofounder and CEO of Endeavor and the author of *Crazy is a Compliment: The Power of Zigging When Everyone Else Zags*.

Throughout the weekend, there were also panels on economic inequality and voting rights as well as short, informative discussions led by faculty and alumni called “Amicus Brief” presentations. Other highlights included dinners and brunches for classes ending in 4s and 9s, a student/alumni breakfast, diversity events, class activities, and time to explore New Haven.



Alumni Weekend 2019 featured a series of short talks dubbed **Amicus Briefs**. Watch videos of some of these talks and other Alumni Weekend events at [vimeo.com/showcase/6516581](https://vimeo.com/showcase/6516581).



**Tracey Meares**, Walton Hale Hamilton Professor of Law and Founding Director of The Justice Collaboratory:

**“In the last ten years or so, Tom Tyler and I have translated this theory into practice. We’ve changed courtrooms. We’ve changed schools. We’ve changed prisons. And we’ve changed the conversation around policing in the United States.”**

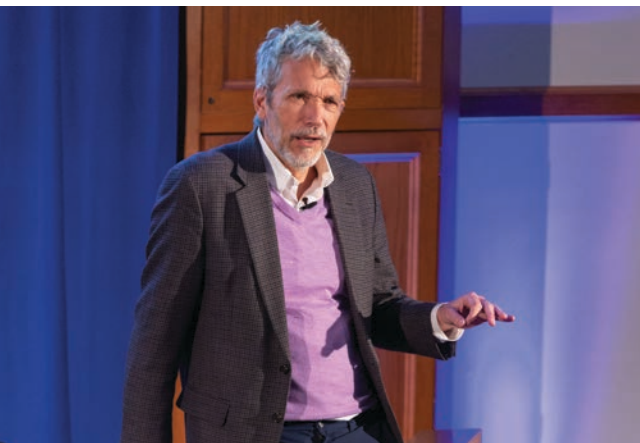


**Abbe R. Gluck** ’00, Professor of Law and Faculty Director of the Solomon Center for Health Law and Policy:

**“The opioid crisis is the most challenging public health crisis in modern American history. It also happens to be the most exciting thing to happen to civil procedure in a long time. Civil Procedure professors are cool for the first time ever!”**

**Douglas A. Kysar**, Deputy Dean and Joseph M. Field '55 Professor of Law:

“Like the loss of carbon stores in the Amazon, the release of methane from a thawing Arctic is one of those tipping point systems that keep scientists awake at night. From the lawyer’s perspective, what keeps us up is that these tipping points represent sources of greenhouse gas emissions that cannot be regulated.”



**Ian Ayres** '86, William K. Townsend Professor of Law:

“We regulate your password choices much more than we regulate fund choices [for 401k plans]. When you choose a password you have to use an exclamation point or a number or upper case letters. That’s a kind of guardrail.... But we could use guardrails with regard to the fund choices you make.”

**The Award of Merit recipients shared memories of their time in law school and gave advice for the next generation of lawyers in their speeches. Below are excerpts.**

### **Linda Rottenberg '93:**

In 1997, I cofounded Endeavor with Peter Kellner '03 to identify and support high-growth entrepreneurs in emerging and underserved markets. Because of my Yale experiences, we started in Chile and Argentina; Peter, then at YLS, took a semester off to get Endeavor going. Today, the notion that entrepreneurs exist everywhere seems obvious. But 22 years ago, the phrase “emerging-market entrepreneurs” sounded downright loony. For over a decade I was known throughout Latin America and the Middle East as “Chica Loca” — the crazy girl.

Today, Endeavor operates in 35 countries on five continents as well as eight underserved hubs in the U.S. Last year, Endeavor Entrepreneurs generated \$20 billion dollars in revenue and three million jobs.

Our core business — which Tom Friedman dubbed “mentor capital” — was founded as a nonprofit. But while technically a 501C3, Endeavor never fit the nonprofit mold.

Several years ago, a committee led by LinkedIn founder Reid Hoffman helped me design Endeavor Catalyst, a rules-based fund that co-invests in Endeavor companies raising Series A, B, or C rounds of equity capital. Endeavor Catalyst offers competitive returns for our investors while also generating profits to scale and deepen Endeavor’s impact. We’ve raised over \$200 million and invested in more than 100 Endeavor companies.

What’s not to love?

Well, as I began describing Endeavor as a hybrid organization, some board members objected: “You can’t use that word, ‘hybrid.’” I was urged to come up with a new word. When the board reconvened, I explained that while many people consider for-profit versus nonprofit to be a binary choice, I disagree. Hasn’t the world moved beyond the binary? Even Facebook, which my daughters call “Instagram for old people,” has 71 gender options.





So I said: “Let’s move profit beyond the binary. You wanted a new word, OK. Endeavor is the world’s first *transprofit*.” My board decided it liked hybrid after all.

Whenever I speak to MBAs, I’m always asked why I chose law school. I’ve realized that so much of what’s definitional to me can be traced back to Yale: My connection to Latin America and a love of travel more broadly. My confidence to forge a career others thought was crazy. And my belief in erasing hard lines between sectors to create unique institutions.

### **Ben Heineman ’71:**

Lawyers have three basic roles: technical experts, wise counselors and accountable leaders.

Lawyers should aspire to play these vital roles not just in the private sector but also in the public sector and the nonprofit sector, including the academy.

Lawyers as experts, counselors, and leaders should have as their north star the basic mission of public, private, and nonprofit institutions — high performance with high integrity and sound risk management, where integrity encompasses law, ethics, and values.

In the roles of wise counselors and accountable leaders, lawyers need better, broader education, training, and experience when facing the profound, multi-dimensional problems beleaguering our fast-changing world — problems that have significant elements which go far beyond the law. Such topics as immigration, refugees, climate change, corruption, inequality, health care, racial justice, relations with China, economic growth, trade, globalization, regulation of new tech.

Lawyers as counselors and leaders should aspire to be lawyer-statespersons — where the first question they ask about the actions of their institutions is “what is legal?” but the last question must always be: “what is right?” Lawyers should also aspire to be partners

to their legal and non-legal colleagues but ultimately they must aspire to be guardians of their institution. They must always resolve the powerful tension between being a partner and being a guardian in favor of the guardian role, even if that involves personal risk or even resignation.

Lawyers as professionals and citizens must keep constantly in view the ethical dimension of their organization’s integrity which might be summarized as the duty to the institution, the duty to its stakeholders/constituents, the duty to secure the public goods which the market cannot supply, and the special duty to the public good of the rule of law and the fair administration of justice.

Lawyers as technical experts must, of course, master the “core competencies” that law schools teach. But to become wise counselors and accountable leaders, we must also learn a host of “complementary competencies” not necessarily taught or taught well.

To integrate these core and complementary competencies, lawyers must have true interdisciplinary educations beyond 127 Wall Street. At a minimum, the integration of law, business, and public policy — with students majoring in one subject, say law, but minoring in the other two, business and public policy. And, of course, to make interdisciplinarity a reality, not just an endless talking point, acquiring scientific and social scientific literacy in fields ranging from anthropology to biology to engineering to sociology to physics that underly critical problems in law, ethics, policy, and risk.

Lawyers, ultimately, must transcend their specialized professional training and become true citizens of the world if they are to assume the roles, not just of technical experts, but of the wise counselors and accountable leaders which our society — and the global society — so desperately need. Law schools must embrace the paradox of being a professional school training lawyers — but also a leadership school inspiring and educating them to be broad-gauged citizens with capacious problem-solving abilities. 📍





**Conchita Cruz '16**, Co-Executive Director of the Asylum Seeker Advocacy Project:

“We represented every family that was forced to have their asylum trial while in detention at the Dilley Family Detention Facility. And we won every case. By the end of the summer... the government decided to stop detaining families through their asylum trials in Dilley. It was another critical moment where we could have stopped and instead, we thought... we have to keep going. What happens to all the other mothers?”



**Thomas Glocer '84**, Executive Chairman, BlueVoyant LLC:

“I believe there is another deeper or more subtle reason why Americans don't like lawyers. We ask the questions best left unsaid.”











# The Power of People





By Alden Ferro  
Photos by Samuel Stuart

# Mentorship Stories Demonstrate Two-Way Street

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**The Yale Law School community** consists of a network of more than 13,000 talented leaders and innovative minds that populate nearly every sector of society, from law and business to public interest and government. This remarkable group spans the globe, crosses generations, and has a rich diversity of backgrounds and interests. It is also a fantastic resource for YLS students and young graduates who can form meaningful and lasting relationships with experienced alumni, forging deep ties with benefits to both the mentor and mentee.

These connections have sprung up innumerable ways, from a serendipitous introduction at a Law School event to more deliberate outreach to someone who works at a dream employer. But regardless of how the initial spark is generated, it's clear that when Yale Law School folks start talking, something magical happens.

Nick Turner '96 says that his mentoring relationship with Erin Drake '20 is a "joyful way to stay connected to the Law School." Andrea Nill Sánchez '14 counts on Katharine Huffman '96 for advice on career opportunities and tries to channel the way she "leads with her humanity." With each pair, it's clear how much each person has learned from the other.

These stories are just two examples out of thousands that demonstrate the valuable bonds that take hold and flourish when a standing army of engaged alumni generously pay forward their time, wisdom, and experience in order to guide those beginning to chart their own course.

## Katharine Huffman '96

## Andrea Nill Sánchez '14

**After working at a law firm** in the Bay Area, Andrea Nill Sánchez '14 decided to return to doing the kind of advocacy work she felt passionate about. The bigger question was how to translate her legal education, experience, and network into the social justice sector during the next chapter of her career.

So when she joined The Raben Group, a majority-minority public affairs and strategic communications firm as a Director in its New York office in 2017, she reached out to Founding Principal Katharine Huffman '96.

Huffman, a founder of the firm who specializes in criminal justice reform, civil and human rights advocacy, and evidence-based policymaking, was based in Washington, D.C.

On a trip to Raben's D.C. office, Nill Sánchez got in touch with Huffman, since she knew they shared an interest in the same types of justice reform issues.

"She, Joe Onek '67, and Robert Raben were inspirations for me in terms of how they translated their legal experience into fulfilling advocacy work outside of the law," Nill Sánchez said.

Soon, the two were in touch, often daily, and among other things talked about the practicalities of navigating a career transition from a law firm to advocating for public policy changes.

According to Nill Sánchez, "In the beginning, I came to Katharine for guidance on how to manage my recent transition from being a practicing lawyer to working at the intersection of policy, politics, and communications."

Additionally, Huffman has served as a confidant and source of insight for any issues Nill Sánchez was facing.

"Sometimes we've talked about particular questions or situations she's struggling with; but most of the time, I think the most important thing I'm doing is serving as a sounding board so Andrea has an extra vote of confidence behind her when she follows her own great instincts and creativity," she said.

With time and career changes, their connection has continued to deepen, professionally and personally.

"We've moved from sharing and talking about purely substantive issues," Huffman said, "to also talking through questions about professional development, juggling professional and personal responsibilities, and finding ways of productively pushing partners and colleagues (and ourselves!) to be creative, take smart risks, and do more."

As Nill Sánchez advanced at The Raben Group, Huffman accepted an appointment as the executive director of the Square One

Project at Columbia University's Justice Lab, which aims to improve criminal justice policy nationwide.

The new position allowed Huffman to split her time between New York and D.C. ("conveniently for me!" Nill Sánchez said), and the two got the chance to work together on projects with the New York City Mayor's Office of Criminal Justice and the Columbia Justice Lab.

In October of 2019, Nill Sánchez had another new career opportunity, and she became Executive Director of AI Now, an interdisciplinary research institute at New York University that examines the social implications of artificial intelligence.

"I think we're both excited about the potential for our professional relationship to continue as [Nill Sánchez] dives in more deeply on these AI and technological issues," Huffman said, "all of which have enormous implications for the civil rights and justice reform work we've done together for the past couple of years."

And although they're no longer working directly together, the two continue to stay in touch. Huffman and Nill Sánchez not only have their time at The Raben Group in common but also their affiliations in higher education.

"We're now both leaders at organizations based out of major universities: Katharine focusing on criminal justice and me on the social implications of artificial intelligence — which means Katharine is someone I can count on to advise me on many of the opportunities and questions that come with the challenging work we do," Nill Sánchez said.

A hallmark of their relationship has been the willingness of each to learn from the other.

"The relationship is definitely a two-way street," Huffman said. "I've learned as much from her as she's learned from me."

For Nill Sánchez, their relationship has influenced the kind of leader she wants to be.

"Katharine leads with her humanity and that's something I channel and try to do every day in my role," she said. "She is also a multi-dimensional leader who is passionate about her career, family, and friends, enriching her interactions by bringing her full self to her work and the communities she serves."

As both their professional lives overlapped and developed, Nill Sánchez continues to notice the impact of reaching out to Huffman for coffee several years ago.

"Working together on criminal justice issues has expanded the universe of possibilities of how we can use our law degrees — which has been exciting and liberating," she said.





KATHARINE HUFFMAN:

“I think the most important thing I’m doing is serving as a sounding board so Andrea has an extra vote of confidence behind her when she follows her own great instincts and creativity.”

ANDREA NILL SÁNCHEZ:

“Katharine is someone I can count on to advise me on many of the opportunities and questions that come with the challenging work we do.”





**NICK TURNER:**

**“It’s a really joyful way to stay connected to the Law School. Inevitably our conversations transport me, and I spend the hours after we talk thinking about YLS, my friends, memories, and how it helped get me where I am now.”**

**ERIN DRAKE:**

**“Nick has been there for me at every step of law school, and I believe he will continue to be as I close this chapter of my life and begin a new one.”**



## Nick Turner '96

## Erin Drake '20

**Sometimes, a mentoring relationship can** begin before law school even starts. At an admitted students' program in 2017, Erin Drake '20 met Nick Turner '96, the President and Director of the Vera Institute of Justice, a nonprofit policy organization which seeks to improve the justice system.

The two were attending an annual Black Law Student Association (BLSA) brunch at the home of Walton Hale Hamilton Professor of Law Tracey Meares.

Drake was on the cusp of deciding where to attend law school, and hoped to find an environment supportive of students interested in public interest work.

The two were introduced serendipitously in a corner of the living room, Drake recalled, and remained there for nearly the rest of the brunch.

"I was struck by Erin's thoughtfulness as she considered the kind of environment she'd be happiest in as a law student," Turner said. "While I hadn't intended to give her a hard sell, it was pretty clear that YLS would be right for her, so I did."

The encouragement worked, and Drake accepted her admission to the Law School soon after the brunch. She didn't expect to speak to Turner again until the following year's BLSA admitted students' brunch, but during her first year of law school, Turner held a Vera Institute board of directors meeting at YLS, and he invited Drake to the dinner he was holding. There, she found herself meeting professors, authors, judges, and others she admired.

"The small space to speak with people whom I respect was great, but what mattered most was that Nick had pushed our relationship to grow," she said. "That gave me the signal I needed to continue to invest in our relationship."

Now in her 3L year, their informal mentoring relationship has deepened, and Drake and Turner discuss more than just the practical issues of navigating law school.

"What once was a question about law school or class selection is slowly but surely turning into conversations about the community of non-litigating lawyers he is in and I hope to be in," Drake said.

Since their initial connection began organically over brunch, Drake and Turner said their relationship has a natural feeling that allows them both to be candid and honest with each other. "Some advice Nick gives me I don't take," Drake said. "The comfort lies in the ability to ask, however, and then to translate his experience and opinions into what works for me."

For Turner, the naturalness of their relationship makes the term "mentor" seem undeserved.

"Frankly, I derive my own satisfaction hearing how a very talented, pensive, and kind student wrestles with law school life, decisions that feel so consequential at the time," he said. "What firm, if any, is the right firm? What will this summer decision mean for me next summer? I think these decisions weigh a bit heavier for students of color, and it is rewarding to be able to lend some perspective and encourage Erin to make decisions based upon what moves and excites her."

Drake spoke in similar terms about how decisions about law school, summer jobs, picking classes, and employment opportunities for after graduation can feel momentous and even overwhelming.

"Nick has asked himself and those around him many of the questions I grapple with today," she said. "In a moment when I am learning what is possible with my law degree, observing someone like Nick in his professional and personal world has been a necessary reminder of what is possible beyond law school."

She described Turner as a member of her "personal advisory board," someone she can turn to who reminds her of the goals that led her to pursue law school in the first place. And he can impart advice about how he experienced many of the same law school situations Drake is currently navigating.

"Nick is an important person in my life not just because he answers my emails," Drake said, "but because he lends me his perspective and shares his lived experience and subsequent reflections in order to aid me in my own decision-making process."

For Turner, the mentorship connection is meaningful on many different levels, but he also describes it as "a really joyful way to stay connected to the Law School."

"Inevitably our conversations transport me, and I spend the hours after we talk thinking about YLS, my friends, memories, and how it helped get me where I am now."

As the two have formed a strong bond, it's clear the conversation that started in Professor Meares's living room won't end once Drake graduates in May. Even though they will no longer need to consult about the intricacies of law school, their relationship will continue to evolve and grow as Drake embarks on her career.

"Nick has been there for me at every step of law school, and I believe he will continue to be as I close this chapter of my life and begin a new one," she said. 🍷

*Inspired by these mentoring relationships? Join The Courtyard to connect with fellow Yale Law School alums. See more on page 3 or visit [thecourtyard.law.yale.edu](http://thecourtyard.law.yale.edu).*



# Decades Later, Yale Law School Graduates Remember Investigation into JFK's Assassination

By Rebecca Beyer



A portion of the Warren Commission staff: (left to right) R. Stuart Pollak, Alfred Goldberg, Arlen Specter '56, Norman Redlich '50, Wesley Liebler, J. Lee Rankin, David Slawson, Samuel Stern, Howard Willens '56, Albert Jenner, David Belin, John Hart Ely '63, Burt Griffin '59.





Howard Willens '56



Burt Griffin '59

## Howard P. Willens '56 and Burt W. Griffin '59 were part of a small team of Yale Law School alumni who worked on the Warren Commission's investigation into Lee Harvey Oswald and Jack Ruby.

When Howard P. Willens '56 was looking for a publisher for his firsthand account of the bipartisan presidential commission created to investigate President John F. Kennedy's assassination, he received more than two dozen rejections.

Willens, the last surviving member of the three-person supervisory team that oversaw the Warren Commission staff's work, recalls what they told him: "It's not a conspiracy book; there's nothing new."

Which was exactly his point. Willens called his 2013 book *History Will Prove Us Right: Inside the Warren Commission Report on the Assassination of John F. Kennedy*, echoing the words of then-U.S. Supreme Court Chief Justice Earl Warren whom President Lyndon B. Johnson appointed to head the commission. In his book, Willens argued that, after 50 years, no new facts had been produced to dispute the commission's findings that there was no credible evidence of a conspiracy to assassinate Kennedy and that a single man—Lee Harvey Oswald—holding a single rifle had committed the crime.

And yet, despite Willens' book, despite multiple investigations into the Warren Commission that largely corroborated its conclusions, conspiracy theories continue to abound about Oswald and the man who killed him, Jack Ruby. Those theories posited that Oswald had been assisted by a far-left group in the United States, that Oswald had been assisted by a far-right group from the United States, or that Oswald had been assisted by the governments of Cuba or the Soviet Union, among other claims.

Even at a September 2019 premiere of *Truth is the Only Client: The Official Investigation of the Murder of John F. Kennedy*, a new documentary timed for the 55th anniversary of the Warren Commission's report, Willens says he was approached by those who don't believe the findings of the report.



A Warren Commission staff reunion

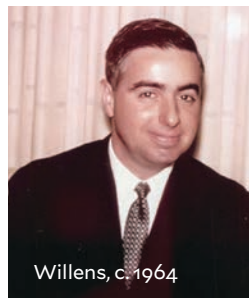
## “Let’s be clear: The Warren Commission was the largest, most comprehensive criminal investigation in the history of the United States.”

—Howard P. Willens

In 1963 and 1964, Willens was a major part of the Warren Commission’s efforts to explain the assassination. He sat in on meetings with other relevant government agencies, including the CIA and the FBI, and helped compile and edit the final 469-page report (with 410 additional pages of appendices). He was also part of what became a small army of Yale Law School graduates who worked on or had a hand in the commission’s creation.

The Yale connection started two days after the assassination when Yale Law School Dean Eugene V. Rostow ’37 placed a call to Bill Moyers, who worked for Johnson, recommending the formation of a presidential commission to head off the possibility of multiple investigative bodies—Congressional committees, state and local law enforcement in Texas, the FBI—conducting simultaneous inquiries. The next day, Nicholas Katzenbach ’47, the second-in-command at the U.S. Department of Justice under Attorney General Robert F. Kennedy, wrote a memo to Moyers suggesting the same.

After President Johnson created the commission (which included future President Gerald Ford ’41), Katzenbach tapped Willens to help



Willens, c. 1964

run it, and Willens, in turn, helped the commission’s general counsel, J. Lee Rankin, hire the team of staff attorneys who would take the lead on gathering evidence. There was no time to post job notices or conduct an in-depth interview process. Willens and Rankin largely relied on word-of-mouth recommendations or chose people they knew personally, including Norman Redlich ’50, Arlen Specter ’56, John Ely ’63, and Burt W. Griffin ’59.

That several Yale Law School alumni were selected for the commission’s roughly 15 assistant counsel positions was purely coincidence, Willens says.

“No one cared what law school you went to,” he explains. “It was, ‘Can you manage the facts? Can you work hard? Are you a good colleague?’”

Today, only Willens and Griffin remain of the Warren Commission’s Yale Law School cohort. They both consider their work on the historic investigation to be one of the most significant experiences of their careers.

“Let’s be clear: The Warren Commission was the largest, most

comprehensive criminal investigation in the history of the United States,” says Willens, now 88.

Griffin, then in private practice in Cleveland, moved to Washington, D.C., with his wife and young children for the duration of the work. He was assigned, along with a more senior attorney, to investigate everything about Ruby. Even today, at 87, he can still recall the most intimate details: Ruby’s love of dogs, his trip to Western Union to pay a dancer from one of his strip clubs just minutes before he shot and killed Oswald, and his visit in the relevant time period to a drive-in restaurant.

“I saw our job as to question everything,” Griffin recalls. “I knew that the nation’s security depended upon us finding whether or not there was a conspiracy.”

Although commission members concluded that there was no credible evidence of a conspiracy, they were careful not to assert that no conspiracy took place.

After all, as Willens told an audience in 2013, “it is always impossible, analytically, to prove a negative.”

That reality, combined with the fact that Ruby, by killing Oswald, had denied the nation a criminal trial at which Oswald could have been publicly prosecuted and defended, has allowed conspiracy theories to flourish.

“People want something they can wrap their arms around,” Willens says.

In 1977, during a congressional subcommittee’s review of the Warren Commission’s findings, Redlich gave his opinion on conspiracy theorists.

“I think there are simply a great many people who cannot accept what I believe to be the simple truth, that one rather insignificant person was able to assassinate the president of the United States,” he said.

Each of the Yale Law School alumni who worked on the commission went on to distinguished careers. Ely taught at Yale Law School and became dean of Stanford Law School; Griffin became a judge in his home state of Ohio; Katzenbach became Johnson’s attorney general and later served as general counsel of IBM; Redlich became dean of New York University Law School; Specter was a U.S. senator; and Willens had a long career in private practice that included work on behalf of the Northern Mariana Islands in the Western Pacific.

Today, Willens and Griffin continue to speak out about the commission and its findings. In addition to their appearance in the recent documentary, they debate critics, engage in an online forum about the assassination, and present at conspiracy theory conferences.

“A lot of these people, they’re not persuadable,” Griffin says. “I don’t attempt to persuade them.”

Instead, he hopes to demonstrate, by virtue of his presence and participation, the integrity of the commission’s work.

“I hope people understand that we are honest people and we tried as hard as possible to find out why the president and Oswald were killed,” he says. 🍷



In 2013, Griffin and Willens attended a legal seminar on “JFK’s Assassination and the Law: 50 Years Later” hosted by Judge Brendan Sheehan of the Cuyahoga County Court.

# ALUMNI NEWS



(left to right) David Albenda '60, Graham Watkins, and Tom Baer '60

## YLS Celebrates Donors at NYC Bookstore

On November 7, 2019, 140 Yale Law School donors and friends enjoyed a reception hosted by Dean Heather Gerken at the renowned Rizzoli Bookstore. Guests mingled at a reception while learning more about The Courtyard, Yale Law School's new online alumni directory and engagement community. In her remarks, Dean Gerken thanked everyone present for their support to the Law School, saying, "You matter enormously for all that we do. Your support serves as a force-multiplier. By investing in Yale, you invest in our students, the work they do, and the paths they lead."



(left to right) Jessica Phillips '01, Mark Elliott '90, Jasman Ayankola, and Tina Severson

Throughout the year and in cities across the country, alumni gather for events organized by Yale Law School's Office of Alumni Engagement and Development. Here is a sampling of the events that have taken place over the past six months. Events details are posted on our website [law.yale.edu/alumni](http://law.yale.edu/alumni). Please contact the Office of Alumni Engagement and Development if you want to update your contact information, by phone at (203) 432-1690 or by email at [alumni.law@yale.edu](mailto:alumni.law@yale.edu).



Clockwise from top left: John Firestone '85, Anastasia Boyko '05, and Craig Brod '80; John Kim '00; (left to right) Alma Magaña, Jorge Camacho '10, Lauren Gerber Lee '10, and Basha Rubin '10

NEW YORK

Corporate Law Alumni Breakfast

More than 60 alumni and guests joined the Yale Law School Center for the Study of Corporate Law for a Craig Wasserman '86/ Wachtell, Lipton, Rosen & Katz alumni program titled "Corporate Enforcement in the Trump Administration." The program on October 29, 2019, was held at The Century Association in New York City. Moderated by **Roberta Romano '80**, YLS Sterling Professor of Law and Center Director, the panel included Jennifer Arlen, Norma Z. Paige Professor of Law and Director, Program on Corporate Compliance and Enforcement, New York University School of Law; **Alicyn Cooley '08**, Executive Director, Program on Corporate Compliance and Enforcement, New York University School of Law; **Robert J. Giuffra Jr. '87**, Partner, Sullivan & Cromwell LLP; and **Fadi Hanna '06**, Global Chief Compliance Officer, Bloomberg LP.



Photos on opposite page and top by Samuel Stuart

LONG ISLAND



(above, from left) Sheila McLean '66 and David McLean '66; (right, from left) Rajesh Garg '84 and Madhu Powar Garg '84 LLM, '91 JSD

**Hamptons Summer Cocktail Party**

On Saturday, August 3, 2019, alumni and their guests gathered at the home of **Rajesh Garg '84** and **Madhu Powar Garg '84 LLM, '91 JSD** in Westhampton Beach, NY.

WASHINGTON, D.C.

**Diversity Reception Brings Affinity Group Members Together**

On July 11, Yale Law School alumni, students, and guests attended the Washington, D.C., Diversity Reception. Former and current members of the affinity groups gathered in the historic building of The Loft. Douglas NeJaime, Anne Urowsky Professor of Law, welcomed attendees to the event.



Clockwise, from top right: Rob Falk '90, Jeffrey Bartos '90, Ari Fitzgerald '90; Beatrice Pollard (left) and Veronica Yezep '08; Anjali Motgi '14, Adam Grogg '10, and Xiao Wang '14



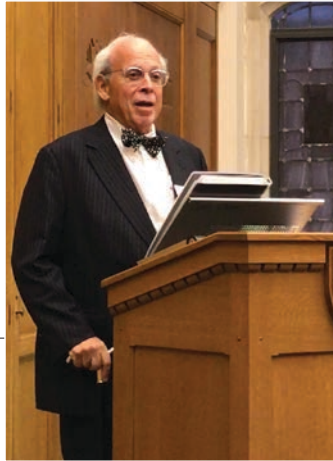
**Welcome to the Courtyard**

Alumni and guests in the D.C. area gathered for a reception hosted by Williams & Connolly on November 21, 2019. A presentation at the event introduced attendees to The Courtyard, Yale Law School's new online alumni directory and engagement community.

## NEW HAVEN

## Dinner Celebrates Gift of John H. Streicker '67

On September 19, Dean Heather Gerken and Mindy Roseman, Director of International Programs and Director of the Gruber Program for Global Justice and Women's Rights, hosted a dinner in honor of **John H. Streicker '67** and the recipients of the Streicker Fund for Student Research. Providing support for students' academic projects requiring international travel, the fund enables students to engage in field research, in-country interviews with relevant stakeholders, and archival research. In the 2018–19 academic year, 26 students received scholarships. Streicker, who provided wine from his vineyard in southwestern Australia for the event, was deeply interested in each student's story, and invited their feedback about ways to better the program for future students.



(left) John H. Streicker '67;  
(above) Dean Gerken addresses the attendees

## PENJERDEL



## Annual Garden Party Held in Philadelphia

Almost 30 alumni and their guests attended the annual Garden Party on September 22 at the home of **Sarah Ricks '90** and **Tom Dolgenos '90** in Philadelphia. **Anil Kalhan '99** gave a talk titled "Immigrants' Rights and the Trump Presidency: Litigation, Advocacy, and Accountability."

## Martha's Vineyard Annual Summer Cocktail Party

This summer's annual Martha's Vineyard cocktail party was held at the home of **Peter Weiss '52** and Cora Weiss on August 8, 2019. The group also welcomed YLS current and incoming students and their guests. Special thanks to **John Firestone '85** for coordinating this event.





The winning team at work



The faculty team



The judges



The winners celebrate

## Iron Chef comes to Wall Street

Yale Law School's edition of the Iron Chef competition, a highly anticipated community event, was held in October. The 1L team prevailed over teams of faculty, dining hall staff, and students to be named the 2019 winners. Members of the winning team were Elaine Emmerich '22, Caroline Grueskin '22, Danny Li '22, Caroline Parker '22, Joel Sati '22, Leah Samuel '22, and Evan Walker-Wells '22.

Contestants had 20 minutes to cook an appetizer, 40 minutes to cook an entrée, and 30 minutes to prepare a dessert, all without an oven or stove. Each course had a secret ingredient, selected by Dean Gerken and Dining Hall Manager Jim Barnett, that the contestants had to incorporate into their dishes: eggs for the appetizers (from quail eggs to caviar), scallops for the entrée (featuring local scallops from Stonington), and chocolate for dessert.

Judging the results were Dean Gerken; Jordan Laudano, President of Jordan Paige Foods; Denis Marukovich, Executive Chef at Tarry Lodge; Guillaume Traversaz, Executive Chef at Union League Café; and Sonia Salazar, Owner and Chef of Barracuda and Te Amo Tequila Bar & Tacos.



# Yale Law Report

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