UNIVERSITY OF MARYLAND SCHOOL OF LAW MAGAZINE 2009

JD

Ready for Takeoff

A dynamic new dean shares her vision for improving legal education

FUSION CENTERS: WHERE PRIVACY AND TECHNOLOGY COLLIDE

FINANCIAL MELTDOWN POST-MORTEM

UNIVERSITY OF MARYLAND SCHOOL OF LAW MAGAZINE 2009

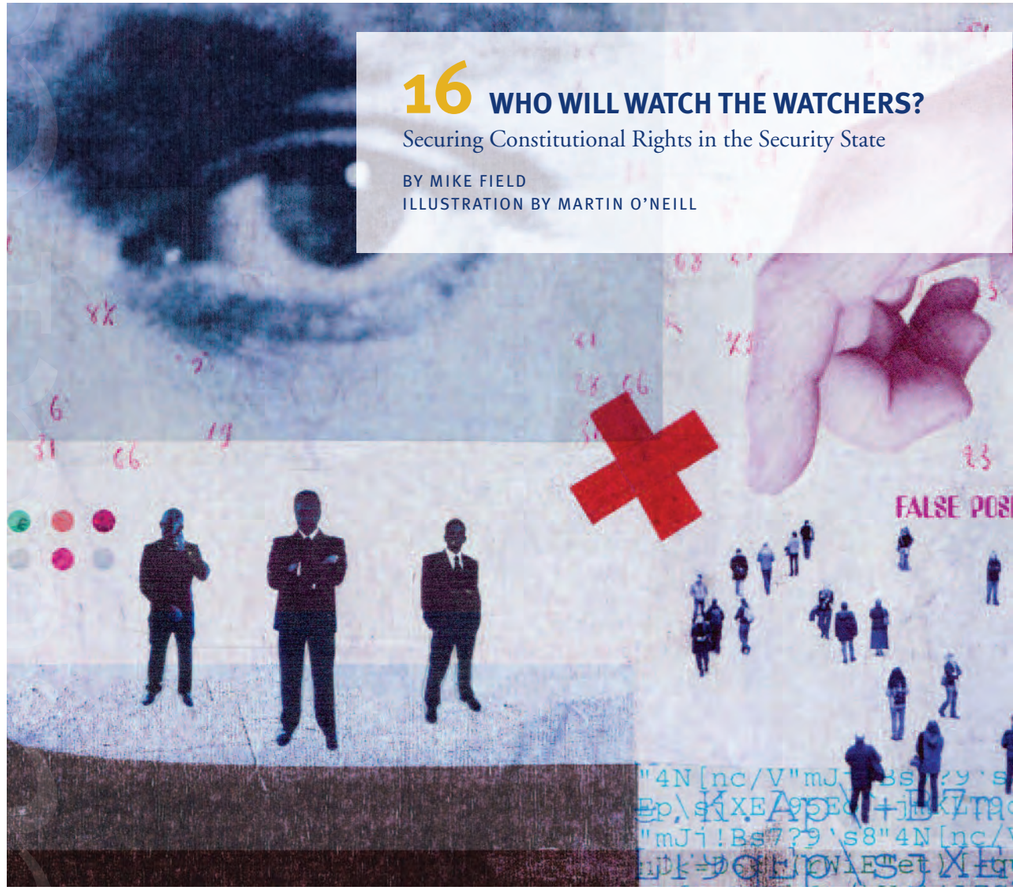
Perpetual Motion

"I OFTEN FIND MYSELF RUSHING through the vestibule of the law school from work to a class or from an externship. Although most law students usually walk calmly, quietly, and composed through the classroom door once they arrive at class, it is a bit chaotic before. When I am standing at the guard's desk, I have noticed other law students rushing to and from, and as a result, I happened to catch this photo.

I joke with my classmates that it feels like we will always be rushing or that we are in a perpetual intellectual whirlwind (especially when you take summer classes). Once law school is over, life really does not slow down and might speed up even more. One thing that I have noticed is that UM Law gives us confidence to explore and conquer new projects or endeavors as law students. As a result, many of us graduate and enter the legal world with refined passions or specialities that make us unique commodities. Thus, I suppose there is no time to slow down but capturing this student 'in-motion' makes me think that maybe there is just enough time to stop and appreciate all that the law school has taught us."

Daria Grayer is a second-year evening student, bioethicist at Washington Hospital Center's Center for Ethics, and an award-winning photographer.

features



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Securing Constitutional Rights in the Security State

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The School of Law's new dean, a national leader in legal education, is known for engaging the thoughts of others, then acting decisively to move things forward.

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Figuring out what led to today's economic mess could hold the best clues for moving forward – and averting the world's next financial crisis.

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Reflections on the Financial Crisis and Investment Banking

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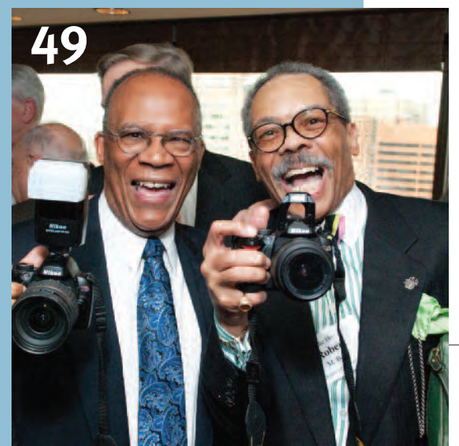

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Dear Graduates and Friends,

I have known for many years that Maryland is a great law school. As a law professor at Temple University, I respected so many of UM Law's faculty and greatly admired the School's commitment to public service and its groundbreaking Clinical Law Program. During the Dean Search process, the more I learned about the Law School, the more impressed I became. But not until I became a member of the community myself did I fully appreciate how remarkable Maryland Law truly is.

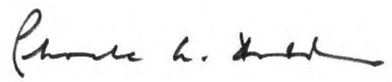
It's a community that includes the gifted teachers and scholars and committed staff who work here. Outstanding students who study inside these walls. Dedicated graduates who devote countless hours of their time and offer wise counsel. And generous supporters who provide vital resources to sustain our work.

Most meaningfully, this institution's definition of community doesn't end at the doors of the Law School, or exclude individuals that have never set foot in our building. Our community includes our neighbors in Baltimore who are given a voice and find justice thanks to the efforts of our legal clinics. It extends to disaster-stricken regions where our graduates help rebuild shattered lives. It reaches Capitol Hill, as our faculty's scholarly expertise shapes the debate on cutting-edge issues at the intersection of technology and privacy. I invite you to read about all these aspects of our community, and many more, in the pages that follow.

I also to thank so many of you for all you have done to welcome me to your community. I have appreciated learning more about you and your thoughts about the Law School's future. This issue of the magazine provides an opportunity for you to learn more about me. Another opportunity for us to meet will be October 3, as the School of Law hosts my first formal event as Dean. I hope you will be able to attend and look forward to meeting as many of you as possible.

My door is always open, and I will be relying on your insight and support as we continue to expand the reach and impact of the Maryland Law community.

Best wishes,



Phoebe A. Haddon
Dean

Wit and **Wisdom**

from Faculty on Legal Issues of the Day

"It's amazing what we will do and say when we are shielded from social shaming. You think when you're doing it online, people are images and things that we attack. It's depersonalized. This generation has been schooled in the misogyny of bravado. It's become a point of pride that I can talk that way, too. I can be vicious. Young women are jumping on this, thinking it's empowering. It's anything but."

—***Danielle Citron,*** *in the Philadelphia Inquirer, speaking about online bullying.*

"It's been nearly two decades since anyone who has not served as a federal appellate judge – for at least a little while—has been confirmed to sit on the Supreme Court. What this means is that justices on the Court have come to be representative of a very narrow slice of the profession. Federal appellate judges, former federal prosecutors and high-powered federal appellate practitioners stand a very good chance of getting nominated. State court judges, full-time law professors, former criminal defense attorneys, even civil practice trial lawyers—not so much."

—***Sherrilyn Ifill*** *in a CNN commentary about the need for professional diversity on the Supreme Court.*

"In the last couple of years people are starting to be aware that if they have these units in their car, people can keep track of you. I think it's a growing public awareness. The problem is that most people feel like, 'I'm not doing anything wrong, so who cares?' But I think that's the wrong way of looking at it."

—***Renée Hutchins*** *in a New York Times article about Fourth Amendment protections for the use of GPS data.*

"Did China and India suddenly have gigantic needs for new oil products in a single day? No. Everybody agrees supply-demand could not drive the price up $25, which was a record increase in the price of oil. The price of oil went from somewhere in the 60s to $147 in less than a year. And we were being told during that run-up, it's supply-demand, supply-demand, supply-demand."

—***Michael Greenberger*** *on 60 Minutes, discussing the role of speculation in driving up oil prices, including a one-day jump of $25.*

"No one has done a decent job of covering the four years that Thurgood Marshall practiced in Baltimore. It was a very active period, but it was difficult to get at. He did major civil rights cases, but he also tried to keep his private practice."

—***Larry Gibson*** *in the Washington Post, announcing the opening of the new exhibit "Thurgood Marshall's Early Career in Maryland: 1933-1937" in the Marshall Law Library.*

"The AIG bailout is a wealth transfer scheme in the guise of a public investment in a supposedly going concern. In plain English, AIG is winding up its derivative business. Since it was on the losing side of derivatives bets, wind up means payment to winners."

—***Robert Rhee*** *in a National Law Journal op-ed about the AIG bailout.*

"The longer an accused remains unrepresented and unable to challenge the government's case, the more likely delay jeopardizes a fair trial. The prosecutor's decisive advantage often results in unjust convictions and coerced pleas."

—***Douglas Colbert,*** *writing in The National Law Journal about equal justice for poor people accused of committing a crime.*

"During the Bush years, it was all too common for administration political appointees to suppress or reshape scientific findings. They infamously tried to suppress a report by EPA scientists on the scope of global warming, for example. But ending such heavy-handed manipulation by political appointees is the low-hanging fruit of the effort to restore science to its rightful role in policymaking. It absolutely needs to be picked, but there's much more to harvest."

—***Rena Steinzor*** *in a Baltimore Sun op-ed about the relationship between science and policy.*

"I have applauded the Governor for his vision in continuing to invest in the future of biotechnology in our state. There are numerous legal and ethical considerations in this type of research. But the world's most prominent scientists, researchers, and policy makers in the field recognize that Maryland has developed an approach to stem-cell research that serves as a model for the rest of the world."

—***Karen Rothenberg,*** *Chair of the Maryland Stem Cell Commission, in the Washington Post after Governor Martin O'Malley reconfirmed his commitment to funding stem cell research.*

Setting Things Straight with Uncle Sam

By Elizabeth Heubeck

Working in the Low Income Taxpayer Clinic, Jonathan Elefant '10 helped a client resolve a $30,000 bill from the IRS.

IN 2002, DAVID PASSON, A DISABLED VIETNAM veteran living on a fixed income, found himself in a desperate situation. Confronting a mound of medical bills, he sold some stocks to pay down his debt. But in fending off one set of creditors, he unsuspectingly stumbled into a different quagmire.

Six years later, Passon received a $30,000 bill from the Internal Revenue Service (IRS), which had taxed the earnings of the stocks he had sold. Fortunately, Passon immediately notified his social worker, who referred him to UMLaw's Low Income Taxpayer Clinic.

Enter law student Jonathan Elefant, J.D. candidate 2010. Researching the matter, he determined that the stocks Passon sold had not appreciated enough to warrant the taxes imposed by the IRS. Over the course of nearly three months, Elefant assisted Passon in preparing a new tax return, essentially wiping his financial slate clean.

"I'm so very grateful. Jonathan was marvelous," says Passon, who, prior to going to the clinic, faced not only an insurmountable debt but the IRS's threat to garnish his Social Security wages.

The resolution didn't come easily. "Once the IRS assesses a tax liability, you have to unravel the whole process. We simultaneously negotiate with the IRS to get them to stop collecting against the client while working to determine whether the tax liability is valid," explains visiting law school assistant professor Pamela Chaney, who oversees the clinic.

Under Chaney's guidance, student attorneys provide free tax preparation to low- and moderate-income working families in Baltimore City and represent low-income Maryland residents who have disputes with the IRS. This academic year, the clinic prepared an estimated 175 tax returns and assisted 64 clients in resolving tax issues. Students are expected to average 28 hours of clinic work per week, but Elefant took on an additional caseload.

"I stayed late, I worked Sundays," he says. "Being low-income doesn't entitle people to any less respect or any less dignity than we would give our friends and families. The fact that they're here shows us they're not trying to run away from the issues; they're trying to resolve them."

Clinical Law Program Fills Vital Needs

EACH YEAR, THE STUDENT ATTORNEYS who take part in UMLaw's 26 student law clinics provide free legal services to hundreds of community residents in need, while honing their own legal skills. Brenda Bratton Blom, professor and director of the School of Law's Clinical Law Program, estimates the clinics provide an average of 110,000 hours of service annually—involving 25 faculty and 250 students. "The number of people who need these services grows every year. When you have to choose between lunch and a lawyer, it's an easy decision," Blom says. Accomplishments of Clinic faculty and students in 2008-09 included:

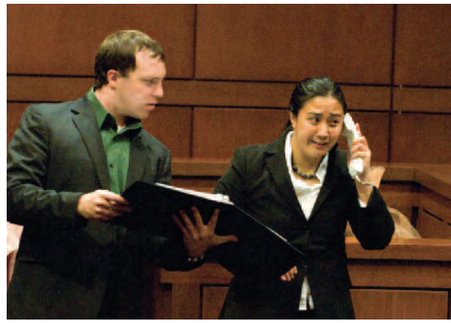
Students in the **Reparations, Reconciliation and Restorative Justice** seminar spearheaded passage of a new state law that requires insurance companies wishing to do business in Maryland to disclose any policies they or their predecessor firms provided to slave owners until 1865;

The **Civil Rights of Persons With Disabilities Clinic** was instrumental in the case of *Shane Feldman, et al., v. Pro Football Inc., et al.,* which determined that under the Americans With Disabilities Act, closed captioning of scoreboard announcements during Washington Redskins games at FedEx Field was not optional but required;

The **Environmental Law Clinic** recorded a number of victories. Students researched and drafted the newly enacted Environmental Standing Bill that gives individuals and associations the ability to challenge state environmental permits, licenses, and Critical Areas variances and other state environmental decisions in state court.

The Waterkeeper Alliance, represented by the Clinic, reached an agreement with the Maryland Department of the Environment (MDE) resolving the Waterkeepers' legal challenge to MDE's general stormwater permit for construction sites. As a result of this agreement, MDE has committed to making significant changes to the way it requires developers to prevent polluted runoff caused when rain washes sediment and other pollutants from these exposed areas.

The **Drug Policy and Public Health Strategies Clinic** worked with the U.S. Department of Justice's Civil Rights Division in negotiations with Baltimore to remedy the City's zoning code's discrimination against licensed residential substance abuse treatment facilities



Students rehearse the play about Walter Arvinger's life sentence and its commutation that they wrote in the course "Lawyers and Legal Systems and Their Social Context."

Grappling with Ethical Issues—on Stage and Off

By Mike Field

FROM THE OUTSET, THE NEW COURSE Lawyers and Legal Systems and Their Social Context, was an unusual venture. Funded in part by a grant from the Fetzer Institute of Kalamazoo, Michigan, the course asked School of Law students to critically examine common assumptions about the legal system, including its fundamental moral and ethical premises.

"We decided it would make sense to present something to the public. We wanted to show the kinds of legal and ethical issues lawyers face," says professor Michael Millemann, who co-taught the class with Robert Bowie '77, founder of Bowie & Jensen, LLC, and a part-time playwright. Live theater—an art form defined by the maxim "show, don't tell"—proved uniquely well suited to this process, so the duo set out to have their student create an original drama.

Millemann, Bowie, and their students decided to focus on the case of Walter Arvinger, whose case made national news in 2004 when he was released after 36 years behind bars for a murder it is now widely accepted he did not commit. Millemann and students from the School of Law were instrumental in bringing attention to the case and securing his release. The play that resulted is actually a play-within-a-play, showing both the events leading to the false conviction, and the moral and ethical issues students grappled with three decades later as they tried to prove Arvinger's innocence.

The professors initially had expected to cast the show using local actors. "What really surprised me was how completely the students took control of the effort," says Bowie. "They wanted to act in the roles they created, which was incredible; it really was an added benefit to the class."

The students were not without resources. Professional theatrical leadership was provided by Elliott Rauh, managing director of Baltimore's Single Carrot Theatre, who served as director. of the production. His cast of four men and four women "entered into the heart of the law," says Bowie, "by engaging in a process that exposed them to the humanity of law that is usually only learned after the boot camp experience of law school is completed."

The process of researching, writing, discussing, and rehearsing the play—which included classroom visits by Arvinger himself, and from former Governor Robert Ehrlich, who commuted Arvinger's sentence—brought a real immediacy to the idea that lawyers' actions have far-reaching consequences. "I really had to think about what the lawyers did, and that made a big impression upon me," says graduating student Octavia Shulman, who played Arvinger's mother, and the "class clown" in the student scenes. "Everyone was so excited by this. It was so unconventional teaching the law in such a creative way. When the Governor came to school that conversation really scared me to death. What I do or don't do as a lawyer can hugely impact someone's life. It made me feel I really have to know my stuff."

For director Elliot Rauh, the whole effort really came together when the play was performed in April before a standing room only house of friends, classmates, faculty, and family members of the cast. "There is a moment when the students transform to prisoners in a jail, calling out at Kaplan [Arvinger's attorney]. It was this really wonderful theatrical moment. Basically in four weeks of rehearsal we bonded and had this opportunity to create something together, and it really worked."

Distinguished Visiting Professor Justice Bess Nkabinde delivered the lecture "The Modern Constitution of South Africa: Are the Promises in the Constitution Realizable or a Distant Dream?"

Striving for Constitutional Rights in South Africa

By Jamie Smith

DISTINGUISHED VISITING PROFESSOR Justice Bess Nkabinde, a Justice on the Constitutional Court of South Africa, delivered the lecture "The Modern Constitution of South Africa: Are the Promises in the Constitution Realizable or a Distant Dream?" last October 20.

"The promises are not a dream. South Africans retain their faith in the resilience of their Constitution and the vibrancy of their democracy. Never again will we be subject to the oppression of the past," said Justice Nkabinde, noting that after the Constitution was adopted, seven million copies in the 11 official languages of South Africa were distributed throughout the country.

Justice Nkabinde was one of several Distinguished Visitors who spent time on campus during the 2008-09 academic year through a program that invites distinguished legal practitioners and academics—from both legal and non-legal disciplines—to join the School of Law community. Other visitors were Martha Bergmark, president and chief executive officer of the Mississippi Center for Justice, and Mary L. Dudziak, the Judge Edward J. and Ruey L. Guirado Professor of Law, History, and Political Science at USC Gould School of Law

"We must never stop learning from each other. The beauty of the legal profession is that you always have colleagues to confer with. The knowledge I've gained from collaborating with my new colleagues at Maryland will help the Constitutional Court of South Africa," said Justice Nkabinde.

Leading the Way in Alternative Dispute Resolution

FOR THE SECOND CONSECUTIVE YEAR, Maryland leaders participated in the Maryland Public Policy Conflict Resolution Fellows Program. Building upon the success of the inaugural program in 2007, the Fellows engaged in three days of exploration of interest-based negotiation, collaborative governance, and consensus building skills. The second class of Fellows represented a wide variety of Maryland leaders including representatives from the legislature, faith-based community, judiciary, executive, and non-profit sectors who came together to learn from each other and national leaders in the field of public policy dispute resolution.

The Fellows were invited by the program sponsors, the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals; David J. Ramsay, President of the University of Maryland, Baltimore; and Dean Karen H. Rothenberg.

"As a problem-solving institution, the Judiciary has an interest in advancing collaborative leadership in Maryland," said the Hon. Benjamin Clyburn, a 2008 Fellow. "I thoroughly enjoyed participating in the Fellows program and used the opportunity to sharpen my own negotiation and collaboration skills with a wonderful group of people."

—Toby Treem Guerin

The annual Business Law Conference, "The Subprime Meltdown: Causes, Consequences and Solutions" couldn't have been more timely. On Oct. 3, 2008, as experts from academia, the financial services sector, consumer groups, Capitol Hill, journalism, and regulatory institutions gathered at the Law School to discuss the nation's economic crisis, Congress passed a $700 billion bailout. Participants' skepticism about the plan proved prescient. "A lot of this legislation is highly illusory," said Michael Greenberger, a professor at the School of Law and director of its Center for Health and Homeland Security, a panelist and moderator of the symposium. "Congress does not have an infrastructure in place to deal with this." (l-r) *New York Times* Editorial Board Member Teresa Tritch, Damon A. Silvers, Associate General Counsel for the AFL/CIO, Thomas E. Pérez, Secretary of the Maryland Dept. of Labor, Licensing, and Regulation, and School of Law Dean Karen H. Rothenberg led a lunchtime discussion of the meltdown's impact on the country.

(l to r): Dr. David Lewis, Brown University, Professor Richard, Bonnie, University of Virginia and School of Law Associate Dean and L&HCP Director Diane Hoffmann.

Drug Policy Pendulum Swinging Back

By Gynene Sullivan

IN THE LATE 1960S AND '70S, POLICY MAKERS endorsed a "reformist approach" toward addiction that emphasized the need to provide treatment therapeutically instead of criminally. However, exploding drug use in the '70s alarmed policy makers and led to the initiation of the "War on Drugs" and a zero-tolerance approach to addiction treatment.

Last November 7, the Law & Health Care Program co-hosted the conference "Obstacles to the Development and Use of Pharmacotherapies for Addiction." In delivering this year's Stuart Rome Lecture, Professor Richard Bonnie, an expert in the fields of mental health and drug law, asserted that the pendulum is swinging back to therapeutic treatment because "it has become increasingly clear that the War on Drugs has caused a great deal of damage at great cost, with little evidence that it has made any impact."

At the conference, lawyers, health care providers, judges, and regulators discussed the obstacles that exist at each stage of medication development and uptake, including challenges for pharmaceutical companies; obstacles relating to clinical trials and the FDA approval process; patient reluctance to use and provider reluctance to screen for, and prescribe, medications to treat addiction; and gaps in insurance coverage for these medications.

Videos of the panel discussions are available at http://www.law.umaryland.edu/pharma.

Human Rights Progress, Abuse Take Center Stage at UDHR 60th Anniversary

By Jeff Raymond

THE UNIVERSAL DECLARATION of Human Rights (UDHR) remains an important, guiding model for governments and people around the world, but 60 years after its adoption by the United Nations, constant political will and effort is still required to see the document's high-minded promises turn into real protections.

That message was among those aired at the School of Law's three-day symposium from Oct. 23- 25 marking the 60th anniversary of the declaration's signing. Speakers addressed the challenges posed to the ideals contained in the document by worldwide poverty, hunger, poor health, and persecution. The litany of human rights abuses by autocratic regimes from Chile to Russia and China are being replaced or joined by abuses cloaked in the banner of counterterrorism, according to several of the more than three dozen speakers and moderators.

Justice Chaskalson (right) and Former President of Ireland and U.N High Commissioner for Human Rights Mary Robinson.

Former President of Ireland and U.N. High Commissioner for Human Rights Mary Robinson delivered the keynote. "Sixty years on, there is a woeful global failure to secure access to justice and basic rights like food, health, and safety for a majority of humans. The law doesn't work for about 4 billion people in our world," said Robinson.

Redefining the Role of Clinical Education

TO COMMEMORATE the 35th anniversary of its founding, the School of Law's pioneering Clinical Law Program spotlighted its mission of integrating theory with practice by hosting the national conference "Curriculum Reform: Linking Theory and Practice" on March 6.

Faculty and deans from leading clinical law institutions gathered for discussions about integrating best practices into the curriculum and the redevelopment of law school curricula.

"Clinical legal educators are poised to play an important role in the next developments in the legal academy," said Brenda Bratton Blom, Director of the Clinical Law Program. "This is not a time to just plow ahead as if circumstances were the same as they were last week or last year. This is a time to take a deep breath, and evaluate not just how we are preparing students to be lawyers, but how we are maximizing our impact in the services that we deliver."

In his keynote address, Professor Michael Millemann detailed the different ways the Clinical Law Program at the School of Law has grown and changed over 35 years. But the overarching concern, he said, is to continue to teach and mentor students, even as alumni. "We all are special trustees of the students' idealism," he said. "We recruit students because they are idealistic. When they get here, we should nurture that idealism. When they graduate, we have to continue to support it."

—Gynene Sullivan

Career Survey Sparks "Call to Action"

Panelists for the April 24 discussion "Strategies That Work: Innovation and Experience from the Field" were (l-r): Laura L. Johnson of Gordon, Feinblatt, Rothman, Hoffberger & Hollander; Heidi Hansan of Miles & Stockbridge; Valerie Granfield Roush of Sodexo, Inc.; and Karen Popp of Sidley Austin.

Lynne Battaglia '74 describes it as a "conundrum" that dictates career choices for female lawyers: When law firms base evaluations on billable hours rather than on quality of work, women can sometimes be at a disadvantage, says the Maryland Court of Appeals Judge.

Wendy Butler Curtis '98, a special counsel in litigation at Orrick's Washington office, wonders why women, who "were disproportionately ahead in the class" at law school, later comprise just 20 percent of partners in law firms.

Both issues were discussed at a roundtable that Battaglia and Curtis attended in December at the Law School. The discussion was an outgrowth of a career satisfaction study, undertaken by professors Jana Singer and Paula Monopoli and supported by the Law School's Office of Institutional Advancement and Career Development Office. The professors surveyed UMLaw graduates going back to the Class of 1977. The ultimate aim for their work: to chart a plan of action for improving women's experiences in the legal profession.

> **"WOMEN DON'T FEEL** they are getting (paid) what they deserve."
>
> *—Prof. Paula Monopoli*

Singer and Monopoli queried more than 600 alumni in their Fall 2008 survey. "We were interested in alums in general, but we wanted to know if the experiences of women in the workplace were different, and if they were making different choices in their careers," says Monopoli, founding director of the Women, Leadership & Equality (WLE) program, which oversaw the project. The questions aimed to reveal differences in career choices, and overall satisfaction with life and work.

SOME KEY FINDINGS

- Although men and women are equally likely to begin their careers at law firms, they are not equally likely to stay there:

- 47% of women began careers at private firms; 29% remain
- 50% of men began careers at private firms; 40% remain
- 40% of women are employed by government
- 25% of men are employed by government

The most gratifying finding, Monopoli says, "is that our graduates—both men and women—are generally happy." But the survey showed that there are still great disparities in career advancement among men and women, and also in their priorities. The women surveyed, for example, were significantly more likely than men to identify flexibility in the workplace, and work-family balance, as important to their career satisfaction.

One outcome of the study, says Singer, may be better guidance for employers when it comes to retention. This is an important issue for law firms, which incur high costs replacing employees who leave. Toward that end, the professors shared preliminary findings in a workshop last April for area law firms that are committed to better retaining and advancing female lawyers. "We [aimed] to offer suggestions about what will make lawyers want to stay," Singer says, such as offering opportunities for flexible schedules, without stigmatizing that choice. Compensation is also an important issue, says Monopoli. "Men measure success by the amount of compensation they receive. Women are less likely to say compensation is most important to them, but they did say they were concerned with being appropriately compensated. There's a feeling out there that women don't feel they are getting what they deserve. That to me is an important finding"—for employers, she says.

Wendy Curtis says the research "is a call to action. It captures the realities that we all experience, but it's nice to see it in writing. That way, we can go back to our own workplaces and institute change."

Monopoli and Singer will present their final report this fall.

—Martha Thomas

Joined in Commitment to Public Service

The election of Barack Obama had an inspiring impact on third-year student Bill Ferguson.

"What we're doing is high level policy reform." **–Bill Ferguson**

For Bill Ferguson, a second-year law student committed to improving public education, the inauguration of Barack Obama last winter seemed the perfect setting for proposing marriage to his girlfriend, Lea Smith. After all, the two had met when they were both teaching in Baltimore as part of the Teach for America program. They'd deepened their commitment to the community—and to each other—by volunteering for the Obama campaign, spending election day on a flatbed truck in Philadelphia, assisting and entertaining voters.

So when Ferguson heard about an essay contest sponsored by the Presidential Inaugural Committee, which offered "Tickets to History" for 10 supporters who could explain what the inauguration of Barack Obama meant to them, he jumped at the chance to enter. "I wrote about why we work in education, how the inauguration symbolized such an important shift in the United States," Ferguson says. He also promised to pop the question at the inauguration.

That did the trick. Three days before the big event, Ferguson learned that he and Smith were invited to attend the inauguration, and many of the surrounding VIP events. The couple's magical moment came just after Obama finished his inaugural address, when Ferguson dropped to one knee and made his proposal. Through tears, Smith said yes.

As spring slipped in to summer, and the couple's August 15 wedding date fast approached, Ferguson balanced his wedding preparation plans with his law school studies and his work as a graduate intern for Baltimore City Schools CEO Andres Alonso. In that role, which he's held for two years, Ferguson has worked directly with Alonso in reorganizing the central office as funding is decentralized.

"What we're doing is high level policy reform," Ferguson explains. "During my first year, the focus was on 'fair student funding'—shifting money from the central office to the schools, so that they can make decisions about how to spend it." In year two, he says, efforts broadened to include restructuring—including layoffs—of the central office.

Fiancee Smith has worked just down the hall, as special assistant to Alonso's chief of staff Tisha Edwards '01. Ferguson says he's been inspired in his work because both Alonso and Edwards are lawyers. "I think I connect with them," he says. "There's a way that law school teaches you to think, to approach things from every angle, to attack a policy from each stakeholder's viewpoint."

For Ferguson, who was also selected this spring to the prestigious *Maryland Law Review,* the work with CEO Alonso wasn't the only thing that kept him busy. Just days after returning from the Inauguration, he and Smith learned of a proposed state budget cut to city schools. "We decided to do something about trying to restore the budget for our kids in Baltimore City and we saw our opportunity to deliver our own message of hope and our ability to contribute," he says. The couple launched "Maryland Ed Equity," and ultimately hand carried 75 letters, signed by TFA teachers, to Annapolis to present to the Governor.

"Without my experiences with TFA, the law school, the election of President Obama, proposing to Lea, and our experiences at the inauguration, we would never have had the courage or insight to start 'Maryland Ed Equity,'" says Ferguson. "My take away message from all of these wonderful events is that you can't just wait for change to happen, you have to make change happen."

—Martha Thomas, with Bryan Pugh




Sounds of Progress

The School of Law's new dean, a national leader in legal education, is known for engaging the thoughts of others, then acting decisively to move things forward.

By Jamie Smith

FROM YOUR FIRST CONVERSATION with Phoebe Haddon, it's quickly apparent why she is universally described as a great listener by colleagues, friends, and family alike. Her smile is broad and luminous, her laughter uninhibited and contagious. She leans slightly forward across the tabletop, maintains a steady contact with her warm, dark eyes, and nods, gently encouraging you to go on. And an interview intended to provide the University of Maryland School of Law's new Dean with an opportunity to hold forth about herself – at length and without interruption – quickly becomes a conversation in which she listens almost as much as she speaks.

"To listen well is as powerful a means of communication and influence as to talk well," said John Marshall. Dean Haddon's record of leadership and the broad respect she enjoys throughout the legal profession bear out the words of the U.S. Supreme Court's first Chief Justice.

Revealingly, the people she's most interested in hearing from are those who disagree with her.

"I'm always going to listen to what you say. I'm not afraid to engage the thoughts of others. They may be helpful in fixing what I'm doing wrong," Dean Haddon says, reflecting two other aspects of her personality repeatedly identified by those who know her best: self-confidence and respect for the views of others.

Over the last three decades, she has employed these strengths to improve institutions ranging from the American Bar Association's Council of Legal Education and Admission to the Bar, to the Redevelopment Authority of the City of Philadelphia, to the American Law Institute-ABA Committee on Continuing Professional Education.

"Dean Haddon has been recognized as a national leader for years," says former dean of the University of North Carolina School of Law Judith Wegner, who co-authored the Carnegie Foundation for the Advancement of Teaching's 2007 landmark report, *Educating Lawyers: Preparation for the Profession of Law.* "Maryland Law's unique strengths provide a perfect opportunity for Phoebe to employ her experience and vision for improving legal education in a way that will position the School even more prominently within the legal profession and the legal academy."

Engaging

childhood in Passaic, NJ

grandparents, Name and Name

Colleagues cite Dean Haddon's facility for bringing together an organization's diverse, sometimes antagonistic constituencies, and getting them talking. She listens, finds the common ground, and builds a coalition of supporters. Then she leads them in developing and implementing an approach that results in the achievement of a shared goal.

"Phoebe has a personal and professional philosophy that you can get more things accomplished with cooperation instead of competition," says I. Herman Stern Professor Emeritus of Law Frank McClellan, who has been Haddon's colleague on the Temple Law faculty since 1981, and her husband since 1985.

"It's an interesting approach for a lawyer to get people out of the adversarial approach and into a cooperative one where you're looking for similarities in what you believe, not differences. She doesn't see competition as the dominant model, and she's not looking to win if it means someone else has to lose."

But Dean Haddon's emphasis on collaboration shouldn't be confused with a lack of mettle, say those who know her well. Her scholarly expertise includes such famously contentious areas as torts litigation, and the jury. And when emphasizing a strongly-held belief, she'll remove her brown plastic-rimmed glasses and fix you with a look that leaves no doubt: Dean Haddon is a leader.

"Phoebe has a philosophy that participation and collaboration are key to the deliberative process. But what she's really good at is making things happen after the deliberations are over," says Joanne Epps, Dean of Temple University's Beasley School of Law and a faculty colleague of Haddon's for more than 20 years. "Some people have great ideas, but can't go from the idea to its execution. Phoebe is committed not only to arriving at a great idea but also ensuring that it is acted upon."

A strategic thinker who is deeply engaged in developments in higher education and the legal profession, Dean Haddon is in the beginning stages of organizing a strategic plan for the School of Law. Characteristically, this planning process has begun by listening. She has conducted a retreat with her deans, has begun to meet with members of the Board of Visitors, and – after hosting a breakfast for all Law School faculty and staff on the morning of her first day at Maryland – is now in the process of holding one-on-one interviews with every member of the faculty and law school administrators. And while Dean Haddon's plan for the Law School ultimately will reflect the shared views of a wide range of constituents, it will no doubt be shaped by her own vision for the future of legal education.

When the Carnegie Report was published in 2007, its challenge to law schools to focus more on developing students' ethical skills and commitment to justice was highly influential and groundbreaking. Dean Haddon had issued a similar call almost 15 years earlier.

In "Education for a Public Calling in the Twenty-First Century," 69 *Washington Law Review* 573 (1994) she wrote that law schools "have an opportunity to define good lawyering … as a public calling which emphasizes a professional obligation to promote equality in the legal system … to clarify the values important to the practice of law in contemplation of a more pro-active public role."

Today, she believes more firmly than ever that lawyers' moral obligations to advance justice extend far beyond their responsibilities as client advocates and officers of the court.

"That doesn't describe what I believe to be the richness of lawyers' societal obligations, which can be very broadly and richly defined, and clearly includes something more than simply following the rules of the court," she says.

In her article 15 years ago, Haddon cited Maryland Law as one of the few institutions that was addressing those issues. Today, Dean Haddon says the School is positioned to be a leader in reshaping not only legal education, but perhaps the legal profession itself. Location, prominence in clinical education, engagement in public service, and an outstanding faculty—committed to excellence in teaching and dedicated to scholarship that searches for solutions to real world problems—all play a part.

"Our location provides a tremendous opportunity to be part of not only a metropolitan statewide conversation, but of a national and global conversation," she says. "We can help define what justice is, and solve problems in ways that recognize the complexity of today's society. And we can be leaders in thinking creatively about the roles of teachers and scholars, of students, and the legal profession in today's world."

A fourth-generation lawyer and educator, Dean Haddon says it was clear from childhood that she would either study law or become an educator, but in her family, she says, "I was the first one who did both." Her father Wallace James Haddon, a dentist, moved the family in 1955 from Hampton, VA, to Passaic, NJ, after identifying it as a city where an African American could establish a substantial professional practice. Haddon's mother began her career as a mathematician at the National Advisory Committee for Aeronautics (NASA's precursor), then became a junior high school math teacher and high school guidance counselor when the family moved to New Jersey.

Throughout Haddon's middle class childhood, belief in the importance of education was a core value of her family. So, too, were a commitment to excellence and the determination to overcome any obstacles that might deter that pursuit. Dean Haddon points in particular to her grandmother, Phoebe Bassette, as someone from whom she inherited more than her name. Once, Bassette – notoriously late and frequently trying to juggle 20 things at once – was pulled over for speeding down the street in her hometown of Hampton. It was the 1940s, and undaunted by either his badge or his race, she told the white police officer of this small southern town, "I'm sorry, but I have some place to go. If you need to talk to someone, my husband's office is right down the street," and kept on going.

"I do that sometimes, too. I get so involved in what I'm doing that the fact that there might be some barriers or things that are in the way don't even occur to me as stopping progress," says Haddon.

While in high school, Haddon took a month-long trip to France with a student group, engendering a lifelong love of travel that has taken her to every continent except Antarctica and Australia. At Smith College, she earned a degree in government, with minors in economics and African American studies. The experience was so important to her, that she remained deeply involved in the life of the College, serving on the Board of Trustees for a decade, including a term as Vice Chair.

After moving to Pittsburgh in the early 1970s, Haddon applied to several nearby law schools. One school offered her admission, as well as scholarship support through an affirmative action program that stipulated its

as *Duquesne Law Review* editor in 1976, with the school's Dean, Ronald Davenport

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Reflecting

participants take one fewer course than other students. She still bristles at the memory.

"Though well intended, this requirement was based on some notion that African Americans would not do as well, or meet the same standards, as other students. My background gave every indication that I would do as well, or even better than those gross stereotypical predictions suggested," she says.

"That kind of broad, overly inclusive assumption does not sit well with me. People have to be judged as individuals. That doesn't mean we don't think about how various groups have been discriminated against and try to address persistent structural barriers that continue to impede some groups from attaining equality. But you can't build your response to discrimination without being mindful of the subtle influence of stereotypes."

Dean Haddon instead enrolled at Duquesne Law School, where she received a full scholarship and went on to become editor-in-chief of the *Duquesne Law Review.* After graduating in 1977, she served as a law clerk for The Hon. Joseph F. Weis, Jr., United States Court of Appeals for the Third Circuit, and practiced at Wilmer Cutler & Pickering in Washington, DC, before joining the faculty at Temple law school in 1981.

At Temple, Haddon taught courses on constitutional law, torts, products liability, and race and ethnicity. She established herself as a national scholar on constitutional law and tort law, co-authoring two casebooks in those fields, and published numerous scholarly articles on equal protection, jury participation, academic freedom, and diversity.

"Whether it's writing about torts or con law, or teaching a seminar on the jury, there's always been a kind of civil rights edge to what I've been doing; my focus has always been shaped by a belief in equality, particularly respect for the rights of others," says Dean Haddon. "I don't fit the model of scholars who get interested in one particular substantive area of study and use the classroom and law journals to express their views divorced from the context of the lived experiences of people – I am particularly concerned about approaches that take account of people who are marginalized in the system."

Haddon's scholarship is a continuation of her family's tradition of social activism. Her father was an active leader in the NAACP. Her aunt, Rachel B. Noel, led public school desegregation efforts in Denver, culminating in the U.S. Supreme Court's ruling in *Keyes v. Denver School District No. 1,*

new faculty member at Temple Law

> **"MY FOCUS HAS ALWAYS** been shaped by a belief in equality, particularly respect for the rights of others."
>
> *—Dean Phoebe Haddon*

which made Denver the first city outside the south to receive instructions from the Supreme Court to address segregation.

Striving to improve access to quality education, at law schools and beyond, became her true academic passion. Haddon quickly attained national prominence for her efforts, earning appointment as a member of the executive committee of The Association of American Law Schools, a trustee of the Law School Admissions Council, and co-President of the Society of American Law Teachers. Today she is a member of the Council of the American Bar Association Section on Legal Education and Admission to the Bar, the official accrediting body of American law schools, and serves on a number of committees of those other organizations.

"A real strength for Phoebe is her leadership in groups like the ABA and others outside the academy. It's given her an opportunity to look at the challenges of legal education and the profession not just as a member of one school, or even as an academic, but from a very broad perspective," says Paul Bekman, Chair of Maryland Law's Board of Visitors. "At a time when law schools are facing a scarcity of resources, and the legal profession is rethinking ways of serving clients, she is the right person at the right time to be Dean of our Law School."

Other law schools had pursued Haddon for deanships in the past, but she always demurred. Her experiences had made her an expert in not only legal education, but in law schools themselves. Dean Haddon could tell when the fit just wasn't right, or if an institution wasn't poised for future growth. From her first visit to Maryland Law, she knew she had found a new home.

Haddon envisions a Law School that enhances its quality by making itself more accessible to students from a wide range of racial, educational, and economic backgrounds. She wants to broaden the definition of faculty excellence to include a diversity of talents, from theoretical scholars, to outstanding classroom teachers, to policymakers, to practitioners providing experiential learning opportunities consistent with the mission and rich tradition of the law school. In so doing, she wants to attract people who share her vision of a school both accessible and elite in its stature among excellent law schools.

"There are individuals here – faculty, staff, and students alike – who have the qualifications to go anywhere. But they've made a commitment to Maryland because they believe in what we can accomplish together. I see that as very different from many other institutions," Haddon says. "When I hear them talk about their reasons for choosing to be at Maryland, it's very energizing to me. It reinforces my belief that I made the right choice in joining them."

with daughter Cara and husband, Frank McClellan

Who Will Watch the Watchers?

Securing Constitutional Rights in the Security State

By Mike Field
Illustration by Martin O'Neill

TRAFFIC IS TERRIBLE. Late for a meeting, your mind is working overtime on how to adjust your presentation. Suddenly, there's a clearing ahead. You hit the gas—and fly right into a speed trap. Blue lights flash in your rearview mirror.

On the side of the road the police officer takes your license and registration, returns to his car, and feeds them through an optical scanner. While you sit fuming your name is being checked at a remote government computer center that keeps track of the websites you visit, the books you buy online, your long distance phone bills, and hundreds of other pieces of both public and private information. Something in your past suggests behavior that authorities deem suspicious: perhaps your name was included on a suspicious activity report for using binoculars and taking pictures "with no apparent esthetic value" in Los Angeles, as police policy there now dictates. As you wait, two more squad cars appear, their lights flashing, and the officer—now sounding a little nervous—says, "Please step slowly out of your car and spread your arms."

It may sound like a futuristic dystopian nightmare, but the possibility of this kind of scenario is closer to reality than many people imagine. Government run or sponsored data clearing houses are now active in nearly every state. Known as fusion centers, they are funded by the federal government as part of the national response to the 9-11 terrorist attacks. Originally envisioned as a means of sharing anti-terrorism intelligence among federal, state, and local law enforcement agencies, fusion centers are generally unknown to the

Professor of Law Danielle Citron says "I'm a privacy person." She is also a national leader in studying legal issues surrounding government reliance on information technologies.

public. Even legal scholars are unsure how they fit within the country's legal framework. And no one seems to be quite sure what they do.

"There is this concept that computers can create a personal profile of individuals that will predict if they are a potential security risk, but the reliability of these models is unknown," says Professor of Law Danielle Citron of the methods employed by fusion centers to sift through vast quantities of seemingly innocuous —but often private—data to try to identify potential terrorists. "We are talking about it but it is not yet in the public eye." In order to advance the discussion and further explore legal issues surrounding government collection and analysis of information about private citizens, Citron helped organize one of the nation's first gatherings of legal scholars and privacy experts focusing on fusion centers. The Technology and Privacy Roundtable, which was hosted by the School of Law during the spring 2009 semester, brought together two dozen experts from across the country for a day of discussion and debate.

From the start it became apparent that it is what is *not known* about fusion centers that raises the greatest legal and privacy concerns. "People say, 'Oh, you worry too much.' I think now is the time to be considering these issues," said Roundtable co-leader Frank Pasquale, a visiting professor of law at Yale, and the Loftus Professor of Law at Seton Hall University, at the session opening.

But identifying the issues means knowing what, exactly, fusion centers are doing. Beyond bland generalities most centers refuse to say. And the task is made all the more difficult by the fact that no two fusion centers are quite alike. The Department of Homeland Security reports that as of February 2009 there were 58 fusion centers around the country. To date, the Department has provided more than $380 million to state and local governments to build and equip the centers, but does not directly operate or control them. For the most part, fusion centers evolved locally on an ad hoc basis beginning around 2003. Each fusion center is run by a unique set of state and regional partners and, beyond having a general mandate of information and intelligence sharing, they often have widely differing approaches to what information they collect, and with whom and for what reasons they share it.

Fusion centers use powerful computers and sophisticated programming techniques to scan huge quantities of data, looking for anomalies that may indicate terrorist threats. But in addition to public records such as court appearances and tax records, the centers can "fuse" private information such as phone bills and credit reports and even secret information provided by other government agencies. This is what happened when Baltimore peace activists and antiwar demonstrators found themselves on federal terrorist watch lists after the Maryland State Police infiltrated their organizations and compiled extensive dossiers on the protestors in 2005 and 2006. The Baltimore Sun reported in 2008 that the undercover state police reports failed to identify any criminal or even potentially criminal acts on the part of the protestors, yet nonetheless entered their names on a database of potential terrorists or drug traffickers. "If you get put on a watch list that means airlines can deny your ability to fly. You can potentially lose your employment if you are deemed a security risk, or perhaps be unable to get a job, depending on who gets to see these lists," notes Citron. "You're talking about real concrete harm."

Both the theory and technologies that undergird the fusion systems are new—and, say many experts, unproven—and little legal framework exists to regulate or direct the centers' activities. The possible misuse of such extensive new information collection and analysis capabilities first drew attention in December 2007, when the American Civil Liberties Union published a white paper titled "What's Wrong with Fusion Centers?" The report identified several areas of general concern, citing ambiguous lines of authority; participation by both private sector subcontractors and military personnel; the likelihood of "data mining" in which centers go looking for suspicious individuals without probable cause; and the aura of excessive secrecy that surrounds the centers. It went on to suggest a number of legal and political safeguards that could prevent misuse of the centers' unprecedented information gathering ability, dryly observing that the best solution might be to abandon the concept entirely, and "return to traditional law enforcement techniques based upon reasonable suspicion that have kept America safe and free for over 230 years."

> "The horse is out of the barn. **Fusion centers are not going away.** So what do they do? We are very concerned that because there are ambiguous lines of authority there is no policing mechanism in place to prevent abuse."
>
> *—Michael German, ACLU policy counsel*

Many observers—including report co-author and ACLU policy counsel Michael German—believe there is no turning back. "The horse is out of the barn," he said at the Roundtable. "Fusion centers are not going away. So what do they do? Are they being used to collect information on lawful dissent? Are these places where information on innocent activity is collected and shared? We are very concerned that because there are ambiguous lines of authority there is no policing mechanism in place to prevent abuse."

Throughout the day's discussion participants repeatedly expressed frustration at how little public information is available about fusion centers, even after six years. There was a sense among the legal scholars and privacy experts that they were steering without a compass into uncharted territory. Consequently, the Roundtable at times seemed not so much policy debate as reconnaissance mission, with everyone putting their heads together trying to understand what's out there. It seemed a fitting venture for Danielle Citron, a self-described "cyber law geek" who has gained a national following writing about automated systems like e-voting machines, cyber security, and cyber harassment in scholarly journals and the online forum Concurring Opinions [see essay on p. XX]. The Roundtable, she says, was the natural extension of her interests: "All of my work is part of a broader story about how information about us can be used and misused." She considers a moment and adds, "I'm a privacy person, obviously."

Citron says her involvement in the cutting-edge field of cyber privacy rights "was pretty serendipitous," evolving from her first law article, published in 2006 in the *UC Davis Law Review,* concerning the relatively new technology of Voice Over Internet Protocol and its likely effect on personal jurisdiction theory. That investigation led her to contemplate the legal ramifications of other novel electronic technologies. The following year the *Southern California Law Review* published her article "Reservoirs of Danger: The Evolution of Public and Private Law at the Dawn of the Information Age," in which Citron drew an intriguing legal analogy between the collection of personal information in large unregulated databases and the early industrial age creations of large reservoirs of water to power mills. The water was harmless in repose but could wreak havoc if the dams gave way—though it took many years and several tragedies before the law evolved to protect those downstream. By the same token, in the cyber world any one of us could be living downstream of a data dam without under-

standing the risk. "The reservoir metaphor suggests we underestimate the dangers inherent in damming up and collecting data," Citron says, reflecting her article's central premise that new economic eras bring about new concepts of personal harm.

If large uncontrolled databases pose risks—as recurring stories of identity theft and wide scale security breaches would seem to indicate—then the danger becomes even more acute, says Citron, when the scope of information collected is hidden behind veils of national security. "What we are seeing with fusion centers is mission creep. They started out as anti-terrorism tools, but now we are seeing their mission changed to the protection of all infrastructure from all risk. The danger is that they are combining unproved theories of data mining with use of private databases that may or may not be accurate. If the data used is incorrect then the results are going to reflect that. It's the old story of garbage in, garbage out."

But the centers are not without their defenders. According to Sean Kates '07, a law and policy analyst in the Law School's Center for Health and Homeland Security, first responders such as police, fire fighters, and other emergency personnel are especially likely to see benefits in the centers. "What falls apart first in a large scale emergency is communications," he says. "First responders look upon fusion centers as a positive because they provide a reliable central source of good information. "I have had police officers verify to me that fusion centers have been helpful to them in looking across county lines, and across differing criminal records systems, to aid in investigations. From that perspective it's a good concept," says Kates.

Robert Riegle, who directs the state and local program office of the Office of Intelligence and Analysis, pointed to two recent success stories involving law enforcement, in testimony last April before a subcommittee of the Committee on Homeland Security. In one, a DHS operational specialist coordinated with federal officials on an Amber Alert for a 3-year-old girl being taken out of the country by a suspect wanted for rape and murder. Using information and contacts gathered through a California fusion center, he was able to track the youngster to a flight bound for the Netherlands; she was ultimately recovered unharmed. In the second case, the Denver fire and police departments worked with a Colorado fusion center to track and apprehend a suspect wanted for seven different firebombings of SUVs.

Skeptics note, however, that a good concept does not always translate into good practice. In order to truly understand the dangers posed by fusion centers that operate with virtually no public awareness or oversight, we must first invent new ways of describing our rights, says Professor of Law and Government Mark Graber. "The great danger is that very often we think of constitutional rights purely in traditional paradigms that don't reflect current reality. For example, we think that freedom of speech means an individual can stand on the corner and denounce the government without fear of interference. But today free speech often involves someone on the Internet. How do we ensure free speech is not inhibited in this environment?" Fusion centers, he says, pose a special challenge in this new world. "In the old days the concept of privacy meant that there was information that the government couldn't learn about you without going to court to obtain a warrant. And then they had to go look. In the past if a government official asked me, 'What have you been reading?' I would say, 'None of your business.' Now they don't need to go look, they already have the information. From the patterns on Amazon they know your reading habits. So it becomes crucial that they can't use that information."

Professor of Law and Government Mark Graber: "We very often think of constitutional rights purely in traditional paradigms that don't reflect current reality."

Since most fusion centers involve at least some participation from commercial data brokers, there is, practically speaking, **no limit and no quality control on the kinds of information** that might be sifted in search of unusual patterns that indicate a threat.

But that may require entirely different legislation than the current regulatory structure concerning individual privacy and electronic data. Congress passed the Privacy Act of 1974 after numerous hearings and a number of reports on such topics as national data banks, commercial credit bureaus, and the effect of computers on personal privacy. In many ways it is a bill very much of its time, reflecting an era before the Internet, when only the government could have the kind of massive concentration of computers needed to keep and search enormous databases of private information. When signed into law the bill established a code of fair information practices governing the collection, use, and dissemination of personal information maintained in systems by federal agencies. Information about an individual could not be disclosed from these systems without that person's written consent, or by specific statutory exception; and individuals were enabled to access and amend their records in the case of faulty information.

In theory, at least, the Privacy Act protects citizens from an intrusive, all-seeing government sticking its proverbial nose in people's private business. But what the Act does not do—and the reason it offers little in the way of protection today—is in any way regulate or control private interests from intrusively collecting, analyzing, and selling data about individuals.

Since most fusion centers involve at least some participation from commercial data brokers, there is, practically speaking, no limit and no quality control on the kinds of information that might be sifted in search of unusual patterns that indicate a threat. An individual whose purchases, opinions, Internet use, political donations, or general activities are deemed potentially subversive—by whom or by what standards to be determined by fusion center operators and not shared publicly—could be flagged for questioning, monitoring, or observation. Since private databases are often error-prone and not subject to consumer control or review, Citron's "garbage in/garbage out" dictum means the system would generate a relatively high number of "false positives"—flagging innocent individuals for further scrutiny or surveillance based on faulty information. The ACLU report points out that even if fusion centers obtain the unrealistically high accuracy rate of 99 percent, in the U.S. population of 300 million citizens with a hypothetical 1,000 terrorists at large, 990 of the terrorists will be "caught"—as will *3 million* innocent Americans. "We have decided we want to live with more false positives than negatives," says Citron. "This approach relies on crude algorithms which mean that, for a large number of people, you're going to be pulled aside."

If, as most Roundtable panelists agreed, "the horse is out of the barn" for fusion centers, then the need for effective legal oversight and vigilant public scrutiny is compelling. The Roman poet Juvenal once asked, "Who will guard the guardians?" Ultimately, the experts concluded, there will need to be some kind of online presence "watching the watchers."

Anatomy of a Meltdown

Figuring out what led to today's economic mess could hold the best clues for moving forward—and averting the world's next financial crisis.

By Patrick A. McGuire

SOME CALL IT A BLACK HOLE. OTHERS USE THE MORE SINISTER METAPHOR of "a dark market." Robert Rhee, an associate professor at the University of Maryland School of Law who teaches corporate finance and corporate ethics says flatly "so much of the financial universe out there is unknown territory."

His law school colleague, Prof. Michael Greenberger, the former federal regulator and now oft-quoted explainer of the economic meltdown for NPR and 60 Minutes, speaks of "a shadow market." This is a market, he says, that is understood by few, including top Wall Street insiders. Many of them, he says, had such little appreciation for the details of their risky practices that they not only caused unprecedented losses in the national and world economies, but wiped out tens of millions—in some cases hundreds of millions—of dollars from their own personal wealth.

"It's crystal clear," says Greenberger, "that except for some of the people doing the trading, at the highest levels the CEOs, the top officers absolutely did not understand what was happening."

“There has to be a relationship between risk and return. But proper risk taking is where Wall Street fell down.”

—Robert Rhee

Exactly what was happening?

As policy makers in Washington sift through the debris of derailed derivatives and default swaps for answers to that question, Maryland School of Law faculty such as Greenberger and Rhee see a common cause for the meltdown.

“The biggest legal aspect to what’s happening now is the lack of regulation and the ineffectiveness of regulations,” says Rhee. “Aside from that, the larger causal mechanisms of this crisis remain outside of the law.”

Of course, most mechanisms require lubrication for them to work. In this case, according to a Maryland Law graduate who is now a prominent consultant to the financial industry in regulatory and governance services, the gears of this crisis were greased by bad judgment at the highest levels of government.

“The rampage in derivatives was an outgrowth of the Fed’s ‘easy money’ policies,” says Ellyn Brown ’80, a current member of the board of directors of NYSE-Euronext, Inc., the publicly traded entity that owns and operates the New York Stock Exchange and the pan-European stock exchange.

She speaks of “the federal legislative and executive branches’ ill-thought-out and mostly-uncoordinated promotion of home ownership as an absolute good,” as further fuel to the meltdown. That, and what she sees as Congressional resistance to adequate oversight of Fannie Mae and Freddie Mac.

Brown, the Securities Commissioner for the State of Maryland from 1987 to 1992, cites economist Robert Samuelson who “gives perhaps the most organic explanation of the genesis of today’s crisis: ‘Taking financial stability for granted, money managers, bankers, traders, government officials and ordinary investors did things that destroyed financial stability.”

Once the derivatives market took off, adds Brown, “extending to the over-the-counter market so that small town pension funds found themselves—perhaps unknowingly—in the market, derivatives then became a major part of the problem and contributed enormously to the market’s plunge.”

President Barack Obama said that the financial crisis has been a result of “gaps and weaknesses in the supervision and regulation of financial firms [that] presented challenges to our government’s stability of our financial system.” In response, the Obama administration introduced a proposal to reform the regulation of financial markets with five key objectives: to promote robust supervision and regulation of financial firms; establish comprehensive supervision and regulation of financial markets; protect consumers and investors from financial abuse; improve tools for managing financial crises; and raise international regulatory standards and improve international cooperation.

Since President Obama’s plan was proposed in June, many experts who have analyzed the crisis point to regulation as the solution, financial industry expert Christine Edwards ’83 cautions that simply creating more regulations won’t help.

“As a country we tend to legislate for the last problem and not for the next,” says Edwards, whose practice as a partner in the Chicago firm of Winston and Strawn focuses on regulatory policy issues in the securities and banking industries. “Trying to look forward to determine what is the next meltdown ready to happen is much more difficult.”

The question of too much or too little regulation, she notes, or the type of legislation needed right now is less pressing than asking whether or not the right regulatory structure is in place to clearly inform and monitor key financial industry players and consumers. She points to a current “patchwork quilt” of regulations that duplicates efforts between federal, state, and local agencies.

Perhaps the gaudiest patch on that quilt—and one that most financial experts now point to as an immediate cause of the current economic chaos—was the passage in December 2000 of The Commodity Futures Modernization Act. A bill introduced by former Republican Sen. Phil Gramm, then chair of the Senate Banking Committee, it was embraced by both sides of the aisle, passed by wide margins and was signed into law just before Christmas by President Bill Clinton.

In effect it deregulated the trading of derivatives and default swaps by telling the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) that they had no authority at all over them.

“Nobody’s complaining that stock trading put us in this meltdown, or that regulated futures trading put us here,” says Greenberger, who served on the CFTC from 1997 to 1999. “It’s this dark-market derivative product, these private, bilateral transactions. Over the counter derivatives are today an $800 trillion notional value market. We [the CFTC] thought when it was $27 trillion it ought to be regulated. We lost that battle.”

Derivatives are not new. Rhee says that derivatives have a Jekyll-Hyde duality. They can be used to hedge (mitigate) risk, but they can also be used to magnify risk-taking. As opposed to an investment in a commodity itself, a derivative is a bet on the future price of some other asset or index, such as stock or interest rates. The plainest instruments are futures and options. While investing in the standard commodity future remains regulated, newer non-traditional forms such as credit default swaps are private transactions that are legally traded “off the books” and subject to no official scrutiny.

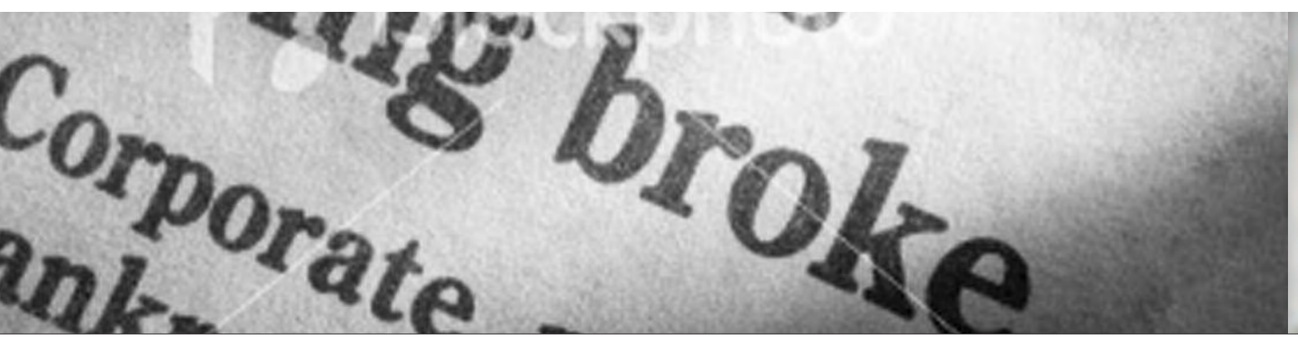
That the risk-hedging derivative suddenly became an economy busting risk of its own derives from its use as a hedge against the failure of investments in sub-prime mortgage securities. According to Greenberger there is more investment money today tied up in derivatives than in stocks and bonds. Given that the supposed fail-safe factor of sub-prime mortgages—housing prices will never fall—actually failed, and given that no one was monitoring the domino effect of thousands of sub-prime mortgage foreclosures on other aspects of the economy, the risks taken seem now in hindsight to be so obviously reckless.

“There has to be a relationship between risk and return,” notes Rhee, a former New York and London investment banker with a Wharton MBA. “But proper risk taking is where Wall Street fell down.”

Rhee, who served as vice president in the investment banking arm of Swiss Re in New York, as well as an investment banker with UBS Warburg and Deutchebanc Alex. Brown, an investment banker at UBS Warburg in London and a real estate investment banker at Deutchebanc Alex Brown in Baltimore, believes unwise risk taking was a product of a subtle change in the way Wall Street firms have organized themselves in the last several decades.

“A while ago,” he says, “Wall Street was made up of private companies that had their own capital. And it used to be you were using the firm's capital so it was preserved in a way that made sense. People had a greater interest in their stock in the company. The thought was ‘I can’t blow up my own firm because a large part of my wealth is tied up in it.’”

But, he notes, many of those firms began going public or were merged with larger commercial banks with large balance sheets.



"Now it's shareholder's capital you're using," says Rhee. "The capital you can invest is whatever the executive committee or management will allow you to use in terms of your own trading activities. The risk-to-return relationship got skewed heavily. It encouraged excessive risk taking. That explains AIG [American International Group] It was as if people were saying, 'What we're doing now is just printing money. The more policies we write the more we sell this type of stuff. My year end bonus will be X million.' Under those circumstance, people inside that group were probably getting caught up in this."

It was, he says, a classic house of cards and the incentives were perverse; even substantially employee-owned firms like Bears Stearns were not immune to the new psychology of risk-taking.

"We were in a bubble. The bubble psychology is that you don't think you're the person without the seat when the music stops. It's always going to be someone else. I can't imagine that these bank executives were immune from that type of psychology.

"Don't forget some of these bank executives had hundreds of millions invested in their own firms, so if it blew up, it blew up their entire net worth. It leads me to think they knowingly engaged in excessive risk taking without knowing how excessive their risk taking really was. They did not think the risks would be magnified down every chain of every transaction."

How could supposedly savvy financiers so delude themselves? Greenberger says it was shockingly simple.

The sub-prime mortgage loans that were bundled together and sold as securities and collateralized debt obligations were, like most loans, classified as senior, mezzanine and junior debt. As such they received credit ratings from organizations such as Moody's and Standard and Poor's.

"They get Triple A ratings for the most secure senior debt," says Greenberger, "but that's senior debt of sub-prime mortgages, given to people who can't afford to pay back. But many of the 'brilliant minds' are believing they've got Triple A and Double A paper and they believe these are conservative, solid investments and they sell them as that. People who buy them think they are conservative, solid investments, not understanding it was a Triple A rating of junk."

The frosting on this devil's food cake was the credit default swaps.

Those who granted the sub-prime mortgages, and those who bought them, took out what was essentially an insurance policy—so that if the mortgage holder defaulted, the insurance paid back their investment. Though these policies were issued by insurance companies, they were not called insurance because then they would fall under state and federal insurance regulations. Labeled credit default swaps, they helped move the delusion from the mortgagers to the insurers.

"They thought, 'We're getting premiums for this insurance for which we will never have to pay anything because there are no risks,'" says Greenberger. "It wasn't just AIG. Everyone was issuing insurance, calling it swaps and not setting aside reserves and it blew a multi-trillion hole in the economy. They never thought housing prices would go down. When housing prices went down the insurance got triggered. But unlike regulated insurance, they never had to set aside reserves to pay those policies. And you're talking about a minimum of $25 billion in insurance."

The insurance became the ultimate factor in self-delusion, says Rhee. "I think the insurance fed into the psychology and affected executive opinions as to how much risk they'd exposed themselves to."

He says a former colleague on Wall Street who specializes in bond insurance, told him recently, 'We didn't know X would lead to Y would lead to Z would lead to a would lead to B. We knew X was a problem. Or Y was a problem. But we didn't connect all the dots.'"

Wall Street traders understood the individual problems, says Rhee, "but there was no one sitting at the top saying 'Okay, I see the trail of transactions and if something happens the trail of transactions will fall in a domino pattern like this.'"

In the meantime, a unified strategy for resolving the problem has remained elusive. Many want to concentrate on and punish villains. Banks decry talk of new, day-to-day regulatory monitoring and insist Wall Street be trusted to voluntarily clean up its mess. Reformers want tough new legislation enacting more restrictive regulations. Greenberger is concerned that President Barack Obama's economic advisors are too close to Wall Street and are taking half-steps toward re-regulation.

"They want a private clearing house," he notes. "I say that's not enough. You have to have public exchange trading for these derivatives so you have transparency. Not only to The Fed but to the public as a whole. It gives you an added set of regulatory tools that are being overlooked."

One proposal would create a systemic risk regulator—someone whose job would be literally to oversee these myriad off-the-books trades and find potential danger points or dominoes about to fall.

"The concept is totally appropriate given the level of sophistication of institutional products," says Edwards. "What happened in the system that caused meltdown was the piling on of risk from several different segments of the market simultaneously that were not looked at as a cumulative matter. They acted as accelerants rather than as what they were designed to do."

Brown agrees that the general idea of regulating for systemic risk seems unavoidable "now that we've actually come face-to-face with the realities of our interlocked financial system." However, she says, "We need to think not only about counterparty risk and all of the relationships that made Bear Stearns, Lehman Brothers, and Merrill Lynch so vulnerable, but also to the nature of global systemic risk, across institutions and markets worldwide."

The entire issue of risk regulation, she says "is perilous territory—the danger being that over-regulation will impede the innovation necessary to grow our economy. By definition, she says, innovation of any sort requires risk.

"It is one thing for government regulators to be concerned about, and move to regulate outrageous leverage ratios," says Brown. "It is quite another thing to ask a regulator to assess the risk inherent in a new financial product or service. Having been a regulator myself I know very well that regulation is a defensive art form. Regulators aren't out there in the market thinking up new products and services. The regulators' mission is to prevent problems. Thus, the regulators' inclination is to say 'no' rather than risk being wrong by embracing anything new and different."

Derivatives ...
Ripped from the Headlines

WHEN PROFESSOR MICHAEL GREENBERGER first offered his course on "Futures, Options, and Derivatives" two years ago, just 20 students applied for 25 spaces and the course was only offered in the spring. Flash forward to 2009: 101 students enrolled and the class was offered both semesters.

That number includes Max Romanik, who said the class was especially gratifying because the subject matter is ripped from headlines. "It's a great experience when the professor can walk in with a statute that came off the presses that day. You don't have to study bizarre hypotheticals. The real world is happening all around you right now," he noted.

The ongoing global financial crisis has clearly spurred an increase in student demand for law courses on derivatives, the complex instruments that crippled credit markets and wreaked havoc on bank balance sheets. Students are "hungry to decipher how derivatives contributed to the crisis and excited about the prospect of being involved in the regulatory overhaul that could lead to a new phase in the history of global finance," according to a May 7 news article by Reuters, which profiled Greenberger's course at the School of Law.

Echoing the sentiment of many of her classmates, Meaghan McCann told Reuters, "I wanted to understand how it happened and what it will mean for our future ... and what we can do to make sure it doesn't happen again."

HIGH ANXIETY

Illustration by Kevin McSherry

During uncertain times, like those we live in today, it's tempting to look to the future for reassurance ... and for answers to the problems currently besetting us. Are there ways to temper the downsides of technology's unrelenting march forward? Can we find a way to fix the global financial mess we find ourselves in?

In the essays that follow, two Maryland Law scholars bring thoughtful analysis to these issues. Danielle Citron shows how "cyber mobs" have brought hate crimes to a frightening new level, and suggests how the law can be employed to better protect victims. And Robert Rhee looks at what went wrong in the world of investment banking—and holds out hope for the emergence of a new kind of business model.

Civil Rights
in the Cyber World

By Danielle Citron

THE INTERNET IS A DOUBLE-EDGED SWORD. While it can facilitate the empowerment of people who often face discrimination, it can also be exploited to disenfranchise them. Anonymous mobs employ collaborative technologies to terrorize and silence women, people of color, and other minorities, effectively denying them the right to participate in online life as equals.

Consider the case of Bonnie Jouhari, a civil rights advocate and mother of a biracial girl, who was targeted by a white supremacist website. The site posted her child's picture and Ms. Jouhari's home address and showed an animated picture of Ms. Jouhari's workplace exploding in flames next to the threat that "race traitors" are "hung from the neck from the nearest tree or lamp post." After Ms. Jouhari and her daughter began receiving harassing phone calls at home and work, she left her job and moved. Today, neither she nor her daughter maintains a driver's license, voter registration card, or bank account because they fear creating a public record of their whereabouts.

Another example: Kathy Sierra, a programmer and game developer, who maintained a popular blog on software development called "Creating Passionate Users." In 2007, anonymous individuals attacked Ms. Sierra on her blog and two other websites. Posters threatened rape and strangulation. They revealed her home address and Social Security number. Doctored photographs featured her with a noose beside her neck; another depicted her screaming while being suffocated by lingerie. After the attack, Ms. Sierra canceled speaking engagements and feared leaving her yard. In April 2009, she explained that her "blog [once] was in the Technorati Top 100. I have not blogged there—or anywhere—since."

Many view these attacks as isolated instances of cyber bullying. But anonymous mobs accomplish something far more systematic than that. Rather than attacking a random mix of individuals, cyber mobs disproportionately target women. The non-profit organization Working to Halt Online Abuse explains that, from 2000 to 2007, 72.5 percent of the individuals reporting cyber harassment identified themselves as women and 22 percent identified themselves as men. Half of those individuals had no relationship with their attackers. Similarly, the National Center for Victims of Crimes' Stalking Resource Center reports that approximately 60 percent of online harassment cases involve male attackers and female targets. Cyber mobs often target lesbian and/or non-white women with particular virulence. They also focus on men of color, religious minorities, and gay men.

> **WHEN ONLINE MOBS** attack individuals because of their race, gender, or other protected characteristic, they damage individuals, their groups, and society in unique ways.

When online mobs attack individuals because of their race, gender, or other protected characteristic, they damage individuals, their groups, and society in unique ways. To be sure, traditional criminal and tort law can reach some of their injuries. Criminal law punishes online harassment and threats. For instance, the Violence Against Women Act (VAWA) punishes anyone using a telecommunications device without disclosing his identity and with the intent to "abuse, threaten, or harass any person who receives the communication." Tort law would provide redress for a cyber harasser's actions. Individuals can bring defamation suits if online lies ruin their reputations. They can seek money damages for emotional distress that a defendant intentionally or recklessly causes. They can bring privacy claims against defendants who publicly disclosed private facts that would be "highly offensive to the reasonable person."

These traditional remedies are important—but they have a limited role. Defamation law, for instance, remedies a plaintiff's reputational harm caused by online lies, but does not address the stigma and economic injuries that individuals experience. Nor does it redress the harm that targeted groups and society suffer in the wake of bias-motivated conduct.

Civil rights laws are designed to respond to such harm. Antidiscrimination laws guarantee the right to be free of unequal treatment on the basis of race, gender, or other protected characteristics. Civil rights remedies would combat a cyber mob's interference with individuals' right to work and participate in discourse online as equals.

Existing civil rights laws provide tools to combat anonymous online mobs. The Civil Rights Act of 1968, for instance, punishes "force or threat[s] of force" designed to intimidate or interfere with a person's private employment due to that person's race, religion, or national origin. Courts have sustained convictions of defendants who made death threats over employees' e-mail and voicemail.

Current law should be amended to criminalize online threats made because of a victim's gender or sexual orientation. Congress could amend VAWA pursuant to its power to regulate an instrumentality of interstate commerce—the Internet—to punish anonymous cyber mobs that threaten individuals because of their gender or sexual orientation. The Department of Justice would presumably support such a development as it currently encourages federal prosecutors to seek hate crime penalty enhancements for defendants who subject victims to cyber harassment because of their race, color, religion, national origin, or sexual orientation.

Civil rights laws also sanction private lawsuits against cyber mobs for their discriminatory actions. Courts have allowed plaintiffs to bring claims under section 1981 of Title racial minorities from "making a living" in their chosen field. And targeted individuals can sue attackers under Title VII of the Civil Rights Act of 1964 for preventing them from making a living because of their sex.

Many will, of course, oppose a cyber civil rights agenda on the grounds that it would interfere with our commitment to free speech. A cyber civil rights agenda, however, comports with First Amendment doctrine and free speech values. The First Amendment does not prohibit states from using criminal and civil law to forbid threats. Threats of violence made via new technologies are not immunized from penalty on free speech grounds.

Not only does a cyber civil rights agenda comport with First Amendment doctrine, it is consistent with prominent free speech theories that emphasize the importance of autonomy, cultural innovation, and the promotion of truth. Restraining cyber gender harassment is essential to defending the expressive autonomy of its victims. Although harassers express themselves through their assaults, their actions directly implicate their targets' self-determination and ability to participate in political and social discourse. Self-expression should receive little protection if its sole purpose is to extinguish the self-expression of another.

Some may insist upon protecting cyber gender harassment from regulation to promote truth. Cyber gender harassment, however, has little to do with an exploration of truths. Rape and death threats tell us nothing about the victims—no truths are contested there. This is equally true of denial-of-service attacks and Social Security numbers. Even where online harassers make factual assertions, the anonymity of online communications prevents the marketplace of ideas from performing its curative function.

In short, cyber mobs inflict serious injuries that law must address. Combating their cyber assaults requires a comprehensive approach, one that includes traditional criminal prosecutions, tort remedies, and civil rights actions. Together, traditional remedies and antidiscrimination laws have great potential to deter, punish, and remedy the abuse of online mobs. We can harness law's coercive power to reverse the backward-looking trend without sacrificing our commitment to free speech.

Professor Danielle Citron's scholarly interests include information privacy law, cyberspace law, and administrative law, with an emphasis on legal issues surrounding the government's reliance on information technologies. Before teaching, Professor Citron worked as a litigation associate at Willkie, Farr & Gallagher. She served as a law clerk for two years for the Honorable Mary Johnson Lowe of the U.S. District Court for the Southern District of New York. (For the full talk from which this essay was excerpted, visit: www.law.umaryland.edu/cyber)

Reflections on the
Financial Crisis
and Investment Banking

By Robert J. Rhee

THE FINANCIAL CRISIS OF 2008 HAS PERMANENTLY changed Wall Street. Conventional wisdom says that Wall Street—the "bad guy" in the simple narrative—enabled the crisis by providing the financial technology, primarily securitization and derivatives, that brought the global financial system to its knees. I don't disagree, except to suggest that there is nothing intrinsically wrong with these financial instruments. But I take a slightly different perspective on the relationship between Wall Street and the crisis. With the caveat that in hindsight we are all an Einstein or a Buffett, I posit that one of the root causes of the crisis (and there are many) is the way Wall Street organized itself during the 1990s and beyond.

During this period, Wall Street was consolidating at an aggressive pace. The consumption of firms was startling. Consider these venerable names from the not so distant past: Alex. Brown, Bankers Trust, SG Warburg, Donaldson Lufkin & Jenrette, Montgomery Securities, First Boston, JP Morgan, Salomon Brothers, Smith Barney, Paine Webber, just to name a few. Many of these firms were consumed by commercial banks, which had enormous balance sheets but lacked the intellectual capital and operational scale to break into the top-tier of investment banking. These banks included Deutche Bank, UBS, Credit Suisse, Swiss Bank, Barclays, Bank of America, Chase Manhattan, and the predecessors of Citigroup. These firms brought an enormous amount of new capital to the activity of investment banking.

Like most financial executives I accepted the idea that global finance required intense concentration of capital and a global network of intellectual capital and cross-selling capabilities within a single firm structure. I was wrong. And so too were the titans of Wall Street who engineered this mega-catastrophe. The consolidation combined stable commercial banking with volatile investment banking. The investment banking business now had far more capital. During this time as well, vast pools of private capital, private equity and hedge funds, also came into prominence and were searching for returns. With the convergence of these factors, Wall Street was primed to take larger risks.

In hindsight as I try to make sense of what is happening now, my moment of insight should have been a valuation study I performed for a large financial institution. The question concerned the value of a large fixed income trading operation. There were no comparable public companies, and so no easy answer to the question. The work required an implied sum-of-the-parts analysis of bulge bracket (full service) investment banks. The study's essential conclusion was that proprietary trading operations, the type of activity that is at the epicenter of this crisis, are and should be lowly valued. Even then, this made intuitive sense: Such activity requires large amounts of capital and are highly risky, thus necessarily resulting in low valuations.

When investment banks were independent, capital was precious and judiciously applied. True, Wall Street is littered with firms that self-destructed as a result of poor risk management. But notable accidents and malfeasances aside, the risks of proprietary trading were contained by an appreciation of risks that could blow out one's capital. This fear instilled discipline. In the past, Wall Street had focused on high value, high return activities—some of which such as mergers and acquisitions advisory require little capital.

The balance radically changed when Wall Street consolidated in the 1990s. Firms were getting larger, fueled by an occasional shot of anti-regulatory steroids. A landmark event was the conversion of Goldman Sachs from a partnership to a public company. The logic is

apparent: bigger meant more capital; more capital required greater returns; greater returns are achieved only with greater risk. There are only so many highly profitable, lower risk opportunities to go around. Where would the returns come from? The banks had to take bigger risks, and this meant that the focus would turn to trading—that lowly valued, highly risky business, which was "juiced up" with high leverage to yield greater profits. Just as there was a global credit bubble that fueled the housing bubble, there was a glut of capital on Wall Street, with commercial banks, investment banks and private capital all searching for returns. The resulting financial pressures transformed Wall Street from a value-added, intermediation service provider to an enormous hedge fund.

The organizational changes on Wall Street left it highly vulnerable to a seismic shift in market volatility, just the way a decade before Long-Term Capital Management was vulnerable to the abnormal disturbance in the fixed income market triggered by the Russian debt default crisis. This time around, in the wake of the housing crash and credit illiquidity, it is no surprise that the first casualties were the independent investment banks that did not have the capital to withstand a catastrophic shock: Bear Stearns, Merrill Lynch, and Lehman Brothers. These firms did not have the balance sheets to survive a financial shock, or at least to delay an ultimate demise. I would never have thought that in one fell swoop, these firms would go the way of the dinosaur. Nor could we have foreseen that Goldman Sachs and Morgan Stanley, the two surviving patricians of American investment banking, would be forced to convert to banking holding companies.

So what is the future of investment banking? Any answer is speculative. We know that financial institutions cannot be allowed to take the type of risks they took. In hindsight, it was a continuing game of Russian roulette and ultimately the odds caught up. We do not know whether universal banks will voluntarily divest their investment banking operations. My guess: probably not. Investment banking is an alluring activity, and there may still be an appeal of cross-selling financial products under a one-firm umbrella. In any event, it seems that the genie is out of the bottle. Investment banking is no longer the prime domain of American firms, and the financial market is truly globalized. We can only better regulate the risk-taking activities.

MY HOPE IS THAT, from the ashes of the 1990s and the financial crisis of 2008 Wall Street, will come a different business model.

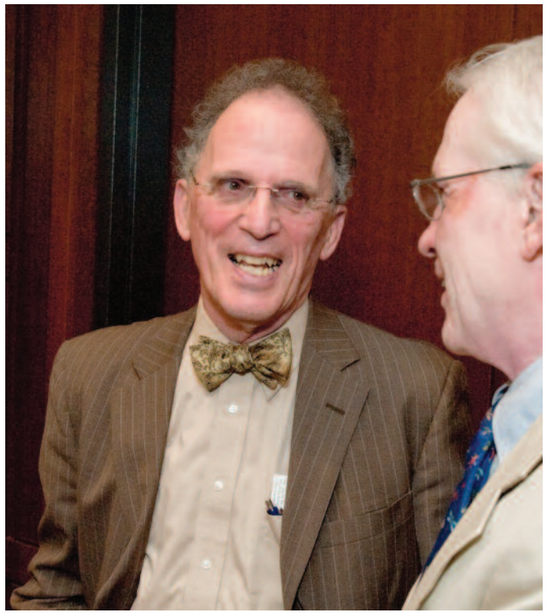
My hope is that, from the ashes of the 1990s and the financial crisis of 2008 Wall Street, will come a different business model. Market forces have brought down an industry of titanic scale, and Wall Street is certainly far smaller now than it was just a year ago. There is no longer a glut of capital in search of returns (indeed we have the opposite problem in that capital is seeking shelter from risk). In life as in fashion, what was once old is sometimes the "new" new. A possible future of investment banking may be a return to the old model of focusing on intermediation services, high profitability products, measured risk taking, and a renewed appreciation that capital is the lifeblood of a firm and it cannot be so easily staked. In any event, the crisis does not mark the death of Wall Street, or capitalism for that matter, but only its transformation into a new form.

Assistant Professor Robert Rhee's scholarly interests include risk-focused economic analyses of legal and social problems. He has served as a law clerk on the U.S. Court of Appeals for the Third Circuit, and a trial attorney in the Honors Program of the U.S. Department of Justice. Professor Rhee also has worked as a vice president in financial institutions investment banking at Swiss Re, as an M&A investment banker at UBS Warburg in London, and as a real estate investment banker at DeutcheBanc Alex Brown in Baltimore.

The Art of Imperturbability

Roger Wolf has been pivotal to the advance of Alternative Dispute Resolution.

By Martha Thomas



When Roger Wolf lived in Tunisia in the 1960s, he played basketball on a team in the hillside village of Le Kef, traveling with team members to nearby towns for games. A Peace Corps volunteer working on a public housing construction project at the time, Wolf recalls that the lessons on the basketball court were as valuable as his work assignment. As he got to know his fellow teammates and others in the community, he says, their differences—he was a Jewish American, a recent Harvard graduate living in an Arab country—didn't seem to matter. "They knew me as a person foremost, and we were able to talk about issues in a way that wasn't hostile."

Whether Wolf arrived in Tunisia with an empathetic ear, or honed his listening skills while he was there, may be a kind of chicken-and-egg puzzle, but his ability to hear—and understand—both sides of an issue defines his approach to the law, and his popularity as a teacher.

Wolf, who retired from the School of Law last spring, served on the faculty since 1982. In 2001, he founded the Center for Dispute Resolution at the University of Maryland (C-DRUM), which has served not only the schools at the University, but courts and agencies throughout the state. He also ran the school's mediation clinic. Last year, he was the first recipient of the Robert M. Bell award for outstanding contribution to Alternative Dispute Resolution (ADR) from the State Bar Association.

"Roger's personal influence on advancing the acceptance of Alternative Dispute Resolution within the legal community cannot be underplayed," says Rachel Wohl, executive director of the State's Mediation and Conflict Resolution Office. "He was a pivotal leader at several critical turning points in the development of ADR in Maryland," she adds, noting that Wolf was one of the key drafters of Title 17 of the Maryland Rules, which advances the use of ADR in the courts.

She and others point out that it's common today for most civil and family cases in Maryland to be referred to mediation at some point before they go to trial. They credit Wolf's tireless efforts, in no small part, for this seismic shift.

"I LIKE TO THINK that I listen to people, and I can get people to listen to each other."

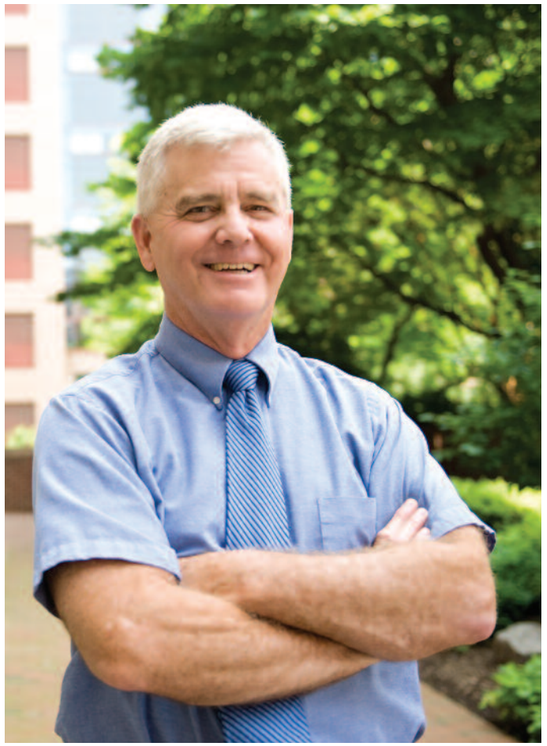
For Wolf, mediation and ADR has been a perfect fit. He has been described by a fellow mediation trainer, Harry Fox, as someone "who raises imperturbability to an art form."

Says Wolf, "I like to think that I listen to people, and I can get people to listen to each other." ADR, he says, is "not so much avoiding conflict as learning how to deal with it in a productive way."

After the Peace Corps, Wolf attended law school at George Washington University, and went to work for the Neighborhood Legal Services Program as a Reginald Heber Smith Fellow. Advocating for tenants' and consumer rights in Lyndon Johnson's Washington, he says, was gratifying. "We felt we were on the side of what was right."

Wolf went on to head the Clinical Law program at Catholic University, and took a hiatus from legal teaching to purchase a farm and operate a vineyard in Knoxville, MD, though he continued with private practice in Frederick. A few years after his return to teaching, at the University of Maryland, he volunteered to act as the reporter for the nascent Maryland State Bar special committee on dispute resolution. The work launched his leadership efforts into ADR.

Brian Tucker '02 says his former teacher "embodies the best of the legal profession, by combining intelligence, creativity, and compassion." Says Tucker: "I see in Professor Wolf someone who is using the law to do good things."



A Creative Problem Solver

Longtime dean James Forsyth shepherded a generation of students through times of crises.

"I could appreciate the validity of an argument well made." **–James Forsyth**

Such a humane person. Reasonable, calm, patient beyond words. One of the most solid human beings I know.

Such were the heartfelt accolades expressed by UMLaw students for longtime dean James Forsyth, upon his retirement last spring.

In his role as assistant dean for registration and enrollment, Forsyth often encountered students during times of crisis—perhaps they were struggling to pay a tuition bill, or complete enough credits for graduation. In response, he was "flexible, kind, and open to creative problem solving, but not a pushover," says Dawna Cobb, assistant dean for student affairs.

Forsyth joined the School of Law's administration as assistant to the dean in 1969. At that time, most of the students were white males from Maryland, presided over by two deans and about 20 faculty members. (One of Forsyth's duties was making sure the school's manual typewriters were in order so students could type their papers and exams.) Today's student body is much more diverse, both in terms of race and gender, as well as geographically, with more than 40 percent of students hailing from outside Maryland.

The shift has brought new expectations from students, says Forsyth. Previously, he says, "institutions could get away with marginal services. Students went to class and that was it." Today, "the school expects more of itself. There are a number of extra-curricular and student activities. It's more than just a place to go to school."

Over the years, Forsyth was closely involved in these transformations. In the early 1970s, he was director of financial aid for the University of Maryland's professional schools, and later worked as an admissions officer for the School of Law. In 1984, he became responsible for registration and student records, before moving on to head the Office of Registration and Enrollment.

"As a student, you never realized all that he did to keep the Law School running," says Kenneth Aneckstein '96, a partner at DLA Piper in Baltimore who has taught estate planning and estates and trusts as an adjunct faculty member for seven years. "As an adjunct, I came to understand how just and wise he is. He takes into account the needs and concerns of various constituencies while keeping the School's best interests at heart."

One thing that never changed, says Forsyth, whose mission involved ensuring that students took and passed the required courses, is law students' ability to frame an argument. "I sometimes admired it when students came into my office and presented a lawyer-like case to convince me of why I should let them do something," he says. Though he didn't always bend the rules, he says, "I could appreciate the validity of an argument well made."

Judging from the outpouring of student responses at Forsyth's retirement (gathered into a booklet by Cobb), he'll be sorely missed. "He's never one to seek the spotlight or be the center of attention," wrote one student, "but he's had a huge impact on the lives of students here."

—Martha Thomas

The School of Law continues to attract leading legal minds to join its community of innovative scholars. Emerging and nationally known stars enhance the school's outstanding academic reputation.

Promotions

Two faculty were recognized for their contributions to the law school with promotions this year.

DANIELLE CITRON, VOTED "BEST TEACHER" by the law school's students in 2005, was promoted to Professor of Law and tenured. Her scholarly interests include information privacy law, cyberspace law, and administrative law, with an emphasis on legal issues surrounding the government's reliance on information technologies. Her 2009 article "Cyber Civil Rights," in *Boston University Law Review,* was cited as "groundbreaking" and became the subject of an on-line symposium at the Concurring Opinions legal blog. Other publications within the last year include "Law's Expressive Value in Combating Cyber Gender Harassment" in *Michigan Law Review,* "Open Code Governance" in *University of Chicago Legal Forum,* and "Technological Due Process" in *Washington University Law Review.*

PETER DANCHIN WAS PROMOTED TO ASSOCIATE PROFESSOR. Before joining the faculty at Maryland in 2006, he was lecturer and director of the human rights program at Columbia University's School of International and Public Affairs. He has served as a foreign law clerk to Chief Justice Arthur Chaskalson of the Constitutional Court of South Africa. His areas of interest are international law, human rights law, and comparative constitutionalism. His recent articles have been published or are forthcoming in the *Columbia Journal of Transnational Law, the Yale Journal of International Law,* and the *Harvard International Law Journal.* His most recent book, UNITED NATIONS REFORM AND THE NEW COLLECTIVE SECURITY (with Horst Fischer), was published last year by Cambridge University Press.

VISITING LAW SCHOOL ASSISTANT PROFESSOR RUSSELL McCLAIN joined Maryland Law in 2006 as Coordinator of the Academic Achievement Program. Prior to joining the School of Law, he served as a Legal Writing instructor at Howard University. Professor McClain is currently developing a work in progress relating to the discharge of student loans in bankruptcy under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. His research agenda includes a follow up to this article, relating to the student lending paradigm generally, and, specifically, comparing student lending to predatory consumer lending. Professor McClain was recently honored by the University of Maryland Chapter of the Black Law Students Association as the 2006-2007 Alumnus of the Year. He graduated Order of the Coif from the School of Law in 1995, going on to practice civil litigation in Los Angeles, and specializing in entertainment, consumer, and bankruptcy law.

New Faculty

Three distinguished and highly qualified scholars and teachers have joined the School of Law faculty this year.

ASSOCIATE PROFESSOR OF LAW MICHELLE HARNER arrives from the University of Nebraska College of Law, where she served as an Assistant Professor of Law and was voted "Professor of the Year" by the upperclass students for two consecutive years. Harner is widely published and lectures frequently on various topics involving financially distressed entities and related legal issues. Her most recent publications include "Corporate Control and the Need for Meaningful Board Accountability," (94 *Minnesota Law Review,* forthcoming 2010); "The Corporate Governance and Public Policy Implications of Activist Distressed Debt Investing," (77 *Fordham Law Review* 703, 2008); and "Trends in Distressed Debt Investing: An Empirical Study of Investors' Objectives," (16 *American Bankruptcy Institute Law Review* 69, 2008). Harner earned a JD at the Moritz College of Law at The Ohio State University, where she served as Executive Editor of the Ohio State Law Journal and also was a member of the Order of the Coif. She earned a BA in English and Political Science at Boston College.

AFTER JOINING MARYLAND LAW IN 2008 AS ITS FIRST HEALTH LAW & BIOETHICS FELLOW, LESLIE MELTZER HENRY is now an Assistant Professor of Law. Her scholarly interests lie at the intersection of bioethics, health policy, and law. Henry's current research explores the use of "dignity," and considers the degree to which it has any moral force as a normative concept in law and bioethics. Her most recent article in this area is "Human Dignity and Bioethics," which was published this summer in the *New England Journal of Medicine.* Henry's bioethics scholarship also includes a chapter in THE OXFORD TEXTBOOK OF CLINICAL RESEARCH ETHICS entitled "What is Fair Subject Selection?" (with James Childress), and an article in the *American Journal of Bioethics,* which discusses the "Undesirable Implications of Disclosing Individual Genetic Results to Research Participants." Before coming to the law school, Henry was a Greenwall Fellow in Bioethics and Health Policy at the Johns Hopkins Berman Institute of Bioethics. She earned a JD at Yale Law School, an MSc in the History of Medicine at the University of Oxford, and a BA, *summa cum laude,* in both History and Medical Ethics at the University of Virginia. She is currently a doctoral candidate in the Department of Religious Studies (bioethics specialization) at the University of Virginia.

ASSISTANT PROFESSOR OF LAW AMANDA PUSTILNIK comes to the law school from Harvard Law School, where she served as a Climenko Fellow and Lecturer on Law. She conducts research in the area of law and science. Her current research includes work on models of mind in neuroscience and criminal law and on torts by semi-autonomous machines. Pustilnik graduated from Yale Law School in 2001, where she was an editor of the *Yale Journal of International Law* and published notes on law and science. She then practiced litigation with Covington & Burling, where she focused on pharmaceutical and securities regulation. Prior to practicing law, Pustilnik clerked for the Hon. Jose A. Cabranes on the United States Court of Appeals for the Second Circuit. She graduated Harvard College, *magna cum laude,* and Phi Beta Kappa, with a concentration in History of Science. She also served as the John Harvard Visiting Scholar at the University of Cambridge, Emmanuel College, where she was affiliated with the History and Philosophy of Science department.

Faculty Publications, Presentations, and Honors

The School of Law's faculty has a well-deserved reputation for producing outstanding legal scholarship, as evidenced by the rich array of books, articles, working papers, and conference presentations they complete each year. The entries on the following pages represent only a sampling of the diverse scholarly activities of our academic community. For a more complete listing and actual links to articles, visit ***www.law.umaryland.edu/scholarship.***

Taunya Lovell Banks published the book chapter "Balancing Competing Individual Constitutional Rights: Raising Some Questions" in LAW AND RIGHTS: GLOBAL PERSPECTIVES ON CONSTITUTIONALISM AND GOVERNANCE (Penelope E. Andrews & Susan Brazilli, eds., Vandeplas Publishing 2008) and the articles "Dangerous Woman: Elizabeth Key's Freedom Suit - Subjecthood and Racialized Identity in Seventeenth Century Colonial Virginia" in 41 *Akron Law Review* 799 (2008); and "Trampling Whose Rights? Democratic Majority Rule and Racial Minorities: A Reply to *Chin* and *Wagner,*" 43 *Harvard Civil Rights-Civil Liberties Law Review* 127 (2008).

Barbara Bezdek contributed the book chapter "Putting Community Equity in Community Development: Resident Equity Participation in Urban Redevelopment" in LAW, SOCIETY AND PROPERTY, (Robin Paul Malloy and Nestor Davidson, eds., Ashgate 2009); and presented "Stable Housing for Seismic Economic Times: Renewing Rental Housing at 'This Defining Moment' in U.S. Affordable Housing Policy," for St Louis University Public Law Journal Symposium "Property Rights and Economic Stability: A Necessary Connection?" (February 2009); and "The Alinsky Prescription: Law Alongside Organizing," for John Marshall Law Review Symposium on Law & Organizing (April 2009).

Brenda Bratton Blom published "Conversations on 'Community Lawyering': the Newest (Oldest) Wave in Clinical Education" *Washington University Journal of Law and Policy* (Fall 2008) (with Susan Brooks, Nancy Cook and Karen Tokarz).

David Bogen published the articles "Mr. Justice Miller's Clause: The Privileges or Immunities of Citizens of the United States Internationally," 56 *Drake Law Review* 1051 (2008) and "Indigenous Peoples and the Law - Ancient Customs: Modern Dilemmas," 2009 *The Verdict* vol. 1, 43-51 (Queensland Law Society, 2009); and presented "Rebuilding *Slaughter-House:* the Case's Support for Civil Rights" at the Fourteenth Amendment: The 140th Anniversary Symposium at the University of Akron School of Law, Akron, Ohio (October 23, 2008).

Patricia Campbell presented "Intellectual Property Rights and Legal Attacks on Counterfeit Goods" at the Symposium on Avoiding, Preventing, and Detecting Counterfeit Electronic Parts, Center for Advanced Life Cycle Engineering (CALCE), A. James Clark School of Engineering, University of Maryland (September 9-10, 2008).

TAUNYA LOVELL BANKS

Danielle Citron published the article "Open Code Governance," 16 *University of Chicago Legal Forum* 355 (2008) and "Cyber Civil Rights," 89 *Boston University Law Review* 61 (2009), and will publish "Law's Expressive Value in Combating Cyber Gender Harassment," 108 *Michigan Law Review* (forthcoming).

Douglas Colbert published the article "'The Right to Counsel: Delay Jeopardizes Fairness,' U.S. Supreme Court's ruling in *Rothgery v. Gillepsie County,*" *Texas National Law Journal* (August 11, 2008).

Karen Czapanskiy published the article "The Right of Public Participation in the Law-Making Process and the Role of the Legislature in the Promotion of This Right" in 19 *Duke Journal of Comparative and International Law* 1 (2008) (with Rashida Manjoo) and will publish FAMILY LAW: CASES, TEXT, PROBLEMS (forthcoming 2009) (with Ellman, Kurtz, Weithorn, Bix, and Eichner); and "Chalimony" *NewYork University Journal of Law and Social Change* (forthcoming).

Kathleen Dachille published the Law Synopsis "Pick Your Poison: Responses to the Marketing and Sale of Flavored Tobacco Products" (Tobacco Control Legal Consortium, February 2009) and presented "Flavored Tobacco Products: Legislative Activity and Options" and "Fire-Safe Cigarette Laws: How This Legislation Swept the Country Like Wildfire" at the National Conference on Tobacco or Health; Phoenix, Arizona (June 11, 2009).

Abraham Dash presented "The Common Law of England," Crofton Country Club, Crofton, Maryland (March 14, 2009).

Martha Ertman presented "The Upside of Baby Markets" and "Developing a Scholarly Agenda" at the National University of Kyiv-Mohyla Academy School of Law, Kiev, Ukraine (November 2008); "Incorporating Sexual Orientation Issues into Teaching Contracts," at the AALS Annual meeting in San Diego (Jan. 2009); and "Race Treason: The Untold Story of America's Ban on Polygamy" at Washington University in St. Louis's workshop on Family, State and Public Policy (March 2009) and at the University of Baltimore Law School's Legal Feminism Conference (April 2009).

Don Gifford published the article "Impersonating the Legislature: State Attorneys General and *Parens Patriae* Product Litigation," 49 *Boston College Law Review* 913 (2008); and presented "The Future of Public Nuisance Litigaiton," to the U.S. Chamber of Commerce—Institute for Legal Reform Webinar (December 11, 2008); "Public Nuisance Litigation: Protecting the Public or Expanding Products Liability Law," at the National Center for State Courts Justice Roundtable (November 21, 2008); and "Public Nuisance Litigation—The State's New Regulator" at the American Bar Association Annual Meeting, Tort Trial and Insurance Practice Section (August 10, 2008).

David Gray presented "A No-Excuse Approach to Transitional Justice" at the conference on Conflict and Transitional Justice at Emory University (September 19-20, 2008).

Michael Greenberger served as a panelist "The Impact of Financial Markets on the Price of Oil" Organization of the Petroleum Exporting Countries (OPEC) and the European Union (EU) Workshop, Vienna, Austria (April 30, 2009); and presented "Toward a New Theory of Regulation: Ferment in the Face of Crisis," The Tobin Project's Second Government & Markets Conference, Yulee, Florida (April 24-26, 2009).

Deborah Hellman published the article "Prosecuting Doctors for Trusting Patients," 16 *George Mason Law Review* 701 (2009); gave presentations on her book WHEN IS DISCRIMINATION WRONG? at the Syracuse University Law School Faculty Colloquia Series (February 16, 2009), at the Association of Practical and Professional Ethics Annual Meeting (March 6-7, 2009), and at the Woodrow Wilson International Center for Scholars (Sept. 16, 2008); and presented the paper "Willfully Blind for Good Reason" at the University of Toronto Legal Theory Workshop (January 16, 2009) and the University of Southern California Law School (March 13, 2009).

Diane Hoffmann published the articles "Treating Pain v. Reducing Drug Diversion and Abuse: Recalibrating the Balance in Our Drug Control Laws & Policies" in 1 *St. Louis University Journal of Health Care Law and Policy* 231 (2008); "Achieving Quality and Responding to Consumers—The Medicare Beneficiary Complaint Process: Who Should Respond?" 5 *Indiana Health Law Review* 9 (2008) (with Virginia Rowthorn); "Building Public Health Law Capacity at the Local Level," 36 *Journal of Law,* Medicine & Ethics 6 ((Special Supp., Fall 2008) (with Virginia Rowthorn); and will publish the article "Physicians Who Break the Law" in *St. Louis University Law Journal* (forthcoming 2009).

DIANE HOFFMANN

Susan Leviton published the article "Preventing Schools from Becoming the Pipeline to Prison," 42 *Maryland Bar Journal* 3 (May/June 2009) (with others); and presented "The Urban Child in Context: Families, Schools, Neighborhoods and Lives" at the Urban Child Symposium, University of Baltimore School of Law, Baltimore, Maryland (April 2, 2009).

Paula Monopoli published "Why So Slow: A Comparative View of Women's Political Leadership," 24 *Maryland Journal of International Law* 857 (2009); presented "Gender, Power & the Presidency," Moderator, Symposium on the 60th Anniversary of the Universal Declaration of Human Rights, University of Maryland School of Law, Baltimore, Maryland (October 24, 2008); and "Gender and Constitutional Design," Symposium on Election Law, Journal of Race, Religion, Gender and Class, University of Maryland School of Law, Baltimore, Maryland (October 16, 2008). Professor Monopoli was also an invited member of the Thought Leaders Roundtable convened at the University of Texas Summit on Women and the Law (April 30, 2009).

ROBERT PERCIVAL

Robert Percival published the new sixth edition of his best-selling casebook Environmental Regulation: Law, Science & Policy (2009); and presented the 15th Annual Lloyd K. Garrison Lecture at Pace University School of Law (April 1, 2009). He also made presentations at the law schools at Harvard, Duke, American University and Vermont, addressed the IUCN Academy of Environmental Law in Mexico City (Nov. 10, 2008), and the Congress of the World Jurist Association in Kiev, Ukraine (March 24, 2009). In May 2009 he served as an environmental expert for the U.S. State Department in China, delivering 14 lectures in six Chinese cities at universities, think tanks, consulates, the Chinese Ministry of Environmental Protection, and the Guangzhou Lawyer's Association.

Michael Pinard served as a panelist for "The Future of Clinical Legal Education" at the University of Maryland Clinical Law Program's 35th Anniversary Conference, Curriculum Reform: Linking Theory and Practice, (March 6, 2009); and "A Comparative Perspective on the Collateral Consequences of Criminal Convictions: Lessons the United States Can Learn from England and Wales, Canada and South Africa," at the New York University School of Law Faculty Workshop (February 18, 2009); and presented "The Civil Rights Dimensions of Prisoner Reentry: The Impact on Individuals, Families and Communities" as the Dr. Martin Luther King Commemorative Speaker for the Public Interest Law and Policy Speakers Series, Washington University School of Law (January 22, 2009).

Garrett Power published the article "Regulatory Takings: A Chronicle of the Construction of a Constitutional Concept," 23 *Brigham Young University Journal of Public Law* 221 (2009); and authored the entries "Takings" for the Encyclopedia Of Supreme Court History (2008), "Philip Perlman" in the Yale Biographical Dictionary Of American Law (2009), and "Regulatory Takings" in the Encyclopedia Of The Supreme Court Of The United States (David S. Tanenhouse ed. 2008).

Peter Quint published the articles "The Universal Declaration and South African Constitutional Law: A Response to Justice Arthur Chaskalson," 24 *Maryland Journal of International Law* 40 (2009); "60 Years of the Basic Law and its Interpretation: An American Perspective," 57 *Jahrbuch des öffentlichen Rechts der Gegenwart* 1 (2009); and "David Currie and German Constitutional Law," 9 *German Law Journal* 2081 (2008).

Shruti Rana published the articles "'Streamlining' the Rule of Law: How the Department of Justice is Undermining Judicial Review of Agency Action," 2009 *University of Illinois Law Review* 101 (2009) and "From Making Money Without Doing Evil to Doing Good Without Handouts: The Google.org Experiment in Philanthropy," 3 *Journal of Business & Technology Law* 87 (2008); and her article "Fulfilling Technology's Promise: Enforcing the Rights of Women Caught in the Global High-Tech Underclass," was reprinted in Women, Science and Technology, A Reader in Feminist Science Studies (Mary Wyer, et. al. eds., Routledge, 2008).

William Reynolds published the articles "Survey of the Law of Cyberspace—Electronic Contracting Cases 2007-2008" in 64 *The Business Lawyer* 199 (2008) (with Juliet Moringiello); "The Story of the Full Faith and Credit Clause," 41 *Maryland Bar Journal* 34, (Nov/Dec 2008); and presented "E-Commerce in Maryland" at the Maryland Judicial Institute, Annapolis, Maryland (October 16, 2008). His book Understanding Conflict of Laws (3d ed.) (with William Richman) was translated into Japanese.

Robert Rhee published the articles "Towards Procedural Optionality: Private Ordering of Public Adjudication," 84 *New York University Law Review* 514 (2009) and "Tort Arbitrage," 60 *Florida Law Review* 125 (2008).

Karen Rothenberg published the article "Recalibrating the Moral Compass: Expanding 'Thinking Like a Lawyer' Into 'Thinking Like a Leader' in 40 University of Toledo Law Review 411 (2009); and presented "Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom" at the 2009 Annual Deans' Workshop/Conference of Chief Justices Midyear Meeting, Scottsdale, Arizona (January 26, 2009).

Jana Singer published the book Resolving Family Conflicts (Ashgate Press, 2008) (edited with Jane Murphy); the article "Dispute Resolution and the Post-divorce Family: Implications of a Paradigm Shift" in 47 *Family Court Review* 363 (2009); and presented "Hearing Children's Voices in Family Court Processes: Which Way is Forward?" at the Association of Family and Conciliation Courts Annual Conference (May 28, 2009) and "The Evidence is In: The Results of the University of Maryland School of Law Alumni Survey," at the Conference on Retaining and Advancing Women in Challenging Economic Times, University of Maryland School of Law (April 24, 2009) (with Paula Monopoli).

Maxwell Stearns presented "How Narrow is the Narrowest Grounds Doctrine?," Midwest Law and Economics Annual Meeting, Chicago, Illinois (October 4, 2008); and "The Median Voter Theorem and Universal Voting Participation by Judges," with Eugene Kontorovich, Midwest Law and Economics Annual Meeting, Chicago, Illinois (October 3, 2008); and will contribute the book chapter "An Introduction to Social Choice" in Elgar Handbook on Public Choice (Daniel A. Farber and Ann Joseph O'Connell eds., forthcoming).

Rena Steinzor published the article "Capture, Accountability, and Regulatory Metrics," 86 *Texas Law Review* 1741 (2008) (with Sidney A. Shapiro) and presented "Government Performance and Results Act, Regulatory Metrics, and Government Accountability," Panelist, 2008 ABA Administrative Law Conference, Washington, DC (October 17, 2008).

Lawrence Sung published the article "In the Wake of Reinvigorated U.S. Supreme Court Activity in Patent Appeals," 4 *Journal of Business & Technology Law* 97 (2009).

David Super published the article "Laboratories of Destitution: Democratic Experimentalism and the Failure of Anti-Poverty Law," 157 *University of Pennsylvania Law Review* 541 (2008); presented "Against Flexibility," UCLA Law School Faculty Workshop, UCLA Law School, Los Angeles, California (October 17, 2008); and will publish "Defending Mortgage Foreclosures: Seeking a Role for Equity," 42 *Clearinghouse Review* (forthcoming 2009).

Michael Van Alstine published the article "Taking Care of John Marshall's Political Ghost" in 53 *St. Louis University Law Journal* 93 (2008) and contributed the book chapter" The Role of Domestic Courts in Treaty Enforcement: Summary and Conclusions," in The Role Of Domestic Courts In Treaty Enforcement: A Comparative Study (D. Sloss, ed., Cambridge University Press, forthcoming 2009).

Katherine Vaughns presented "Removal to Federal Court: How Defendants Do It. How Plaintiffs Stop It." at the The Bar Association of Baltimore City's Milton Talkin Lecture Series (January 7, 2009).

Ellen Weber presented "Reluctance of and Restrictions on Physician Prescribing," Obstacles to the Development and Use of Pharmacotherapies for Addiction (November 7, 2008); "Disability Discrimination and Health Privacy Standards," University of Maryland School of Medicine, Addiction Psychiatry Fellows Forum, Baltimore, Maryland (December 22, 2008); and "Protecting Civil and Health Privacy Rights of Patients with Addiction" at the Maryland Society of Addiction Medicine, Baltimore, Maryland (March 7, 2009). She also received the 2009 Public Citizen Award from the National Association of Social Workers – Maryland.

DAVID SUPER

Deborah Weimer served as a panelist for "Medical-Legal Partnerships in the Law School Setting" at the 2009 AALS Annual Meeting (January 9, 2009) and presented "Current Issues Facing Women Living with HIV" at the UMB Interdisciplinary Conference for Law, Medicine, Social Work, Nursing, and Pharmacy students (January 11, 2009).

Marley Weiss participated in the Roundtable Session, "Towards More Effective Labor Governance" at the Conference on Humanizing Trade/humaniser le commerce, sponsored by the Global Labour Governance (GLG) Project, Montreal, Quebec, Canada (April 27-29, 2009); and presented "The Employee Free Choice Act" at the National Lawyers' Guild Regional Conference, University of Maryland School of Law, Baltimore, Maryland (March 28, 2009).

Gordon Young published the article "Justifying Motive Analysis in Judicial Review," 17 *William & Mary Bill of Rights Journal* 191 (2008); and authored the entries "Jurisdiction Stripping" and *"United States v. Klein"* in the Encyclopedia of the Supreme Court of the United States (Gale 2008).

2008 champion Brian Robinson presented this year's award to Dana Backlund.

Joey Tsu-Yi Chen was one of the finalists for best oral argument and won the award for best brief.

In an overflowing Courtroom, former Myerowitz champions Marc DeSimone '04 (left) and Megan Nichols '05 (right) received seats of honor in the jury box.

Students Make Winning Arguments

MARCH 11 WAS A DAY DEVOTED to appellate advocacy. At noon, the final round of the 39th annual Morris Brown Myerowitz Moot Court Competition took place in the Ceremonial Courtroom, with Dana Backlund earning the nod for best oral argument from judges Diana Gribbon Motz of the U.S. Court of Appeals for the Fourth Circuit, Albert J. Matricciani, Jr. '73 of the Court of Special Appeals of Maryland, and Phyllis D. Thompson of the D.C. Court of Appeals. In addition to finishing as a runner-up for best argument, Joey Tsu-Yi Chen was awarded the prize for best brief.

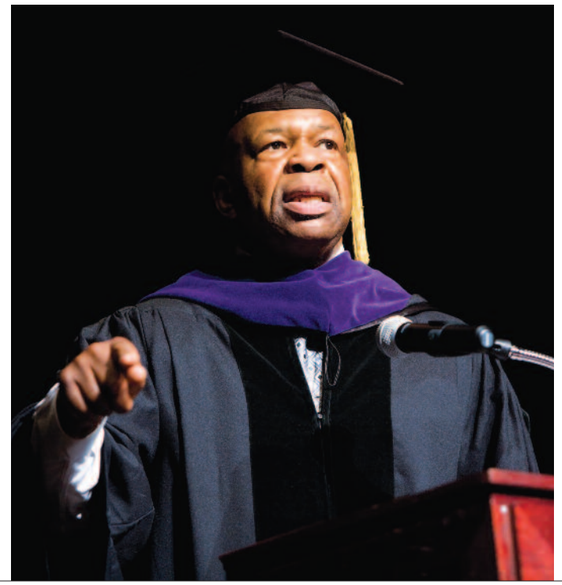
That evening, the Moot Court Board presented the dinner-discussion "Appellate Advocacy: Legal Specialty or Legal Necessity?"

Judge Matricciani, Mike Leotta of the U.S. Department of Justice, Kevin Arthur '87, Jessica V. Carter '92, and Peter Nothstein '05 offered their personal and professional insights on the changing nature of appellate advocacy and the need for the legal profession to address these changes.

BLSA Celebrates Intellectual Relevance

SEVERAL HUNDRED STUDENTS, alumni and faculty gathered Feb. 21 for the annual Black Law Students Association Banquet, dedicated this year to the theme "Intellectual Relevance."

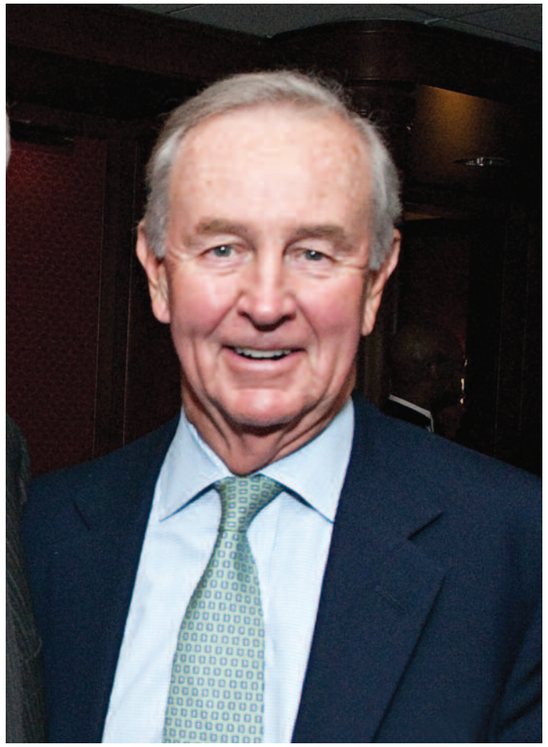
Julie D. Goodwin '82, Morgan State University's General Counsel, was named Practitioner of the Year. The Hon. Wanda Heard '82, Associate Judge for Baltimore City Circuit Court (pictured receiving her award from BLSA Parliamentarian Nancy Oyedele '10), was named Alumna of the Year. U.S. Representative Donna Edwards, the first African American woman to represent Maryland in Congress, delivered the keynote address. The Impact Award, given to a member of the Law School community who has contributed a significant amount of time and assistance to help in the furtherance of BLSA's programming and overall goals, was presented to the Office of Institutional Advancement as a whole.



2009 Commencement

THE SCHOOL OF LAW'S MAY 15 Hooding Ceremony was enough to stop traffic – literally. The faculty and 235 members of the Class of 2009 gathered before the ceremony in Westminster Hall, then processed together down a closed Fayette Street to the Hippodrome Theatre, where an overflow crowd of family and friends awaited.

U.S. Congressman Elijah Cummings '76 delivered the keynote address and Lisa Elder and Bob Maddox, Presidents of the Day and Evening graduating class, respectively, announced that a record 96 graduates had contributed to the Class Gift. Later, graduates attended UMB's Commencement Ceremony at the 1st Mariner Arena, where the speaker was Maryland Governor Martin O'Malley '88.



An Investment in Law Pays Unexpected Dividends

Celebrating the distinguished career of Joe Hardiman ’62, one-time CEO of NASDAQ.

“I’ve watched in awe as the economies of the world have grown closer together.” **–Joseph Hardiman**

Joseph Hardiman ’62 didn’t intend to go into the investment business. But, following his own advice, he kept his mind open to possibilities—and went on to become president and CEO of the NASDAQ stock market.

“I went to law school with the full intention of spending my career in the law, as a practicing attorney,” says Hardiman, and his career illustrates a tenet he says is as true today as it was 40 years ago. Law degrees, he says, “clearly do not confine one to the practice of law.”

After earning his JD at the School of Law, he began his career conventionally enough, practicing law in Baltimore for five years. By 1968, though, Hardiman began to widen his scope. He was recruited by the Baltimore-based banking house Robert Garrett and Sons, Inc., which was later sold to Alex. Brown and Sons. There, Hardiman quickly rose through the ranks, ultimately becoming Alex. Brown’s managing director and chief operating officer.

The work prepared him well for what was to come: In 1987, he signed on to lead the investment world’s foremost self-regulatory organization, the National Association of Securities Dealers (NASD)—most familiar for its wholly owned subsidiary, NASDAQ.

Hardiman said at the time that he would stay at least five years, but no more than 10. “I had the strong feeling that the person at the helm has to be there five years to make an impact … but if you stay more than 10 years, you’ve probably stayed too long,” he says. During his nine and a half years at the helm of NASDAQ, it grew into the world’s second largest private equity market, second only to the New York Stock Exchange. Daily volume of trading increased from 130 million shares to more than 550 million shares.

Under his leadership, NASDAQ adapted corporate governance requirements and increased listing standards for all NASDAQ National Market companies, improving protection for investors and paving the way for parity of treatment under state blue sky laws. He’s also credited with introducing a marketing and customer driven ethic into an organization that was traditionally more bureaucratic.

Throughout that time, and in particular since his retirement in 1997, Hardiman has been an active philanthropist in Baltimore and beyond. He serves on the Board of the University of Maryland Baltimore Foundation, Inc., where he is a representative to the investment committee that manages the system-wide endowment. He was also chair of the Board of Visitors during the fundraising campaign that gave the School of Law its much-admired building. And it was his generosity that served as the catalyst to establish the new Karen H. Rothenberg Fund for Public Service. Last spring, Hardiman was honored with the University of Maryland School of Law Distinguished Graduate Award.

In reflecting on his career over the last five decades, Hardiman says, “I’ve watched in awe as the economies of the world have grown closer together, keeping pace with their clients.” Another marvel has been the impact of technology. When he started, the floor-based exchanges saw transactions of about 2 million shares per day, and they had to close one day a week to keep up with the paperwork. Now markets are able to handle transactions of billions of shares daily.

Those beginning their financial careers today “have challenges we did not have, and that is sobering,” he concedes. But he stresses the value that the law’s Socratic method of teaching has to any number of professions. “Today,” Hardiman says of those hitting the job market, “there is a wide range of possibilities.”

—Christine Grillo

Cool Amidst the Chaos

When times are most devastating, Juliet Choi ’03 steps in.

By Christine Grillo

When disaster strikes, Juliet Choi ’03 does some of her best work. A senior director at the national headquarters of the American Red Cross (Washington, D.C.), she helps to manage and execute national disaster relief operations, supporting chapter networks and thousands of volunteers, and serves as the principle-in-charge for NGO strategic partnerships for the Red Cross. At one point last fall—as hurricanes Fay, Gustav, Hanna, and Ike overlapped—she oversaw simultaneous relief efforts in 14 states with more than 5,000 volunteers.

Just a few months earlier, the Midwest flood season was one of the worst in more than 15 years. And that same year saw more than 160 tornadoes in the U.S., one of the largest numbers in a decade. During national-scale disasters, Choi helps to administer the day-to-day exchange of immense amounts of information among local chapters, government, and non-governmental agencies.

> **“I WANT EVERYBODY** to have access to the table.”

After earning her law degree in 2003, Choi set out to pursue the practice of civil rights, not disaster relief. After completing a clerkship with the Hon. Dennis M. Sweeney (Circuit Court, Howard County), she began a two-year civil rights fellowship at the Asian American Justice Center in Washington, where she focused on national origin discrimination. Then, a year into her fellowship, while working to amend the Stafford Act to ensure protection of limited English speakers in times of disaster, Hurricane Katrina hit.

“I started receiving random phone calls from Gulf Coast Asian communities,” says Choi. She made nearly a dozen trips to the Gulf Coast, attending community meetings, fact-finding, and doing legislative legal research. This turn was “completely unintentional and unplanned,” she says, “but it made a lot of sense to get into Katrina advocacy.”

Working with immigrants from Southeast Asia—Vietnamese and Cambodians mainly—Choi saw at close range how devastating language barriers can be. Many of the Asian hurricane survivors were not aware of emergency support services, most had never heard of FEMA, and some were fearful of asking for assistance. “You see the issue to the nth degree when all systems are overwhelmed and dysfunctional,” says Choi.

When her fellowship ended in 2006, she joined the Red Cross. She sees systems change advocacy—as a critical part of her career. Her work is complex, but her goal is simple: She wants to help build robust, flexible frameworks that provide equal access to all. “I want everybody to have access to the table.”

Choi’s position as a senior director at the American Red Cross often takes her into the field in the wake of natural disasters.

A Celebration of Leadership

ON MAY 7, MORE THAN 200 MARYLAND LAW GRADUATES and friends gathered at Baltimore's Center Club for "A Celebration of Leadership," an event honoring Dean Karen Rothenberg and distinguished Law School graduates. Over the past decade, Dean Rothenberg – who plans to return to the faculty after a sabbatical – led the Law School to new heights of achievement. Paul Bekman '71, Chair of the Board of Visitors, announced at the celebration that more than 160 individuals contributed over $180,000 to establish the Karen H. Rothenberg Fund for Public Service.

Dean Rothenberg with U.S. Congressman Elijah Cummings '76

(left) Alumni Board President Jason St. John '00

(below) Ed Feingold '58, Alice and Eugene Schreiber '60, Faith Feingold

(left) Renowned photographers Larry Gibson, Professor of Law, and The Hon. Robert M. Bell, Chief Judge of the Maryland Court of Appeals

(below) University System of Maryland Chancellor William E. Kirwan with Distinguished Graduate Award recipient Joseph Hardiman '62

(left) Board of Visitors Chair Paul Bekman '71

(right) Osborne Scholar Bryan Saxton '09 and Board of Visitors member Hamish Osborne '86

CURRENT AND FORMER STUDENTS from the School of Law's Evening Program came together at their annual reception on Feb. 13, swapping war stories about juggling classes and full-time jobs, and honoring a pair of individuals for their service to the program. The Evening Program Service Award, recognizing an individual's exemplary contributions of service and leadership to the students of the evening program, was awarded to Senior Judicial Fellow John F. Fader, II '68. The A.J. Bellido de Luna Leadership Award, established by the 2004 Evening Division Graduates to recognize leadership shown by a graduating Maryland Law student, was presented to Elizabeth A .Green '09.

SINCE ITS INCEPTION FIVE YEARS AGO, the Leadership Scholars Program has provided financial support for more than 150 outstanding students. Christine Edwards '83 (pictured), who permanently endowed a full scholarship for a student concentrating in business law, spoke at a May 8 luncheon honoring the Class of 2009 Leadership Scholars. More than 80 current and past Leadership Scholars, including Anne B. Gallgher Memorial Scholarship recipient Ryan Palmer '09 (pictured with Peter Holland and Peggy Gallagher), have given to the Leadership Scholars Legacy Endowment to provide support for future Leadership Scholars. With Making an Impact campaign co-Chair Henry Hopkins '68 has pledging to match every dollar made to the endowment, the efforts has already raised more than $73,000.

ON APRIL 7, THE LAW SCHOOL welcomed more than 20 members of the Class of 1959 to a luncheon celebrating the golden anniversary of their graduation. Helping welcome them to the half-century club were more than 40 members of classes who had already celebrated their 50th graduation anniversary, including Victor Laws '41 and Marvin Mandel '42. Mary Katherine Scheeler '53, Chair of the Legacy Council, addressed the gathering.

ON FEB. 6, TOP CHINESE PUBLIC interest lawyer Zhang Jingjing (center, with Environmental Law Program Director Robert Percival, left) and Joel Fedder '58) delivered the Fedder Lecture, "Taking the Long Distance Bus to the Court: A Practitioner's Perspective of Environmental Litigation in China." Known as the "Erin Brokovich of China," Jingjing is Director of Litigation for the Center for Legal Assistance to Pollution Victims. She helped win the largest class-action environmental suit in Chinese history, when more than 1,700 villages in Fujian Province were awarded compensation from a factory that had dumped chlorine and chromium into the water supply. The lecture was supported by the Fedder Environmental Fund, established in 2007 through the generosity of Mr. Fedder and his wife, Ellen.

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University of Maryland School of Law
Black Alumni Second Reunion and Symposium

MORE THAN 200 GRADUATES GATHERED last fall for the School of Law's second Black Law Alumni Reunion, enjoying a weekend of fun, fellowship, and substantive discussions about race, law, and society. A highlight of the weekend was the unveiling of "Thurgood Marshall's Early Career in Maryland: 1933-1937," in the Marshall Law Library. Drawing on three decades of research by Professor Larry Gibson, the permanent exhibit reveals little-known facts and stories about the formative years of Marshall's early law practice, and was unveiled by his widow Cecilia Marshall in a rare public appearance.

A companion exhibit depicted the leadership efforts of Emerson Dorsey '79 and Judge Andre Davis '78, with student leaders of the Black Law Students Association, to have the Law Library named in honor of Justice Marshall. "Our first reunion five years ago was such a success, that we had to have another. At the same time, we sought to make this one more substantive, more meaningful, and more fun. I think we succeeded on all counts," said Dorsey. "We discussed some very important issues in the African American community today, raised awareness about how the Law School faculty is addressing these issues, and reconnected with friend and colleagues from all over the country."

Fall 2009

Campus Happenings

October 1
Law & Health Care Program 25th Anniversary Celebration.

October 3
The School of Law will celebrate the appointment of Dean Phoebe A. Haddon with "The Global Economy, Political Will, and Challenges for International Trade," featuring a keynote address by Ambassador Ron Kirk, U.S. Trade Representative, and an address by Dean Haddon.

October 8
The Environmental Law Program's annual Ward Kershaw Conference, "Regulatory Dysfunction in 3D—Toxic Substances Control Act, Consumer Product Safety Act, and Occupational Health and Safety Act," will explore novel concepts for regulating toxic substances in our homes, workplaces, and natural environment.

October 19-22
UMB Founders Week.

November 4-6
Maryland Public Policy Fellows Program.

November 12-13
The International & Comparative Law Program Conference "Global Governance and Multilateralism" will feature a keynote address by Madeline Albright, U.S. Secretary of State from 1997-2001.

November 13
Environmental Law Program Winetasting Party.

For an updated and comprehensive list of happenings at the School of Law, visit www.law.umaryland.edu/docket

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