

GREAT CASE: Jay Gould '06 Wins  
Historic \$1 Billion Verdict for Sony  
PROFILE: Therese Pritchard '78  
BRAINSTORM: Dean Vincent Rougeau  
and Michael Gehhardt  
Debate the Impeachment  
GIVING: The 2019-2020 Report

# THE VISION PROJECT

# WHAT'S NEXT?

The BC Law faculty discuss where the Covid-19 pandemic may lead us. There are warnings, but there are also farsighted ideas and strategies for crafting a better future, a more just society, and a world in which each and every human being is equal under the law.



**CAUTIONARY TALES**

In public and private sectors, ethics have been wanting. Associate Dean for Academic Affairs and Professor Renee Jones questions how American business and American government have cooperated during the coronavirus pandemic. *The Vision Project*, page 16

Features



16

**How the Pandemic Will Change Us**

The Boston College Law School faculty discuss where the Covid-19 pandemic and its medical, economic, racial, political, and legal consequences may lead us.

34

**The Chair**

In a long career that brought down corporate defrauders and eventually landed her among the small cohort of women to chair a top global law firm, Therese Pritchard '78 has remained true to herself: a lawyer who eschewed a cutthroat professional trajectory for the simple pleasure of finding what was interesting right in front of her. It was the secret to her success.

*By Jeri Zeder*

38

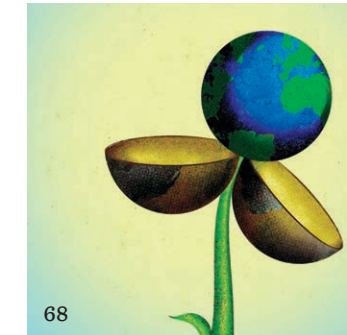
**The Land of Music and Piracy**

In a copyright showdown between the music industry's Big Three record labels and a major broadband internet company, Jeff Gould '06 kept the beat for the plaintiffs while art and artists won the day to the tune of a \$1 billion jury verdict.

*By Chad Konecky*



44



68



- Foremost**
- 2 **In Limine** From the Editor.
  - 3 **For the Record** Updates and contributors.
  - 4 **Behind the Columns** The Vision Project: If we stay united, racism may yield. *By Dean Vincent Rougeau*
  - 6 **In Brief** Rappaport hews to policy as a means to fix what ails us; Professor Catharine Wells defends Holmes's moral convictions in insightful new study; new faculty hires.

- 8 Faculty Scholarship** Professor Alfred C. Yen offers nuanced look into copyright law; notable faculty milestones and publications.
- 10 In the Field** Yolanda Courtney Lyle '01, Michael "Saph" Sapherstein '97, and four other alumni on the job.
- 12 Brainstorm** Dean Vincent Rougeau and Michael Gerhardt discuss the Impeachment.
- 14 Evidence** A Drug's Journey: How lawyers make cures happen.

Clockwise, from top left, Brandon Shemtob '14 and his wife Alaina "Lainey" Sullivan '15; Michael Gerhardt talks with Dean Vincent Rougeau; Jane Swift launched her Jerome Lyle Rappaport Visiting Professorship at BC Law; global connections that are about flourishing together, rather than surviving apart.



12

- Esquire**
- 44 **Generations** Brandon Shemtob '14 and Alaina "Lainey" Sullivan '15.
  - 45 **Class Notes**
  - 50 **Alumni News** Albert Sebag's professional network spans the globe.
  - 52 **Advancing Excellence**
  - 55 **The 2019-2020 Giving Report**
  - 68 **In Closing** The Vision Project: Selecting for better global relationships *By Professor Frank Garcia*

# Foremost

## Beware the Ides of March

**We are all shook up.** Nothing has been the same since the Ides of March delivered the virus that brought the world to a near standstill. Beware, we've been told, of the Ides. In Shakespeare's day, a soothsayer warned the protagonist in *Julius Caesar* to be cautious. In Roman times, the Ides were a time for settling debts.



There can be little doubt today that we are paying those debts, many of them of our own making and long overdue. As the Covid-19 pandemic has opened our eyes to social, political, and cultural failures, we have discovered fault lines seemingly everywhere: in our hospitals, school rooms, prisons, supply chains, courthouses, government seats, financial markets, business centers, underserved communities, police stations—the list goes on and on.

Where to turn for guidance, for the comfort of bona fide ideas, for the tickle of hope that there may be ways to fix the mess we're in?

Being at a law school, *BC Law Magazine* naturally looked to its brain trust, the faculty, for answers. Surveyed for explanations of how Covid-19 could have laid us so low and for how the law and its ethical underpinnings could lift us back up, the professors articulated a vision for the future and identified actions that could help the body politic achieve new levels of honesty and equality. The result is The Vision Project, a collection of interviews that begins on page 16 and expands online at [lawmagazine.bc.edu](http://lawmagazine.bc.edu).

In the midst of this global reckoning, it is heartening to read stories of moments when right prevails over wrong and the rule of law shows its muscle. That happened last December when Jeff Gould '06 and colleagues at a small, boutique firm in Washington, DC, won a staggering \$1 billion jury verdict for their client Sony in a copyright infringement case against internet service provider Cox Communications. How did they do it? The answer may surprise you, but you can wager that music played the best hand. Read more ("The Land of Music and Piracy") on page 38.

Just to ensure that there were other interesting distractions in the magazine to amuse you, we elicited a story from Therese Pritchard '78 about how she made it to the top of big law driven not by ambition so much as pure fascination with the cases in front of her ("The Chair," page 34). And we explain how Jim Champy '68 applied his business re-engineering knowhow to philanthropy on behalf of Boston College Law School. It's some story ("The One-Man Brain Trust," page 52).

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### A Win for Sioux in Pipeline Case

Returning to the news in *Standing Rock Sioux Tribe v US Army Corps of Engineers and Dakota Access, LLC*, a bellwether environmental case being stewarded by Jan Hasselman '97, a staff attorney for Earthjustice ("Taking a Stand at Standing Rock," *BC Law Magazine* Summer 2017).

In March, the United States District Court for the District of Columbia found significant unresolved concerns

about the potential impacts of oil spills from the pipeline and the likelihood that one could take place, requiring the Corps to complete a full environmental impact statement (EIS).

In July, Judge James Boasberg ordered that the pipeline cease pumping crude by August 5 pending the EIS, a process that takes two years and carries an exacting standard of review. The case coalesces around an easement the Corps acquired from the federal government to pump 600,000 barrels a day beneath Lake Oahe. The reservoir sits one mile upstream from the Tribe's reservation and is part of a river system that serves 17 million people.

The shutdown order, sought by the plaintiffs since 2014, was immediately appealed. Whether or not it stands, the final status of the permit won't be decided until the next presidential administration, when environmental review is complete.

✉ We'd like to hear from you. Send your letters to *BC Law Magazine*, 885 Centre St., Newton, MA 02459-1163, or email to [vicki.sanders@bc.edu](mailto:vicki.sanders@bc.edu). Please include your address, email, and phone number.



### 'Defending Jacob' Makes It to Screen

*BC Law Magazine* has been following the saga of William Landay '90 and his 2012 bestselling novel, *Defending Jacob*, as it has made its way slowly to the screen. It finally got there April 24 as an eight-episode Apple TV series starring Chris Evans and Michelle Dockery. Although various film options had been considered over the years, none had panned out. A limited-run series "wasn't a possibility I'd have thought of, until it came up," an excited Landay said when the project was announced.

### CONNECT

Update your contact information to stay in touch with BC Law. To learn of ways to help build our community, volunteer, or support the school, contact BC Law's advancement office:

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### BUILD OUR ALUMNI COMMUNITY

**Online Community** BC Law's LinkedIn page is a useful resource.

See what colleagues are doing professionally, read about the latest events, build your network, track classmates' achievements, and publish your own. Join at [linkedin.com/school/boston-college-law-school](https://www.linkedin.com/school/boston-college-law-school).

**BC Law Magazine** The alumni magazine is published twice a year, in January and June. Contact editor Vicki Sanders at [vicki.sanders@bc.edu](mailto:vicki.sanders@bc.edu) or 617-552-2873 for printed editions or to share news items, press releases, letters to the editor, or class notes.

**Regional Chapters & Affinity Groups** Alumni gather to socialize, network, and stay connected. Our newest group, Graduates Of the Last Decade (GOLD), fosters community among recent graduates. Contact us to start or join a chapter or affinity group, or to help organize an event.

**Class Agents** Agents are intermediaries between the school and alumni and keep classmates informed, engaged, and invested in BC Law's future success in between reunion years.

**Reunion Committees** The most successful reunions result when engaged volunteers serve on their Reunion Committee. Committees begin forming the Summer prior to reunion weekend, and members spend about two hours per month on committee work.

**Ambassador Program** Law firm ambassadors promote engagement with and giving to BC Law among alumni at firms with a BC Law presence. The volunteers provide the Law School with perspective on the legal industry, mentor and recruit students, and partner with advancement to strengthen the alumni community.

### CONNECT WITH STUDENTS

**Mentoring Program** The 1L Mentor Program matches students with alumni in the city where they want to live and in the practice area they are considering. Mentors serve as informal advisors between students' first- and second-year summers.

**Judging Oral Advocacy Competitions** Hundreds of students participate in four in-house competitions: Negotiations (fall), Client Counseling (fall), Mock Trial (spring), and Moot Court (spring). Alumni from all career areas are needed to judge these competitions.

### INVEST IN OUR FUTURE

**Advancing Excellence** When you give to BC Law, you have a meaningful impact on our entire community. Your gifts sustain everything from scholarships that attract and retain talented students to faculty research grants that keep BC Law at the forefront of scholarship.

**Named Scholarships** Student scholars are selected each academic year based on a number of factors, such as leadership, financial need, academic excellence, and public service achievements.

**Law School Fund** Gifts to the annual

fund provide immediate financial support for many of BC Law's most important needs. Key funding priorities have included financial aid, public interest summer stipends, post-graduate fellowships, and faculty research grants.

**Dean's Council Giving Societies** In appreciation for leadership-level gifts, members receive invitations to special receptions and events and enjoy membership in comparable University-wide societies. To learn more, visit [bc.edu/lawgivingsocieties](http://bc.edu/lawgivingsocieties).

**Drinan Society** This society recognizes loyal donors. Drinan Society members have given to BC Law for two or more consecutive years, and sustaining members have given for five or more consecutive years. The society is named for Robert F. Drinan, SJ, who served as dean of BC Law, 1956 to 1970.

**Alumni Association Dues Program** Dues exclusively fund alumni activities and events. Support the program by visiting [bc.edu/lawdues](http://bc.edu/lawdues).

Foremost

THE  
VISION  
PROJECT

## This Time Feels Different

If we stay united, racism may yield. BY DEAN VINCENT ROUGEAU

In May, protests erupted around the United States in the wake of yet another savage killing of an unarmed black man at the hands of the police. Not even a global pandemic could check the progress of America's racial disease. It is chronic. We treat the symptoms but we have been unable to cure the cancer for 400 years. ¶ This time, however, it feels as if a dam has broken. The demonstrations are mostly peaceful and many of the protesters are white. This should not surprise us because racism disfigures every member of society. Although black people are its most obvious and devastated victims, white people are forced to participate in a system created in their name, and are burdened with its "privileges" regardless of whether or not they perceive them. ¶ On top of this, our country has been brought to its knees by a presidency that has shattered every norm of decency, comity, and civility that we have understood as essential to the operation of our democracy. President Trump's words and actions have become salt

"The law is our best tool for reclaiming our country as a place where all people can participate in shaping our common life, and in which no one is simply an instrument for the acquisition of wealth or power by others."

DEAN VINCENT ROUGEAU

on our nation's wounds. During the protests in Washington, DC, his heavy-handed clearing of protesters and staging of photo opportunities before two prominent and historic churches drew widespread revulsion and sharp criticism from both the bishop of the Episcopal Diocese of Washington, Mariann Budde, and the archbishop of the Roman Catholic Archdiocese of Washington, Wilton Gregory, who happen to be the first woman and first African American, respectively, to hold their positions.

Archbishop Gregory found it "baffling and reprehensible that any Catholic facility would allow itself to be so egregiously manipulated and misused in a fashion that violates our religious principles, which call us to defend the rights of all people, even those with whom we disagree." He reminds us of the very same values that animate the Boston College Law School community, and signals to us what we are called to do in this moment.

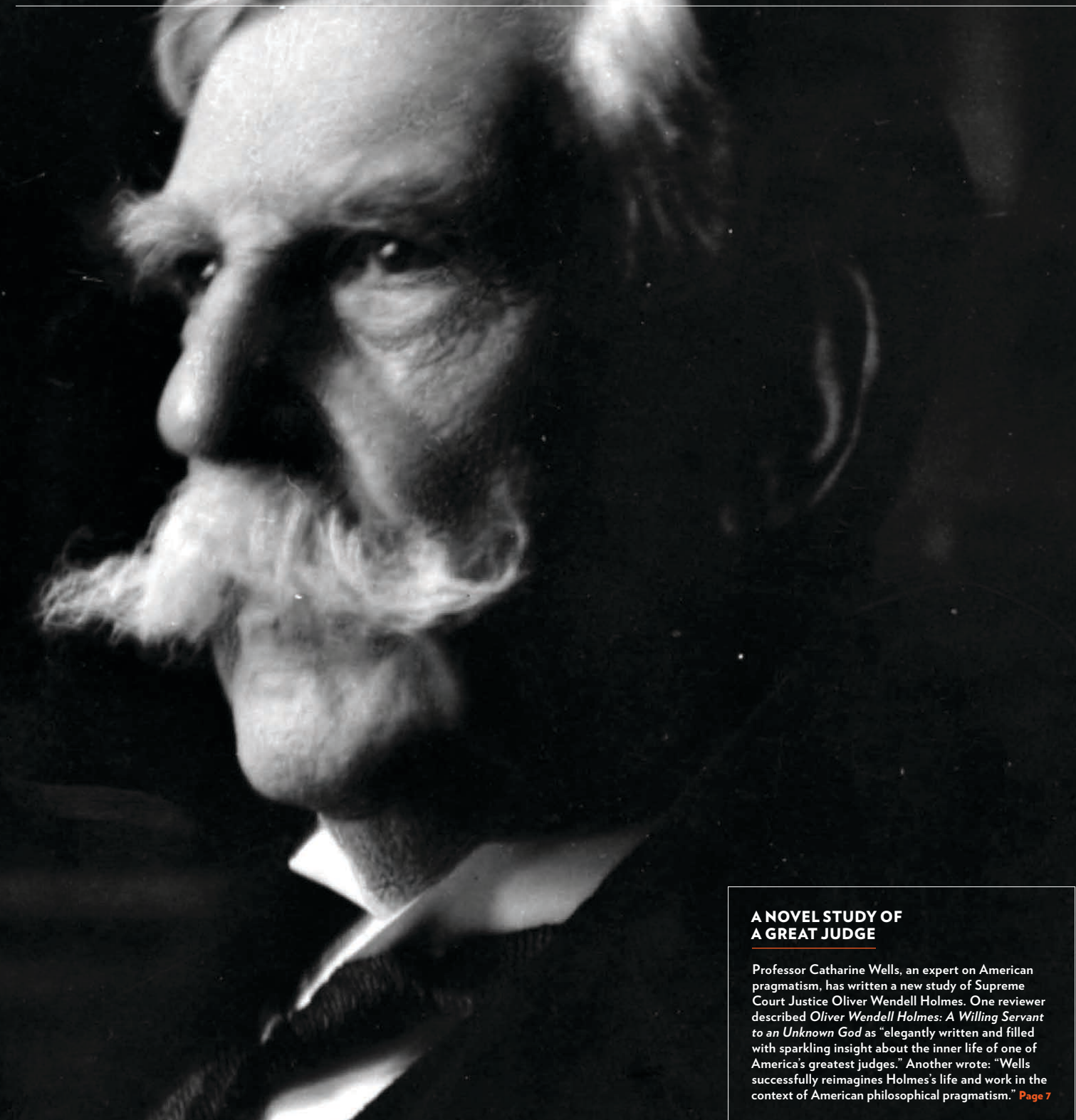
We cannot continue to allow some in our society to dehumanize and divide us if we are to have any hope of preserving our democracy. The law is our best tool for reclaiming our country as a place where all people can participate in shaping our common life, and in which no one is simply an instrument for the acquisition of wealth or power by others.

America has erupted not only because of festering racism, but also because it is descending into oligarchy. The most meager attempts by ordinary people to have a voice in our government or to secure a modicum of economic security are ruthlessly attacked and derailed. We make it more difficult to vote than almost any other advanced democracy. We have an ineffective social safety net that is on the brink of collapse. We still give political credence to the contemptible notion of the "deserving" and "undeserving" poor. We turn our backs on legitimate cries for help and justice from immigrants and refugees.

Those views are inimical to the values that have sustained Boston College Law School for nearly 100 years. This law school will never retreat from its commitment to using the law to uphold the dignity of the human person, advance the common good, and promote compassion for the marginalized. A new opportunity to infuse our work as lawyers with those values has presented itself. Our country is in desperate need of healing. Let us not lose this opportunity to attack, once and for all, the disease of racism while we build an economy and a democracy that serve us all.

# DOCKET

IN BRIEF 6  
FACULTY  
SCHOLARSHIP 8  
IN THE FIELD 10  
BRAINSTORM 12  
EVIDENCE 14



### A NOVEL STUDY OF A GREAT JUDGE

Professor Catharine Wells, an expert on American pragmatism, has written a new study of Supreme Court Justice Oliver Wendell Holmes. One reviewer described *Oliver Wendell Holmes: A Willing Servant to an Unknown God* as "elegantly written and filled with sparkling insight about the inner life of one of America's greatest judges." Another wrote: "Wells successfully reimagines Holmes's life and work in the context of American philosophical pragmatism." [Page 7](#)

## In Brief

**“We have an incredibly high recidivism rate for some low-level crimes. If we were manufacturing cars, we’d be shut down immediately. If you have a 67 percent failure rate as a car manufacturer, you wouldn’t be able to make cars anymore.”**

Suffolk County (Mass.) District Attorney RACHAEL ROLLINS

# The System Has Failed Them

Rappaport hews to policy as a means to fix what ails us.

BY JAEGUN LEE '20

**In hindsight, the event was prescient:** a March 9 panel at BC Law on ending mass incarceration while emphasizing the importance of crime prevention and rehabilitation. The message? That our criminal justice system has become a trap that places individuals with mental illnesses and substance abuse problems, among others, in a vicious and perpetual cycle of punishment.

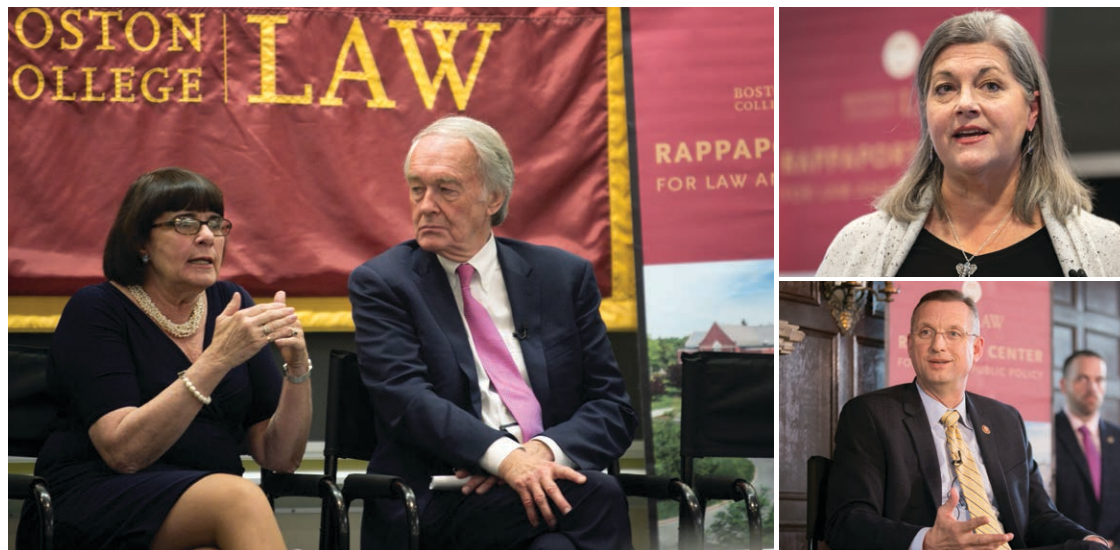
The all-star panel of Massachusetts law enforcement officials and lawmakers convened for the Rappaport Center for Law and Public Policy mere months before a black man, George Floyd, was killed by a white Minneapolis policeman, triggering a nationwide outcry against racism and a renewed call for criminal justice reform.

The panel comprised US Senator Edward Markey '72, Suffolk County District Attorney Rachael Rollins, Middlesex County District Attorney Marian Ryan '79, Middlesex Sheriff Peter J. Koutoujian, and moderator Will Brownsberger, a Massachusetts state senator.

Their March observations, statistically astute and systemically damning, are haunting in the context of Floyd’s death in May. “We incarcerated two million, mostly African American men, in the 1990s,” Senator Markey said. “We owe an apology to an entire generation of young African American men. The system failed them.”

DA Rollins said the criminal justice system—the “last catch basin at the end of several failing systems”—is not broken but rather has been working exactly how it was designed to work, resulting in unacceptably high recidivism rates. “We have an incredibly high recidivism rate for some low-level crimes,” Rollins said. “If we were

**Criminal Justice panelists: Middlesex County District Attorney Marian Ryan '79 and US Senator Edward Markey '72. At right, Jane Swift, top, and US Representative Doug Collins.**



manufacturing cars, we’d be shut down immediately. If you have a 67 percent failure rate as a car manufacturer, you wouldn’t be able to make cars anymore.”

Koutoujian, president of the Major County Sheriffs of America and the Massachusetts Sheriffs’ Association, said a one-size-fits-all approach to rehabilitation simply does not work. “There are

## OTHER RAPPAPORT CENTER EVENTS

Speaking from experience as the former first woman governor of Massachusetts, Jane Swift on January 15 launched her Jerome Lyle Rappaport Visiting Professorship at BC Law with a talk on how women in politics can leverage social media. Although it can be a particularly toxic environment for women, she said, social media generally acts as a “fundraising equalizer.”

US Representative Doug Collins (R-Ga.), ranking member of the House Judiciary Committee, participated on February 3 in a wide-ranging

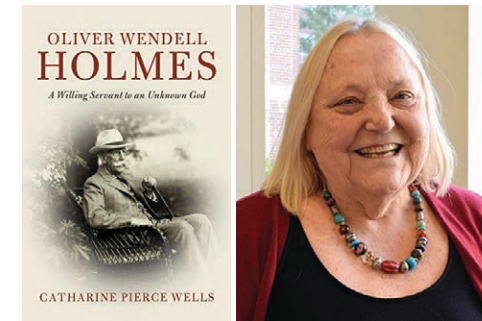
discussion on criminal justice reform, impeachment, and other hot political issues. Visiting Professor Jane Swift (R) led the questioning during which Collins emphasized the importance of bipartisanship even in a time of deep political divisions.

Rappaport’s May 19 webinar, “Helping Families and Children Cope with Covid,” brought together Harvard psychiatrists Michael Jellinek and Gene Beresin and psychologist Anne Fischel. While they acknowledged the difficulties of pandemic

living, Fischel also saw a bright side, predicting we will experience “post-traumatic growth,” may value relationships more, and discover personal, internal strengths.

In early July, Rappaport presented “Covid-19 and Federalism: Opportunities and Challenges.” Webinar panelists were former US Solicitor General Donald Verrilli, Massachusetts State Solicitor Elizabeth “Bessie” N. Dewar, and Stanford Law Professor Michelle Mello. Dan Kanstroom, Rappaport Center faculty director, moderated.

The book is the first to explore the 19th century New England influences that shaped Holmes’ character.



## A Great Judge Examined

Wells defends Holmes’ moral convictions in insightful new study.

Oliver Wendell Holmes has long fascinated Professor Catharine Wells, a Boston College Law School professor and expert on American pragmatism. She has studied and written about the Supreme Court justice for decades, an effort that culminated in *Oliver Wendell Holmes: A Willing Servant to an Unknown God*, published by Cambridge University Press in May.

One reviewer described the book as “elegantly written and filled with sparkling insight about the inner life of one of America’s greatest judges.” Another wrote that “Wells successfully reimagines Holmes’ life and work in the context of American philosophical pragmatism.”

Holmes was surely one of America’s greatest judges. His legal career spanned seventy years, fifty of them on the bench, first in the

Massachusetts Supreme Judicial Court and then in the United States Supreme Court. During these years, he helped to reshape the common law and wrote foundational opinions about freedom of speech and the limits of state regulatory power.

Though he was much praised and respected in his lifetime, more contemporary writers have not been so kind. They have charged that he was cold, distant, and lacked empathy—the result, they thought, of three years fighting for the Union in the thick of the Civil War. Holmes himself regarded military service as a sacred experience; and this, the modern critics said, made him heartless and bellicose. Furthermore, they argued, his so-called positivism made him skeptical of the high ideals that Americans had fought to defend in the Second World War.

In her book, Wells argues that Holmes’ critics have failed to understand the depth and strength of his moral convictions. To illuminate these, she set out to reconcile the contradictory tendencies in Holmes’ thought by exploring his early life and influences. She turned her philosopher’s eye to the pragmatism “that fueled his intellectual humility” and to the Transcendental Idealism “that inspired him to live what [Ralph Waldo] Emerson had described as a life that was ‘secretly beautiful.’” The result, according to Wells’ publisher, is an “innovative study” that is the first to explore the 19th century New England influences that shaped Holmes’ character and that “unlocks his unique identity and contribution to American law.”

## COMMENCEMENT WAS POSTPONED, CONGRATULATIONS WERE NOT

Boston College Law School’s 3Ls and LLM students should have gathered in Conte Forum on May 22 to receive their degrees on stage in front of faculty, family, and friends. The Covid-19 pandemic threw a wrench into those plans, as it did for many other graduates across the world. So BC Law stepped up to offer some virtual hugs and high fives.

The Law Student Association, with support from the BC Law

administration, put together a celebration that ran the week of May 18 on the Class of 2020 Facebook group page, kicked off with a video from the faculty. Other events included a Facebook Watch Party screening of *Legally Blonde*, a virtual Trivia Night, a favorite memory photo contest, and messages and live video appearances from Dean Vincent Rougeau, the LSA president, and faculty and staff. Watch the faculty congratula-



Professor Steven Koh offering good wishes virtually to the Class of 2020.

tions video at [tinyurl.com/bclawgrad](https://tinyurl.com/bclawgrad). For those graduates who are able to make it back to campus, a physical Commencement ceremony is being planned for the weekend of October 11.

## FACULTY HIRES



**1. Atinuke “Tinu” Adediran**  
Adediran has assumed the title of David and Pamela Donohue Assistant Professor in business law (succeeding inaugural chairholder Natayla Shnitser, who was promoted to associate professor and granted tenure). Adediran comes from the University of Chicago Law School where she was an Earl B. Dickerson Fellow and Lecturer in Law. BC Law Dean Vincent Rougeau described her scholarship on inequality in the law, legal institutions, and the legal profession, as demonstrating “how disciplinary perspectives and training can deepen our understanding about critical issues in the legal profession and the work of law firms.” Adediran earned her JD from Columbia University School of Law and a master’s and PhD from Northwestern University.

**2. Reena Parikh**  
Parikh, a Boston College graduate, joins BC Law following a Robert M. Cover Clinical Teaching Fellowship at Yale Law School’s Worker and Immigrant Rights Advocacy Clinic. Before Yale, she worked for US Citizenship and Immigration Services in the Office of the Chief Counsel, and completed a one-year detail as a Special Assistant US Attorney in the Eastern District of New York. Parikh’s experiences include a clerkship for the Honorable Margaret B. Seymour in the District of South Carolina and internships with the Department of Justice Civil Rights Division and the Asian American Legal Defense and Education Fund. She earned her JD at American University Washington College of Law.

**3. Sandy Tarrant '99**  
Tarrant, who has been a visiting professor and director of the Entrepreneurship & Innovation Clinic (EIC) at BC Law, assumes the title of Associate Clinical Professor this fall. Previously, Tarrant was an associate in the Corporate and Public Finance practices at the Boston office of Mintz Levin, where she worked with private and public companies on mergers and acquisitions, financings, public offerings, securities compliance, and governance. She also served on the firm’s Pro Bono Committee. Before attending BC Law, she worked in varying capacities for nonprofit and political organizations around New England.

## TRIBUTE

### ALOHA, MICHAEL

Anyone who ever set foot in the Boston College Law School Library likely knew Michael Mitsukawa, a gentle and effective presence there for thirty-five years. He was a vital facilitator during the new building’s construction in the mid-1990s and later ran the Administrative and Technology Resources (ATR) department. Beloved for gestures of thoughtfulness that a friend called his “Michael moments,” Mitsukawa characteristically wrote a farewell thank you letter to the community in February when he departed for Hawaii to be with family during the brief, final chapter of his life. He died there of cancer on April 29.



## Faculty Scholarship

# Copyright Subtleties

Professor Yen offers nuanced look into the law. BY CLEA SIMON

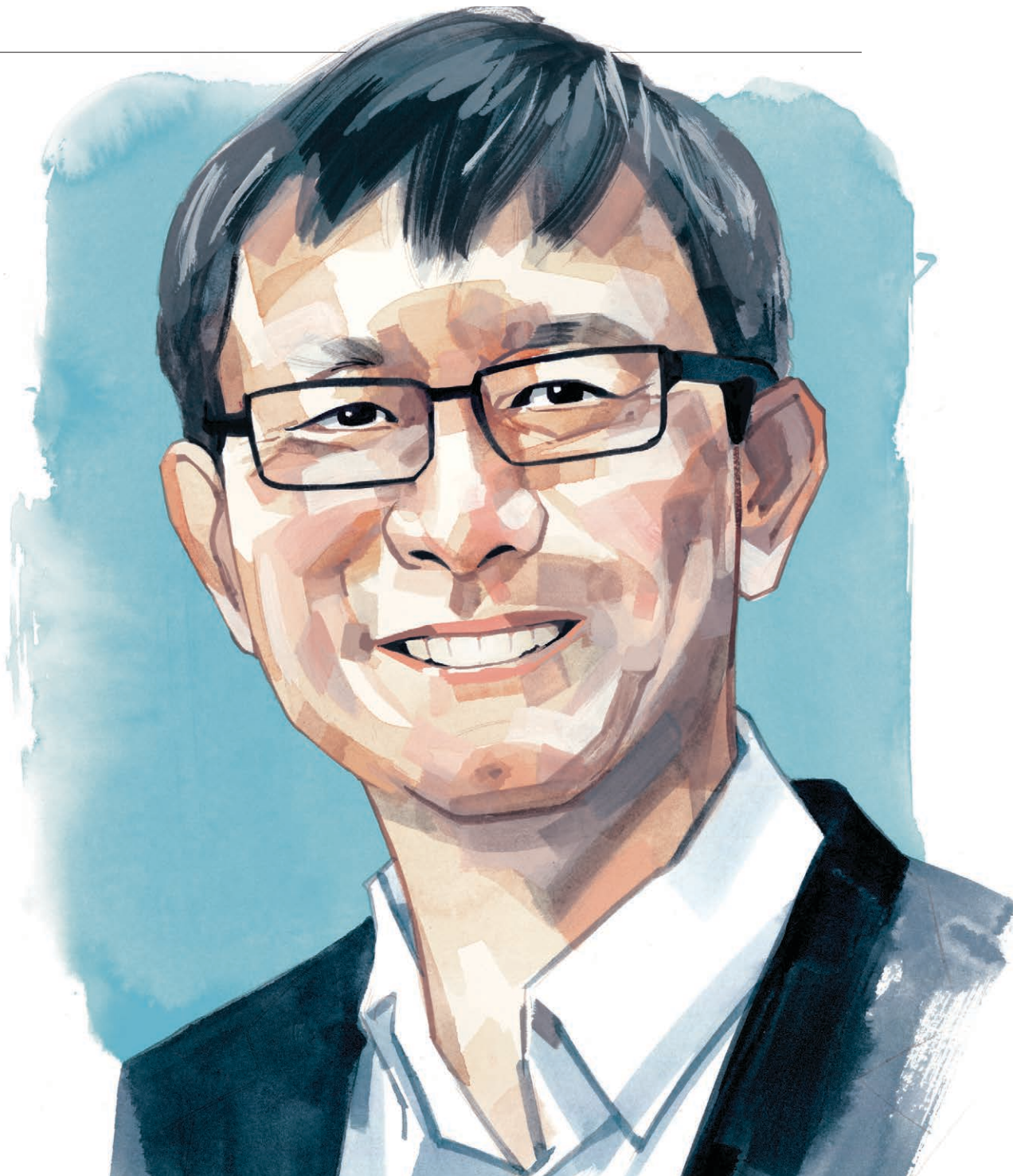
**The Idea:** *Extending copyright law to cover the internet requires that courts look deeper into underlying policies in order to decide which rationale from the law of tort applies: strict liability or fault-based liability.*

**The Impact:** The internet has increased the speed and facility of disseminating all kinds of copyrighted material, including literature, music, and movies—often without permission.

As Professor Alfred C. Yen explains, in the pre-internet world, copyright owners whose rights had been infringed upon would most likely have sued the individuals directly responsible for distributing copyrighted works without authorization. However, in the internet era, it may be difficult to locate the precise person responsible or that person might be located outside the United States. In addition, one single person might not have the financial resources to fully compensate a copyright holder for the damages of copyright infringement, making this traditional recourse ultimately unsatisfactory.

In response, copyright holders have begun suing internet service providers for infringement committed by their users, drawing on established law that at times holds one party responsible for copyright infringement committed by another. The result has been a series of narrowly focused decisions that do not answer the fundamental strict liability or fault-based liability questions at stake.

Yen's work has had considerable influence over the positions taken by litigants in third-party copyright litigation. However, because his writings



### POCKET RÉSUMÉ

**Degrees** BS, MA, Stanford University; JD, Harvard. **Title** Professor and Dean's Distinguished Scholar at BC Law. **Newest Credential** Editor-in-Chief, *Journal of the Copyright Society*. **Select Writings** Articles in *Georgetown Law Journal*, *Southern California Law Journal*, *North Carolina Law Review*, *Boston University Law Review*, *Minnesota Law Review*, *Chicago-Kent Journal of Intellectual Property*, and *Virginia Sports and Entertainment Law*. Books include *Copyright Law: Essential Cases and Materials*, editions 1–3 (co-authored with Joseph P. Liu). **Activism** Organized the first, fifth, and tenth Conference of Asian Pacific American Law Faculty, all held at BC Law.

Yen's work has had considerable influence over the positions taken by litigants in third-party copyright litigation. However, because his writings call for a more subtle...analysis of the underlying law, rather than arguing for any particular approach, they have been cited by both sides.

call for a more subtle and deeper analysis of the underlying law, rather than arguing for any particular approach, they have been cited by both sides.

Courts might choose strict liability, he explains, because they believe that internet service providers should insure and guarantee the behavior of their users. Followers of this theory argue that it does not matter how careful or responsible the service provider is in trying to prevent its users from committing copyright infringement because service providers should insure and guarantee that their systems are never used for infringement. Thus, if infringement does occur, the service provider is liable even if there was nothing reasonable that could have been done to prevent it. "Not surprisingly," says Yen, "copyright holders often favor this line of thinking."

Alternatively, courts might hold internet service providers liable only when they have behaved unreasonably in failing to stop infringement. This would happen if the provider intentionally encouraged infringement or if the provider took insufficient precautions against infringement. "Service providers prefer this line of thinking because it implies that reasonable behavior eliminates responsibility for the behavior of their users," says Yen.

Although Yen's work has been cited in such cases as the 2002 US Fourth Circuit Court of Appeals *CoStar Group Inc. v. Loopnet*, where the use of proprietary real estate material was at stake, this conflict may best be illustrated by the leading Supreme Court case *MGM Studios Inc. v. Grokster Ltd.* In this 2005 case, Yen's writings were cited by the plaintiff and the defendant. The plaintiff, MGM, sought damages on the basis of strict liability. In other words, on the grounds that Grokster, a peer-to-peer file-sharing network, enabled

improper use of MGM's copyrighted material. As a file-sharing network, it was set up to share material, even copyrighted material. The defendant Grokster, on the other hand, used Yen's writings to support a fault-based approach, which argued that under limited liability it was not responsible for malfeasance by individual users. The network existed for users to share files, but they weren't supposed to share copyrighted files.

Interestingly, the Court decided the case unanimously in the plaintiff's favor, but did so under the general theory favored by the defendants. In its decision, the Court appeared to reject the plaintiff's argument that the defendant acted as guarantors and insurers of its users. Instead, it apparently accepted the defendant's argument of limited liability: that Grokster should only be responsible under certain specific conditions. Unfortunately for Grokster, the Court found that the case met those conditions. The implication, explains Yen, was that "the defendant lost because it deliberately wanted its users to infringe."

However, this decision did not settle the issue. Because the Court did not clearly reject the viability of the plaintiffs' theory of the case, it left ambiguities that persist to this day. "Current litigation about third-party copyright liability shows that courts still have not clearly decided which rationale of liability takes precedence, or how the different rationales might be blended," says Yen.

It is therefore possible that the issues Professor Yen has framed will return to the Supreme Court for further clarification.

The courts, he says, "have to be more nuanced and more thoughtful about how they construe the doctrines defining where liability exists."

### NOTABLE FACULTY PUBLICATIONS

**Daniel R. Coquillette** and Bruce Kimball have followed *On the Battlefield of Merit* with the second in their two-volume history of Harvard Law School. *The Intellectual Sword: Harvard Law School, the Second Century* (Harvard University Press), which earned distinction as a Belnap Press imprint. It chronicles the school's near collapse and dramatic resurgence during that period.

**Shu-Yi Oei** and **Diane Ring** teamed up to write "Tax Law's Workplace Shift" (*Boston University Law Review*). The authors examine whether a deduction in the 2017 tax law could lead to a widespread shift toward independent contractor jobs, costing workers employee protections. They conclude that it is difficult to isolate the deduction as the sole driver of such a shift.

**Brian JM Quinn**, who has written extensively on issues of legal reform in post-Socialist Asia, particularly Vietnam, was the resident director for the Fulbright Economics Teaching Program in Ho Chi Minh City from 1994-2000. His recent work on the nation is "Developing Fiduciary Culture in Vietnam," published this year by *Seattle University Law Review*.

**Patricia McCoy**, a prominent scholar of financial services regulation and the 2008 banking crisis, wrote two articles in 2020 with Susan M Wachter. "The Macropprudential Implications of the Qualified Mortgage Debate" was published in *Law and Contemporary Problems*. "Why the Ability-to-Repay Rule Is Vital to Financial Stability" appeared in *Georgetown Law Journal*.

## FACULTY MILESTONES

**Facing Racism** Dean Vincent Rougeau was named inaugural director of the Boston College Forum on Racial Justice in America. The forum provides a meeting place for listening, dialogue, and greater understanding about race and racism, and serves as a catalyst for bridging differences regarding race in America, promoting reconciliation, and encouraging fresh perspectives.

**The Thinker** Cathleen Kaveny is the 2020 recipient of the Marianist Award for Intellectual Contributions. She accepted the honor in February at the University of Dayton, where she gave the Marianist keynote lecture, "Law's Pedagogy in a Pluralist Society." The annual award honors a Roman Catholic for contributions to Catholic intellectual life.

**A Voting Conundrum** Legal historian Mary Sarah Bilder joined constitutional scholar Edward B. Foley and author Jesse Wegman (*Let the People Pick the President: The Case for Abolishing the Electoral College*) at the Kennedy Library May 27 to discuss the history of and contemporary challenges to the Electoral College.

**Of the Moment** Early in his career, Mark Brodin spent six years as staff attorney with the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, representing plaintiffs in individual and class actions in the areas of employment discrimination, housing discrimination, sexual harassment, and police misconduct. This June he memorialized that time and mission with "The Boston Lawyers' Committee for Civil Rights Under Law: The First Fifty Years" in *Massachusetts Law Review*.

**Rest in Peace** Arthur Berney, a beloved professor and civil rights litigator who worked on the landmark 1967 case *Loving v Virginia*, passed away April 1. "Arthur was a beacon of justice and social responsibility" who became "the conscience of the school," says BC Law Professor Robert M. Bloom '71. Berney's first book, *Legal Problems of the Poor* (1976), was a "trailblazing effort" that helped establish the field of poverty law, recalls BC Law Professor George Brown. Brown also views Berney as a pioneer in national security law, in which he co-authored one of the first casebooks.

## In the Field

## POCKET RÉSUMÉ

**Yolanda Courtney Lyle '01** Chief of Staff to the CEO of Pfizer. **Pay it Forward** She is a member of the Jackie Robinson Foundation's (JRF) Northeast Scholar Advisory Committee, and an alumna of JRF. **Healthy Respect** In 2017, the Healthcare Businesswomen's Association honored her with a Luminary Award.



## Right Place, Right Time

Pfizer VP meets the moment with corporate smarts.

BY MAURA KING SCULLY

“BC Law was the only school I applied to,” recalls Yolanda Courtney Lyle '01, vice president of executive operations and NYHQ site lead for pharmaceutical giant Pfizer. “It had a strong reputation for excellence, and I was eager to return home to Boston.”

Lyle, a Brookline native, excelled in high school, but the expense of a private college seemed out of reach. Fortunately, a scholarship from the Jackie Robinson Foundation, together with a Boston College Tip O'Neill Scholarship, paved her way to entering Boston College as a sociology major and set the stage for an exciting career in corporate

America. After graduating, she spent four years working, including a year volunteering with AmeriCorps National Civilian Community Corps, a network of national service programs, in an effort to give back and positively impact the community.

After graduating law school, Lyle practiced law for three years at Nutter in Boston, and then moved to New York City. Leveraging her experience as a clinical study coordinator at Brigham & Women's Hospital, she joined Pfizer in 2004 as an attorney sup-

porting their global research and development operations.

At Pfizer, Lyle has learned a lot about what it takes to navigate and sustain a successful career in corporate America, emphasizing the importance of being agile, flexible, and receptive to making transitions. “Early on in my career, I had a tendency to resist change,” recalls Lyle. “I was comfortable in my role. I was good at what I did, and I saw no reason to rock the boat. However, it ultimately occurred to me that if I continued to decline new opportunities, there

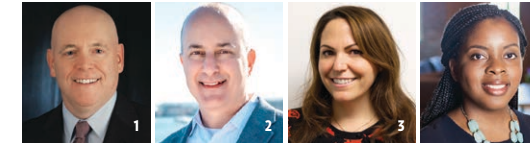
would come a day when people would stop asking.”

With that in mind, in 2010, Lyle joined Pfizer's compliance division. It was a period of transition and growth for compliance at Pfizer which, as Lyle saw it, presented great opportunity—and she was right. She went on to lead a team responsible for ensuring the overall effectiveness of Pfizer's compliance program through the development and implementation of comprehensive risk management strategies for the company's research and development, medical, and manufacturing operations.

In June of this year, she was appointed to her current position as Chief of Staff to the CEO. “When I left BC Law, I never could have imagined that my career would lead me to this point. I'm thrilled to join the Office of the CEO, and am excited for the important work ahead,” she says.

“I've always been proud of what we do at Pfizer. But now, as we work to develop a Covid-19 vaccine and identify therapies to treat this deadly virus,” she explains, “I'm more inspired and more grateful than ever to work for an organization so committed to public health and to being a part of the solution to combat this evolving crisis.”

Lyle, who is a member of the Executive Leadership Council, a network of the nation's most influential African American executives, is often asked for career advice. Drawing from her own experiences, she says: “What I've learned over time is not to underestimate the importance of taking risks. Growth often happens when we step outside of our comfort zone.”



## Paths to Success

Alumni find career satisfaction in diverse places.

### 1. Hugh McCrory '86

**Life Skills** As senior vice president/chief counsel for MetLife Investment Management, he advises a global investment management team that specializes in fixed income, real estate, agriculture, and private equity investments. **One for All** “We strive to build a culture that is very supportive and collaborative, within our team and with our outside firms.” **Diversify** For those who want to transition from firms to in-house, he recommends covering the bases. “There can be pressure to specialize early, but do what you can to expand your range. And, step forward for special projects—your willingness will be viewed positively, and you'll broaden your experience. Pro bono can be a great way

to do that, too—you'll likely get additional training and you'll be giving back.”

### 2. Aaron Toffler '92

**Earth Day Every Day** As director of policy for Boston Harbor Now, he's helping shape the region's response to climate change to ensure that the Boston waterfront is accessible, equitable, and resilient. **Well Schooled** Previously, he was a faculty member at Lasell University, where he directed the Environmental Studies Program and served as dean of the School of Communication and the Arts. **Walk the Land** “As a third-year law student, I was lucky to be able to teach environmental law to Boston College undergraduates as part of Professor Zyg Plater's first cohort of law student teachers.

From that moment, I was hooked on teaching. I have been fortunate to be able to combine my passions for most of my career.”

### 3. Angela Arroyo '09

**Food for Thought** She spent eight years as a legal officer with the World Food Programme in Rome. “I was able to do rigorous legal work, including litigation within a context that was literally working to make the world a better place.” **Global Adaptations** In 2018, she moved on to the United Nations Development Programme (UNDP) as a legal specialist. Based in New York, she serves in the human resources/employment law section, providing guidance to staff in 177 countries. **The Big Picture** “When giving advice, it's necessary to take into consideration the national context, whether it be a pandemic or civil war, a natural disaster, or merely the cultural

differences that shape the context of that office.”

### 4. Carla Reeves '10

**Labor of Love** As a senior associate at Goulston & Storrs in Boston, she focuses primarily on employment litigation and counseling. “My employment law practice is dynamic and engaging, and most of the matters I handle involve issues and fact patterns that are fascinating. No two days are the same.” **Giving Back** She's a board member for the Volunteer Lawyers Project of the Boston Bar Association, a member of the Massachusetts Black Lawyers Association, and volunteers with the Women's Bar Foundation's Family Law Project for Domestic Abuse Survivors. **Advice** “Develop a network of mentors and sponsors, and work to foster meaningful relationships with them. As you advance in your career, pay it forward.” —MKS

## MEET A MARVEL IN THE DIGITAL SPACE

**Michael “Saph” Sapherstein '97** There's no villain in sight, but that doesn't mean Sapherstein is letting his guard down. As assistant chief counsel of Marvel Entertainment, Sapherstein is defending and advancing the explosive universe of digital super heroes. “Marvel video games and digital comic books, in particular, are growing exponentially. It's incredibly exciting to wrestle with the legal issues involved,” he says.

Marrying his interests in law and technology was Sapherstein's goal even before he enrolled at BC Law,

where he co-founded the *Intellectual Property and Technology Forum*, a still-thriving interactive web-based law journal.

After law school, he worked at an

IP/tech-focused boutique law firm and then quickly moved in-house to a dot-com start-up. In 2001, he joined Major League Baseball Advanced Media as its second in-house counsel. “The Commissioner of Baseball convinced the MLB Club owners to consolidate their interactive and internet rights into one company,” he explains. “It proved to be a multi-billion-dollar success story.”

Looking for his own seventh-inning stretch, Sapherstein went to work for Marvel Entertainment in 2008. “I saw that Marvel had just hired its first head of digital, and I convinced him to hire me as Marvel's first lawyer dedicated to digital,” recalls Sapherstein, who notes that just a year after he was hired, Marvel was acquired by the Walt Disney Company.

Sapherstein is a natural in a world of adventurers. “The law will never catch up to the pace of development in the digital space. There's no uniform set of ‘digital’ laws; rather, a patchwork of laws that apply to issues such as data privacy, IP rights, and kid-targeted content,” he explains. “It's always exciting.” —MKS





# Q+A

WITH

Michael  
Gerhardt

and DEAN  
VINCENT ROUGEAU



## The Elusive Remedy

An experienced eye looks at the Trump impeachment.

ABRIDGED AND EDITED BY CLEA SIMON

**What exactly is impeachment and how did what occurred with Trump fit into its constitutional role? With only three impeachments in our country's history, Michael J. Gerhardt, the University of North Carolina at Chapel Hill Burton Paige Distinguished Professor of Jurisprudence, is perhaps the leading expert, having authored six books on the legislative process. In February, when he lectured at BC Law and spoke with Dean Vincent Rougeau, Gerhardt also brought a personal perspective, having testified at the impeachments of Presidents Clinton and Trump.**

**“Impeachment is intertwined with culture. You can only do so much in impeachments that the culture allows you to do, or as little as it may allow you to do.”**

MICHAEL J. GERHARDT, Burton Paige Distinguished Professor of Jurisprudence at UNC Chapel Hill

**MG:** The perception of impeachment and the practice of impeachment have both changed over time. Look at what happened in Watergate: Congress and a special prosecutor identified misconduct that President Nixon had been engaged in. The committee approved three articles of impeachment against him, and then he resigned. People think of that as an example of a system working.

Fast forward to today. I don't think we can look at [President Trump's impeachment] and come to the same conclusion and without seeing that the Constitution itself might be broken.

**VR:** Your point about the Constitution being broken is really important. Most other democracies have their constitutions go through evolutions and revisions, and sometimes they're replaced. Obviously, we've added amendments, but the basic structure—the way we think about the Constitution—has remained relatively constant.

The Nixon impeachment happened in a different economic and social and cultural context. There was an agreement amongst those who ran the country about how things were supposed to work. And we just don't have that anymore.

**MG:** Impeachment is intertwined with culture. You can only do as much in impeachments as the culture allows you to do, or as little as it may allow you to do.

**VR:** What we've seen is this dramatic move over a relatively short period of time—twenty-

five years. We've seen people who were, during the Clinton impeachment, trying to uphold a moral standard about lying under oath, now supporting lying under oath. Another dramatic example is the way the evangelical Christian community has lined up behind the president.

I don't think the framers could have imagined the kind of moral space we're occupying today across the range in leadership. There are lots of ways we could ask ourselves whether or not the Constitution is functioning appropriately for where we are now.

**MG:** The fact that Nixon was willing to resign tells us a lot about Nixon. In the end, he listened when people said, “You've got a choice here. You can either get convicted and thrown out or you can resign.” If that question were posed to President Trump, he would say there's no way he'd resign. So the forced resignation option to impeachment is not viable. That puts us back in a situation of what systems are viable. We have to confront the limitations of all these options.

**VR:** This president consistently breaks norms that have existed as far as anyone can remember. The executive has always been trying to increase its power, but he's behaving in ways that are akin to what you would expect in an authoritarian state. That is frightening, but what is more so are the enablers around him; it takes a group to enable a leader like this. We're seeing people who are willing to throw away decades of government service to serve as his lawyers and attach themselves to power.

**MG:** That's a terrific point. In constitutional law we teach the unitary theory of the executive: the idea that all executive power should be consolidated under the control of the president. I'm not sure it's ever really been in effect, but this administration and his lawyers are pushing that theory forward and that might be some explanation for the behavior we're seeing, including attacking the justice department, in part because under this theory they all work for him. There are many problems with the unitary theory of the executive. One is that there are no means for holding the president accountable.

**VR:** One potential check is the ballot box. But now they're corrupting the voting process.

We're hearing more and more about the responsibilities we have as citizens. We probably need to rethink how we educate young people about their responsibilities and maybe go back to some notion of civic education.

**MG:** The framers, particularly James Madison, talked about the importance of an enlightened citizenry. Citizens who would be interested in education. There's this idea of civic virtue, that it's a noble endeavor to be involved with and informed about politics. Many Americans don't share that, which is unfortunate. Education may be one way to deal with that, but I think it's cultural. It has to be a lived experience. We have to figure out a way to ensure that people don't just read about it; they have to be brought up or given experiences where they can really use those ethical rules.



## Evidence

## A Drug's Journey

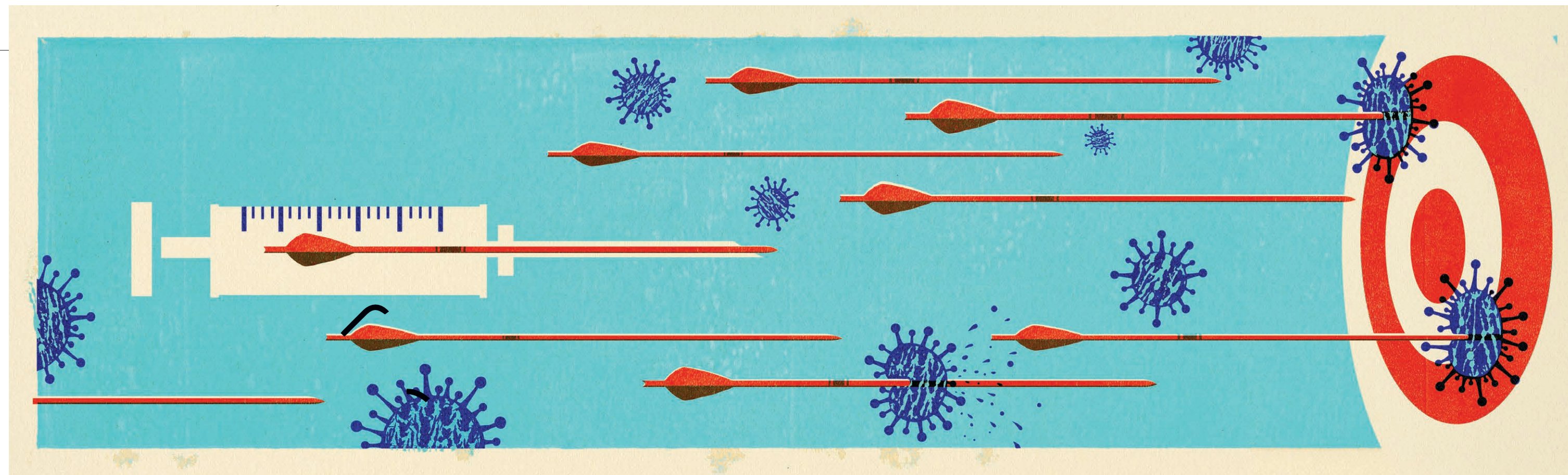
How lawyers make cures happen.

As the world's scientists race to find a vaccine for Covid-19, all eyes are on the biopharmaceutical industry. The time, money, and human resources needed to bring new drugs to market are enormous. Even before the pandemic hit, pharma was big business, growing by leaps and bounds to keep up with the burgeoning demand for treatments and cures for a host of diseases. One may think of pharma as within the purview primarily of scientists and engineers. But working alongside those who develop and produce new therapies are legions of lawyers who make sure that the legal i's are dotted and t's are crossed as a drug makes its arduous journey from idea to trials to finished product and beyond.

We wondered what, *exactly*, do lawyers in pharma do, what specialties do they bring to the process, and where along the drug development timeline do their skills intersect with the science, manufacture, sales, and marketing of the drugs being made?

The questions were put to Nikki Hadas '97, senior vice president and chief legal officer at Akebia Therapeutics in Cambridge, and her legal intern, BC Law student Iris Ryou '21. The information graphic at right provides their answers.

RESEARCHED AND WRITTEN BY  
NIKKI HADAS '97 AND IRIS RYOU '21



## DRUG DEVELOPMENT



## New Drugs

Medicines currently in development worldwide /

**16,000**

## Cost to Develop

**\$985 million**

Median, 2009-2018

**\$2.8 billion**

Most expensive: Oncology and immunomodulatory, 2009-2018

## Success Rates (2000-2015)



**13.8%** / Phase 1 to Approval for all drugs



**33.4%** / Highest: Infectious diseases and ophthalmology



**3.4%** / Lowest: Cancer

## Timeframe

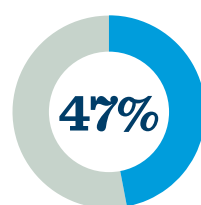
**10** / Years from discovery to commercialization (average)

**3-6** / Years for initial discovery: Understanding the disease or condition and choosing a molecule to target

**6-7** / Years for clinical development: Three consecutive phases

**1/2-2** / Years for FDA review and scale up to manufacture

## MASSACHUSETTS BIOPHARMA



Increase in jobs since 2010



**500**

Biotech companies in the state

**\$4.8 billion** / Venture capital investment 2018

**12.4 million** / Added square feet of commercial space in 10 years, a 70% increase

**265,000,000**

Number of patients receiving MA companies' therapies in the United States

**2 billion** / Number of patients receiving MA companies' therapies worldwide

## LEGAL TOUCHPOINTS

## INTELLECTUAL PROPERTY

1. During drug discovery and research phases, Intellectual Property (IP) lawyers identify key inventions and prepare and prosecute patent applications to protect them. This continues throughout drug development and commercialization, as new inventions are conceived and reduced to practice. Working with commercial and regulatory teams, IP lawyers select brand names that can be registered as trademarks for drug products and satisfy FDA regulatory requirements.

2. From initial discovery to marketplace, IP lawyers routinely conduct landscape analyses and monitor patents filed by companies with potentially competing products or patents. They may file invalidity or opposition actions to those blocking patents, defend such actions brought by other companies or institutions, and negotiate license agreements with those whose patents may cover the company's product.

3. IP lawyers bring actions against competitors who infringe the company's patents or trademarks or misappropriate trade secrets. They bring infringement suits against companies that seek to market a generic or biosimilar version of the company's innovator drug products.



## CORPORATE • SECURITIES

1. Corporate lawyers provide legal support for financings and other capital raises to obtain the funds to develop a new medicine. The funds may be used for research, clinical trials, manufacturing, and other development activities.

2. Corporate lawyers support partnering activities, for example, collaborations with other biopharmaceutical companies that may have specific expertise and provide financial support for a drug's development. In such a setup, they draft and negotiate the collaboration agreement that forms the basis of the relationship and support the collaboration for the duration of the relationship.

## CONTRACTS

1. When a company collaborates with an academic institution, hospital, or clinic on research, contract attorneys draft and negotiate the agreement between the parties.

2. Contract attorneys draft and negotiate agreements such as clinical trial agreements with sites performing clinical studies of a drug, contracts with vendors and consultants who support a drug's development, and supply agreements with drug substance and drug product manufacturers.



## COMMERCIAL • COMPLIANCE

1. Commercial lawyers review marketing materials for a drug in preparation for launch and afterward ensure marketing materials comply with laws and regulations. They review educational and scientific materials, presentations, and publications to ensure compliance with rules regarding scientific exchange of medical information.

2. Compliance lawyers draft policies, train pharmaceutical sales representatives and other personnel, as well as conduct live monitoring and periodic audits to ensure personnel comply with laws and regulations, specifically those related to product promotion and interactions with health care providers.

HOW THE  
PANDEMIC

WILL

THE  
VISION PROJECT

CHANGE  
US, BY THE

BC LAW  
FACULTY.

**MINISCULE IN SIZE AS COVID-19 IS (125 NANOMETERS), IT HAS BECOME A COLLOSAL DISRUPTER FORCING AN EPIC STANDOFF BETWEEN NATURE AND HUMANKIND.** The collateral damage is breathtaking: deaths in the millions, racial despair, economic collapse, global divisions, populist uprisings, political fractures. The job of teachers and scholars is to search for meaning in such moments, to offer lessons from history, and to point the way forward. For professors of law, that means looking through the lenses of ethics, equality, rights, justice, governance, and more in an effort to make sense of what is happening and why. We asked these questions of the Boston College Law School faculty and what emerged is The Vision Project, a collection of some 40 interviews—condensed on these pages and expanded online—on what went wrong and how we might make things right. For their full responses, visit [lawmagazine.bc.edu](http://lawmagazine.bc.edu) and click on The Vision Project.

Interviews and editing by  
**VICKI SANDERS,  
DAVID REICH  
+ JERI ZEDER**

Photographs by  
**DANA SMITH**  
Illustrations by  
**DAN PAGE**

Portraits by  
**KAGAN McLEOD**

17



# THE PROTECTOR

**What have you been doing to increase workplace and patient safety in hospitals during the pandemic?** I provide leadership as the chief medical officer in Workplace Health and Wellness, a division of Mass General Brigham. This division consists of clinical services for health care workers at the hospital clinic sites, provides injury and illness prevention programs, and supports research in association with the Harvard Center for Work, Health, and Wellbeing.

Looking back, we were reasonably well-prepared for the pandemic. Last year, we instituted a mandatory annual flu vaccination program for all employees, including those not working at the hospitals. Our flu policy is based on the idea

**PROFESSOR DEAN HASHIMOTO IS A LAW PROFESSOR, PUBLIC HEALTH SCIENTIST, AND PRACTICING PHYSICIAN. AT MASSACHUSETTS GENERAL BRIGHAM, HE OVERSEES THE HEALTH AND SAFETY OF WORKERS IN THE TWELVE-HOSPITAL SYSTEM.**

## Q+A

**PROFESSOR DEAN HASHIMOTO /** Chief of workplace health provides guidance in pandemic.

that all employees in a health care system should be a model for our patients and participate in this public health program that reduces the danger of infectious epidemics. Since the Covid-19 epidemic occurred during flu season, this mandatory vaccination program substantially reduced the number of employees who became ill with symptoms identical to the coronavirus illness.

We anticipated the high demand on occupational health services by 77,000 hospital workers through leveraging technology early in the epidemic. In February, we implemented several new electronic reporting systems. When the CDC began to issue warnings about overseas travel, we were the first in our

## THE VISION PROJECT

region to establish a travel survey that was completed by all employees traveling to China and other high-risk countries. When the CDC later issued furlough requirements for those who returned from travel to these Level 3 countries, we were literally pulling people out of work during the same day that these requirements were issued. The travel data were an invaluable means of protecting our patients and workers.

Our basic strategy was highly focused on implementing key CDC guidelines. The danger of trying to reduce all potential risks to zero is that you will not prioritize the safety interventions that will have the most substantial impact. We took the more practical approach of emphasizing five key CDC recommendations and implementing them exceedingly well.

So, we emphasized respiratory hygiene, washing your hands, physical distancing, and a masking policy that required both patients and employees to wear surgical masks. Shortly after initiating universal masking, we saw a substantial decrease in the number of infections among our health care workers. We were perhaps the first health system in the country to initiate universal masking, and we published this important data in the *Journal of the American Medical Association*.

We also instituted a symptom report that later transformed into what is called the FastPass system whereby, in order to enter the hospital, you have to record daily on a phone app whether you have any symptoms of disease. Then, once you receive your staff pass on your mobile device, you show it to the person at the door who will let you into the hospital and provide a surgical mask to wear for that day.

Our most innovative achievement was putting together the occupational health call center. The call center receives phone calls from employees about any Covid-related issue, but especially if they have symptoms and want to be considered for testing. When testing first became available, we were able to offer it to everyone in a reliable way. We needed, however, to increase the size of our occupational health staff more than three-fold within

two weeks. That's what the creation of the call center allowed us to do. We basically went from 35 clinicians to over 100 clinicians, most of whom are devoted to the Covid-19 epidemic. The call center makes testing readily available and provides advice to concerned workers. It helps track the health of workers and ensures that they are cleared medically before returning to work.

**What parts of the hospital were most susceptible to Covid-19 infection?** It was reasonable to worry that those who were working in the ICU with Covid-19 patients would have a high infection rate. But we found that, at least in our hospitals, that was not where infection rates were highest. Infection rates were highest among those departments with low paying jobs. If you look at our various job categories with lower wages—food service workers, environmental service workers, and so on—their infection rates are up. What we're seeing is basically a reflection of the risk of transmission in the community.

The renowned medical writer and thinker, Dr. Atul Gawande, described our CDC-focused approach to hospital safety at Mass General Brigham in *The New Yorker* on May 13. He noted that we have had “few workplace transmissions” and observed that our hospitals have “learned how to avoid becoming sites of spread.” Dr. Gawande concluded that this hospital safety approach provides a regimen for our society's reentry to the new normal in the face of the pandemic.

**If you were to start from scratch, how would you build a health care system that is effective and just for all?** What this epidemic reveals is the importance of workplace health and public health in health care. In fact, the curve did flatten

in Massachusetts and other states. The number of people infected with coronavirus and who have died is tragic. But the tragedy is a lot less than what it could have been. I hope this means that there will be an even greater recognition of the value of public health, and a greater commitment to it.

Public health has a broader focus than medicine. It looks at the social determinants of health. The Covid-19 epidemic has revealed that the basic injustice within health care, and in public health more generally, is tied to socio-economics. It's tied to disparity in wages, housing conditions, transportation access, food distribution, and other social determinants of health.

Our country spends about two-and-a-half times what is spent in the average industrialized country in the world. Yet, in terms of health outcomes, we're below average. We haven't paid enough attention to the social determinants of health.

What are the impediments to, and opportunities for, achieving a more equitable system? I support the vision of a Medicare-for-All system or a single-payer system. But that's really a ten- to fifteen-year vision. It's not going to occur very quickly even if we make that commitment now because of the number of large steps necessary to get there, including the expansion of Medicaid/Medicare and the abolishment of private health insurance. If I were to pick one thing that I would like for the next presidential candidate to be committed to, it would be climate change. The pandemic creates the unusual opportunity to maintain our reduction of global pollution. Climate change is the most important public health issue of our generation and is having a disproportionate impact on vulnerable populations because of the social determinants of health.

**PROFESSOR PAULO BARROZO'S WORK OFFERS NEW UNDERSTANDINGS OF RIGHTS, PUNISHMENT, CRUELTY, STRUCTURAL MERCY, THE NATURE OF THE POLITICAL REALM, LEGAL EDUCATION, MARKETS INSTITUTIONALIZATION, AND THE NATURE AND EVOLUTION OF LAW.**



## Q+A

**Professor Paulo Barrozo /** Dangerous actors can slip in under cover of the pandemic.

**What are simplifiers and why are they dangerous?** From time to time, significant minorities of the global population experience the world as too complex, and people lose patience for dealing with complexity. That's when the world becomes vulnerable to simplifiers. The last time that happened was with the rise of fascism in the 1920s, and it led to global tragedy. You can't wish away complexity. In their response to the pandemic, simplifiers have been lethal.

The US, Brazil, and elsewhere are engaging in a ruling technique that opportunistic simplifiers sooner or later invariably deploy: the creation of internal and external “others” and enemies, and the release of their supporters from the duties of civility in order to stir and channel primal emotions against targeted minorities. So, we see fascist iconography appearing in pro-Trump and pro-[Brazilian President Jair] Bolsonaro rallies. We see discord used to further promote otherization. It is a feedback loop of divisiveness, injustice, and lawlessness.

**Can champions of the rule of law provide an antidote?** State and local governments, the courts, administrators, task forces, and central banks, can partially contain the chaos and confusion that Trump and Bolsonaro are trying to sow. Interestingly, the first people who ceased to admire Trump and Bolsonaro were the professional administrators around them.

**What changes to legal and political systems would strengthen societies facing future emergencies?** One way to begin would be at the level of legal thought, where a proper concept of the state never fully developed, remaining stunted at the mere notion of government. This could lead to the creation of semi-independent institutions legally charged with the monitoring, preparation, prevention, and response coordination to the several areas of global risk that haunt the 21st century.



Catharine Wells

## PROFESSOR CATHARINE WELLS ON SOCIAL CHANGE

“There is a need for legal reform, but the real work is personal. I think there are four questions we should ask ourselves every day. Do I invite honest responses? Am I willing to listen with an open heart? Am I willing to take responsibility for my role in perpetuating an oppressive system? Am I willing to change?”



## JUSTICE

ALL IS NOT FAIR / Where's the justice in imprisonment and exclusions?

**Professor Mark Brodin: Rethinking Criminal Incarceration.** The pandemic has put on the front pages a long recognized but largely ignored reality: mass incarceration at a rate and number unknown in the rest of the world. Mass incarceration of minorities, often for non-violent offenses, has decimated poor communities, destroyed families, and placed disproportionate numbers of people of color in the relentless school-to-prison pipeline. Race and class permeate every level of the criminal justice system, from arrest to sentencing.

Rethinking knee-jerk imprisoning, for lengths of time unheard of elsewhere, without even the pretense of rehabilitation, job training, or preparation for reentry into society, must be at the top of the list if we want to create a just society. Provision of skilled and resourced public counsel is up there, too. As Stephen Bright, the inspirational defender of capital cases, puts it, "It's far better to be rich and guilty than to be poor and innocent in our perverted system."

**Clinical Professor Mary Holper '03: Who Belongs Where?** This pandemic has demonstrated how entrenched the presumption of detention is in immigration law. When lawyers sued Immigration and Customs Enforcement (ICE) and various jails that contract with ICE,



Mark Brodin



Mary Holper



Kari Hong



Daniel Kanstroom

seeking release for detainees because it is impossible to socially distance in a communal living setting such as a jail, the government held strong to its presumption of detention. In the government's view, every single immigration detainee needs to be behind bars in conditions that are identical to criminal detention.

I wonder whether parents would deem it safe to send their children back to college dorm-living if similar conditions were in place, or whether university administrators would entertain a discussion of housing students with such minor protections. If the conditions are good enough for ICE detainees, but not good enough for our students and children, what does that say about the perceived dignity of these different human beings?

The pandemic has also caused us to consider who belongs where. Families have decided whether to join "bubbles" with other families, creating one large family. States that serve as vacation destinations, especially to big-city dwellers, have put away the welcome mat, fearing virus spread and wishing to preserve their groceries and hospital beds for their own residents. Countries, too, have closed borders to incoming migrants, out of similar fears and desires to preserve services for one's own citizens. Citizenship is always a fascinating topic because nobody can agree on how membership to the club should be allocated. In a global pandemic, decisions about who belongs where have never seemed so crucial.

**Professor Kari Hong: A prescription for immigration.** For the past twenty years, those who wanted to curtail and end immigration have been in charge. But the economic cost is \$5 billion more spent on federal immigration efforts than on the combined budgets of the FBI, DEA, and Secret Service. The human cost is tallied with children afraid for their parents' deportation. The moral cost is losing our standing as the place where the oppressed sought refuge. Today, those seeking safety have their children taken from them, are locked up in detention centers, and have a system designed to deny their claims for relief.

We have an opportunity to replace these failed policies with regulations that welcome those who contribute to our families, our communities, and our country.

First, end all bans that the Trump administration enacted. End the travel ban on Muslim-majority countries. End the asylum ban that bars those seeking protection. End the Remain in Mexico Program, a program deemed illegal by the Ninth Circuit for violating Congress' intent to protect all seeking safety. End the public charge rule, a policy dusted off from the 1910s to keep out those who are believed to be poor in the future.

Second, end detention for asylum seekers and children, and end the family separation policy once and for all. End detention for anyone who was a lawful permanent resident or has been a long-term resident who is pursuing a legitimate claim in the immigration system. That will save more than \$2 billion each year.

Third, make immigration courts independent. Immigration judges are not "judges" in that they are attorneys employed, supervised, and fired by the Attorney General who also controls the deportation policy of the Department of Justice. There is no fair trial if the prosecutor can control the actions of the judge.

Fourth, scale back the reach of ICE. ICE officers should not be policing the streets, hospitals, schools, and parks looking for those with immigration violations. We have a comprehensive criminal justice system for that.

Fifth, legalize the 11 million undocumented. How fitting it would be to legalize those who have been toiling in our fields, building our small businesses, and calling our country their home for years.

Sixth, restore asylum. In the past three years, we ended asylum. It is time to quickly undo the damage and re-open the door to those who go on to become some of the best defenders of our country's ideals and dreams.

**Professor Daniel Kanstroom: 'We stand at a tectonic moment.'** Sadly, with the pandemic, we see a general convergence of immigrant (and racialized) exclusion and fear of disease. This stands atop a long

history of exclusionary measures taken in response to real and perceived threats of disease brought into US communities by "others." Virtually all such measures have had nasty racial overtones.

In March, 1662, for example, the town of East Hampton, Long Island, ordered, "...that no Indian shall come to town into the street after sufficient notice upon penalty of 5s. or be whipped until they be free of the smallpoxe..." In 1891, in the midst of the explicitly racist, so-called "Chinese Exclusion" era, Congress authorized the exclusion of those with "loathsome or dangerous contagious disease[s]," a perilously flexible term to be implemented through largely unreviewable discretionary determinations at US ports of entry. Health officers soon became "proud, uniformed agents of the United States government [who] saw Ellis Island's ornate turrets as towers of vigilance from which they dutifully guarded their country against disease and debility." Race was always a factor in such decisions. The percentage of (mostly) Asian immigrants excluded at Angel Island exceeded 10 percent, much higher than Europeans at Ellis Island. Similar racialized exclusions—particularly of Haitian immigrants—took place in the HIV/AIDS epidemic.

On the other hand, some public health and economic support measures express a deeper sense of social solidarity and care than we have seen in this country since the Franklin D. Roosevelt administration. All of this is to say that we stand at a tectonic moment, a point of inflection during which much attention must be paid not only to short-term crises but also to historic opportunities to engage in real, progressive change.

In an inevitably globalized economy, we face a dangerous array of diseases, including drug-resistant TB, MERS, SARS, Ebola, ZIKA, West Nile, and so on. The view of the nation-state as a gated community—while perhaps technologically feasible in the very short term—is an unsustainable xenophobic fantasy in the long term with devastating economic and human rights consequences that we must avoid.

## THE VISION PROJECT



Mary Ann Chirba



Alice Noble



David Wirth

# The 'Public' in Public Health Means Everybody

Politics, care disparities, and populism hurt equality.

As three of BC Law's experts on health care law, public health, and global health reflect on the Covid-19 pandemic, they share a somber outlook for the future.

Calling the US response "a fiasco of grand proportions," **PROFESSOR MARY ANN CHIRBA**, who teaches public health law and policy courses at the Law School and (with David Wirth) at BC's Schiller Institute for Integrated Science and Society, pilloried the current administration's "total disrespect for expertise, science and data," suppression of facts, and promulgation of harmful information for undermining good faith efforts to implement a rational response.

The US has no shortage of expertise in relevant fields, from virology to supply chain management to disaster preparedness, says Chirba, but "the experts and the scientists need to be let out of the bunker and allowed to do their job." The present overriding need, she says, is for national leadership, of whatever political stripe, that respects science and data.

"We can't ignore the confluence of the George Floyd murder, the protests, and Covid-19," says **PROFESSOR ALICE NOBLE**, a colleague and co-author with Chirba of the two-volume treatise *Health Care Reform: Law and Practice—A Comprehensive Guide to the Affordable Care Act and its Implementing Regulations*. "Along with outrage over police brutality and systemic racism in policing," she says, "there's also outrage over the disproportionate impact of the pandemic on communities of color." Racial and economic disparities in health outcomes and access to health care are deep-rooted and long-standing, a reality often obscured by "the complexity of our patchwork health care system," says Noble.

If she has a glimmer of hope in the middle of this crisis, it is that the intense public

focus not only on Covid-19, but also on the racism baked into US institutions from the criminal justice system to health care, will galvanize action, as people are compelled to confront a fundamental lesson of public health: that "the health of all is dependent on the health of each."

**PROFESSOR DAVID WIRTH**, who has a master's in chemistry and is an expert in international environmental law and multilateral organizations, sees the same lesson playing out on a global scale. The pandemic, like climate change, is "a tragedy of the global commons," he says, and as such demands collective action among nations. The US has historically been ambivalent about multilateral cooperation, he noted, though President Trump's decision to terminate the US relationship with the World Health Organization (WHO) in the throes of a pandemic is unprecedented.

"With these global problems," says Wirth, "the chain is only as strong as the weakest link. If one large state continues to pollute, if one large state continues to allow the virus to propagate without intervention, then the entire planet pays the price."

Like Chirba, Wirth sees "a systematic disparagement of scientific and technical expertise," in tandem with a rise in populism around the globe. "We need to look at the role of scientific, quantitative expertise in domestic and international institutions, and set up guardrails to ensure that debate occurs within areas where there's legitimate room for disagreement," he says. If democracies are to overcome these existential threats, "the exercise of democratic prerogatives needs to be based on scientific principles," he says, "and they're just not negotiable. Mother Nature doesn't negotiate." —JANE WHITEHEAD



Sharon Beckman

### ASSOCIATE CLINICAL PROFESSOR SHARON BECKMAN ON CRIMINAL JUSTICE

"In reality, we do not have a criminal *justice* system. We have a criminal *punishment* system. It pursues its ends through distinctively violent and stigmatizing means. The racial disparities are embedded in our national psyche. I would like to see a reallocation of public resources to public services that research shows can be more effective than criminal punishment in promoting a fair and peaceful society."

AHA!

## What Democracy?

The long, steady creep of white male aristocracy.

BY PROFESSOR MARY BILDER

Since the framing period in the 1780s, the United States has witnessed continual struggles to make our democracy more inclusive. For people on one side of these struggles, law becomes a tool to codify existing inequalities and consolidate and extend the power of white men; for people on the other side, it becomes an instrument by which we can sketch trajectories that get us to equality and inclusion. We may aspire to a democracy, but in crucial respects many of us still inhabit a world that feels like a white male aristocracy.

Conventional histories tell a story of progressive democratic expansion starting with the founding of our nation: the fall of restrictions based on property, on race, on gender. This story presumes a starting point in the 1780s, during which it was widely felt that only white men should take part in constitutional politics.

But that story is wrong. Even in the 1780s, people of color and women believed they should take part in constitutional politics, just like the white men who had been traditionally excluded because of property requirements or religious tests. This is not to deny that an exclusive, white, relatively affluent male group wrote our founding documents or that these documents attempted to favor the interests embodied by that group. But many state constitutions and the federal Constitution did not explicitly bar people of color and women from constitutional participation. Importantly, women and people of color voted in New Jersey in the early national

period, under the state's 1776 constitution.

In the 1790s, exclusions increasingly became part of new constitutional structures. In 1792, Kentucky's constitution broadened suffrage for white men and narrowed suffrage for women. Kentucky became the first western state to permit men to vote without property or taxpaying requirements, but restricted suffrage to "free male citizens." In 1799, the state made the exclusion more explicit, declaring the right to vote to belong to "every free male citizen (negroes, mulattoes, and Indians excepted)." With each of these new pieces of legislation, the constitutional space around women and people of color grew smaller.

Historians debate the causes of the shift from a property-based franchise to an exclusionary franchise based on sex and race. But regardless of the causes, democracy became synonymous with a white male world of political privilege and power. Democracy became a world in which white men were represented instead of a world in which the people were represented. Every state admitted to the Union between 1802 and 1876 defined suffrage by constitutional exclusion based on race, sex, or both.

In 1869, Charlotte Rollin spoke before a special meeting of the South Carolina legislature. She explained that as a black woman she was a "victim of gross, semi-barbarous legal inequalities." She argued that "until woman has the right of representation, her rights are held by an insecure tenure." It was a "fundamental and constitutional right" that belonged to "humanity in general" to ensure "consent of the governed."

A constitutional system that explicitly excluded over half the adult population was not a democracy. It was a white male aristocracy. White men were a privileged class who believed they were the best qualified to rule, and they inherited this privilege by virtue of their birth as white men.

Before recent weeks, this description might have felt to some like a story only about the past. But now we can see that it also describes our present. This legacy of white male aristocracy still surrounds us.

PROFESSOR RAY MADOFF IS CO-FOUNDER AND DIRECTOR OF THE BOSTON COLLEGE LAW SCHOOL FORUM ON PHILANTHROPY AND THE PUBLIC GOOD, A NON-PARTISAN THINK TANK.



Q+A

### Professor Ray Madoff / Can charitable nonprofits survive this?

**What has the pandemic revealed about the philanthropic and nonprofit sectors?** The crisis reminds us of the essential role that charitable nonprofits play in Americans' lives. We count on hospitals to treat the sick, research institutions to help find vaccines, and food pantries and shelters to meet the growing needs of the hungry and homeless. Nonprofits are also playing a role in the reignited fight for justice for black Americans.

But these essential organizations are imperiled as the financial fallout from the pandemic threatens their ability to do their work and, in some cases, their very existence. Our tax system is supposed to encourage the flow of dollars from the private sector to nonprofits, but the rules are not well-suited to their purpose.

**What would you recommend?** We need to overhaul the tax rules governing charitable donations to ensure a closer connection between tax benefits to donors and benefits to the public. The wealthiest Americans enjoy enormous tax benefits; most Americans receive no benefits at all. We need more equity in the allocation so that all Americans' voices for good can be empowered equally. We could start with a rule that changes the deduction to a credit of 25 percent for all gifts over a certain amount for everyone.

Nonprofits generally prefer gifts of cash, but our tax system incentivizes contributions of property. That needs to change.

Donors to private foundations and donor-advised funds enjoy significant tax benefits, but the rules do not ensure that the trillion-plus dollars set aside in these entities reach charities and provide any benefit to the public. That, too, must change.

Our inheritance, capital assets, and estate tax laws let the wealthiest Americans avoid taxation. I propose limiting the estate tax charitable deduction to 50 percent of the gift's value. Given the wealth inequality in this country, it is important that we ensure that everyone participates in paying for the expenses of government.



Mary Bilder



Robert Bloom

#### PROFESSOR ROBERT BLOOM ON POLICING

"There are no easy answers to the systemic racism existing in police forces. We need to find ways to deter bad police officers. We need effective legislation that would allow for a fairer way to review citizen complaints. Most of these reviews are done by the police; it is like the fox protecting the chicken coop."



## CAUTIONARY TALES

**Historically, how did American business and government cooperate for the sake of the nation?** In previous crises, we had government, corporations, and individual philanthropy working collaboratively to help the nation heal.

After September 11, in 2001, Wall Street and corporate America joined forces to raise money to aid those who suffered from the tragedy and to help rebuild New York City. After Hurricane Katrina, in 2005, the corporate sector increased its charitable giving in response to the devastation. During the 2008 financial crisis, government and business worked together to manage the economic recovery.

What stands out in this pandemic is the lack of coordination between government and business and between the federal government and the states. We've learned that, before the coronavirus hit, certain businesses tried to connect with government agencies to begin manufacturing Personal Protective Equipment

PROFESSOR RENEE JONES IS ASSOCIATE DEAN FOR ACADEMIC AFFAIRS. SHE TEACHES AND WRITES ON CORPORATE AND SECURITIES LAW, WITH A FOCUS ON THE IMPACT OF ENFORCEMENT PRACTICES ON CORPORATE ETHICS AND INTEGRITY.

Q+A

### Professor Renee Jones / In public and private sectors, ethics and unity have been wanting.

(PPE). These efforts were either ignored or rejected by federal officials. The executive branch made little effort to coordinate manufacturing of ventilators. Not only were the states left to their own devices, we actually saw federal agencies interfering with states' and hospitals' efforts to secure the PPE they needed.

**Describe the impact of this failure of cooperation.** Chaos. Unnecessary chaos. Also, several examples of craven self-interest come to mind. Senators Richard Burr and Kelly Loeffler reportedly traded stock after they'd received official briefings about the health and economic risks presented by the coronavirus; at the same time they were assuring the public that Covid-19 risks were minimal. The president promoted hydrochloroquine not in the interest of public health, but perhaps because of his allies' business interests. Moncef Slaoui, a former pharmaceutical executive, was appointed to lead Operation Warp Speed,

the government's effort to find a vaccine, despite personal investments that raise conflict of interest concerns. Large public corporations have accepted coronavirus relief funds [from the Paycheck Protection Program] that were meant to support small businesses.

**How would you fix this?** Change the tone at the top. We have a president who's failed to disclose his own business interests and conflicts of interest. When the president is acting that way, it's not surprising that other government officials would follow suit. Typically, shaming works to deter this kind of behavior, but not at this time, with this president. Others, including officeholders and business leaders, have followed the president's example, figuring they can get away with it.

**How has federalism helped us during this pandemic, and how has it failed?** Conventional wisdom is that state and local governments are in the best position to understand and meet the needs of their citizens and to provide direct services, with the federal government providing expertise, experience, and the ability to marshal resources in ways that states cannot do alone. Many state and local governments are responding to the needs of their citizens, but they have looked in vain to the federal government for guidance, support, help, and resources. It's that expertise, coordination, and seamless provision of resources that's been lacking. Thus, the country is not responding competently to the pandemic.

**What good do you hope comes out of this moment—not only from the pandemic, but also the racial justice protests?** The pandemic has exposed our country's stark social inequities. It has disproportionately affected communities of color, with devastating economic and health consequences. The exposure of that level of inequity is likely contributing to the protest movement in response to the tragic killings of African Americans at the hands of police across the country. I hope these protests will lead to meaningful and lasting change.



## ECONOMICS

**THE BOTTOM LINE /** Three views on why we haven't done better—and how we can.

**Professor Natalya Shnitser: Employment Benefits.** The coronavirus pandemic has shone a harsh light on the limits and inequities of existing paid leave policies for US workers. As social-distancing requirements, school closures, and stay-at-home orders became necessary, millions of workers, particularly those employed by smaller businesses, the lack of paid leave prevented workers from staying home if they became sick or needed to care for sick family members. While Congress responded with new temporary requirements for emergency paid sick leave and paid family and medical leave for businesses with fewer than 500 employees, the effectiveness of these provisions, particularly in light of the exemptions provided in subsequent regulatory guidance, remains to be seen.

At the same time, and in the midst of a public health crisis, millions of Americans have not only lost their jobs, but also their employer-sponsored retirement benefits and health insurance. For such workers and their families, continuation coverage under COBRA, if it is available, may not be affordable, while the abil-



Natalya Shnitser



Patricia McCoy



Shu-Yi Oei

ity to obtain health insurance coverage provided by the Affordable Care Act varies significantly across states.

The loss of jobs and of health insurance exacerbates longstanding inequality in the US, with black and Hispanic workers especially hard hit by pandemic-related job losses. As of June, the unemployment rate among African Americans was 16.8 percent, and the unemployment rate among Hispanics was 17.6 percent, while the unemployment rate among whites was 12.4 percent.

Meanwhile, as millions face financial hardships because of the pandemic, Congress has made it easier for Americans to take money from their retirement savings to cover current expenses. While the immediate needs are undoubtedly dire, the Congressional response may undermine retirement security in the long run.

I'm hoping the pandemic and the recent protests over systemic racism can catalyze meaningful reforms, including reforms that address disparities in income and wealth at all stages of life. Recent research from the Boston College Center for Retirement Research (CRR) documents the racial inequality in retirement wealth: In 2016, for example, the typical black household had 46 percent of the retirement wealth of the typical white household, while the typical Hispanic household had 49 percent. The pandemic is likely to exacerbate these disparities, thus making efforts to critically examine and reassess the US retirement system—including employer-sponsored retirement benefits, individual savings, and Social Security—all the more urgent.

**Professor Patricia McCoy: Improving Consumer Resilience.** Congress, in the new CARES Act, has responded aggressively in appropriating money for the stimulus checks that went out to citizens. The program not only helps families, it also supports consumer demand, and therefore the larger economy.

I also applaud Congress for increasing unemployment benefits—by initially extending the length of the benefits, increasing their amount by \$600 weekly,

and extending the benefits to gig workers such as Lyft and Uber drivers. That was good, but the rollout has been problematic. For one thing, the number of applicants was so high that state unemployment offices couldn't process applications quickly enough. In addition, some states—Florida is a poster child for this—imposed prerequisites for unemployment benefits that many people could not meet. Meanwhile, hundreds of thousands of unemployed people can't pay their mortgages and rents. They're going hungry, which accounts for the huge lines at food pantries. One thing this points up is the substantial minority of Americans who lack emergency savings. When they lose their jobs, they run out of money quickly.

To address these problems in the long term, we need to focus on improving the financial resilience of households.

First, we can improve our broken system of unemployment insurance. I would have a uniform set of federal requirements that states couldn't alter and figure out a way to process claims faster. Second, we need to raise the wages of low wage workers, many of whom are black and minority, which would allow them to have a financial cushion to fall back on in a crisis. Third, we should consider mandating loan clauses that provide for debt relief in a national crisis. Finally, we should consider a system of federal business insurance for catastrophes like the pandemic. The private insurance industry can't underwrite widespread catastrophes, so the federal government should step in.

**Professor Shu-Yi Oei: The Impact on Financial Policy.** One thing that has struck me about the economic and financial policy responses to the pandemic is the degree to which the initial US legislative response has been shaped by our underlying political backdrop and prior institutional choices. For example, the \$1,200 stimulus checks provided for in the CARES Act were delivered through the tax system, in part because that's one of the best information sources we have on individual financial situations.

Another example: Many of our social insurance and safety net provisions such as health insurance and the earned income tax credit have been tied to work. So, somewhat predictably, legislators have resisted broad-based income support programs and grants as a way to manage the public health crisis.

On the whole, policymakers, both federal and state, have done a poor job of managing the public health crisis. I suspect that—in part because it's hard to appreciate the seriousness of data presented in abstract numbers, and in part because health and economic impacts have disproportionately been felt by racial and ethnic minority groups, in particular by black and African American and Hispanic/Latino persons—the salience of the public health threat is not as high as it could be among broad segments of the public and policymakers. Thus, we have not seen a strong enough commitment to tackling the crisis.

This is unfortunate not just for those hardest hit but for all of us, because of the many longer term risks that the pandemic presents. We're already seeing a significant reallocation between economic sectors, as some industries are devastated by the pandemic while others thrive. This could mean a significant employment shock for workers in adversely affected sectors. We could see businesses with monopoly characteristics, such as Amazon and Google, becoming even more powerful.

We can respond effectively by boosting social and economic equity through a well-designed social safety net, including more investment in public health, education, and infrastructure, and more commitment to responsible leadership and national preparedness for future pandemics and other crises. We can also invest in worker retraining. But longstanding political and institutional constraints may lead to less-than-perfect social insurance and safety net design.

We need to take these challenges seriously because policy inaction or poorly designed policies could exacerbate emerging shocks and associated inequalities.



Diane Ring



James Repetti

## Let's Give Our Tax System a Chance

It may be able to fix what's broken.

As the pandemic rages on, one thread that will likely run through conversations will be the role of taxation, says **ASSOCIATE DEAN OF FACULTY DIANE RING**. How might we use the tax system to raise needed revenue, allocate tax burdens, incentivize responsible business behaviors, and support those facing hardship?

Ring argues that the tax system has historically been called upon to play each of these roles, and it can do so in the future. Already in this crisis, major federal legislative responses to the pandemic have been grounded in the tax system—from tax incentives and credits to help businesses keep on paying workers to stimulus checks for individuals delivered through the income tax system.

But the bigger and more challenging question, Ring contends, is whether we can reach collective understandings on the deep questions regarding our relationships to each other, to society, and to the world. That challenge must precede the work of the tax system. If and when we rise to meet it, the tax system will be there to help us, she says.

**PROFESSOR JAMES REPETTI** believes that this period of uncertainty is an opportune time to reexamine our tax structures and policies for solutions.

He begins with a bit of history. The 16th Amendment, ratified in 1913, authorized an income tax. For most of the time since, the US has had highly progressive tax rates, with the maximum rate sometimes as high as 94 percent. In the past thirty years, though, the maximum rate has decreased (it's now 37 percent), he explains, primarily because of concerns that high tax rates stifle economic activity.

Yet, Repetti's research also shows that a consensus exists among economists that taxes within the historical range of rates in the US have little or no impact on labor supply, and they cannot agree on whether progressive tax rates decrease or increase savings rates. Meanwhile, empirical research shows that inequality imposes measurable costs on the health, social well-being, and intergenerational mobility of our citizens, as well as on our democratic process.

Taken together, the clear harms arising from inequality and the uncertain harms arising from progressive tax rates strongly support giving equity at least equal weight with efficiency in formulating tax policy. But given the high level of inequality in the US and the currently low and flat tax rate structure, equity should be given more weight than efficiency at this time, Repetti concludes.



## PROFESSORS ANALYZE POLICY RESPONSES EARLY IN OUTBREAK

Grasping the serious economic and financial ramifications of the coronavirus outbreak in early March, four BC Law faculty launched a project to analyze and track the emerging policy responses, including the provisions of H.R. 6201 (the "Families First Coronavirus Responses Act") passed by the house on March 14.

**PROFESSORS HIBA HAFIZ, SHU-YI OEI, DIANE RING, and NATALYA SHNITSER** quickly produced a working paper, "Regulating in Pandemic: Evaluating Economic and Financial Policy Responses to the Coronavirus Crisis," in

order to track developments. "Having spent the past several years working together as part of Boston College Law School's Regulation and Markets Workshop, it made sense to combine our efforts and expertise to try and contribute to effective policy guidance at this critical time," Ring explained in the *Surlly Subgroup* tax blog.

As stated in the abstract, the Working Paper discusses the ramifications of proposed and legislated policy and other actions and identifies three interrelated but potentially conflicting policy priorities

at stake in managing the economic and financial fallout of the COVID-19 crisis: (1) providing social insurance and a social safety net; (2) managing systemic economic and financial risk; and (3) encouraging critical spatial behaviors to help contain transmission.

"The consequences of these three policy considerations and the potential conflicts among them make the outbreak a significant and unique regulatory challenge for policymakers, and one for which the consequences of getting it wrong are dire," the paper states.



PROFESSOR HIBA HAFIZ JOINED BC LAW AS AN ASSISTANT PROFESSOR IN 2018. SHE TEACHES AND WRITES IN THE AREAS OF LABOR AND EMPLOYMENT LAW, ANTITRUST LAW, AND ADMINISTRATIVE LAW AND FOCUSES ON LEGAL SOLUTIONS TO LABOR MARKET CONCENTRATION AND INEQUALITY.

## Q+A

**PROFESSOR HIBA HAFIZ /**  
A toolkit for knocking down barriers to economic mobility.

# LABOR INTENSIVE

## THE VISION PROJECT

**What have the viral and racial crises revealed about employment laws?** It is more important than ever to understand how the disparate statutory and regulatory regimes have worked together to systemically limit economic mobility.

While the New Deal has been heralded as marshaling in a broad social safety net to place a floor on how dire circumstances can get for most Americans through economic crises, that foundational structure of protections—labor protections, minimum wage and maximum hour laws, social security, unemployment, and other protections—was deeply discriminatory. It was riddled with exceptions that excluded occupations in which African Americans were predominantly employed. This placed a legal restraint on those workers' economic mobility while white Americans were able to use social insurance and the broadened social safety net to ward off poverty and secure their status in the emerging middle class. That legacy is still with us.

**Do you see opportunities for advancing economic justice?** If there is any silver lining, it is in the generation of tremendous, innovative ideas for restructuring fundamental aspects of our social order to ensure economic justice.

The current crisis reveals the substantial limitations of linking entitlements to employment and our overreliance on the private sector as a means of correcting for systemic inequality and ensuring economic mobility and opportunity. Public debates about decoupling health care from work are now more urgent. And off-siting millions of workers to remote employment and the turn to contactless service may accelerate automation—a transition that will likely displace workers in almost every sector of the economy.

Second, the consequences of the pandemic on worker safety has led to a real revival in worker organizing and innovative thinking about how to organize with contactless, digital technologies to fight for workplace protections. Since the beginning of March, there have been over 400 “wildcat” strikes over safety concerns, and worker unionizing has

expanded in meatpacking plants, fast-food restaurants, Amazon warehouses, and grocery stores. The role of “essential workers” has become the topic of national discussion in the media and in the halls of Congress with proposals to lift hazard pay.

Third, the movement against systemic racism has challenged police unions and their collective bargaining agreements for insulating police officers from accountability for racist policing. Decades of reform efforts and research offer ways forward, including opening collective bargaining to include community representatives, and more aggressive public oversight that will be critical for ensuring the central role of anti-discrimination in the labor movement going forward.

**What is your vision for a stronger and more just society in a post-pandemic world?** We need a widespread restructuring of workplace rights and benefits to guarantee that employment functions as a source of economic mobility and security.

We must expand workplace protections. There are exciting opportunities for transformational change already in the works to do this. Last February, the House of Representatives passed the Protecting the Right to Organize (PRO) Act, which provides broader strike protections to workers, adds penalties for companies who retaliate against worker organizing, and extends labor law protections to independent contractors. If the act becomes law, it will be hugely consequential for expanding rights at work.

We are also in a moment of genuine innovation that would democratize work and strengthen workers' access to opportunity. For example, the Clean Slate Initiative at Harvard Law School has proposed a site of reforms from expanding labor and employment protections to

agricultural, domestic, undocumented, and other workers to requiring worker representation on corporate boards and bringing community groups to the collective bargaining table.

We must ensure workers' bargaining leverage and align work law with the broader macroeconomic policy goals of economic growth and reducing inequality. Economic growth is strengthened when workers' wages are not artificially suppressed—whether through wage theft, employers' anticompetitive conduct, discriminatory wage gaps, misclassification of “employees” as “independent contractors,” or other unlawful conduct by employers—because of the multiplier effect: Higher worker pay leads to higher consumer spending in the economy that lifts everyone's boats. Work law reforms will be a critical component of our economic recovery.

Finally, a more just society must be one where losing your job does not mean you lose your health care or other employment-based benefits. Nor can it be one where businesses and state and local governments struggling to reopen after the pandemic lack the resources to rehire or hire workers, relegating those workers to increasingly anemic and temporary unemployment benefits, if they are eligible at all. It will be critical to incentivize public and private employment through stimulus funding and reducing the costs of hiring by publicly providing health care and other benefits.

Covid-19's halt on our economy's functioning revealed the limitations of our system in exclusively channeling access to economic mobility through thinly regulated employment opportunities, and contributed to forcing our collective reexamination of systemic racism. Now is our chance to change that.



R. Michael Cassidy

### PROFESSOR R. MICHAEL CASSIDY ON “VIRTUAL” CRIMINAL COURTS

“Defendants have constitutional protections that prevent certain portions of a criminal proceeding from being conducted ‘virtually.’ But others can be conducted using technology. It may be that in the future, twenty-three citizens serving on a Massachusetts grand jury never have to come into the same room to hear evidence to consider and issue an indictment.”

PROFESSOR DAVID OLSON IS FACULTY DIRECTOR FOR THE PROGRAM ON INNOVATION AND ENTREPRENEURSHIP AT BC LAW.



## Q+A



**Professor David Olson /**  
Business is wise to economic growth.

**What has the pandemic revealed about American businesses?** Businesses have actually responded pretty well to a crisis that caught people by surprise.

Early on, some were calling for President Trump to invoke the Defense Production Act, allowing the federal government to mandate the production of PPE and ventilators. Fortunately, that did not happen, and the private sector scrambled to produce the needed products. It wasn't instantaneous; there were real shortages for a time. But I don't think the government could have done better; more likely the shortages would have been protracted.

Now, had the federal government, and maybe states, taken to heart the need to stockpile PPE, then we would have been in a better position.

**What role could business play in addressing racial and economic injustice?**

Unfortunately, those with less money and power, and those who are targets of discrimination, fare worse in crises. What can be done about that?

First, government can invest in the health and wellness of poor and minority populations. It is also time to increase institutional trust by reforming policing and reducing discrimination. We can do more to help those who are vulnerable. South Korea, for example, is paying the housing costs to remove people who test positive for Covid-19 from their households so that they don't infect their families.

Another way to help poor and vulnerable people is to help them become less poor. Social spending can help, but the biggest driver of improved material conditions has been innovation, entrepreneurship, and economic growth.

Insofar as China has stopped the spread of coronavirus, it's in part because a massive portion of its population has moved from abject poverty into a level of economic security because of an embrace of capitalism and economic growth.



## RIGHTS

WHAT ARE OUR RIGHTS? / Let's see what the Constitution *actually* says.

BY PROFESSOR KENT GREENFIELD

In this moment, public health and the public interest require us to act collectively to stop a deadly disease. Without a vaccine, the tools in our toolbox, at least on their face, restrict our freedoms. We have to be distanced from one another. We have to wear a mask. Church gatherings are limited. Businesses are closed.

In our system, freedoms—of speech, religion, and so on—can be limited to serve a compelling governmental interest assuming that the limitation is narrowly tailored to achieve its objective. But most people don't recognize that rights-based discourse involves this sort of balancing act. When we see people saying, "I have a right not to wear a mask" or "I have a right to gather for protest or worship, or to visit my barber shop, even though it will hurt my neighbor or me"; when we see people brandishing assault weapons to protect the right of a business owner to open up or churches meeting in violation of a general ban on gatherings, these are situations in which the public understanding of rights differs from what the law actually says.



Kent Greenfield



Zygmunt J.B. Plater



Cathleen Kaveny

In addition to our misconceptions about the absoluteness of our rights, this moment also exposes how narrow our rights are. Many countries have a much more robust set of positive rights: to health care, to a dignified economic baseline of living. Here in the US we don't think of those things as rights. But economic rights, the right to be safe from violence, and the right to be able to call your doctor when your kids get sick are at least as important to most people's lives as more traditional constitutional rights.

So, on the one hand, our political rhetoric makes the rights we do have seem absolute. On the other, the rights we actually do enjoy in the United States are extremely thin and incomplete—because what really concerns most Americans during this pandemic are things the Constitution has very little to say about.

Because of misconceptions about our rights, we have been much less willing as a nation to make needed sacrifices to stop this disease. The notion of individual liberty as including the right not to wear a mask at the shopping mall in the midst of a pandemic is part of the reason we have failed so abjectly at controlling Covid-19—though an even bigger reason is corruption and idiocy at the top, particularly those of the president.

I'd like to see a notion of constitutional rights that includes pluralism and substantive equality. I'm hoping the pandemic drives home the idea that we're in this together, that my ability to be safe completely depends on your ability to be safe and keep your family safe, and vice versa.

We need to start thinking about our rights in a much more robust way. Health care should be considered a fundamental right. Access to education should be considered a fundamental right. We need an economic safety net that isn't full of holes. And those rights should be thought of as so fundamental that they are protected by the Constitution.

I would love for this moment to begin that discussion.

PROFESSOR ZYGMUNT J.B. PLATER  
ON CRISIS AND CHANGE

"Because visible disasters like the pandemic, continuing racial repression, and climate calamities trigger existential societal responses, we are now realizing the necessity for adaptive, progressive governance processes. We should expect that big changes are on the way."

PROFESSOR CATHLEEN KAVENY  
ON SOLIDARITY

"There's a big tendency in American society to move toward the apocalyptic. Good public communicators like Dr. Anthony Fauci help us resist that tendency. His basic insight is that we'll get through this together if we work together."



# LIFTING THE CURTAIN

## Q+A

PROFESSOR KATHARINE YOUNG / Change begins with a commitment to social and economic rights.

**Do you see a correlation between countries that have done best in fighting the virus and shielding citizens from the economic fallout and those whose laws grant social and economic rights, including the right to health care, a living wage, and other necessities of life?** To answer your question requires an analysis of social movements, legal culture, and the courts, as well as the legacies and institutions of welfare provision and market regulation.

As to the economic fallout, there's a big story yet to be written. The massive rate of joblessness, for example, poses questions about the prudence of the link between having a job and having health insurance—a link that exists in the United States but not in other industrialized democracies. In the US, the right to health care is deeply controversial.

NOBEL LAUREATE AMARTYA SEN CALLED YOUNG'S FIRST BOOK, *CONSTITUTING ECONOMIC AND SOCIAL RIGHTS* (OXFORD, 2012), "A BRILLIANT DISCUSSION OF GREAT IMPORTANCE TO POLICY-MAKING." IN ADDITION TO FOUR BOOKS, SHE HAS PUBLISHED RESEARCH IN THE RELATIVELY NEW FIELD OF ECONOMIC AND SOCIAL RIGHTS IN MANY SCHOLARLY JOURNALS.

Economic and social rights provide a language to challenge this paradigm and move this aspect of the US closer to other states whose systems are premised on protecting their citizens from risk, and on guaranteeing human dignity.

**A social/economic right that's accorded to citizens of some countries is the right to safe and decent housing. What has the pandemic shown us about the housing situations of less-affluent Americans?**

In 2009, the UN Special Rapporteur on the right to adequate housing visited the US and reported on alarming conditions, including significant cuts in federal funding for low-income housing, the persistent impact of discrimination in housing, substandard conditions such as overcrowding and health risks, and severe consequences of the foreclosure crisis, including evictions and homelessness. So, the pandemic has lifted the curtain on what was already a worrying problem. For example, cramped housing conditions have fueled community spread of the coronavirus, and many workers deemed essential live in substandard housing, exposing them and their families to health risks at a time when the rest of us need them most of all. The pandemic has shown that a right to safe and decent housing would benefit all Americans.

**Will the risks being run by workers in manufacturing, health care, and other fields, plus increased attention to the difficulty of their work, increase public support for expanded workers' rights in the United States?** The havoc wrought by Covid-19 is enormous and unprecedented. I see it as a switch point or a crossroads—much like other great calamities, such as the Great Depression and World War II.

But I have a hard time predicting where we will end up. Could Covid be exploited for anti-rights moves? Certainly. In the US, a lot depends on the election, and the realignment of party positions before and after it. Yet conditions are ripe to see a massive renewal of public support for the rights to housing, health care, and social security, including a living wage and perhaps a universal basic income or

other institutional form of social protection against economic risk.

Perhaps we'll see a boost to the decarceration movement, given the rapid spread of the virus in prisons and immigration detention. After this experience, I'd imagine that the US would need a larger justification for locking people up and exposing them to these risks, particularly given its notable outlier status on this issue, and particularly given the disparate harm that falls on people of color. This is also a focal point for the protests that we are now seeing.

I could also mention other economic and social rights. During the pandemic, we have seen great problems in food insecurity amongst Americans, with food shortages, long lines at food banks, the hunger of school children and families, at the same time as images of farmers dumping milk and euthanizing pigs and chickens. Although rights to food, as well as to water, sanitation and a healthy environment, are not as prevalent in constitutions and legislation as other economic and social rights, there are certainly growing and networked mobilizations behind them, and even supportive case law, which have been premised on the argument that they are essential for human life and dignity.

**What is the most hopeful lesson you see coming out of the pandemic?** There may be a moment of social learning taking place, with the realization that none of our rights can be guaranteed when the rights of the least vulnerable are not secured.

**How would life look different if American law had stronger and more explicit protections for social and economic rights?** Written laws can't protect us by themselves. We also need a deep-seated cultural commitment to economic and social rights. If we had that, things would be very different indeed. With due protections for economic and social rights, and to the demands of moral equality and racial justice so desperately being expressed at this very moment, life in America might look like a life of greater freedom and dignity.



# A BETTER WAY

## Q+A

**PROFESSOR DANIEL FARBMAN /**  
Unleash the power of a  
participatory conception  
of the rule of law.

**What has the pandemic revealed about  
the rule of law's responsiveness in crises?**

That depends how you define the rule of law. By one definition, the rule of law involves institutional continuity and fidelity to the rules and norms built around those institutions. This “stability” conception has been eroding since Election Day 2016, and now, with the pandemic and protests, the process has accelerated. We see *and feel* the instability that is rocking the institutions that define a stability conception of the rule of law.

But there's another way of thinking about rule of law. I'm drawn to a “participatory” conception, in which our fidelity to law is expressed in a prolonged commitment to, and participation in, debate and struggle over the most fraught and divisive issues.

Consider two transformational moments. In the 1850s, the compromise that had upheld slavery was dissolving. Then, with the Civil War, slavery collapsed. The war was not a product of anarchy but of a cataclysmic national debate. We could understand the war and the new, more inclusive national order that emerged from it as part of a struggle for a legal order that would be worth defending. Likewise (and less apocalyptically), the transformation wrought by the New Deal and World War II involved a radical overhaul of institutions that came out of the iterative, combative, but fundamentally participatory deep principles of American legal disputation.

It's scary to let go of hope that the stability conception of the rule of law

will preserve us from social and legal upheaval, but our collective response to the pandemic and the collective action in the streets to assert that black lives matter can allow us to draw hope from the deeper, participatory conception of the rule of law.

**Will the pandemic produce a new understanding of constitutional law?** As I teach constitutional law, I try to place the famous cases in historical context. You cannot understand *Dred Scott* without knowing about the toxic politics of the last years before the Civil War. You cannot understand *Plessy* without a picture of the forces that made Jim Crow possible. You cannot understand the Commerce Clause cases of the 1940s without knowing about the political crises of the 1930s and '40s, and you cannot understand the modern courts' cases without understanding how our national political imagination has shifted since the 1980s.

We shouldn't be deceived into thinking that the Constitution, or constitutional law, will set boundaries on our national politics or policies. Rather, as we've seen with President Trump, fragments of what looks like law will be used opportunistically in the present.

Nevertheless, we live in a time where constitutional faith and constitutional traditions have a strong rhetorical and moral appeal. Understanding how to engage in the constrained discourse that is constitutional debate is a critical tool for those who want to leverage that rhetorical and moral power. But just as the Constitution was not, alone, a bulwark against slavery, civil war, depression, Japanese internment, Jim Crow, or caging children at our borders, neither is it alone enough to fall back on in this time of extreme unsettlement.

**What's your vision for a post-pandemic world?** I previously worked with groups that were struggling to end racial disparities in school discipline, reduce segregation, close achievement gaps. Their most precious resource was energy and collective power. Five students in a small meeting with a superintendent could be waved away; five thousand students walking out of school demanded attention.

This is the lens through which I view the promise of the present moment. The pandemic has destabilized our comfortable routines and made us pay attention to concerns that we might otherwise be too busy or numb to engage with.

The historian in me knows that times of transformation have their limits. After just a few years, Reconstruction met the buzz saw of white supremacy and Jim Crow. The gains of the civil rights movement were stalled by resistance in the 1970s. In my most pessimistic moments I see, with Derrick Bell and others, a cyclical trap of progress and regression.

But this is not a moment for pessimism, and so I choose to see the present unrest and uprising as a monumental chance to transform systems that months ago had seemed unchangeable. Defunding the police was a fringe position in January; in June it's a topic of pragmatic debate. Universal health care was a much-gnawed-on abstraction in January; now it's clear that health care *must* emerge transformed from the pandemic. We're standing in the most terrifying and optimistic moment of legal and social transformation. It is in moments like this that transformation happens, through the hard work of those who dare to imagine utopian futures.



Brian Quinn

AHA!

## What's Toilet Paper Got to Do with It?

Our tissue-thin grasp  
of corporate governance.

BY PROFESSOR BRIAN QUINN

**Toilet paper shortages**, no PPE, corporate bankruptcies. They seem like random events, but there is a thread connecting them. The pandemic has been a devastating assault on many of the underlying assumptions of modern corporate governance, revealing in particular the weaknesses created by operating on a knife-edge.

In the years leading up to the pandemic, supply chains had become so finely tuned that little excess capacity could be found in the system. Amazingly, toilet paper manufacture is a capital-intensive business that operates at the very edge of efficiency. With a surge in demand for toilet paper, it should be no surprise that the supply chain failed in the short run. The same is true of PPE. Over the past seventy-five years, the manufacturing supply chain has become increasingly global. When the pandemic hit, we suddenly realized there was no PPE to be had in the US. It was all made in Asia. The ensuing scramble to protect our front-line medical workers can be blamed, in part, on the decades-long effort to improve corporate efficiency and increase profits.

When the economy ground to a halt in March, the first to suffer were employees let go to conserve corporate cash. It turns out rainy day funds are a thing of the past. Corporations spent more than \$700 billion on stock buybacks in 2019 and were on pace to do the same in 2020. Given the size of the CARES Act corporate bailout, corporate largesse in the past few years seems ill-advised. The question is whether we return to status quo ante, privatizing gains and socializing losses, or if the corporate sector will learn. That will require changes to the incentives facing corporate managers and stockholders, and it's not clear that the sector and its investors are ready to accept these changes.



Paul Tremblay

**CLINICAL PROFESSOR PAUL TREMBLAY ON NEIGHBORHOOD BUSINESSES**

“I have been impressed with the resilience of the local street-level economies, and with the courage of our clients doing their best to sustain their businesses. The importance of small businesses to our neighborhood economics has seldom been clearer. That's where the long-term opportunities lie.”

PROFESSOR DANIEL FARBMAN TEACHES AND WRITES IN THE AREAS OF LOCAL GOVERNMENT LAW, LEGAL HISTORY, CONSTITUTIONAL LAW, THE LEGAL PROFESSION, CIVIL RIGHTS, AND PROPERTY



Q+A

### Professor Thomas Kohler / How can people thrive when they lack basic freedoms?

**What has the coronavirus pandemic revealed about problems in our employment policy?** Social solidarity, or the lack thereof, is the biggest problem in the United States. It's reflected in practice and policy. One example is our weak workplace safety protections. The Occupational Safety and Health Act was passed in 1970, but we've devoted few resources to its enforcement. Notably, it provides for enforcement by unions, who were supposed to call safety issues to the attention of employers and authorities. But the influence of unions has diminished.

The pandemic has also revealed how much the workplace has changed. Many people now perform so-called precarious work, driving for "ride sharing services," food or package delivery services, for example. These workers, often minorities or recent immigrants, are vital to such companies' business models, but they often are treated as independent contractors, not employees. As such, they work without the guarantee of a steady income, a living wage, health care benefits, or union representation. Worker safety laws don't apply to them, and they often risk their jobs if they raise complaints. Finally, the fact that the emergency

## THE VISION PROJECT

unemployment funds that we are now providing are often more generous than regular wages points to our tremendous problem with income distribution.

### How do these problems affect the way people experience their daily existence?

People feel they lack control over their lives. I think of Roosevelt's four freedoms: freedom of speech, freedom of worship, freedom from want, and freedom from fear. For many people, those freedoms don't exist.

Of course, societies worldwide are facing all sorts of difficulties, but those with a stronger social system have less anxiety, and put their weaker members at far less risk, including existential risk.

### How could an employment law regime provide a better life for workers?

For employees to have a voice, to have self-determination in how their work is done, they need an organized structure. Collective bargaining was and remains an extremely effective way to do this. Unions have also represented working people, union members or not, in Congress and in state legislatures. I would make joining unions easier.

I'd also like to see a state that guarantees enough of a social structure so that people have effective freedom as opposed to formal freedoms. We need a system that supplies basic needs for everybody, like health care and post-secondary education and also the chance to find meaningful work.

I would institute unfair-discharge protections for all employees—we're the only advanced economy without this basic safeguard.

In addition, everyone should have access to health care, with no one getting inferior treatment. And everyone should stand equal before the law. That would include stopping large institutions when they try to foreclose people, through mandatory arbitration, from having access to the courts.

I think these conversations are beginning and academics can help shape them, though, of course, not lead them. It's going to require that we all work together.

**PROFESSOR THOMAS KOHLER IS CONCURRENT PROFESSOR OF LAW AND PHILOSOPHY AT BOSTON COLLEGE AND A LABOR AND EMPLOYMENT LAW SCHOLAR.**



Steven Koh

## AHA!

# Why We're Falling Apart

### Let's start with populism and fake news.

BY PROFESSOR STEVEN KOH

**Covid-19 exposes the rising pathology of populism, with its hostility to international institutions and, more broadly, expertise of any kind. This is the central threat to international law and institutions nowadays. We are living in an era of epistemic fragmentation, where the diversity of media sources—traditional, social, and other—has led to polarization and a sense of "I know better."**

Epistemic fragmentation obscures what should be obvious: A global pandemic needs a global response. The World Health Organization (WHO) must be integral to such an effort. Unfortunately, rising populism means hostility to the WHO and other global institutions. The WHO may not have responded to Covid-19 perfectly, but it should not be ostracized. Our US obligation is to lead institutions like the WHO, not undermine them, as we have elected to do by setting a withdrawal date of July 2021.

The pathology of epistemic fragmentation has also hobbled our domestic response to the pandemic. Dr. Anthony Fauci says he worries when he hears that a third of Americans would not want to be vaccinated once a Covid-19 vaccine becomes available. This sort of suspicion of expertise and institutions does not bode well for groups like the WHO, which are more removed from the lived experience of many of us than our domestic public health agencies but nonetheless play a vital role in protecting the health of people worldwide.

I hope that reality will cut through our misapprehensions about the pandemic, the way the murder of George Floyd alerted more people to the pathologies of systemic racism and policing in America. Some US governors may have played fast and loose with the facts regarding Covid-19's contagiousness, but with the virus spreading rapidly the facts will be increasingly harder to deny. Perhaps the utility of international law and its institutions will similarly become more evident in this time of crisis.



# CONSTITUTIONAL DEMOCRACY

### THE LAW OF THE LAND / How civil discourse, first principles, and distributed powers can turn us around.

**Professor George Brown: Restoring Civil Discourse Is Key.** I think the racial issues we are facing now are more important and intractable than the public health ones. Translating a growing national consensus into acts and deeds will not be easy. We must not lose the moment—lest it become just a moment. However, we must not let it generate a monolithic orthodoxy that destroys good and bad.

There will always be—there should always be—debate. The most important process goal may be restoring civil discourse. President Trump bears his share of blame for its loss. Those on the other side of the cultural divide are responsible as well. The use of argument-ending, vitriolic epithets such as "racist," "fascist," "xenophobe," is antithetical to civil discourse. Traditional values of free speech have a major role to play here.

Overall, I remain optimistic. It is possible that today's crises will lead us to find our own better angels.

**Professor Daniel Coquillette: Steadied by Our Touchstones.** The underpinnings of our legal order are not rules or police forces, but the cultural heritage that binds us as people, a heritage that perme-



George Brown



Daniel Coquillette



Ryan Williams



Judith McMorro

ates our Constitution, but predates it by centuries. We have seen wars, natural disasters, and civil unrest. These cannot threaten us if we remain, in the words of Dr. Martin Luther King Jr., loyal to "those deep wells of democracy which are dug deep by the founding fathers."

I have been working with US Judicial Conference committees to protect fundamental rights where every jury trial and sentencing is problematic. We will succeed, because of the commitment of our independent judiciary and bar to these values. To modify a well-known phrase by former Wyoming Senator Alan Simpson, "If we protect these values, nothing else matters. If we do not protect them, nothing else matters."

Covid-19, like wars and natural disasters, endangers us all. Of course, the impact has been felt very disproportionately by the poor and socially marginalized, but there is no scientific solution to the pandemic that does not include everybody. An attitude of "I have mine, Jack" has never built strong societies, and will not get us through even the next six months. When Hurricane Irene devastated Vermont in 2011, cutting off whole towns and villages, leaving thousands with no food, drinking water, or even dry clothes, Vermonters met the challenge as one people. Outside the general stores there were erected two notice boards titled "I Need" and "I Have" with resources constantly moving from the "Have" board to the "Need" board.

Our legal system cannot survive by force alone, and every well-educated lawyer knows that we have a social contract based not on the interests of any particular group, but on the general welfare. If we learn from this pandemic

to reassert the basic American values of compassion and care for all, we will emerge, like Vermont did from Irene, a stronger place.

**Professor Ryan Williams: The Pros and Cons of Federalism.** The pandemic provided a vivid illustration of both the value of federalism and its potential drawbacks. Had the President, for example, attempted to follow through on his proposal to force a reopening of the national economy before state officials were prepared to lift restrictions they had imposed, he would have found few plausible legal avenues to achieve his objective without obtaining the cooperation of either state officials or of Congress. Centering decision-making authority at the state level also facilitated different responses to the pandemic in different regions of the country, allowing for a diversity of policy responses that enabled states to match policies to local conditions. Such diversity also allowed the states to play their traditional role as "laboratories of democracy," facilitating experimentation to see which measures worked well and which did not.

At the same time, failures of coordination between state and federal authorities may have exacerbated the health crisis. And the diversity of policies at the state level meant that some states likely chose the wrong policy, contributing to higher rates of infection and death than might otherwise have occurred. This pattern reveals a basic truth about federalism: It functions as a kind of "hedge," limiting the potential upside of the most desirable national policies while simultaneously protecting against uniform imposition of the very worst policies.

### PROFESSOR JUDITH McMORRO ON THE RULE OF LAW

"Bottom line: To have an effective rule of law, we must have a better understanding of our community, of our interconnectedness to one another. No law can order this. No political structure can ensure it. This must bubble up on a human level and become a cultural norm."

**THE VISION PROJECT: ONLINE** / Contained on these pages is a small and select sampling from the interviews with our faculty leaders. To read their responses in full, please visit [BC Law Magazine's online Vision Project website at lawmagazine.bc.edu/category/the-vision-project](http://BC Law Magazine's online Vision Project website at lawmagazine.bc.edu/category/the-vision-project).



# THE

IN A LONG CAREER THAT BROUGHT DOWN CORPORATE DEFRAUDERS AND EVENTUALLY LANDED HER AMONG THE SMALL COHORT OF WOMEN TO CHAIR A TOP GLOBAL LAW FIRM, **THERESE PRITCHARD '78** HAS REMAINED TRUE TO HERSELF: A LAWYER WHO ESCHEWED A CUTTHROAT PROFESSIONAL TRAJECTORY FOR THE SIMPLE PLEASURE OF FINDING WHAT WAS INTERESTING RIGHT IN FRONT OF HER. IT WAS THE SECRET TO HER SUCCESS.

By **JERI ZEDER** Photographs by **BOB O'CONNOR**

# Chair

# WHEN

## THE WASHINGTON, DC, LAW FIRM BRYAN CAVE MERGED WITH THE LONDON FIRM BERWIN LEIGHTON PAISNER IN APRIL 2018, IT WAS BIG NEWS. AND NO WONDER.

The new firm, Bryan Cave Leighton Paisner, had combined revenues of \$900 million, employed 1,400 lawyers, and operated thirty-two offices across eleven countries throughout the US, Europe, the Middle East, and Asia. It boasted the world’s fourth largest real estate practice, and one of the world’s most active global merger and acquisition practices. It represented nearly 200 Fortune 500 companies and thirty of the world’s top fifty banks.

It was also the first global law firm ever to be led by two women.

One was Therese Pritchard ’78.

In her remarkable five-decade career, Pritchard prosecuted some of Wall Street’s most notorious criminals. She uncovered what’s considered the greatest pre-Enron corporate fraud scandal in history, and many of her cases had an enduring impact on corporate governance and finance. She’s skilled at delivering tough news to top people and persuading them to make serious course-corrections. She’s a high-powered attorney with a down-to-earth work ethic: “When Terry gets into something, you will frequently find her in her office with her high heels off, her glasses on, sitting cross-legged in her chair, either intently going over testimony or preparing for a deposition or reviewing documents,” says her colleague LaDawn Naegle, a managing partner in her firm. She’s intense, but there’s a genuineness to Pritchard, Naegle says, that makes people trust her.

Pritchard herself dismisses any notion that her career unfolded according to some grand design. “Mine is a one-foot-in-front-of-the-other story,” she insists. “I think I am just one of those people who finds whatever is interesting about what is right in front of me.”

It’s a lesson she passes on to newly minted lawyers. “When I talk to first-year associates at their new associate training gathering,” she says, “I talk about taking the opportunity that lands in front of you. I think our younger generation likes to plan much more than my generation planned, or certainly, I planned. Some of my career was really about grasping what fell into my lap and running with it, and really getting great reward from that.”

She chose law school as “kind of a default,” she says. “I couldn’t think of anything else that looked interesting. My father was a lawyer. He liked being a lawyer. It looked intellectually challenging and I wasn’t sure what else looked appealing.”

After graduating from BC Law, she worked as in-house counsel for the First National Bank of Boston, where she rotated through departments and discovered an interest in the federal regulatory system. When her husband Ivor, who has a PhD in philosophy, was offered a teaching position outside of Washington, DC, the couple moved and she landed a job in the enforcement division of the Securities and Exchange Commission. “Much of securities law is really a series of disclosure guidelines—what public companies disclose about their financial condition and their business focus, what insiders disclose to the other side of trades,” Pritchard says. “I found the issues around that to be interesting.”

As an assistant director of enforcement at the SEC, Pritchard investigated the 1980s insider trading and fraud scandals of Ivan Boesky, Michael Milken, and the investment bank Drexel Burnham Lambert. They and their multi-million dollar shenanigans made headlines, inspired entire books and films, and still resonate: In February of 2020, Michael Milken was pardoned by President Trump.

The cases changed the world of corporate finance. “I think it created a culture of compliance in the financial services industry that had not existed before. Before these cases, no

significant financier had gotten into serious trouble with the government for violations of law since the Great Depression,” says John Sturc, who supervised Pritchard when he was associate director of the SEC’s Division of Enforcement. “After that, white collar enforcement came to be taken seriously both within the Justice Department generally and within the legal profession. It became a big part of law practice at major law firms which had not existed before.”

Sturc, who continued working with Pritchard after they both left the SEC for the DC law firm Gibson Dunne & Crutcher LLP, says, “Terry has an amazing nose for what is real and what is baloney. She has an ability, better than almost anybody I have ever met, to size up the credibility of both a person and of the evidence that they are purporting to give.

“She is the best negotiator I have ever met,” he continues. “Even though, in theory, I was the more senior partner and she was the more junior one, I had her do all the negotiations. She was much better than I was.”

More than once, Pritchard encountered thorny ethical issues. At the SEC, for example, she faced questions over the freezing of assets. Prosecutors will often use their power to freeze a defendant’s assets to ensure potential recovery. But, if a prosecutor goes overboard, a defendant won’t have the resources to mount an adequate defense. In a 2013 interview with the Securities and Exchange Commission Historical Society, Pritchard said, “I fell on the side of I don’t believe that people should be deprived of the ability to defend themselves.

“If you freeze somebody’s assets so there’s nothing left, they have no choice but to settle with you,” she continued. “I viewed that as not particularly appropriate behavior for an enforcement division.”

In the early 2000s, now at Bryan Cave, Pritchard found herself representing the Belgian speech-recognition technology business Lernout & Hauspie Speech Products. The company had “created bogus customers, booked circular transactions with shell companies, and

recorded loans as sales from 1996 to 2000,” the *Boston Business Journal* reported at the time. The fraud involved hundreds of millions of dollars. It was probably the biggest corporate scandal ever, pre-Enron.

At the time, questions of corporate governance were less developed than they are today. When Pritchard discovered that the company’s management, who had hired her, wasn’t giving her proper information, she needed to step back and think about exactly who her client was—management? the board? the shareholders?—and what her obligations were.

Ultimately, she went to the board. “At the end of the day,” she explains, “the shareholders own the company and are entitled to know the truth about what is going on. The board represented the shareholders and therefore they needed to be the people seeing the evidence that I was seeing and making the decisions about what should be done.” Lernout & Hauspie soon went bankrupt. Its founders went to prison.

Not all corporations are wrongdoers, of course. They are companies that need legal guidance through tangles of laws and regulations, and this is what Pritchard provides. Naegle, Pritchard’s law firm partner, recalls a time when she witnessed Pritchard deliver detailed remedial advice to a company’s board of directors. “When the meeting was done,” Naegle says, “she left the room and I turned to the chairman of the board and said something along the lines of, ‘Do you have any questions or are we done here?’ He points to Terry in the outer office and says, ‘I know what I want to do. I want to bring your scary partner back because

always stop and say, ‘Here’s a message for the women in the audience. There are men who are just not going to take you that seriously and who are going to think you don’t get what they are talking about. Go with it, because at the end of the day, it’s whether you win or lose that counts here.’ I used an example of a man who was saying something to me, and I said, ‘I don’t understand,’ and he said, ‘That’s because you don’t understand business.’ I said, ‘Okay, you might be right, please explain it to me,’ and he basically admitted to a violation of the securities law. So, my attitude was, that’s fine, if that’s the attitude they want to have, use it.”

Her husband Ivor says, “Early in her career, when she was at the Securities and Exchange Commission, and we had our first child, she ran into the policy that nobody could be less than full time and be a supervisor. She was, I believe, the first person there to make an arrangement for some time to work for less than full time after she came back from having her first child.” Ivor is a senior advisor to the US Department of Health and Human Services’ Office for Human Research Protections, which oversees regulations on human research subjects.

“One thing that really helped Terry a lot was not having her career or her family completely walled off from each other,” Ivor says. She’d talk about work at the family dinner table. If a work phone call came in on a weekend while she was busy in the garden, she could quickly switch gears, handle the matter, and then get back to gardening. And Ivor and their younger daughter played for the Bryan Cave softball team. “We would traipse down and play on the Mall with the people from the firm, and so there were times when there was family life and professional socializing going on at the same time,” he says.

In 2013, Bryan Cave needed to hire a new chair, and Pritchard threw her hat in the ring. The search committee polled the partners, asking them what they wanted in a leader. Among the answers: Someone who can assess the firm’s place in the market and can figure out where to position the firm in the short and long term.

According to Naegle, Pritchard’s assessment was that Bryan Cave needed to scale up and get out of the middle, where there was a lot of competition for the same work. In 2014, Pritchard, who at that point had been with Bryan Cave for about a decade and a half, became the first woman chair in the firm’s 140-year history.

Pritchard then led Bryan Cave through a visioning exercise. “Some of the things that came out of that were a desire to grow through a strategic combination”—that is, a merger—“and a desire to have a deeper global presence,” Pritchard says. Her research revealed that Berwin Leighton Paisner in London had been in negotiations with a US law firm, but the talks had fallen through. “I did a bit of research and saw a lot of practice and cultural synergies,” Pritchard says. “Our financial performance was somewhat similar as well. I reached out to Lisa [Mayhew, Berwin Leighton Paisner’s chair] on a bit of a false pretense. I was going to be visiting London, and suggested, since there were so few women running big firms, that it would be nice to meet her over breakfast while I was there. I told her over breakfast what I had seen

and why I thought a combination might be worth exploring. A few weeks later, she called and asked for a second meeting. And the rest is history.”

The merger enabled the combined firms to grow and deepen their expertise in real estate, financial services, food and agriculture, corporations, and litigation, and to expand their global presence. “We are positioning ourselves to be able to handle everything because that is what the market demands,” Pritchard told the online publication Lawdragon in 2019.

Pritchard stepped down from the co-chair position in January 2020, when she was not eligible to run for another term. She resumed her practice in securities and financial institutions enforcement and litigation at the firm. Months later, Pritchard found herself counseling her clients during the devastating Covid-19 pandemic.

“The ultimate goal of any good lawyer in a big law firm is to be a trusted advisor to their client, and they need to find a way to continue to be that in this new environment,” Pritchard says. It’s a perfect summary of the basics of being a successful lawyer—in these times and all times.

**AS AN ASSISTANT DIRECTOR OF ENFORCEMENT AT THE SEC, PRITCHARD INVESTIGATED THE 1980S INSIDER TRADING AND FRAUD SCANDALS OF IVAN BOESKY, MICHAEL MILKEN, AND THE INVESTMENT BANK DREXEL BURNHAM LAMBERT. THEY AND THEIR MULTI-MILLION DOLLAR SHENANIGANS MADE HEADLINES, INSPIRED ENTIRE BOOKS AND FILMS, AND STILL RESONATE: IN FEBRUARY OF 2020, MICHAEL MILKEN WAS PARDONED BY PRESIDENT TRUMP.**

I want her to conduct all the training.’ Her level of seriousness and her ability to approach a very difficult, sensitive topic was what I think struck a chord for the board, and from then on, I referred to Terry as my scary friend who comes in to deliver difficult messages to officers and directors of public companies.”

Incidentally, Naegle and Pritchard were the only women at that board-of-directors meeting. According to the American Bar Association, in 1980, two years after Pritchard graduated from BC Law, around 8 percent of lawyers were women. Today, just 36 percent are women. Pritchard never let it ruffle her. Here’s what she told the SEC Historical Society about a training program she taught for the SEC’s new lawyers: “I would

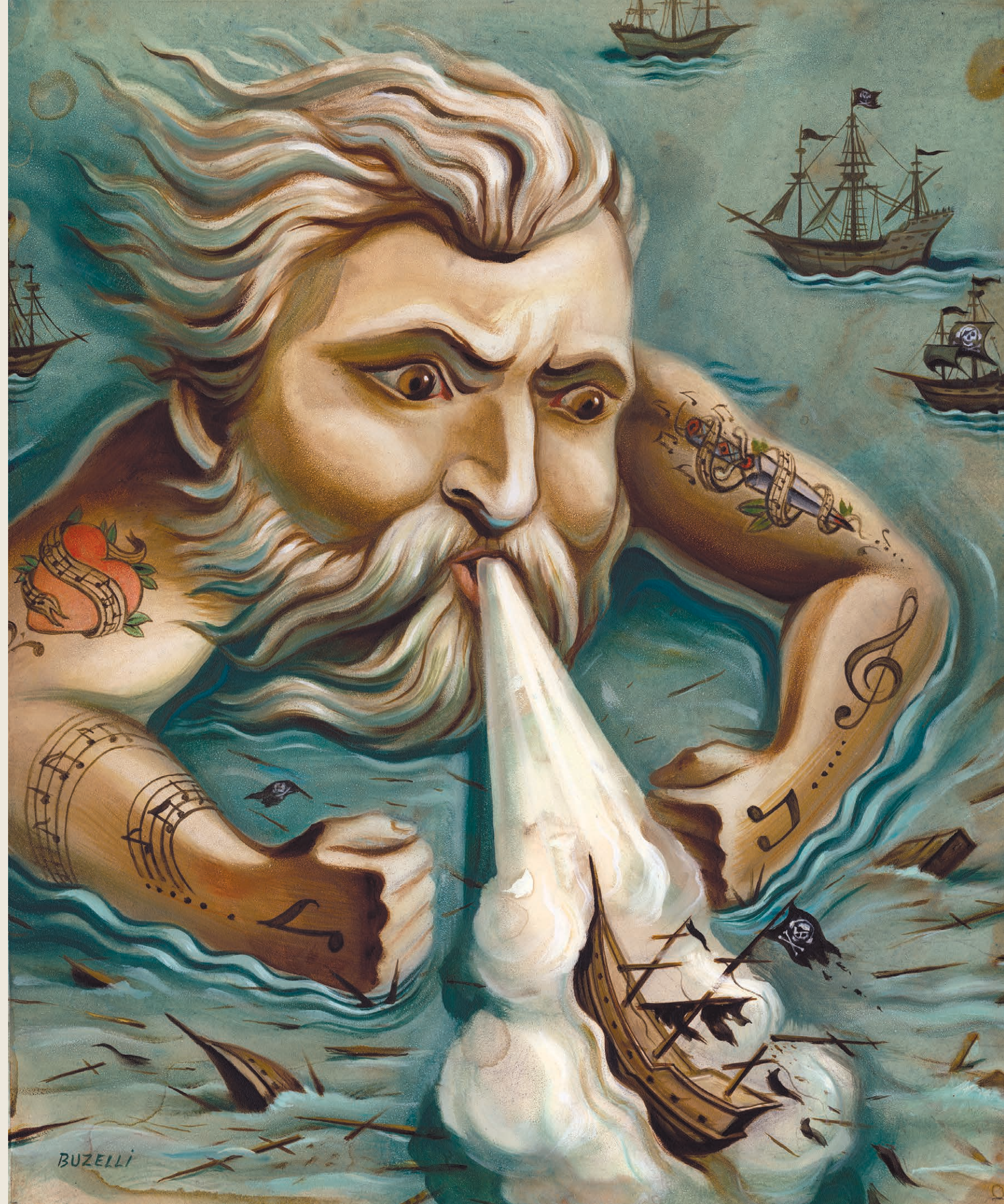


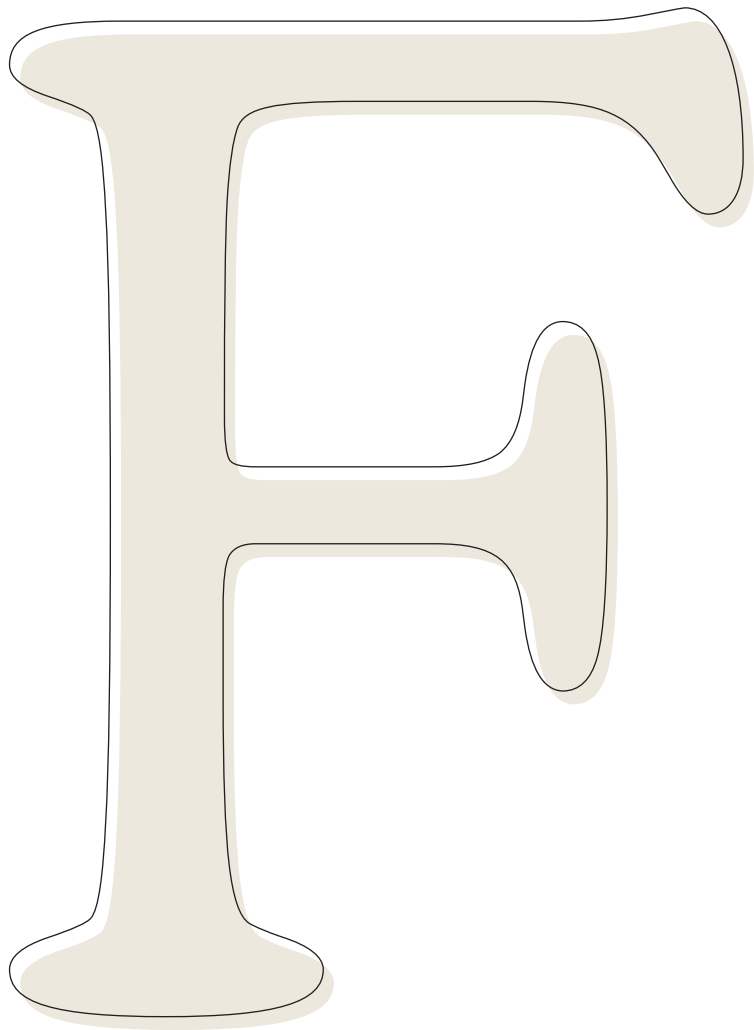
# The Land of Music & Piracy

In a copyright showdown between the music industry's Big Three record labels and a broadband internet renegade, **Jeff Gould '06** kept the beat for the plaintiffs while art and artists prevailed to the tune of a \$1 billion jury verdict.

BY CHAD KONECKY

ILLUSTRATION BY  
CHRIS BUZELLI





**For most of us**, what qualifies as an epic music debate is wholly subjective and undertaken all in good fun. Zeppelin or the Stones? Beyoncé or Adele? Prince or Pink? For Jeff Gould '06, making an argument about music was a whole order of magnitude more complex when he took on a copyright infringement case that pitted the majority of the music industry against one of the nation's largest internet and broadband companies.

The claims? Contributory and vicarious copyright infringement for more than 10,000 songs. The plaintiffs were Sony Music Entertainment, Universal Music Group, and Warner Music Group—known as the Big Three record labels. They own rights to the majority of recorded music sold in the US and worldwide, along with their music publisher counterparts, which own or control the underlying musical compositions. The defendant was Cox Communications, the nation's third largest cable company and eighth largest internet and broadband company. The case included more copyrights at issue, it is believed, than any other in history. It also targeted a larger, more profitable defendant than nearly all other copyright cases. Further complicating matters, the *et al.* following the lead plaintiff, Sony, consisted of fifty-three affiliate record companies and music publishers.

Tasked by Sony with wrangling that legal behemoth into a comprehensible—and winnable—case were Gould and a small band of colleagues at the DC-based copyright boutique, Oppenheim + Zembrak, LLP. The speed alone with which they had to act was daunting, though not surprising, given that the case venue was the US District Court for the Eastern District of Virginia (EDVA), aka “The Rocket Docket.”

The news service Law360 reported that EDVA litigated its way to the nation's shortest average duration from file to trial in 2019—for the eleventh year in a row.

“Our case went from complaint to a trial in seventeen months,” says Gould. “Anybody who's ever tried complex litigation knows that is extremely fast. When you think about it in the context of a case this big, it feels even faster. And years shorter, on average, than the time between complaint and trial for civil litigation in this country. What does that mean for us? It means we work very, very hard.”

Our story begins with a scrappy rink rat who never met a hockey game he wouldn't skate to win. A Vermont native, Gould mostly grew up near Chicago, but returned to New England to attend Phillips Exeter Academy, where he played ice hockey. A 5-foot-9 and 165-pound shoot-first right winger with a knack for finding the back of the net, Gould still plays the game in what he calls a “beer league.” “Put it this way, I would never have been up to the task of playing at the level of BC as an undergrad (or even Williams College, where I went), but I've always come at things from that offensive angle, which can be a helpful attribute if you do a lot of work in the plaintiffs' bar.”

*Sony v. Cox* was definitively a drop-your-gloves sort of legal action. Discovery, alone, became a deluge of documentary analysis and depositions. On the final day of the window, Gould conducted a 3 a.m. deposition via videoconference of an anti-piracy software engineer in Vilnius, Lithuania. That concluded a wild stretch during which the Oppenheim + Zembrak (O+Z) team executed thirty-nine depositions in forty-five business days, including double- and triple-tracking offensive, defensive, and third-party depositions across the country and around the globe on any given day.

“It was bonkers. Absolutely bananas. Off-the-charts insane,” says Gould.

What's more, O+Z is a boutique outfit. There were ten attorneys on staff when the firm landed the case. Gould, forty-four, had been there just fifteen months when O+Z filed the Sony complaint. And it was a doozy. Sony alleged secondary copyright infringement claims against Cox based on the defendant's hand in its subscribers downloading and distributing 7,068 copyrighted sound recordings and 3,452 copyrighted musical compositions owned by plaintiffs—all the while prioritizing its own profits over limiting infringement it knew was occurring on its network.

Gould was tailor-made for a seat at the plaintiffs' table and for his duties managing the litigation day-to-day, which is a lot like running point on the power play. After BC Law, he served as a law clerk to Judge Paul J. Barbadoro of the US District Court for the District of New Hampshire before joining the DC office of Kirkland & Ellis LLP, first as an associate and then as a partner. During his ten-year stint at Kirkland, Gould focused his practice primarily on complex commercial disputes in federal and state courts.

Paul Tremblay, a clinical professor at BC Law and director of the Community Enterprise Clinic, recalls spotting Gould's knack for litigation from as far away as a blue-line slap shot. “We all knew he was going to be super successful,” Tremblay says. “He worked with me in what was then the eviction defense clinic. His group was great, but he was a star. He was so talented as a student. He came to law school with a lot of confidence and poise. You just felt like he was someone who was going to go far.”

Gould, the father of seven-year-old twins, joined O+Z in 2017 and has focused mainly on complex litigation and counseling in intellectual property and commercial disputes, with an emphasis on copyrights, trademarks, and related commercial matters. Besides its music clients, O+Z represents major book publishers and other content and brand owners.

Judge Barbadoro believes he can actually pinpoint the case that set Gould on a collision course with Cox Communications. “I remember working with Jeff on a criminal securities fraud prosecution of an officer and several senior managers at a publicly traded company,” says Barbadoro. “The trial was long and complex. It resulted in convictions and lengthy prison sentences for the defendants. Jeff played a central role in working with me on that throughout, and he later told me that case was one of the things that got him hooked on litigation. I've hired more than twenty recent BC graduates to work for me as clerks, and they've been uniformly excellent. Jeff certainly fits that mold.”

### Got You Under My Skin

For more than a generation, since the heady days of Napster (circa 1999), third-party file-sharing sites where users can download digital audio files without paying for the content have tormented the music industry and the artists it represents in matters of copyright infringement. For every Napster or Grokster snuffed out by legal action, another open-source software tool sprung up in its place.

Prosecuting individual offenders amongst the general public proved impractical—whack-a-mole, if you will. So Gould and O+Z sought to stem the tide at the source of the direct infringers' access—internet service providers (ISPs) that ignore their obligation to act in the face of specific knowledge of illegal infringement. Under the law, an ISP can't knowingly contribute to copyright infringement, nor can it profit from infringement it has the right and ability to stop. ISPs like Cox may be entitled to a so-called “safe harbor” from secondary liability under the Digital Millennium Copyright Act, but here Cox did not qualify for that protection.

In its complaint, Sony alleged more than 10,000 individual works had been pirated illegally over a two-year period, painting a picture of a Cox culture that systematically abetted infringers and openly mocked copyright laws by ignoring hundreds of thousands of notices from copyright owners. Cox boasted 4.5 million subscribers and reported nearly \$20 billion in revenue and more than \$8 billion in profit in the two-year claim period alone. According to Sony, the defendant was flaunting the rules to keep collecting service fees from tens of thousands of customers who flouted Cox's Acceptable Use Policy by using its service to infringe.

Attorneys for the defendants disputed the charge, hammering home themes about its customers' right to privacy, the com-

pany's role in providing internet service for critical infrastructure like banks and police, and its purportedly state-of-the-art graduated response system.

In trying the case, Gould and the O+Z team had to battle the double-edged sword of a jury trial. They needed to steward eight jurors in a manner that allowed them to extract actionable facts and persuasive pathos from testimony and documentary evidence over the course of a two-week trial about network nuances, data transmission, and software functionality. All in the course of considering a monolithic 5.8 million infringement notices directed at Cox and its tens of thousands of faceless subscribers tabbed as *repeat* offenders.

There was another paradigm-shifting aspect of the case. In addition to its contributory infringement claims, Sony was seeking to be the first music industry plaintiff to get a claim of vicarious liability to stick against an ISP. But before they even got to the plate on that allegation, the plaintiffs had to prove the underlying claims of direct infringement by Cox's subscribers.

The stakes were always high given the number of copyrights at issue. Statutory damages awards under the Copyright Act can range from \$750 to \$150,000 *per work* infringed, and the law confers juries with broad discretion to assign a damage award within that range, including any apparent need to compensate the plaintiffs and deter/punish the defendant. A maximum damages verdict would set Cox back somewhere in the neighborhood of \$1.58 billion, which sounds like real money—even to a company that paid its owners \$2.9 billion in cash dividends from 2012 to 2014.

O+Z knew the jury could get lost in how all the technology worked and defendant's efforts to distract. To avoid that, Gould and his team focused on building a story everyone could relate to. “It's so hard to do because the nature of trial presentation is that you build blocks from different witnesses and documents not necessarily in any obvious,

linear way,” explains Gould. “Trials can be very disjointed. We need to take all of the pieces and put them back into a storyline so the jury sees the end of the story and not just the different chapters.”



**“Copyright infringement is not a victimless crime. Cox harmed recording artists. It harmed songwriters. It harmed everybody in the ecosystem. Back-up musicians, union musicians, digital engineers. Everybody.”**

**Matt Oppenheim**  
*O+Z Managing Partner,  
who sat first chair  
for the plaintiffs*

### Thriller

“Copyright infringement is not a victimless crime,” says O+Z Managing Partner Matt Oppenheim, who sat first chair for the plaintiffs at trial. “Cox harmed recording artists. It harmed songwriters. It harmed everybody in the ecosystem. Back-up musicians, union musicians, digital engineers. Everybody.”

That thesis statement underpinned the lawsuit, ultimately becoming its chorus. Gould and the O+Z team made sure to make it about the music. “Making it about the art brings back the real, tangible importance of the music,” adds Gould. “So for each record company exec who testified at trial, we presented a witness who was telling the court and jury about the universality of music and

how there’s personal meaning we draw from individual works—the way you can hear a certain song and it takes you back to cruising around in high school with buddies, or a great family vacation that you had, or the first-time-you-ever stories.”

But the plaintiffs did more than that. Amidst testimony, objections, and argumentation, they played medleys of songs from the respective labels. Riffs and back beats from R&B, reggae, classic rock, pop, folk, and country da-danged from the courtroom. The jury got to groove to Prince, Van Halen, and James Taylor (Warner Music), plus the Rolling Stones, Beyoncé, and Eric Clapton (UMG), as well as Springsteen, Whitney Houston, Billy Joel, and Adele (Sony).

“These were great moments at trial and we did that very deliberately,” says Gould. “Cases like this can become all about the elements of the legal standard. Frankly, it’s easy to forget about the music. So, we spent time and effort and energy collecting and arranging powerful music that we would play.”

Punctuated by head-bobbing interludes, Sony unleashed a torrent of damaging evidence at trial, including a well-documented audit trail detailing the monitoring and reporting of Cox subscribers’ infringement, which offered solid evidence of underlying direct infringement (downloading and distribution) of their copyrighted works by Cox users. It became clear that Cox had subscribers who were infringing in mass, and that the music industry kept telling Cox about it.

Cox countered, arguing it is bound by strong security policies that protect its customers’ privacy; ISPs don’t track down what subscribers are doing online and the burden of policing shouldn’t fall to them. Secondly, the company contended that it is merely a gateway to the internet—that’s the business model. It doesn’t host or edit content. It’s a mechanism for individuals to access the web. Put another way: Don’t blame the messenger.

“What you don’t know until you pull back the curtain and see Cox’s internal documents is that they made a mockery of what the record companies and the music industry were saying,” says Oppenheim. “What Cox really did was develop a policy where the whole point was to avoid doing anything.”

Cox scoffed at that notion, touting its development of a first-in-time, best-in-class graduated response program to infringement that was addressing such issues 24/7/365. The record didn’t corroborate that claim. Cox ignored user behavior over and over again, but kept responding to infringement notices with a thank you and a promise to do something about it. Plaintiffs presented evidence of more than 10,000 infringements *per day* on Cox’s network. But how could the theft of 10,000 works in total be the subject of 10,000 instances of infringement per day? Because millions of Cox customers were downloading the same songs. It’s called pop music for a reason.



**“It was bonkers. Absolutely bananas. Off-the-charts insane.”**

**Jeff Gould**  
*on taking depositions preparing for trial*

### Break on Through

To have a chance at deterring Cox and other ISPs, Sony had to win on its contributory *and* vicarious claims. That meant Sony needed to establish an economic incentive for Cox to tolerate infringement as well as show Cox material contributed to infringement it knew about.

Trial evidence showed that Cox repeatedly said one thing and did another. Cox “gamed their own policy” Oppenheim said in his closing arguments. The company had an Acceptable Use Policy in its customer agreement that prohibited use of its network for copyright infringement. It employed a counter-abuse team.

But the whole thing was “a sham,” argued Oppenheim. Conduct by Cox’s security and marketing teams was arbitrary, capricious, and seemingly motivated by malice at times. For starters, as a matter of course, the abuse team ignored the first infringement notice it received with respect to any individual subscriber. The defense argued that Cox wanted an opportunity to educate customers on the terms of their

agreement, but more often than not, Cox wouldn’t even forward the notices it was receiving. Rather, Sony showed that Cox deleted most of them without taking any action at all.

The company capped its daily account suspensions at 300, a limit routinely met by 9 a.m. Cox also set hard limits on the number of notices that it was willing to receive from different copyright owners, either silently deleting them, or simply rejecting notices automatically at the mail server. The effect was to ignore millions of notices, with no customer-facing action. Was this endemic? One member of the compliance team tapped out an email that read: “We need to cap these suckers.”

The defendants conceded all of the above, adding that, sure, Cox didn’t follow up on *all* of the 270,000 infringement notices it formally processed from the Big Three during 2013 and 2014, but the system it had in place to warn and punish abusers was “extraordinarily effective.” What’s more, Cox argued, those infringement notices sent by the plaintiffs weren’t really specific enough to consistently act on anyway.

Not true. In trial testimony, Cox admitted receiving nearly 5.8 million infringement notices during the relevant years, not counting millions more it blocked or deleted. And, the information in the notices from the labels wasn’t vague. Each notice alerted Cox to the individual subscriber by IP address and included examples of infringement at a particular date and time as well as a cryptographic hash value—a digital signature or fingerprint, that tells software engineers: This downloaded file is identical to the file you know as: “Lady Gaga, Poker Face.”

Cox also abolished the mandatory termination provision of its Acceptable Use Policy (AUP) and made it discretionary with a graduated structure. The new provision began with a three-strikes rule, but over

time, as the number of notices mounted, Cox amended its policy to ten steps, then twelve steps, then fourteen steps. As the problem grew, Cox changed the rules to avoid friction with customers and continue providing them service, for which they collected money.

“Where else in the law are you given fourteen opportunities to obey the law?” demanded Oppenheim in his closing argument. “And as far as capping the number of notices it received, the notion that an ISP can put its hands over its ears so as not to hear about infringement on its network has no place in the law. Cox does not get to limit copyright owners on the amount of theft they report.”

During the claim period, Cox also offered a tiered pricing plan, charging different flat fees for different download speeds. For the uninitiated, a content pirate is not in the game to wait around for any download speed but the fastest.

Further testimony and trial exhibits revealed that suspended customer accounts would often be reactivated within hours. As for oversight, the company slashed its Technical Operations Center abuse team from fourteen to nine members and, ultimately, four. At a company that employs 20,000 people. Turns out that internally, Cox readily acknowledged it had a massive economic incentive to tolerate infringement. It was right there in the discovery docs, brought to life in the form of dozens of emails among Cox employees.

As one executive wrote in an email, “Remember to do what is right for our company and subscribers, not to do what [this customer] is obligated to do under the law.” The head of the abuse team urged workers to give repeat infringers a “clean slate” following a soft termination and reactivation so that Cox “could collect a few extra weeks of payments for their account ;-).” He instructed his team “to hold on to every subscriber we can” and to “keep customers and gain more RGUs” (i.e., revenue generating units, also known as subscribers).

Missive after electronic missive from Cox’s abuse team demonstrated this company-wide approach. “This customer will likely fail again, but let’s give him one more chance—he pays \$317.63 a month.” In another example, “this customer pays us over \$400/month and if we terminate their internet service, they will likely cancel the rest of their services.”

Cox insisted its conduct was driven by a sense of corporate responsibility. As the provider of an essential service, the company couldn’t be hasty or impulsive about suspending or terminating accounts. Especially its business customers, made up of hospitals and city halls and military installations. But trial evidence showed Cox terminated over 619,000 customers—including 22,000 business customers—who were a month or so behind on their bill during the claim period. By contrast, the company terminated a mere thirty-two accounts in response to copyright infringement, despite knowing of tens of thousands of repeat infringers.

The truth was, Cox’s policies did virtually nothing to uphold the company’s AUP. In fact, email records revealed that the counter-abuse manager and his lieutenant crowed “f

the dmca!!!” (the Digital Millennium Copyright Act that established the framework for plaintiffs to send Cox the infringement notices).

Late in the trial, Cox introduced 1,200 emails reflecting warnings sent to customers informing them their activities were illegal and the customers’ responses. Gould did his due diligence and read them all between trial days in preparing to redirect a witness the next morning. Buried in the pile was an email from a customer who—clearly well aware of his actions and, after years of this behavior, irritated he had suddenly received a caution—responded, “I have [an open-source] application on my computer that’s been there for a couple of years. If [this] is illegal, kiss my you know what.” Gould piled on in his redirect of the abuse engineer who received the email, showing that the same customer infringed unabated thereafter. It was not a good moment for the defense.

Ultimately, Cox’s top counter-abuse engineer admitted under oath that financial considerations were a factor in making decisions about whether to terminate an infringing subscriber.

### Let It Be

Following a twelve-day trial last December, a Virginia federal jury needed one full day of deliberations to find Cox liable for willful vicarious and contributory copyright infringement. The jurors awarded \$99,830.29 for each of the 10,017 works infringed upon, adding up to exactly \$1 billion. The verdict is the largest in music industry history and the second-largest copyright verdict ever. It was the largest jury verdict in the history of the EDVA by a factor of more than thirty. In late June, Law360 listed the case among its “Top 7 Copyright Rulings of 2020” midyear report. Gould played a central role in the case from start to finish, including handling ten witnesses at trial.

In a January memorandum asking the court for either a new trial or a reduction in the damages amount, Cox claimed the award “exceeds the aggregate dollar amount of every statutory damages award rendered in the years 2009-2016 by more than four hundred million dollars.” In early June, a ruling from the judge on post-trial motions affirmed the jury’s verdict in all material ways, but ruled for Cox on one legal issue that will trim the total number of works in the suit (and

thus total damage figure). The judge gave Cox sixty days to submit a new list of works that accounts for overlap between copyright protections for sound recordings and their underlying musical compositions.

Multiple emails seeking further comment from both Cox and the defendant’s lead trial counsel at Winston & Strawn went unanswered.

“This case sends a very loud message to ISPs and other technology companies that they can’t build a business that just tramples on and disrespects the rights of content and brand owners,” says Gould. “Eventually, you reach a point where you and the client take a different path toward addressing it.”

Now, there are plenty of reasons to go down that path, if need be. About a billion.



**“[Jeff] was so talented as a student. He came to law school with a lot of confidence and poise. You just felt like he was someone who was going to go far.”**

**Paul Tremblay**  
*BC Law Professor*

GENERATIONS 44  
CLASS NOTES 45

SPOTLIGHTS  
Walter E. Judge '90 45  
Fiona Trevelyan Hornblower '96 46  
Geiza Vargas-Vargas '04 47  
John R. Davis '10 48  
Tere Ramos '14 49

ALUMNI NEWS 50  
ADVANCING EXCELLENCE 52

# ESQUIRE



## GENERATIONS

Alaina "Lainey" Sullivan '15  
and her husband  
Brandon Shemtob '14.

Photograph by  
JORDAN CASSWAY

Written and edited by Deborah J. Wakefield and Margie Palladino '85

## Class Notes

**64 Alan Neigher**, a media and entertainment lawyer in Westport, CT, is legal counsel, consultant, and one of four executive producers of *Big Dogs*, a crime drama set in New York City. The eight-part series debuted in July on Amazon Prime and the commercial streaming service Tubi.

**73 David T. Flanagan** was appointed executive chairman of the Board of Directors of Central Maine Power, a utility company that he led as its chief executive officer from 1994 to 2000. A native of Maine, he has served in various high-profile roles in the nonprofit and public sectors throughout a career marked by a strong sense of civic responsibility.

**77 Len DeLuca**, a veteran of three decades at CBS Sports and ESPN, was selected for the inaugural class of Boston-based Digital Sports Desk's "75 Over Sixty" award honoring mentors and icons of the sports industry. He was also named one of the eight outside board directors of the *Heights*, publisher of the eponymous independent student newspaper at BC, where he was sports editor in 1973 and 1974. He is the founder of Len DeLuca & Associates LLC in New York, NY.

**78 Mitchell Rudin** was appointed chairman and CEO of Savills North America in June. He had joined Savills in 2018 and became president in 2019. Rudin previously was CEO of Mack-Cali Realty Corp. and CEO and president of US Commercial Operations at Brookfield Office Properties.

**79 E. Christopher Kehoe**, a partner in the Boston office of Robinson & Cole LLP, was presented with the Richard B. Johnson Award by the Real Estate Bar Association for Massachusetts (REBA) for his contributions to advancing the practice of real estate law.

**83 Rear Admiral Robert F. Duncan**, retired from the US Coast Guard, was elected president of the Judge Advocates Association. He is a former judge advocate general of the Coast Guard and later, as district commander, led the Coast Guard's highly praised response to Hurricane Katrina.

**84 Michael K. Fee** is a partner in the Boston office of Verrill Dana LLP, where he leads the health care and life sciences defense practice group and focuses his practice on white collar criminal, civil, and administrative enforcement matters. He was previously a litigation partner in the Boston office of Latham & Watkins LLP.

**Lynne Spigelmire Viti** was awarded an honorable mention in the 2020 Joe Gouveia Outermost Poetry Contest for her poem, "Meditations at Newcomb Hollow Beach." Distinguished poet Marge Piercy served as judge. Viti is a professor emerita at Wellesley College following retirement as a senior lecturer in writing. Her debut short story collection, *Going Too Fast*, was published in March by Finishing Line Press and her poetry collection, *Dancing at Lake Montebello*, will be released in November by Apprentice House Press.

**85 Rebecca Pomeroy McIntyre**, a trial attorney at Sarrouf Law in Boston, married David Jay Corrsin in Greenport, NY, in February. The nuptials were featured in the Sunday "Vows" section of the *New York Times* on March 15.

**Nancy G. O'Donnell** is counsel in the Boston office of Verrill Dana LLP and a member of the firm's family law group. Previously an attorney at Rackemann, Sawyer & Brewster in Boston, she has more than thirty years of legal experience in family and general law. She also serves on the Council for Women at BC.

**86 James P. McKenna** is co-author of "The Legality of QALY under the ADA," a report released by the Pioneer Institute that suggests the adoption of the quality of life years (QALY) measurement by state Medicaid programs has the potential to violate the Americans with Disabilities Act. He is a senior legal fellow at the Pioneer Institute in Boston, teaches courses on law and ethics as an adjunct professor at Worcester Polytechnic Institute, and serves as town moderator in Millbury, MA.

**90 Walter E. Judge** assisted in securing a victory for Ben & Jerry's, the iconic Vermont ice cream maker, which was sued in federal court by an environmental advocate, who alleged the company misled customers with their "happy cows" advertising regarding the sourcing of their milk and cream products. He is a partner in the Burlington, VT, office of Downs Rachlin Martin PLLC and focuses on business litigation issues.

✉ We gladly publish alumni news and photos. Send submissions to *BC Law Magazine*, 885 Centre St., Newton, MA 02459-1163, or email to [vicki.sanders@bc.edu](mailto:vicki.sanders@bc.edu). Because of space considerations, we are not able to publish alumni news regarding inclusion in *Super Lawyers Magazine*, *The Best Lawyers in America*, and similar rating entities.



## WALTER E. JUDGE '90

**Ice Cream Win** When Judge won a victory on behalf of Ben & Jerry's this spring, how did he celebrate? "With B&J ice cream, of course!" **Say Cheese—and Chocolate** He started his firm's Food & Beverage Law Practice Group because "the Vermont craft beer, cheese, and chocolate industry has skyrocketed to international superstardom in the past six or so years, adding to the existing fame for ice cream, and I wanted to be part of that." **Avocation** "I'm fully immersed in the crazy Vermont craft beer scene. I have the luxury of being able to drink some of the best beer on the planet every single day (Heady Topper or Hill Farmstead, anyone?) and to help brewers with their legal problems. Many of them are now friends, not just clients." **Best Treat in Law School** "Meeting my wife, Jean O'Neill '89."





### FIONA TREVELYAN HORNBLOWER '96

**A Leader's Agenda** The new head of the National Association for Law Placement Foundation (NALP) sees her role as "identifying key areas where robust research and data will enable tangible improvements for both individual organizations and the profession as a whole." **2020 Vision** "We're running Covid Roundtable webinars bringing law schools and employers together on issues ranging from remote work and instruction to reopening plans." **When Not Working, You Could be Found...** "Baking with our daughter, walking the dog with my husband, or touching base with my BC Law gals as we all navigate working, parenting, and now Covid."

**Michelle R. Peirce** was named president-elect of the Women's Bar Foundation, where she has served as a trustee and is a volunteer with its Family Law Project. A partner in the Boston offices of Barrett & Singal PC, she is co-chair of the firm's litigation practice group and focuses her practice on complex civil litigation and white-collar criminal defense.

**Ileta A. Sumner**, founding general counsel of the Battered Women and Children's Shelter in San Antonio, TX, was appointed to the San Antonio Bar Foundation Fellows Class of 2020.

**91 Susan M. Finegan**, a partner in the Boston office of Mintz and chair of the Pro Bono Committee, was appointed to the Board of Trustees for Dartmouth College in Hanover, NH. She also serves as co-chair of Massachusetts Access to Justice Commission and was named to Law360's 2020 Access to Justice Editorial Advisory Board.

**92 John F. Malitzis** is the managing director and global head of surveillance for Citigroup Global Markets and is responsible for trade and electronic communication surveillance. He was previously deputy general counsel at Citadel Securities and an executive vice president at the Financial Industry Regulatory Authority and NYSE Regulation.

**Hon. Thomas R. McKeon** was confirmed as a justice of the Maine Superior Court following nomination by Governor Janet Mills. Prior to his judicial appointment, he was a partner at Richardson, Whitman, Large & Badger in Portland, ME.

**Aaron M. Toffler** was appointed director of policy at Boston Harbor Now, a nonprofit organization promoting the economic, social, and

environmental health of Boston's waterfront, harbor, and islands. Formerly, he was director of the environmental studies program and dean of the School of Communication and the Arts at Lasell University in Newton, MA.

**93 Darren T. Binder** is senior vice president and chief legal and risk officer for St. Charles Health System in Bend, OR, where he is responsible for the Legal, Internal Audit, Compliance, Risk Management, and Information Security departments and serves on the corporation's executive care team. He was previously vice president and general counsel at Bon Secours Health System.

**Marianne C. LeBlanc**, a partner at Boston-based Sugarman & Sugarman PC, was inducted as a fellow of the American College of Trial Lawyers. She is a member of the Massachusetts Board of Bar Overseers, the American Association for Justice Board of Governors, and the Executive Committee of the Massachusetts Academy of Trial Attorneys Board of Governors.

**94 Martin S. Ebel** was named chief operating officer of the US Equal Employment Opportunity Commission in Washington, DC. With the agency since 2010, he has served in a number of key positions, most recently as director of field management programs.

**Christopher Mirabile** was appointed to the Securities and Exchange Commission's Investory Advisory Committee in May. He is senior managing director and board member of Launchpad Venture Group and chair emeritus of Angel Capital Association.

**Jay R. Talerman**, a municipal law partner at Mead, Talerman & Costa LLC in Newburyport, MA, is director

of operations of Boston Glory, the newest franchise in the American Ultimate Disc League. As the team's director of operations, he is responsible for overseeing staff and players in every facet of running a sports franchise and handles all contracts and legal issues. An ultimate player since 1985, he was a coach of the BC team while attending BC Law and, more recently, a member of the 2018 World Over-50 Championship Team.

**Ellen J. Zucker** was named to the 2020 list of Plaintiffs' Lawyers Trailblazers by *The National Law Journal*. She is a partner in the Boston office of Burns & Levinson LLP.

**95 Seema Nanda**, the first Indian American to be appointed as the chief executive officer of the Democratic National Committee, has stepped down after two years in the position. While she had not announced any future plans at press time, she is "continuing the fight for our democracy and to elect Democrats everywhere."

**Nerre Shuriah** presented a session entitled "Leading with Planning to Grow: Business Development in the New Paradigm" at the American Bar Association Wealth Management and Trust Conference in Orlando, FL, in February. She is senior vice president and director of wealth planning at First Citizens Bank in Raleigh, NC.

**Ingrid C. Schroffner** is senior associate attorney at the University of Massachusetts Medical School (UMMS) Office of Management. In her new position, she advises UMMS business units on such matters as contract drafting, negotiation, health care compliance, public procurements, conflict of interest, and assists in training. She was previously associate general counsel with the Massachusetts Executive Office of Health and Human Services.

**96 Fiona Trevelyan Hornblower** is president and chief executive officer of the Foundation for Law Career Research and Education of the National Association for Law Placement, headquartered in Washington, DC. She is former dean for career development and public service at Boston University School of Law.

**Miles E. Roeder** is a partner at Higgs Fletcher & Mack in San Diego, CA, and focuses his practice on immigration and nationality law. Since 2015, he has spent a week each year volunteering at an Immigration and Customs Enforcement (ICE) facility in Dilley, TX, where he prepares recently arrived asylum seekers from El Salvador, Guatemala, and Honduras for credible fear interviews and bond hearings.

**97 Michael Thomas** is a partner in the Los Angeles, CA, office of Ogletree Deakins and represents employers in both class action lawsuits and single-plaintiff litigation.

**Daniel H. Weintraub** was the recipient of a 2019 American Lawyer Industry Award in the category of Best Mentor-In-House. He is the chief administrative and legal officer and a managing director at Audax Group in Boston.

**98 Myles K. Bartley** is special counsel in the New York, NY, office of Phillips Lytle LLP and specializes in the areas of commercial litigation and mass and toxic torts.

**Garin L. Veris** is a member of the marketing team at Foran Realty Group in Dennis, MA. He is also known as a former National Football League defensive end who played for the New England Patriots for seven seasons.

**99 Karoline K. Shair** is senior vice president, general counsel, and corporate secretary at Akouos, a Boston-based genetic medicines company developing potential gene therapies for hearing disorders. She was previously the vice president and head intellectual property counsel at Biogen, a biotechnology company in Cambridge, MA.

**00 Brian P. Frane** was recently confirmed as an associate justice of the Massachusetts Juvenile Court following nomination by Governor Charlie Baker and a unanimous teleconference vote by the Governor's Council. He is former attorney in charge and interim managing director of the Massachusetts Committee for Public Counsel Services in the Children and Family Law Division.

**Mark Meltz** was appointed CEO and general counsel at Kinnate Biopharma in San Diego, CA, in May. He joined Kinnate from another California company, Audentes Therapeutics, where he served as senior vice president and general counsel. He played a lead role in the sale of the company to Astellas Pharma in January.

**02 Sharon G. Leifer** is a partner in the Boston office of Sullivan & Worcester LLP and focuses her practice on all aspects of commercial leasing. She is active in her community. Among her roles is serving as president of the Westwood (MA) Community Chest and as a member of the Westwood Professional Women's Group.

**04 Nathalia A. Bernardo** is a partner in the New York, NY, office

of Kramer Levin Naftalis & Frankel LLP and a member of the firm's real estate practice group.

**Michael S. Gove** is a member of ElderCounsel, a national organization of elder law and special needs attorneys. He is founding partner of Gove Law Office LLC in Northampton, MA, and focuses his practice on complex estate planning, business representation, and commercial and residential real estate transactions.

**Geiza Vargas-Vargas** is a partner in the Charleston, SC, office of Nelson Mullins Riley & Scarborough LLP and focuses her practice in the areas of mergers and acquisitions, finance, and general corporate law. Previously, she was an assistant professor and assistant dean of academic success at Charleston School of Law and an associate at Skadden, Arps, Slate, Meagher & Flom.

**05 Patrick A. Jackson** is counsel in the Wilmington, DE, office of Faegre Drinker Biddle & Reath LLP. His practice is focused on advising companies during pre-bankruptcy contingency planning, as Chapter 11 debtors-in-possession, and in related litigation in federal and state courts.

**Hilary Dorr Lang** is a partner in the Nashville, TN, office of Waller Lansden Dortch & Davis LLP. A registered patent attorney with a doctorate in organic chemistry, she focuses her practice on the preparation and prosecution of chemical, biologic, and pharmaceutical patents and the management of large patent portfolios in those areas. She previously served as counsel in the Nashville office of McNeill Baur PLLC.

**Brian P. Maloney** is counsel in the New York, NY, office of Seward & Kissel LLP. He is a commercial litigator



### GEIZA VARGAS-VARGAS '04

**First Job** "After graduating from Wellesley College, I worked at a pension fund advisor and fell in love with investment banking and acquisitions. When I entered law school, I already knew I wanted to practice corporate law." **Conundrum** "Reconciling the work that I do and love to do with my opinions about structures and systems that perpetuate socio-economic and racial inequity." **Favorite Color** "Black, although living in Charleston now, I find myself wearing Nantucket Red." **Describe Yourself in One Word** "Fierce." **Early Influence** "My mom—she's also fierce."

## Class Notes

**JOHN R. DAVIS '10**

**Why Build a Class Actions and Whistleblowers Practice?** "I wanted to pursue social justice, and I also wanted to make a decent living. My practice allows me some of both." **The New Normal** "I conducted a final class settlement fairness hearing via Zoom in federal court in Austin, TX. It was for a \$52 million settlement fund for a class of 750,000 Farmers auto insurance policyholders who alleged premium discrimination. The court approved the settlement via Zoom and entered its final judgment the same day." **Favorite Sheltering-in-Place Pastime** Bike rides to Austin's many microbreweries for to-go growlers. **Last Show Binge-Watched** *The Great*.

with significant experience across a wide range of sectors, including banking, maritime, and securities.

**06 Jeffrey M. Gould** is a partner at Oppenheim & Zebrak LLP in Washington, DC, and focuses his practice on complex litigation and counseling in intellectual property and commercial disputes, with an emphasis on copyrights, trademarks, and related commercial matters. His pro bono practice includes counseling the Southern Utah Wilderness Alliance in a series of cases involving land disputes throughout the state. He also serves as a board member for Equal Justice Under Law. (See "Great Case," page 38.)

**07 M. Patrick Moore Jr.** was named a 2019 "Lawyer of the Year" by *Massachusetts Lawyers Weekly* for his work securing a favorable judgment for the plaintiff in *The McLean Hospital Corporation v. Town of Lincoln*, a case in which the Supreme Judicial Court reversed

an earlier Land Court decision and clarified the educational use exemption under the Dover Amendment. He is a partner at Boston-based Hemenway & Barnes LLP and concentrates his practice on complex business, administrative, land use, and appellate litigation.

**08 Adam M. Baker** is an assistant US attorney at the US Department of Justice in Washington, DC. He was previously a partner in the New York, NY, office of Alston & Bird LLP and a member of the firm's government and internal investigations and litigation and trial practice groups.

**Ciara R. M. Baker** is a partner in the Washington, DC, office of WilmerHale and focuses her practice on transactional and tax law.

**Toni Ann Kruse** and Jonathan Richard welcomed baby boy, Langston Kruse Richard, on January 2, 2019. Big sister, Annabelle, is taking her job of teaching her brother very seriously. Kruse was promoted to equity partner at McDermott Will & Emery LLP last January. She practices in the Private Client group in the firm's NY office, where she has been since graduating from BC Law.

**Colm P. Ryan** is a partner in the Albany, NY, office of Barclay Damon LLP and concentrates his practice on commercial, construction, and tort and insurance litigation. He

represents corporations, partnerships, individuals, and school districts in a variety of matters, including negligence and liability claims and commercial litigation related to breach-of-contract claims.

**09 Nicole R. Love** is a partner in the New York, NY, office of Fried, Frank, Harris, Shriver & Jacobson LLP and concentrates her practice on general commercial litigation, white collar criminal defense, and securities enforcement, with a focus on government and regulatory investigations.

**Kevin M. Neubauer** is a partner in the investment management group in the New York, NY, office of Seward & Kissel LLP.

**10 Gregory S. Bombard** is a partner in the Boston office of Duane Morris LLP and focuses his practice on trade secret litigation, business torts, and complex commercial and intellectual property disputes. He serves as co-chair of the Boston Bar Association (BBA) Intellectual Property (IP) Litigation Committee and is a member of the BBA IP Section Steering Committee and the BBA Senior Associates Forum. In addition to his law practice, he is a member of the Greater Boston Food Bank's young professional group.

**John R. Davis** is a partner in the Austin, TX, office of Slack Davis Sanger and is the youngest attorney to be elected partner in the firm's twenty-seven-year history. Lead attorney of the firm's class action and whistleblower practices, he focuses on complex litigation with an emphasis on consumer fraud, health care fraud, antitrust, environmental, and insurance matters. He was previously an attorney at Kanner & Whiteley LLC in New Orleans, LA, and a law clerk for the federal district court.

**Carla Reeves** was named to the National Black Lawyers "Top 40 Under 40" list for her professional achievement and leadership and selected for the 2020 Leadership Council on Legal Diversity Fellows Program. An associate in the Boston office of Goulston & Storrs, she focuses her practice on employment litigation and counseling.

**Paul A. Trifiletti** was a five-time undefeated champion and earned more than \$100,000 as a contestant on Jeopardy in March, making him eligible for the program's Tournament of Champions. He is an assistant district attorney at the District Attorney's Office in the Piedmont Judicial Circuit in Jefferson, GA.

**11 Alana V. Rusin**, a real estate associate in the Boston office of Goulston & Storrs, was named a 2020 "Up and Coming Lawyer" by *Massachusetts Lawyers Weekly* for her professional achievements and community work. She is also an advocate for domestic abuse victims.

**12 James P. Blenk** is a senior associate at Lippes Mathias Wexler Friedman LLP in Buffalo, NY, and a member of the firm's litigation practice. He focuses his practice on commercial

litigation and the defense of municipalities in a variety of matters and advises municipalities in the areas of municipal law and risk avoidance.

**Robert Rudolph** received the Anti-Defamation League's prestigious Daniel R. Ginsberg National Leadership Award, which recognizes outstanding young professionals for their leadership in the fight against anti-Semitism, racism, and all forms of hate. A litigation associate at Rudolph Friedmann LLP in Boston, Rudolph has been active in the ADL since high school.

**13 Priya K. Amar** was named vice president and trust counsel at Fiduciary Trust Company in Boston. Previously, she was a private client and trust associate at Boston-based Goulston & Storrs PC. She is co-chair of the Boston Bar Association (BBA) Continuing Legal Education Committee. She is also a member of the BBA Trust and Estates Section Steering Committee, the South Asian Bar Association of Greater Boston, and the Young Professional Advisory Council at the nonprofit Housing Families.

**Mathew J. Todaro** is a partner in the Portland, ME, office of Verrill Dana LLP and focuses his practice in the areas of environmental regulation, litigation, and energy and natural resources.

**Hilary L. Weddell** is a partner at McManis Faulkner in San Jose, CA, and specializes in employment law. She is also a professor of remedies at Lincoln Law School of San Jose.

**14 Tere Ramos** received the 2020 Patricia Blake Advocacy Award from the Federation for Children with Special Needs for her advocacy for disabled children and their fami-

lies with limited English language skills. An education, disability, and civil rights attorney at Ramos Law LLC in Wellesley, MA, she helps families access Social Security disability benefits and represents children with special needs and students who have faced bullying and harassment in the school system.

**16 John C. Leddy** married Chelsea V. Sullivan in New York's Central Park in February. He is a litigation associate in the New York, NY, office of Wilson Elser Moskowitz Edelman & Dicker LLP, focusing on defending companies in the transportation, construction, and real estate industries. He was previously at Choate, Hall & Stewart in Boston.

**19 Patrick T. Ciapciak** is an associate in the Boston office of Morrison Mahoney LLP and concentrates his practice in the areas of nursing home and long-term care facilities, hospital and medical malpractice, and general liability defense.

**John Gavin, Nicholas Perkins, and Christopher Warner**, all classmates and first-year associates at K&L Gates in Boston, were co-recipients of the PAIR Project 2020 Pro Bono Detention Award, presented in June for representing detained asylum seekers in the Immigration Court and Board of Immigration Appeals. Each took on representation of an asylum seeker held in ICE custody at the Plymouth County Correctional Facility.

**Julian A. Viksman** is a staff attorney in the Los Angeles, CA, office of Hanson Bridgett LLP and a member of the firm's government practice group. He was previously an associate in the Los Angeles office of Lewis Brisbois.

**TERE RAMOS '14**

**Life Mission** As a disability advocate, Ramos seeks justice for low- and moderate-income families and those with limited English—people who are often underserved by the legal system. **Adding to Her Credentials** She is a native speaker of Spanish and English, fluent in Portuguese, Italian, and French and has a working knowledge of Chinese, German, and Russian. **Pre-Law** "Before I was a lawyer, I was a mother to a girl with autism. As I advocated for my child and navigated complicated and convoluted medical and legal worlds, I wondered how a Latina mother who doesn't speak English, with humble means or without an advanced education, would navigate the system. I went to law school determined to focus my legal work in serving the Latino community in education matters."

## IN MEMORIAM

Robert C. Currihan '49  
Hon. J. Albert Lynch '49  
Marshall M. Dranetz '50  
Robert T. Abrams '54  
Hon. James A. Redden '54  
Frank J. McGee '55  
Elisabeth S. McMahon '56  
Hon. Conrad J. Bletzer Sr. '57

James P. Dillon '57  
Richard K. Scalise '57  
Paul F. Degnan '59  
John B. Walsh '59  
Brian T. Callahan '60  
Richard F. Hughes '60  
Elwynn Jordan Miller '60  
John A. Silvaggi '60

Raymond I. Bruttomesso '61  
Raymond F. Murphy '61  
Ernest Bradbury Sheldon '61  
John M. Callahan '62  
David T. Pagnini '65  
Alan Chew '66  
Charles P. O'Connor '66  
Michael E. Mone '67

David J. Levenson '68  
Ronald A. Pina '69  
Edward S. Roman '69  
William J. Groff '72  
Paul A. Francis '74  
Herbert Frederick Lach Jr. '74  
Fay A. Rosovsky '76

Carol R. Cohen '78  
Adam Lloyd Levin '78  
Robert E. Bostrom '80  
Helen Cashman Velie '84  
Alison J. Bane '88  
Robert Godfrey '89  
Christopher J. Hurley '93  
Timothy J. Nolan '96

## Alumni News

# Got a Hard Question? Call Guidepoint

Albert Sebag's professional network spans the globe.

BY MAURA KING SCULLY

As researchers rush to find a Covid-19 vaccine, the business and financial industries impacted by the pandemic have questions. Lots of questions. From in-depth inquiries about supply change disruption to where future growth will come from, Albert Sebag '99 is answering the call through Guidepoint, a professional network that connects clients with high-level advisors across the globe. He is founder and CEO of the company, which includes 650,000 advisors in 150 industries.

"Guidepoint is a knowledge sharing platform," explains Sebag, who launched the company in 2003. "Our clients have very specific criteria and questions."

While the pandemic is generating an all-new set of questions in

search of answers, leveraging expert perspectives to provide data-rich analysis and solve complex problems has long been at the heart of Sebag's company. Clients pay on a subscription basis to access Guidepost's experts, who provide rapid responses that include everything from a phone call to survey tools to customized data products that provide actionable insights. Guidepoint works across a variety of industries, including health care; energy and industrials; technology, media, and telecommunications; and financial and business services.

"Our business model is really exciting," says Sebag. "We are constantly adding value because we are answering hard questions all day long."

Guidepoint itself evolved out of Sebag's questions about how to fulfill his personal interests and professional passions. While finishing a PhD in organic chemistry at Northeastern University, he decided to go to law school. "I enjoyed chemistry, but I knew it wasn't a career for me. With law school, I planned to embark on a whole new career," he explains.

After graduating from BC Law, Sebag joined Kenyon and Kenyon in New York as a patent litigator.

But the fit wasn't quite right. "I'm a risk-taker, he says, "so, I decided to start my own business in 2001, right after 9/11. My timing was horrible. But at the same time, it was the right time. I realized there is no good time to make a change, so I just went for it."

The company Sebag founded, Cancer Advisors, capitalized on the relatively new concept of using the internet for health research. "My focus was on compiling a database of clinical trials for cancer. Because of the way the health-care system was built, doctors wouldn't send patients to other hospitals. So, people became more proactive in searching for where else they could find new treatments."

While the concept was innovative, Sebag was unable to secure financing to stay afloat. But the concept did catch the eye of financial firms looking to invest in experimental drugs. "They were willing to pay for this information, so I decided to pivot," he recalls.

Thus, Guidepoint was born. Sebag's background in science and law is one of Guidepoint's major selling points because the company ensures compliance. "People want to go through a platform like ours because we have educated the people in our database about confidentiality," he says.

As Guidepoint evolves, it's clear that Sebag's inquisitive nature—"after all, chemistry is about interactions that create change," he says—will continue to direct his professional roadmap. "I wanted to do something that didn't feel like a job. Some people are risk averse, whereas for me taking risks is second nature. I just had a wholehearted belief that I could put my mind to something I was passionate about and get it done."

## GREAT MINDS THINK ALIKE

Not only do classmates **Brian Shaud** and **Liam Holland's** post-graduation paths mirror one another—completing Massachusetts Supreme Judicial Court clerkships and serving as federal district court clerks—they had many similar experiences at BC Law, where they were members of the **Class of 2017**. Both were Academic Law Fellows with the Clough Center for the Study of Constitutional Democracy, LEAPS Public Service Scholars, and members of the **Boston College Law Review**. They also share an enduring and genuine commitment to public service.

Earlier this year, the duo did it again. Both were accepted into the US Department of Justice Attorney General's Honors Program after a highly competitive selection process. And both were invited to join the DOJ's Federal Programs Branch in Washington, DC. They will be defending the Executive Branch in federal district courts against civil actions attacking the legality of government policies and decisions by litigating "cutting edge" issues of constitutional law.

Before attending BC Law, Shaud taught eighth grade math in a public school and worked at Community Legal Services in Philadelphia. "I know firsthand the positive impact that government programs can have," Shaud, a first-generation college student, said. "As a child, I was covered by government health-care programs. I am not sure if I could have completed college, much less law school, without significant federal assistance and private investment. Public service is how I give back."

Holland worked for the Massachusetts House of Representatives Committee on Telecommunications, Utilities, and Energy prior to law school. That plus experiences at BC Law like participating in Professor Thomas Barnico's Attorney General Clinic cemented his desire to be involved in these areas of law and to commit himself to ensuring that legislation advances the public interest. —JAEGUN LEE '20



Alexis Ruginis '10

## Sharing the Latinx Spirit

Publisher Alexis Ruginis '10 creates worksheets for kids learning at home.

When Alexis Ruginis '10 and her sister, Janike, launched Veoleo Press in 2018, their mission was clear: publish linguistically accurate, culturally attuned board books in Spanish for the US babies of the Latinx diaspora. "Veoleo is a portmanteau of the Spanish verbs 'I see' and 'I read,' explains Ruginis. "Our market was strictly kids 0 to 3."

Their first book, *¿Dónde está el coquí?*, sold 90 percent of its initial run of 1,500 in a little over a year; they now have two additional books in production. As

Veoleo's co-founder, Ruginis still gives her legal skills a workout. "I knew what I needed to do to establish the company. And I don't have to wait around for someone to draft a contract."

When Covid-19 hit, Ruginis and her sister saw the need to expand Veoleo's mission. "Our mom is a teacher. We understood that all of a sudden, there were all these kids at home and parents wondering what to do. We wanted to do something to help." Ruginis teamed up with eight Latinx artists to create coloring sheets that are fun to do and sneak in lessons on Spanish language, culture, and heritage. "We're offering them on a 'pay as you wish' basis on our website," notes Ruginis, whose efforts were recently profiled in Forbes.

Then Ruginis capitalized on a connection she had made with Elio Morillo Baquerizo, a Latinx NASA engineer who works on the Mars Rover. "I asked him if he would do an online Q&A for older kids, and he said 'absolutely.'" She created a Spanish word search of space terms and sent them to the ninety or so families who signed on. Ruginis then made the webcast and worksheet available online for educators and families.

To Ruginis, who was born in the US and raised in Colombia, the novel coronavirus is an opportunity to celebrate the best of Latin American culture. "It's the Latinx spirit to have this community mindset," she concludes. "It gives us a chance to come together and collaborate."

—MAURA KING SCULLY

## TRIBUTE

### A LAWYER'S LAWYER

Michael Mone '67 was an eminent Boston trial attorney who changed Massachusetts law with the 1980 case *Franklin vs. Albert*, which extended the timeframe for filing medical malpractice claims. A partner in the Boston firm Esdaile, Barrett, Jacobs & Mone, he was also admired for his representation of lawyers and judges facing professional disciplinary charges. Mone passed away on March 20.

"My dad was a legal giant, with few peers in the courtroom. But what I admire most about him was the time he gave to other lawyers who called him for advice.

I can't tell you the number of lawyers who've approached me over the years to tell me how thankful they were for the time when they had a question about a case, or an ethical dilemma, and they called my father for advice, and he was there for them. He loved being a lawyer and was fiercely proud of this profession. He extended himself so freely, to so many who needed help, and he did so much good. That's really his legacy, not the courtroom victories and defeats, but all that he gave back to the bar, both in his leadership, and the advice and counsel he gave to generations of lawyers across this state."

—MICHAEL MONE JR. '96, remembering his father



Michael Mone '67, right, with his son, Michael Mone Jr. '96.



IN THE NEWS

"I think it's important to remember how we got here and why we are here. It is important for us to understand where the violence, where the rage is coming from. It is the result of generations of a knee on the neck.... That knee really is symbolic for so many of us in the black community and so many of us who have been in the civil rights movement for decades in that we've been fighting against knees on the neck in our education system, in our public health system, in our criminal justice system, in our economic system for so very long."

—TANISHA SULLIVAN '02, president of the NAACP Boston branch, speaking June 1 to WBZ-TV on the national response to the police killing of George Floyd



"I'm a risk-taker. So, I decided to start my own business in 2001, right after 9/11. My timing was horrible. But at the same time, it was the right time. I realized there is no good time to make a change, so I just went for it."

ALBERT SEBAG '99

## Advancing Excellence

DONOR PROFILE

# A One-Man Brain Trust

James Champy '68 applies principles of business reengineering to philanthropy.

BY MARGOT ROGERS

➤ **A globally recognized authority** on business reengineering, Jim Champy has always forged his own path. After earning his BS and MS in Civil Engineering from MIT, anticipating he would go into business, Champy chose BC Law as the next step. "I made a specific choice to go to law school rather than business school because I felt that I would learn more," he says, noting that the demands of law school challenged him to think at a higher level. "The disciplined thinking you have to do in the practice of law helped me enormously in business."

Champy's time at BC Law shaped his career and the way he lived his life. He credits his classmates for creating an atmosphere that pushed each of them to excel. "After class we would go down to the cafeteria and continue our case arguments; it was very rich engagement," he recalls. "It's surprising how often people forget the roots of their learning. People went off and were successful but so much of that thinking began in that cafeteria, not just in the classroom."

After BC Law, Champy became one of the founders and the CEO of Index, a \$200 million consulting practice, and then chairman of Dell Perot Systems' consulting arm. Now, as Independent Director of Analog Devices and a best-selling business author of nine books, including his latest title, *Reengineering Health Care*, he continues to consult with multinational companies to improve business performance.

He brings business expertise to his philanthropy. He and his wife, Lois, partner with organizations like BC Law and a handful of other schools to make their giving more effective. "I don't have the need to make up something completely new for our philanthropy. I'd rather find a school that's doing something



**"I support the Law School because I see it as fulfilling an important role in society: graduating young lawyers with a high sense of purpose to provide for the needy."**

JIM CHAMPY

well and support that school," Champy says.

The Champys are especially passionate about funding the education of BC Law students. They describe it as the best kind of investing, since the impact of educating one student is multiplied by all the people that student will affect throughout an entire career. To that end, the couple established the James A. '68 and Lois Champy Fund, which provides scholarships to students pursuing public interest law. "I support the Law School," he says, "because I see it as fulfill-

ing an important role in society: graduating young lawyers with a high sense of purpose to provide for the needy."

For Champy, the engine of endowments makes philanthropy exciting. "I like to sit back and think about the growth of these assets; it's fun. By investing over time you see the benefit of what you're doing." Currently, their scholarship funds one student annually, but his most recent legacy pledge to BC Law will provide for a Champy scholar in each of the three classes every year.

Matching gifts is another example of Champy's reengineering. In 2015, he pledged half a million dollars to create new endowed funds. "My idea was to help attorneys to establish scholarships," he explains. "I would match their 50k gift to start an endowed fund and over time they would add to it." The Champys' match has partnered with twelve alumni to create new endowed funds.

BC Law Dean Vincent Rougeau appreciates Champy's vision and practicality. "Jim is a creative and dynamic donor with big ideas who inspires others to share his joy of philanthropy," Rougeau says. "I rely on him as a trusted advisor who truly has lived his life guided by the Jesuit motto of being a 'man for others.' Together, Jim and Lois have made extraordinary strides for access to justice by supporting students with a passion for working in the public interest, which is so central to the special character of BC Law." *For more information on how you, too, can make an impact, please contact Maria Tringale, director of development, at maria.tringale@bc.edu.*

## CHALLENGE FUNDS

**James Champy pledged \$500,000 in 2015 to encourage other law alumni to establish scholarships. These endowed funds were created with his help.**

**The Michael & Patricia Dillon Family Scholarship**

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COFFEY, DIANA LEVINE

## STUDENT SCHOLARSHIP RECIPIENTS



## MORISI SCHOLAR WITH A MISSION

Support helps Emma Coffey '20 expand her horizons.

**The Michael V. Morisi Endowed Scholarship Fund** was created by Morisi's family and his law partner, Andrew Oatway '92, to support law students who have experience fighting on behalf of the needs of others. Preference is given to those who have exhibited tenacity, loyalty, and zeal in their pursuits, honoring the memory of Michael Morisi CSOM'79.

Emma Coffey '20 embodies the kind of altruistic students the fund supports. "Receiving the Morisi scholarship allowed me to concentrate not only on my own success," Coffey says, "but also

helped me focus on the reason I chose to attend Boston College in the first place: its mission to serve others."

Coffey is the first student in the recently created 3+3 Program that enables BC undergraduates to combine their senior year with the first year of law school. As a 1L, Coffey worked a job several nights a week, leaving little time for much else. Being named a Morisi Scholar in her second year opened up a number of possibilities for her, such as participating in a legal clinic. "This experience helped me sharpen my legal skills,

but also humbled me and helped me gain perspective," she says.

Through the Civil Litigation Clinic, Coffey worked on two cases that had a profound impact on her. During the first case, she helped a mother obtain child support for her two young children. In the second, she assisted a mother facing deportation in an ICE detention center gain the autonomy to decide who had custody of her child. Coffey says that "the skills I learned at BC Law built my confidence and gave me the ability to be an active part of conversations with co-counsel, arbitrators, and opposing parties."

After graduation, Coffey is joining Morgan Lewis. "I wanted to go to a firm where commitment to giving back was woven into the company culture. I am excited and grateful to be taking my clinical experience with me as I enter into my law practice and continue giving back through pro bono work," she says.

"No words will ever be able to truly convey what the Morisi scholarship means to me," Coffey says. "I have been able to take the time to define an exciting and challenging career and for that I am extremely thankful."

-KEVIN COYNE

## CHAMPY SCHOLAR FIGHTS INJUSTICE

Kevin Collins '20 finds his dream coming true.

**"My public interest law experiences** have varied during my time in Law School," Kevin Collins says, "but they always had one purpose: the service of others."

Whether it be his service for Teach for America before coming to BC Law, his co-presidency of the Black Law Students Association, or his work in public interest, Collins is a great example of a scholarship recipient who has focused on helping others.

After his first year at the Law School, Collins worked in the Rackets Bureau at the Manhattan District Attorney's Office with colleagues prosecuting crimes ranging from construction and insurance fraud to money laundering. "Without the Champy scholarship, I would not have been able to pursue my

passion of becoming a public interest lawyer," Collins says.

As a 3L, he went on to participate in BC Law's Ninth Circuit Appellate Program, which gives students the opportunity to argue cases in federal appeals court.

Collins and his teammates submitted a brief to the court on behalf of their client, an immigrant applying for asylum from horrific abuses she suffered in El Salvador.

In May, the team argued—via video—for her to receive protection, citing the Convention Against Torture.

"At one point, Kevin's video feed cut out, but he quickly was able to resume a connection and kept arguing without missing a beat," says Professor Kari Hong, the founder of the Ninth Circuit

program. "Kevin was unflappable."

For Collins, it was a rewarding and humbling experience. "I have not only learned about the complexities of immigration law in this country, but I also realized that I enjoy direct client representation," he says.

Post-graduation, Collins is headed for the New York City Law Department as an assistant corporation counsel. -KEVIN COYNE



Advancing Excellence

# Lending a Hand When It Matters Most

In a crisis, alumni find various ways to assist the Law School.

BY JANE WHITEHEAD

**► In the dizzying pivot** from real-world to virtual operations imposed by the Covid-19 pandemic on every office at Boston College Law School, one constant remains: what Director of Recruitment and Employer Outreach Douglas Saphire called the “strength, generosity, and caring of the BC Law alumni community.” This time of uncertainty has given alumni new impetus to channel gifts of their time, expertise, practical help, and philanthropic support. Here are areas where alumni are having an impact.

**ADMISSIONS** Six accomplished alumni weighed questions like “What’s it like working in the legal profession in an economic downturn?” and “How has student debt shaped your career?” during a May 6 webinar for admitted students called “Your Future in Practice.”

Spanning multiple generations and areas of legal experience, from Ellen Huvelle ’75, senior judge at the United States District Court (Washington, DC), to Joel Goldberg ’92, former senior counsel at Netflix, the panelists spoke candidly about their own law school experiences and career paths.

From quarantine in her Upper West Side apartment in Manhattan, Yolanda Lyle ’01, a vice president at pharmaceutical giant Pfizer, shared her wariness as a law school applicant of the “cut-throat culture” at law school, and her relief at finding a “warm, collegial, nurturing environ-



1. Evan Friedler '16,  
2. Ellen Huvelle '75  
3. Mike Puzo '77  
4. Stephen Riden '99

ment” at BC Law. Deluged by poorly written Covid-19-related executive orders, Hank Rouda ’86, general counsel at Giorgio Armani Corporation, advised half-jokingly: “Go work for the governors and please learn how to write!”

The session attracted 125 participants and boosted registration for further webinar panels, a boon to BC Law’s Admissions Office during the critical period when applicants are making their final decisions.

**CAREER SERVICES** As president of the Board of the BC Law Alumni Association in the year of the pandemic, Steve Riden’s long-standing commitment to keeping BC Law students employed means frequently brainstorming strategies with the Career Services Office (CSO). He helps connect students with law firms, honoring the commitment of his own firm, Beck Reed Riden LLP, to a summer associate from BC Law when many firms are cutting their summer programs. He also guides individual students as they weigh their options. The times may have changed, but Riden’s mission remains the same: to help students develop “a long term perspective and think of strategies they can use to get themselves into a job they want,” said Riden ’99.

On another CSO front, with in-person campus visits on hold, the Virtual Advisor series of online panel discussions has replaced the Visiting Advisor program that brings alumni to the Law School for informal talks about different career paths. Evan Friedler ’16 and Robert Langevin ’15 from the office of general counsel at the international online home goods retailer Wayfair, were panelists at a recent online session, and followed up the group discussion with individual mentoring sessions with 1L and 2L students, over Zoom.

“The job market and prospects have changed so quickly,” said Friedler.

Because fewer jobs are readily available, he advises students to front-load their résumés with specific, concrete examples of work done, to help them stand out from their peers.

“BC Law has been a tremendous resource for Wayfair,” said Friedler, noting that his boss, Enrique Colbert ’00 is also a BC Law graduate. “Every time we have an opening on our team, we go back to BC Law to make sure that they’re aware; we want to make sure we get the best candidates possible,” he said. He hopes the example of this mutually beneficial partnership will “encourage more alumni to do the same, especially now.”

**PHILANTHROPY** “It’s really hard to be a good leader in times like this,” said Danielle Salvucci Black ’96, a member of the Dean’s Advisory Board (DAB) and long-term benefactor of BC Law. So when she and her husband Brian made a recent additional gift to the Law School Fund, they saw it as a public affirmation of support for “the great things Dean Rougeau has been doing during his tenure,” said Black, who co-owns her family commercial construction and real estate business. She is keen that the school’s strategic planning not be derailed by a temporary shortfall in funds: “We understand that in the short term, the needs are more acute,” she said.

Fellow DAB member Michael J. Puzo ’77, a partner at Hemenway & Barnes LLP, is similarly impressed by the school’s “thoughtful and kind” response to the pandemic, including the switch to teaching remotely and offering extra financial support. “The dean made a compelling case to invite people who were able to respond philanthropically to meet an unexpected and significant need for financial support,” said Puzo. “He doesn’t ask for what he doesn’t need, it’s pretty clear there was a need, and you’ve got to do your part.”

LAW DAY 2020 SPONSORS

BC Law’s annual Law Day celebration was canceled last spring. Despite the setback, these donors generously allowed the Law School to remain the beneficiary of their funds.

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ALUMNI ASSOCIATION NOTICE

On November 6, 2020, the Alumni Association will hold an Alumni Board meeting followed by the annual Assembly Meeting. Elections for 2021 Alumni Board members will be held during these events. Anyone who has volunteered for BC Law in 2020 is eligible to vote. Please visit [bc.edu/lawalumni](http://bc.edu/lawalumni) or contact Kelsey Brogna, associate director of alumni class and school engagement, at [kelsey.brogna@bc.edu](mailto:kelsey.brogna@bc.edu) for more information about the association and this election.

# 2019

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A heartfelt thank you to all the alumni and friends of Boston College Law School for your generous support.

The Report on Giving recognizes all donors who made a gift to Boston College Law School during the fiscal year spanning June 1, 2019 to May 31, 2020.

Considerable care has gone into the preparation of the Giving Report. Each donor is very important to us and every effort has been made to achieve accuracy. If we have omitted or incorrectly recorded a name, we sincerely apologize and ask that you contact the office of annual giving at 617-552-8691 or [lawfund@bc.edu](mailto:lawfund@bc.edu).

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Anonymous '75  
 Anonymous '91  
 Hugh J. Ault and Martina David-Ault  
 Edward C. Bassett '77  
 Jill Nexon Berman '78  
 Roger M. Bougie '62  
 John F. Bronzo '74 P'10  
 Susan Vogt '83 and Peter R. '81 Brown  
 John M. Brunner '74  
 George G. '59 and Sandra Backofen Burke P'92  
 Joseph H. Burke '72  
 Thomas J. Carey '65  
 Kevin Michael Carome '82  
 Megan Elizabeth Carroll '92  
 Phyllis Cela '76 and Gary M. Sidell '77  
 James A. '68 and Lois J. Champy  
 Robert C. Ciricillo '70  
 Denis P. Cohen '76  
 Juan Alexander Concepcion '03  
 David A. Cooper '76  
 Don Joseph Julio Cordell '94  
 Robert V. Costello '69  
 Julian J. D'Agostine '53  
 Robert K. Decelles '72 and Mary L. Dupont P'08'06  
 Susan Giroux Dee '79  
 Karen G. Del Ponte '83  
 Paul A. Delory '75  
 Leonard F. '77 and Geraldine Healy DeLuca  
 Ernest Michael Dichele '78  
 Edith N. Dinneen '73  
 Anthony R. '60 and Emily M. DiPietro P'86  
 Edmund '78 and Colleen Whitty DiSanto  
 Jack A. Donenfeld '76  
 William G. Donnelly '68

Christopher E. Doyle '70  
 Diane Durgin '74  
 Susan H. Farina '94 and Dino Farina  
 William F. Farley '69  
 Robert S. '76 and Mary Ellen Farrington  
 Charles D. Ferris '61  
 Thomas J. Flaherty '75  
 Richard M. Gaberman '63  
 Ellen B. '86 and William F. '81 Grieco  
 Charles J. '59 and Barbara Vazza Gulino P'92'85  
 Stuart J. Hamilton '97  
 B. L. Hassenfeld-Rutberg '65 P'92  
 Megan Jeanne '82 and John A. '82 Herbers  
 John B. Hogan '52  
 Ruth-Arlene W. Howe '74  
 Ellen S. '75 and Jeffrey G. Huvelle  
 John J. Isaza '89  
 Anne Rickard Jackowitz '89 P'21  
 John A. Johnson '60  
 Anne P. Jones '61  
 Matthew J. Kelly '97 and Christine Kelly '97  
 Raymond J. Kenney Jr. '58  
 Gene S. Kupferschmid  
 John C. Lacy '48  
 Dennis A. Lalli '77  
 James P. Laughlin '77  
 Stephen J. Laurent '74  
 Edward R. '71 and Patricia M. Leahy  
 Edward A. '67 and Anna M. Lenz  
 Gary P. '70 and Janet L. Lilienthal  
 Stephen G. Lioce '87  
 Thomas T. Lonardo '73  
 Edward J. Loughman '93  
 Joan Lukey '74 and Philip D. Stevenson

William J. Lundregan '67 P'93'96  
 Thomas E. Lynch III '77 P'00  
 James E. McDermott '80 and Sharon A. Bazarian P'13'09'07  
 Charles S. McLaughlin '74  
 Mary Hallisey McNamara  
 Christopher G. Mehne '77  
 Robert C. Mendelson '80  
 James M. '73 and Lisa K. Micali  
 Mark C. Michalowski '85  
 Elwynn J. Miller '60  
 John N. Montalbano L'80  
 John T. Montgomery '75 P'06'11  
 Pamelee Murphy  
 Donald W. Northrup '66  
 Jo Ellen '79 and Enrique Ojeda  
 Norma Jeanne '77  
 Michael J. '77 and Christine Puzo P'08'08'02'00  
 James F. '58 and Helen Wood Queenan Jr.  
 Sander A. Rikleen '76 and Lauren Stiller Rikleen '79  
 Christine P. Ritch '87  
 Hon. William P. Robinson III '75 P'00  
 Anne Rogers '77 and John Simpson  
 S. Jane Rose '77  
 Lawrence A. '58 and Lois Ruttman  
 Jeffrey S. Sabin '77  
 Alan I. Saltman '73  
 Kitt '77 and Heather B. Sawitsky  
 Herbert J. Schneider '64  
 Edward R. '71 and Raymond L. Skowyrza Jr. P'05  
 Leonard E. Sienko Jr. '77  
 Hon. Mitchell J. Sikora '69  
 Jeffrey P. Somers '68  
 Lawrence O. Spaulding '72  
 Paul E. Sullivan '69  
 Robert E. Sullivan '66  
 William C. Sullivan '68

**DECEASED**  
 Francis X. Ahearn '43  
 Salvatore E. Aloisi '34  
 Adolph N. Anderson '53  
 Ruth Frances Anderson  
 George Ankeles '35  
 Joseph C. Barry '47  
 Theophile J. Bernhardt '49  
 Robert W. Blakeney '52  
 Barbara Bougie  
 Edward G. Boyle '49  
 Russell E. Brennan '34  
 Philip H. R. Cahill '48  
 Marie C. Chisholm  
 William F. Chisholm '35  
 Walter E. Clark '49  
 Kitt '77 and Heather B. Sawitsky  
 Mary F. Costello '79  
 Julian J. D'Agostine '53 P'14  
 George Shrigley '38  
 Ella M. Stevens  
 Harold A. Stevens '36  
 Helen Jane Sullivan  
 Walter F. Sullivan '47 P'66  
 Tedd J. Syak '35  
 F. J. Thompson '35  
 James F. Travers '49  
 David R. White '49  
 William T. White '50

Christopher Ferren Warner •  
 Jenna Michelle Weissman •  
 Ryan T. Welwood

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 Molly K. Agostinelli  
 Keshav Ahuja  
 Monica Hope Allard

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 Jacob P. Ascoli  
 Sean Attwood  
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 Abigail W. Balfour  
 Monica D. Barton  
 Lauren Elizabeth Beausoleil  
 Bradfield E. Biggers  
 Ariel G. Borgendale

Daniel J. Brutti  
 Laura Burlot  
 Regine Sarah Capungan  
 Sarah E. Carlow  
 Robyn S. Casper  
 Zhen Zhen Chen  
 Maya Cherayil  
 Heidi J. Chu  
 Reilly Clark

Emma M. Coffey  
 Hannah G. Cohen  
 Bri Alexys Coleman  
 Kerry Collins  
 Kevin B. Collins  
 Katerina S. Colon Cordero  
 Annika B. Conrad  
 Nadika Cotrone  
 John S. Craig

Michael C. Curran  
 Kimberly L. Cyrus  
 Nathan A. Davison  
 Natali De Corso  
 Hannah Siobhan Deegan  
 Hannah M. Dodge  
 Sarah L. Doelger  
 Garrison Doodlesack  
 Ezra D. Dunkle-Polier

Olivia G. Flynn  
 Courtney R. Foley  
 Lucas Joseph Follett  
 John Foster  
 Joshua M. Friedman  
 Jillian R. Friedmann  
 Gabriel Frumkin  
 Brann G. Gallagher  
 Kent Coleman Gay  
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 Jonathan D. Girard  
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 Antonio M. Gonzalez  
 Cody S. Goodwin  
 Haylie Gordon  
 Makena Granger  
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 Atilla Habip  
 Emma K. Hackley-Baker  
 Janine Alexandria Hanrahan  
 Michael J. Harris  
 Timothy J. Hartwell  
 Benjamin J. Haspel  
 Kinsy S. Hassan-Ali  
 McKenna K. Heath  
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 Caroline E. Holliday  
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 Joseph Salvatore  
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 Su Kyung Suh  
 Roya S. Tabibi  
 Pippa L. Temple  
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 Samuel D. Thomas  
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 Hugh Tra  
 Alyson P. Tseng  
 Amber Rae Volz  
 Yuxuan Wang  
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 Julia M. Whall  
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 Steven Levy •  
 Maxwell Passas  
 Lexie Rae Pereira  
 Rebecca Powell  
 Eric Schumacher  
 Marija Tesla

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 Hui Chuan Chiang  
 Anne Fairbanks

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 Clementina Randillo  
 Clifford ••  
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 Prof. Jeffrey Cohen ••  
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 Coleman •••  
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 Coquillette ••  
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 Janet A. Costello •  
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 Robin A. Coyne ••  
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 Jacqueline Crittenberger-Geissler •  
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 Frances A. Curran •••  
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 Randi Gilbert Cutler  
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 Ralph Stephen Daniels  
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 Corynne Dech  
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 Mina DeCorso •  
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 Eugene Delsener ••  
 Geraldine Healy  
 DeLuca ••••  
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Jane D. Gannon ●●●  
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 Eileen Glasheen ●●  
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 Richard Greenberg  
 Richard B. Greenberg ●●  
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 Michelle L. Grossfield ●  
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 Guglielminotti  
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 Harry Hadjaris ●●  
 Hiba Hafiz ●  
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 Lacey Hale  
 Rosie Hale  
 Eric Hall ●  
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 Lucy Halperin ●●  
 Eileen T. Hamilton ●●  
 Patricia Hamilton ●●  
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 Scott Harshbarger  
 Dean M. Hashimoto ●●●  
 Matthew H. Haverstick  
 Elisa Heinz  
 Eric Heinz  
 Peter Heinz  
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 Sheila Hicinbothem ●●  
 Thomas Hiller ●●  
 David Hillinger ●  
 Ingrid M. Hillinger ●●  
 Michael Hillinger ●●  
 Nancy B. Hingston ●  
 Elizabeth L. Hobart ●●●  
 Janet Hodos ●  
 Mark Holliday ●

Mary Holliday ●  
 Kari Elisabeth Hong ●●  
 Elizabeth A. Hopkins ●  
 Robert M. Houghteling ●  
 Diane Howard ●  
 Theodore H. Howe ●●●  
 Dan Howlett  
 Sarah Lessels Hsieh ●  
 Mary P. Hughes ●  
 Linette Z. Hunt ●●●  
 Ilana Hurwitz  
 Christina J. Hwang ●  
 Ji Young Hwang ●●  
 Emilie Hyams ●●●  
 Jennifer Ioli  
 Marcia Ishizuka ●  
 Nobuhisa Ishizuka ●  
 Judith R. Jacobi  
 Maryann Jalkut ●●●  
 Meg James  
 Michael Theodore James ●  
 Suzanne Jantzen ●●  
 Patricia Jaroch ●  
 Ellen A. Jawitz ●●  
 Michael Jellinek ●  
 Susan E. Jensen ●  
 William C. Johansen ●●  
 Christina Johnson  
 Diane R. Johnson ●●  
 Stephen A. Johnson ●  
 Marcie M. Jonas ●●  
 Cary Jones Jr.  
 Mary Ellen Jones ●●  
 Renee M. Jones ●●  
 Elaine O'Connell Jordan ●●  
 Laura L. Jordan  
 Jeanne Joy ●  
 James Kallman  
 John C. Kane Jr.  
 Daniel Kanstrom ●●  
 Glenn S. Kaplan ●●  
 Lynn Brown Kargman  
 Mary Fay Kattman  
 Michael Kattman  
 Jonathan Katz ●●  
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 Laura Kaye ●  
 Eoghan Keenan ●●  
 Elisabeth A. Keller  
 Gina Maria Kelly ●●●  
 Kathleen Kelly ●  
 Gail Kendall ●●  
 Martha Dawson Kennedy ●●  
 Caroline Kenney  
 Carolyn A. Kent ●  
 Nathaniel D. Kenyon ●  
 Kathy B. Kerry  
 Anatole Klebanow ●●  
 Elizabeth Smith Klein ●●●  
 Karlys Kline ●●●  
 Steven Koh  
 Peter Kongkasem ●●●  
 Phyllis Gartner Korff  
 Robin L. Kornegay-Rougeau ●●●  
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 Andrea Green Kosloff ●  
 John E. Koster ●

Pamela Koster ●  
 Nicholas F. Kourtis ●●●  
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 David Kravitz ●●  
 Linda Reale Kremer ●  
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 Cem Kus  
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 Patricia M. Leahy ●●●  
 Joan A. Leake ●●  
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 Carrie McGilvery Logan ●  
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 Norman R. Lombardi  
 William R. Lordi ●●  
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 Kevin L. Lucca  
 Mark Lucca  
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 Kathleen Anne Lynch ●●  
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 Macdonald ●●  
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 John Mariani ●  
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# Trade You

Growing better transnational relationships. BY PROFESSOR FRANK GARCIA

The Covid-19 pandemic is bringing us another opportunity, more intimate and harrowing than a global financial crisis, to recognize how urgent it is for us to think, feel, act, and react as one planet, one global community. And yet we are living this challenge in the midst of a wave of resurgent nationalism that seeks to chart a course through this crisis by denying interconnectedness, emphasizing difference, and treating domestic and international relations as a series of zero-sum games. This reaction began before the pandemic and has deep roots in the way globalization has been mismanaged to intensify capitalism's inequality effects on a global scale, including right in our own affluent countries. We thought we could pursue robber-baron capitalism abroad and preserve social welfare capitalism at home, but that has turned out not to be possible.

Some see in this moment the death of globalization, rather than merely the failure of one version of it. Instead, I think we could come out of this with a renewed faith in global connections that are about flourishing together, rather than surviving apart. As we

start to peer ahead towards what a post-Covid world might look like, what will it take for us to apply these painful lessons towards a more integrated, supportive, and just global economy?

I think this begins personally. We must try not to forget what we've learned from the

pandemic about isolation, economic insecurity, and our longing for connection, when we extrapolate to the global. From this perspective, the world consists of eight billion people wanting mostly the same things: life and health for their families and communities, strong social bonds, and economic relations that build opportunity and prosperity.

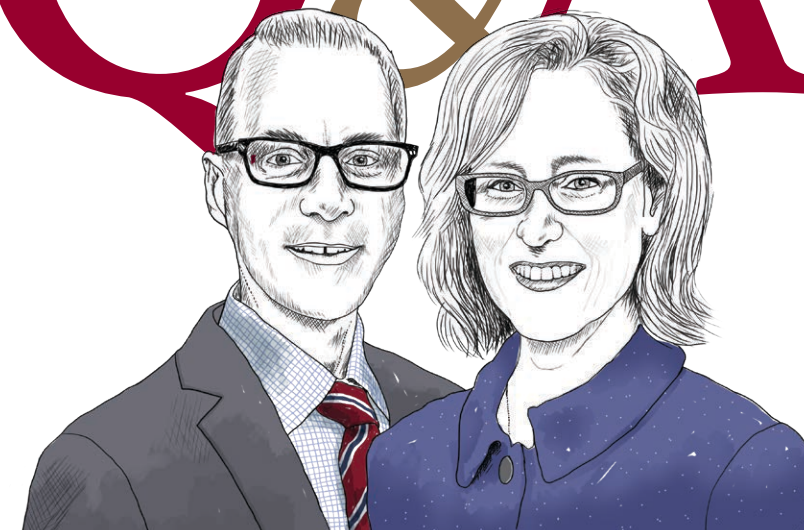
What does this mean at the level of trade policy and global economic structures? I think this also calls for an act of remembering. In our daily lives we all understand the difference between consensual economic exchanges (even if they ultimately disappoint us), and transactions that are coerced or exploitative. And yet when we come to the global economy, we too often label as "trade" something that is predatory, coercive, or exploitative.

Unfortunately, the current US administration has made coercion a signature of its approach to our transnational economic relationships, threatening or imposing illegal tariffs, for example, to force concessions from key allies like Canada, Mexico, and Korea. No one denies the need for trade to be a mutually beneficial bargain, but such tactics don't make trade "fair"—they aren't even trade at all, but something darker and more oppressive, which over time makes everyone more vulnerable to the damaging effects of a globalized and underregulated finance capitalism, which is where the real problem lies.

As Covid-19 decimates the global economy, we can recapture a vision of trade as mutually beneficial consensual exchanges, and build treaties and institutions that protect and enhance consent, rather than undermine it. Instead of reacting to economic and social challenges through old strategies that aren't working, we can engage the real problem, and work towards rebalancing economic globalization. This way when the walls start to come down, it won't just be the temporary barriers of social distancing and travel bans, but nationalist tariffs and marginalizing global economic structures as well. That is a recovery worth hoping for and working towards.

*Professor Garcia's recent scholarly interests are reflected in Consent and Trade: Trading Freely in a Global Market (Cambridge).*

# Q & A



## Hearsay: Talking about BC Law

Sue Farina, an arbitrator and attorney who serves on the boards of several small companies, and her husband, Dino Farina, a mechanical engineer and entrepreneur, share what inspired them to make a bequest to Boston College Law School—and how they can help generations of future students pursue their own career aspirations.

### Why did you choose to study at BC Law School?

**SF:** After a career in business, I decided to go to law school because I wanted an intellectual challenge in my professional life. I have always been fascinated by the power of words and how laws shape society. I had heard about BC Law's supportive atmosphere and collegial reputation and I was impressed with its alumni. When I visited the campus, students were smiling and I knew that was where I wanted to be.

### What BC Law professor made the biggest impact on you?

**SF:** iL was quite a year. In Francine Sherman's Legal Reasoning, Research, and Writing

Program, I learned persuasive writing and in-depth research—tools that I still use nearly every day.

### Do you have a legal role model or mentor?

**SF:** Yes—I worked extensively with Gary Greenberg '74 in my first law firm job. I learned a lot about being an effective advocate. He has an excellent strategic mind and I have so much respect for him.

**DF:** Like a good coach, he knew how to challenge Sue to be at her best and help keep her eye on the prize.

With SUE (HANMER) FARINA '94

### How has the current pandemic impacted you day-to-day?

**DF:** When Sue was in-house counsel and then president at my company a few years ago, she was exactly what we needed. Now that we are both working at home, we can see how much we enjoy partnering on things again.

### What led you to make a bequest to BC Law School?

**SF:** We both appreciate the opportunities our education has given us. Together we decided to leave the bulk of our estate to our alma maters. I would like to ease the financial stress for some BC Law students, so they can use their degree in areas where their passions lie.

**DF:** We thought about this for a long time. We both understand the value of education.

Sue and Dino Farina's decision to include BC Law in their will allows us to celebrate their generosity during their lifetime through membership in the Shaw Society. For more information, please visit [bc.edu/joinshaw](https://bc.edu/joinshaw).

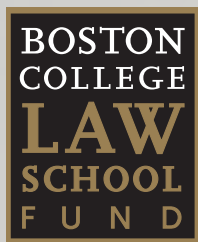
The Office of Gift Planning can help you make your own mark at Boston College. To discuss your giving options, please contact Maria Tringale at [617-552-4751](tel:617-552-4751) or [maria.tringale@bc.edu](mailto:maria.tringale@bc.edu).

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