Appellate Advocacy Center Secures New Protection for Pretrial Detainees

Inaugural Newt and Jo Minow Debate

$5 Million Bequest from the Dawn Clark Netsch Estate Trust
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On November 10, 2015, Northwestern Law will host the inaugural Newt and Jo Minow Debate Series, on the topic “U.S. Prosecutors Have Too Much Power.”

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The gift endows the Walter and Dawn Clark Netsch Scholarship Fund, which will provide financial aid for students who are interested in pursuing careers in public interest law; it will also support loan repayment assistance for graduates who choose public interest jobs.

18 A Supreme Success

The Appellate Advocacy Center helped bring Kingsley v. Hendrickson, a 7th Circuit case involving the rights of pretrial detainees, before the United States Supreme Court. In June, 2015, the Court issued a 5–4 decision in favor of their proposed standard for evaluating excessive force claims.

50 Jason Strong Exonerated

For seven years, a team of Bluhm Legal Clinic faculty, students, and alumni worked for the release of Jason Strong, wrongfully convicted of murder in 2000.
Earlier this year, we hosted a conference designed to expand dialogue between disciplines. “Bridges not Barriers: The Law-STEM Alliance as a Catalyst for Innovation” brought together scholars, practitioners, scientists, entrepreneurs, and students to discuss ways to facilitate technological innovation. This was part of our ongoing commitment to develop initiatives around the insight that our Law School must educate legal professionals who can understand, navigate, and negotiate the interface of law, business, and technology.

This issue of the *Reporter* details some of the key initiatives underway in this space, including recent successes by students and alumni who earned venture capital for their startups, and some of the very interesting research our faculty is conducting on intellectual property law. The Searle Center on Law, Regulation, and Economic Growth is building a series of databases for scholars to conduct empirical research into patents and standard-setting organizations, because we know how important these types of intellectual assets are to promoting technological innovation.

These and other initiatives are deeply connected to entrepreneurship. Northwestern is at the cutting edge of these entrepreneurial innovations. Chicago is rapidly becoming a technology and entrepreneurship hub, and this is in no small part the result of the broader Northwestern community. If you are interested in learning about how Chicago is becoming an “entrepreneur’s paradise”—*Inc. Magazine*’s description, not mine—take a few minutes to watch a video interview with three prominent Chicago businessmen: Jeff Malehorn, of World Business Chicago; J.B. Pritzker (JD ’93) of the Pritzker Group; and Howard Tullman (JD ’70) of 1871. In a wide-ranging conversation they discuss Chicago’s tech and entrepreneurship ecosystem and how entrepreneurs are changing the world. The interview can be found on the Inc.com website, or at this link: http://bit.ly/1gJDzeu.

At the heart of our approach to legal education is collaboration. This, too, is something we have a remarkable history of encouraging. Elsewhere in this issue you will find stories about alumni, faculty, and students working together to exonerate the innocent, and argue at the highest levels of our judicial system to clarify the rights of pretrial detainees. The scope of our Law School’s activities is broad, but all of our projects and initiatives share a common commitment to partnership and multidisciplinarity.

None of this would be possible without the ongoing support of our alumni community. I thank you, and I invite you to volunteer, join us for one of our events, follow our activities through social media, or visit campus. Or drop me a note—my email address is: daniel.rodriguez@law.northwestern.edu. I would enjoy hearing from you.

Daniel B. Rodriguez
Dean and Harold Washington Professor
Inaugural Newt and Jo Minow Debate to be Held November 10

On November 10, 2015, Northwestern Law will host the inaugural Newt and Jo Minow Debate Series, on the topic “U.S. Prosecutors Have Too Much Power.” The event is presented in partnership with Intelligence Squared Debates.

The debate series was established as part of a $4 million gift from friends and colleagues of Newton N. Minow (JD ’50), Walter Annenberg Professor Emeritus and Life Trustee of Northwestern University.

The first Minow Debate will focus on the level of power afforded to prosecutors in the United States criminal justice system, and examine whether that power ought to be limited. The event, particularly timely given ongoing national discussions about criminal justice reform, is held in partnership with Intelligence Squared Debates, a nonpartisan, nonprofit organization committed to “restoring civility, reasoned analysis, and constructive public discourse.”

Arguing in support of the notion that prosecutors have too much power will be the noted criminal justice expert Paul Butler, a former federal prosecutor, professor at Georgetown, and author of *Let’s Get Free: A Hip-Hop Theory of Justice*. He’ll be joined by Nancy Gertner, former federal judge and celebrated criminal defense and civil rights attorney, who is now a senior lecturer at Harvard.

Arguing against will be David Hoffman, a former federal prosecutor, City of Chicago Inspector General, and now a partner at Sidley Austin. Hoffman will be joined by Reid Schar (JD ’97), a partner at Jenner & Block and a former federal prosecutor who prosecuted former Illinois Governor Rod Blagojevich.

Following his graduation from Northwestern Law, Minow served as law clerk to the Honorable Fred M. Vinson, Chief Justice of the United States, and as assistant counsel to Governor Adlai Stevenson. He was appointed by President John F. Kennedy to the Federal Communications Commission in 1961, where he drafted legislation that expanded the broadcast spectrum, provided the foundation for the Public Broadcasting System, and promoted the implementation of communication satellite technology. He also served as chairman and director of the Public Broadcasting Service, where—among many other accomplishments—he reintroduced and preserved the televised presidential debates.

*PBS NewsHour* anchor Judy Woodruff has said: “There may be no one alive who cares more about America’s democracy than Newton Minow, who was there at the creation of the modern political debate.”

Minow first suggested televised presidential debates in a memo to Governor Stevenson in 1955. After the 1960 debate between Kennedy and Nixon, there were no televised presidential debates until 1976, when Minow and colleagues fought tirelessly to resurrect them. Minow co-chaired the 1976 and 1980 presidential debates and has remained involved with the Commission on Presidential Debates to this day, now serving on its Board of Directors.

“It is difficult to quantify Newt’s extraordinary impact on civil discourse in this country,” said Dean Daniel B. Rodriguez. “This debate series honors his commitment to elevating the public dialogue throughout his career.”

The Newt and Jo Minow Debate is open to all. For tickets, please visit: law.alumni.northwestern.edu/minow
Chicago’s Corporation Counsel Stephen Patton Delivers 2015 Pope & John Lecture

On Tuesday, September 29, Stephen R. Patton, Corporation Counsel for the City of Chicago, delivered the 25th annual Pope & John Lecture on Professionalism to the Northwestern Law community.

In a talk entitled, “Chicago’s Legal Risk: Managing the City’s Toughest Issues from Stop-and-Frisk to Homelessness,” Patton discussed his tenure as head of the city’s 450-person legal department—he was appointed to the position in May of 2011 by Mayor Rahm Emanuel—and described efforts currently underway to manage risk and costs.

Patton explained that he has been bringing a lot of the city’s legal work back in-house, decreasing the need for outside counsel. He also launched the Pro Bono Initiative, securing more pro bono and partial pro bono work from Chicago firms, the success of which, he said, “speaks very highly of the lawyers of this wonderful city.”

Patton told the audience that one of the key elements of his risk management strategy is to look for innovative solutions and collaborations that can serve both justice and the taxpayers’ interests. As an example, he described the partnership with the American Civil Liberties Union to develop new guidelines and reporting mechanisms for police investigatory stops. Often called “stop and frisk,” this controversial approach to policing has come under increased scrutiny in recent years. Rather than litigate the issues, the City of Chicago, the Chicago Police Department, and the ACLU negotiated a legally enforceable agreement designed to ensure and confirm that police practices comply with all laws. The agreement includes training and supervision, data collection and monitoring, independent review by a former federal judge, and monthly data releases.

Patton also discussed efforts to bring justice to the victims of torture under former Chicago police commander Jon Burge, a scandal now entering its third decade. He helped shape the proposal—approved by the City Council earlier this year—that created a $5.5 million reparations fund. The proposal, which was drafted in consultation with plaintiffs and their attorneys, as well as Amnesty International, includes an acknowledgement and an apology from the City Council and from the Mayor, a series of services for victims and their families that include counseling and free city college tuition, and cash reparations.

Prior to heading the Chicago Law Department, Patton was a senior litigation partner at Kirkland & Ellis, where he was the lead lawyer in a number of high-profile cases—including representing the city of Chicago against two lawsuits brought by the state of Illinois for closing Meigs Field in 2003. A graduate of Indiana University with a JD from Georgetown University, Patton has deep civic ties to the city, including serving as president of the Chicago Bar Foundation and Chairman of the Board of Advisors to the Chicago Volunteer Legal Services Foundation.

The Pope & John Lecture Series on Professionalism, established in 1991 by the Chicago firm of Pope & John Ltd., has brought dozens of legal professionals, including former US Attorney Patrick Fitzgerald and former federal judge Nancy Gertner, to campus. The series is part of the Bluhm Legal Clinic’s Bartlit Center for Trial Advocacy and focuses on issues related to legal professional responsibility, including legal ethics, public service, professional civility, pro bono representation, and standards of conduct.
Curriculum Development Grant Expands Entrepreneurship Lab

A curriculum development grant from VentureWell, a nonprofit organization that supports technology entrepreneurship, will allow the Master of Science in Law program to expand its Entrepreneurship Lab, a key component of the program’s unique curriculum.

“We’re very excited about this grant and how it will enhance the MSL program,” said Leslie Oster, clinical associate professor of law and director of the Master of Science in Law program. “VentureWell is widely recognized for helping schools build their offerings in entrepreneurship education; this support is a vote of confidence in the MSL program, and the Entrepreneurship Lab in particular.”

VentureWell sponsors a series of grant programs that are designed to inspire and support young entrepreneurs. The grant for the Entrepreneurship Lab was awarded under the highly competitive faculty grants program, from which only 14 percent of proposals in the Spring 2015 grant cycle were funded.

Now in its second year, the MSL program breaks down traditional educational silos, focusing on the intersection of law, business, and technology as it relates to innovation and entrepreneurialism. The program provides focused, practical, business-centered legal training to STEM professionals through a curriculum designed specifically to help professionals work across disciplines, recognize obstacles and risks, and visualize opportunities for innovation and entrepreneurship.

“A lack of understanding of the relevant legal and regulatory issues can be the biggest obstacle to technological innovation and commercialization,” Oster said. “These topics are all too often missing in entrepreneurship education. We created the MSL program to address this gap.”

The Entrepreneurship Lab is a course designed to teach students how ideas become business enterprises. Students begin by developing product concepts through a series of questions, such as: What is the problem solved by this technology? Who are the customers? What is the value proposition? From there, the students work on the fundamentals of starting a company, from entity formation and basic intellectual property protections, to potential regulatory pathways for their product.

The course is taught by Jonathan Gunn (JD ’13), co-founder and chief technology officer of the medical diagnostics company Briteseed, LLC. Before Gunn came to the Law School, he earned a doctoral degree in Materials Science and Engineering and Nanotechnology from the University of Washington. He has published in the fields of biomedical and biomaterials engineering, holds numerous patents, and has been awarded research fellowships by the National Institutes of Health, the Ford Foundation, and Pacific Northwest National Labs.

As a student at Northwestern, Gunn participated in NUvention, a campus-wide interdisciplinary initiative in which students from different disciplines form teams and spend two semesters collaborating on projects and following their ideas through the commercialization life cycle.

Briteseed is the result of Gunn’s participation in NUvention; his teammates then are his business partners now, and the device they developed has earned their company millions in start-up funding as well as numerous awards.

Last year, students in the Entrepreneurship Lab formed teams that worked on projects related to preventing falls by senior citizens and Methicillin-resistant Staphylococcus Aureus (MRSA) infections in healthcare settings; these projects culminated in team pitches to the Johnson & Johnson Innovation Center and Insight Accelerator Labs.

Thanks to the VentureWell grant, Gunn and Oster are able to expand the program to include a longer development runway, prototyping and testing capacities, and more outside mentorship support from local technology incubators.

“The students in the MSL program this year are very entrepreneurial,” Oster said. “I expect we will see viable ideas emerge from the Entrepreneurship Lab this year. Even beyond that, though, just from participating in the lab, our students will learn a lot about how to put their ideas into practice.” ■

“A lack of understanding of the relevant legal and regulatory issues can be the biggest obstacle to technological innovation and commercialization.” —LESLIE OSTER
Launching New Ventures

Law Students, Alumni Win Big at Northwestern University Venture Challenge

This year’s competition saw three entrepreneurial students and alumni successfully pitch their startups and earn seed funding to help bring their enterprises to market.

Drawing students from across disciplines and campuses at Northwestern together for an entrepreneurial competition is at the heart of Northwestern University Venture Challenge (NUVC). Conceived six years ago, the competition has grown into a vital network of Northwestern-affiliated innovators and leaders.

This year, Opticent Health, launched by Kieren Patel (JD-MBA ’16) won first prize at the NUVC competition on June 4, earning $45,000 in startup capital. Opticent Health is one of three participating startups, including MDAR Technologies and Hazel Technologies, with Law School students or alumni as part of their company leadership.

NUVC is divided into five competitive tracks: business products; consumer products; green energy and sustainability; life sciences and medical; and social enterprise. This year, the competition began with 86 participants and over the course of two rounds they were winnowed down to five, the strongest in each category. In the final round teams give presentations in front of venture capitalists and entrepreneurs from around the country.

Patel’s startup designs and manufactures optical medical devices, specifically creating non-invasive tests for eye disease. In addition to winning first prize across the whole competition, Opticent Health also won first prize in the life sciences and medical track of the competition. Patel, the president and CEO of Opticent, has a PhD from the University of California at Berkeley in Molecular and Cell Biology and has distinguished himself at Northwestern as an Innovation to Commercialization Fellow (I2C), which gives graduate students first-hand experience in handling intellectual property for innovations developed at Northwestern University.

Patel says the idea behind Opticent Health was born from talking to his father, an ophthalmologist of 35 years, who had recently attended a seminar.
in Los Angeles where Northwestern biomedical engineering professor Hao Zhang outlined an imaging technique that would produce richer optical scans by delving into tissue health. During Patel’s I2C Fellowship he worked with Zhang to “translate the technology from bench to bedside.” Zang is now Opticent’s chief science officer.

Patel believes NUVC helped shape the final product: “NUVC was a terrific opportunity to pressure test our company’s business case and commercialization plan with seasoned and knowledgeable judges.”

Jesse Chang (JD-MBA ’16) is also an I2C Fellow and the leader behind MDAR Technologies, which pioneered a new form of motion-contrast 3D scanning that helps autonomous vehicles respond more accurately in difficult driving conditions. MDAR Technologies won third prize in the overall competition and first in the business products track.

Amy Garber (MSL ’15) started Hazel Technologies this year with classmates from her NUvention Energy course. Their product, FruitBrite, seeks to slow down the fruit ripening process, so that produce lasts longer and generates less waste. During the market research phase of the course Garber and her team discovered the retail sector loses billions of dollars annually in lost produce, so they set on a path to focus on retail and distribution as their core markets.

Hazel Technologies won second place in the green energy and sustainability track, and Garber serves as the chief intellectual property officer. That role has proven instrumental in both patenting the technology and managing the financial deals. Garber describes herself as a “liaison between law and technology.”

Garber is a member of the first class of Master of Science in Law graduates at Northwestern Law, a program designed to bring together leaders with science backgrounds and provide business-centered legal training.

NUVC is run primarily by Entrepreneurship in Action, an undergraduate student group, with support from Kellogg Innovation & Entrepreneurship and the Farley Center for Entrepreneurship and Innovation.
Bridges not Barriers: The Law-STEM Alliance as a Catalyst for Innovation

Conference Explores the Relationship Between Law and Innovation

Lawyers, scientists, engineers, doctors, entrepreneurs, students, and faculty gathered at Northwestern Law on June 17, 2015, for a one-day conference titled “Bridges not Barriers: The Law-STEM Alliance as a Catalyst for Innovation.” The conference explored the role of scientists, lawyers, engineers, regulators, and policy-makers in designing creative legal, policy, and regulatory solutions that facilitate technological innovation.

Law School Dean Daniel B. Rodriguez and Dean Julio M. Ottino of Northwestern University’s McCormick School of Engineering and Applied Science launched the conference with a discussion about how interdisciplinary training and collaboration facilitates innovation.

The wide-ranging discussion included current proposed patent legislation, the controversies surrounding how certain aspects of the current patent system are used or abused, and how public policy sometimes leads to unintended consequences.

Law School Dean Daniel B. Rodriguez and Dean Julio M. Ottino of Northwestern University’s McCormick School of Engineering and Applied Science opened the day with a conversation about the relationship between the law and scientific innovation. The conversation was moderated by Esther Barron, the Harry B. Reese Teaching Professor of Law and the director of the Entrepreneurship Law Center in the Bluhm Legal Clinic.

The discussion centered on the importance of interdisciplinaryity in business and in education. Ottino explained that the best science is built on the work of others, and that in technology most new ideas are “mashups” of older ideas. He described a particular approach to developing a mindset that facilitates creation, and how this is central to promoting innovation. Rodriguez made the point that lawyers need to be involved in the innovation process early on, because they understand the legal and regulatory structures that can make or break a product on its way to market, and because they have expertise in mitigating risk.

Rodriguez and Ottino also discussed new and ongoing efforts at Northwestern University to expand and enhance programs that encourage interdisciplinary collaboration.

A panel devoted to biotechnology and medicine, moderated by Professor Laura Pedraza-Fariña, followed the introductory discussion. The discussion centered on identifying emerging issues at
the intersection of law, science, and medicine, with a particular emphasis on issues where barriers exist between the disciplines and examples of how different disciplines have worked together to promote innovation.

Panelists included Professor Teresa Woodruff from the Feinberg School of Medicine; Peter Safir a partner at Covington & Burling; Professor Rebecca Eisenberg from the University of Michigan Law School; and the director of Center for Health Information Partnerships, Feinberg Professor Abel Kho.

Because of the importance of intellectual property to the process of technological innovation, the day’s keynote discussion featured John Veschi, chief executive officer of Marquis Technologies, and Brian Beeler, executive vice president and general counsel of Horizon Pharma. As representatives of different industries, Veschi and Beeler discussed the varying roles intellectual property plays across sectors and how different sectors manage their intellectual property portfolios in light of sector-specific regulations. The wide-ranging discussion included current proposed patent legislation, the controversies surrounding how certain aspects of the current patent system are used or abused, and how public policy sometimes leads to unintended consequences.

In the afternoon, Professor Peter DiCola moderated a conversation on Data Security and Privacy: Drones, Robotics, and Automated Data Collection. The discussion centered on the advantages and disadvantages of privacy by design, risks involved in broad data collection schemes, establishing baselines for privacy in data collection, and international differences in practices and customs regarding privacy.

Panelists included Professor Margot Kaminski from the Moritz College of Law at Ohio State University; Malavika Jayaram (LLM ’95), a fellow at Harvard University’s Berkman Center for Internet and Society; Nicholas Campbell, privacy program manager at Google; and Kimberly Wong, senior counsel at McDonald’s Corporation.

The final panel was moderated by Professor David Dana and was devoted to issues relating to Energy and Environment. The discussion centered on how lawyers deal with fast-developing technologies, and how can scientists bring lawyers into the technological development process earlier to help with aspects of legal and policy risk and regulation.

Panelists included the director of the Argonne-Northwestern Solar Energy Research Center, Northwestern University Professor Mike Wasielewski; faculty co-director of the Emmett Institute on Climate Change and Environment at UCLA School of Law, Professor Ted Parson; Professor Kimberly Gray from the McCormick School of Engineering and Applied Sciences at Northwestern University; and Howard Learner, president and executive director of the Environmental Law and Policy Center.

Professors David Schwartz and James Speta, along with law and doctoral student Ryan Whalen (JD-PhD ’16), led the wrap-up session, noting that two of the major themes of the day were the importance of both developing coherent frameworks and interdisciplinary training.

Video recordings of the Bridges Not Barriers conference sessions are available for viewing and download at: www.law.northwestern.edu/mag-bridges.
Engaging Practice: Judgment, Strategy, Leadership

Center for Practice Engagement and Innovation Hosts First Fall Forum

What does it take for new lawyers to become strategic partners for their clients? What does it mean to possess legal judgment, to engage strategic thinking, and to be a leader in resolving a client’s problem? These questions and more were considered, discussed, and energetically debated during the Center for Practice Engagement and Innovation’s first fall forum, held September 21, 2015.

Launched earlier this year, the Center for Practice Engagement and Innovation (CPEI) is designed as an incubator for ideas about how to help law students develop the critical aptitudes required to succeed in today’s legal marketplace.

Central to the center’s approach is the belief that the varied experiences of people engaged in one or more aspects of the legal services triangle—consumers, providers, and instructors—are essential to this process.

“Solutions for legal education must be informed by ideas coming from practice into the academy,” said James Lupo, professor of practice and the center’s director.

The Engaging Practice: Judgment, Strategy, Leadership forum was designed to do exactly that.

The event brought together leaders from private practice, government attorneys, general counsels, and alternative legal service providers. Attorney talent development professionals and corporate legal operations executives also participated. The varied backgrounds and current points of engaging law practice among the participants resulted in a rich and diverse set of perspectives on the future of the legal professional and the skills new lawyers need to succeed in it. Facilitated by student and faculty leaders, the attendees worked in groups organized around current sector engagement. They collected their ideas and then each group rejoined the forum to debrief and discuss.

“What was important, and fascinating, was how much common ground existed, both as to the kinds of curricular enhancement we should consider and the business dynamics driving the need for integrated innovation,” Lupo said. “The insights and energy conveyed will be a great resource for CPEI and the Law School as we contemplate how best to meet the needs of our students and the profession.”

CPEI grew out of the Law School’s most recent strategic planning process, in recognition of how significantly the legal services sector has changed in the last several years. Lupo described the three main drivers behind those changes: the reorganization of relationships between lawyers and clients, new legal services technologies, and alternative legal service platforms such as legal process outsourcing firms.

Lupo and James Speta, senior associate dean for academic affairs and international initiatives and director of executive LLM programs at Northwestern Law, were charged with looking at how the changing delivery of legal services affects the careers of Northwestern Law students upon graduation and throughout their careers.

“A primary focus of our strategic planning process was to investigate how best to serve our students, our community and our profession not only for today but also for tomorrow,” said Daniel B. Rodriguez, dean of Northwestern Law. “We created CPEI to build connections between the Law School and the practice community, to facilitate a two-way conversation about how we prepare our students so that they are ready to effectively engage in and eventually lead the profession.”

Other law schools are studying the changing legal landscape and while they often provide important research, their work largely fails to actively engage the legal community, Lupo said.

“Our ultimate goal,” he continued, “is to produce actionable intelligence in the form of recommendations for programmatic and curricular innovations that will best serve our students today and throughout their careers.”
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Meet Daren Batke, Associate Dean of Alumni Relations and Development

Northwestern University School of Law is pleased to welcome Daren Batke as the new associate dean of alumni relations and development. He joins us from the University of Chicago Law School, where he was the executive director of development. The Reporter sat down with him to discuss his interests, background, and his plans for alumni relations and development.

Tell us a bit about yourself and what brought you to Northwestern Law.

Prior to Northwestern Law I was at the University of Chicago Law School, where I served as the executive director of development. I’m working on a PhD at the University of Michigan in organizational behavior and management, with a particular focus on the intersection between a university’s external relations work and how student affairs practitioners facilitate student learning outside of the classroom.

I was drawn to Northwestern Law by Dean Rodriguez’s vision for the future of legal education. He understands that the legal world is in a period of incredible change, and that legal education has to evolve accordingly. The school has a long history of curricular and co-curricular innovation, so rather than worry about change, people here embrace it, meet it with new ideas. The school’s optimistic, open culture is really compelling.

What are some of your goals for Alumni Relations and Development?

My goal is to create irresistible opportunities for alumni and external partners to become more deeply engaged with the Law School. Northwestern University already has an incredible world-class community, but I believe the best places have an obligation to grow even stronger. What kinds of new dialogue can we nurture among all of our constituents? How can we make sure we’re collaborating effectively across departments to build new concepts, programs, and relationships? These are the questions in front of me right now.

Any major challenges you anticipate?

Because the Law School has a strong established base of support, our challenge is to communicate not just our needs, but why our institution is worthy of support, whether it is financial or in a volunteer capacity. I believe this is a very collaborative process and look forward to building relationships with alumni, friends, and donors.

Do you have a message for the Northwestern Law alumni community?

I want our alumni to know that they are powerful partners in our mission. Northwestern Law really rests on the shoulders of the community that supports it. Our alumni are instrumental in that role, and I want them to know that while we have great decanal leadership, top notch faculty, and incredible students, we need them in order to really excel as an institution.

What do you like to do when you’re not busy at the Law School?

I really love exploring new restaurants and cuisines, and Chicago is wonderful for that. I also love the water, having grown up and always lived near one of the Great Lakes, so having easy access to Lake Michigan is incredible. Last of all, I’m a big college football fan, so very happy to embrace the Northwestern football spirit!

Does that mean you will relinquish the maize and blue?

This is the most difficult question yet. As a lifelong Wolverine, I must assert my Fifth Amendment privilege.

Well, then, tell us what you have observed about the culture of Northwestern Law.

I see an institution with a unique identity. The students are mature, enterprising, and deeply engaged—in their studies, of course, but also in what is happening in the wider world. There is a spirit of innovation and creative problem solving among faculty, staff, and students that is incredibly inspiring to be around; people here are developing and implementing programs that address head on the emerging realities of legal practice. It’s a tremendously exciting time to join this community and I look forward to contributing to it.
Mark and Kimbra Walter Establish Scholarship Fund

Mark and Kimbra Walter, through their family foundation, have established the Walter Family Foundation Scholarship Fund at Northwestern University School of Law, which will fully fund an entering student with demonstrated financial need for up to three years. The scholarship provides for tuition and related education expenses, as well as living expenses, allowing the recipient to graduate debt free.

Mark Walter earned his JD from the Law School in 1985. He is the chief executive officer and co-founder of Guggenheim Capital, a financial services firm with $210 billion assets under management. Recognized as one of the most influential people in sports business, he is the controlling owner of the Los Angeles Dodgers, is one of the owners of the Los Angeles Sparks, and has controlling interests in insurance and other businesses.

He serves on the board of the Solomon R. Guggenheim Foundation, as a director of the Field Museum, and as a trustee of Northwestern University.

Kimbra Walter, also an attorney, earned a bachelor’s degree in economics from Northwestern in 1985. She serves as a member of the Board of Trustees of the Lincoln Park Zoo, OneGoal, and the Goodman Theatre.

Noted philanthropists, the Walters have supported Northwestern University for many years—Mark’s first gift was $100 in 1986, right after he graduated from the Law School.

“We are committed to educating students regardless of their financial situation,” said Dean Daniel B. Rodriguez. “This very generous gift from our friends and long-time supporters, Mark and Kimbra, will help us expand that promise.”

“‘We are committed to educating students regardless of their financial situation. This very generous gift will help us expand that promise.”

—DEAN DANIEL B. RODRIGUEZ
Northwestern Law has received a bequest of $5 million from the Estate Trust of Dawn Clark Netsch. The gift will endow the Walter and Dawn Clark Netsch Scholarship Fund, which will provide financial aid for students at Northwestern University School of Law who are interested in pursuing careers in public interest law. The gift will also support loan repayment assistance for Northwestern Law graduates who choose public interest jobs.

The Walter and Dawn Clark Netsch Scholarships will be available to Northwestern Law JD students entering in the fall of 2016.

“Dawn was a mentor to many generations of Northwestern Law students,” said Dean Daniel B. Rodriguez. “It was very important to her that students with a passion for public service be able to pursue those types of careers. This bequest helps do that in two ways. It provides scholarship support for students who know, coming in to law school, that they want to work in the public interest following graduation. It also provides post-graduate loan repayment support for students who discover that path while they are here.”

Dawn Clark Netsch (1926–2013) came to Northwestern University in 1944, majored in political science and graduated Phi Beta Kappa in 1948. She went on to Northwestern Law, where she was the first woman to earn the Scholar’s Cup for having the highest grade point average in the first-year class. She graduated in 1952, the only woman in her class.

Elected to the Illinois Constitutional Convention in 1969, Netsch was one of the architects of Illinois’ current state constitution. Elected to the state senate in 1970, she served for eighteen years—representing the 13th and then the 14th district. In 1990, she became the first woman elected to statewide office when she won the race for Illinois Comptroller.

An expert on constitutional law, she was one of the authors of the Illinois state constitution and a co-author of *State and Local Government in a Federal System*, the definitive text.

She joined the Northwestern Law faculty in 1965—the school’s first female faculty member—teaching and mentoring students for more than forty-five years. In 1963, she married internationally acclaimed architect Walter Netsch (1920–2008), best known for his design for the Cadet Chapel at the US Air Force Academy in Colorado Springs, Colorado. They were...
prolific collectors, together creating an important collection of modern American art.

The Netsch Estate Trust gave Northwestern Law artwork from the Netsch collection as part of the bequest, notably “Wallpaper With Blue Floor Interior” by Roy Lichtenstein, which now hangs in the Law School Atrium. The Law School also received some of her campaign memorabilia—a neon sign that was part of her 1990 campaign for Illinois Comptroller now illuminates Harry’s Cafe.

“Dawn often hosted her students at her home. She liked the idea of that tradition living on at the Law School.” Rodriguez explained. “I am delighted that we have a part of their collection here. For me, it’s a reminder of just how fortunate we are that she was a member of our community.”

“It was very important to her that students with a passion for public service be able to pursue those types of careers.”

—DEAN DANIEL B. RODRIGUEZ
New Clinical Fellow: Annalise Buth

M. R. Bauer Foundation Clinical Fellow in Dispute Resolution

Annalise Buth

After a post-law school path that took her from Michigan to Mumbai, Annalise Buth (JD ’07) is thrilled to be returning to Northwestern Law’s Bluhm Legal Clinic. A former student in the Children and Family Justice Center, Buth returns as the first M.R. Bauer Foundation Clinical Fellow in Dispute Resolution, a fellowship created as a part of the foundation’s recent gift to the Clinic’s Center of Negotiation and Mediation.

Buth was working as a litigation associate at Michigan law firm Miller Johnson when she heard about the fellowship. She had been working with the Restorative Justice Coalition of West Michigan implementing a restorative practices program in Grand Rapids schools, and saw an opportunity to continue to concentrate on this emerging and promising approach to conflict, “which focuses on the harm that results from an offense rather than the rule or law that has been broken, and seeks to repair the harm and restore relationships by recognizing the needs and obligations of those affected.”

As a clinical fellow, Buth will focus on the Center’s restorative justice initiatives along with teaching Negotiation and supporting the Center. She is helping to establish the Center’s Restorative Justice Practicum, which will be offered in Spring 2016. In it, students will be working approximately 12 hours per week at field placements, which Buth will help them to secure, as well as taking a corresponding seminar.

“Restorative justice is another important form of dispute resolution, and I want to help students see ways that they can incorporate restorative practices in their work. By developing restorative skills, students will become better advocates,” Buth said.

There will be a range of field placements, which may include working directly with restorative justice practitioners or focusing on program design and implementation.

“In order to really understand restorative justice, students must experience it,” she said. “There has been an increased interest in restorative justice because more people are recognizing that punitive approaches are ineffective. Often you see restorative justice programs in schools or the juvenile justice system, but there is so much potential for developing restorative programs and implementing restorative practices in different areas.”

“As adding restorative justice to our curriculum makes sense for the Center on Negotiation and Mediation. Annie was chosen to lead this effort because of her commitment to restorative justice, her ability to work with partners in Chicago communities, and her excitement about Northwestern Law’s potential to lead the way in teaching restorative justice,” said Lynn Cohn, clinical professor of law and director of the Center.

Prior to working at Miller Johnson, Buth worked for an NGO in India that focused on human trafficking cases, and the Legal Assistance Foundation of Metropolitan Chicago.

Colloquium Brings Law and Economics Scholars to Campus

Earlier this year, Brenda K. and Andrew Z. Soshnick (JD ’88) made a gift of $500,000 to Northwestern University School of Law in support of the study of law and economics and the interrelationships between those disciplines.

An advanced seminar that brings together outside scholars, resident faculty, and Northwestern students for discussions around cutting-edge research in the law and economics field, the Soshnick Colloquium on Law and Economics launched in the Fall 2015 semester. Organized by Professors Ezra Friedman and Max Schanzenbach, topics in the inaugural semester ranged from “Consumer Bankruptcy and Financial Health” to “Do Constitutional Rights Make a Difference?”

A number of interesting and provocative scholars will visit the Northwestern Law campus as a result of this initiative, including:

- Tom Baker, William Maul Measey Professor, University of Pennsylvania Law School
- Yun-chien Chang, Associate Research Professor, Academia Sinica
- Will Dobbie, Assistant Professor of Economics, Princeton University
- Adam Chilton, Assistant Professor of Law, University of Chicago Law School
- Carola Frydman, Visiting Associate Professor of Finance, Kellogg School of Management
- Jonah Gelbach, Associate Professor of Law, University of Pennsylvania Law School
- Prasad Krishnamurthy, Assistant Professor of Law, Berkeley Law
- Florenica Marotta-Wurgler, Professor of Law, New York University School of Law
New Clinical Fellow: Anna Maitland
Michael and Mary Schuette Clinical Fellow in Health and Human Rights

When Courtney and Chris Combe decided to support Northwestern Law they knew they wanted to enhance the social justice initiatives already in place, and help increase the Law School’s footprint globally. As a result, they established two fellowships including the Michael and Mary Schuette Clinical Fellow in Health and Human Rights, a role that expands the reach of the Access to Health program.

This year, Anna Maitland, a graduate of the University of Colorado Boulder with a JD from American University, Washington College of Law will join the clinic as the Schuette Fellow. Maitland has a track record of creating and contributing to global community-based projects in a variety of capacities.

Over the last two years Maitland co-founded Justice & Empowerment Initiatives, a Nigeria-based NGO devoted to developing creative justice solutions in collaboration with poor and marginalized communities by training community-based paralegals, supporting community organizing and providing free legal services.

“During the interview process I was excited to learn about Access to Health’s focus on community-based solutions. I think there’s a real synchronicity between the work I’ve been doing in Nigeria and Access to Health,” said Maitland.

Maitland will mentor students in the Health and Human Rights clinic course, and provide programmatic support for the Access to Health program. With its emphasis on community-based assessment and its interdisciplinary nature, Access to Health is rich with opportunity.

Juliet Sorensen, clinical associate professor of law at the Center for International Human Rights describes Maitland’s role as vital. “Access to Health has limitless potential, and having Anna here hugely enhances our ability to do meaningful global health work and make an impact on human rights. Anna’s dedication as evidenced by her fieldwork, and her leadership abilities makes her an accomplished partner and peer in this work.”

“The Access to Health project offers an amazing opportunity for students to work in an interdisciplinary environment to craft innovative approaches to difficult barriers to adequate health care. I look forward to working with this year’s class,” said Maitland.

2015 Jay A. Pritzker Fellows Announced

The Pritzker Fellowships were created to help talented Northwestern Law graduates launch their public interest careers. While there is a tremendous need for legal services in the public interest sector, a lack of adequate funding creates a shortage of opportunity, particularly for recent law graduates. To address this issue, the Jay Pritzker Foundation made a $1 million gift to the Law School to establish the Jay A. Pritzker Fellowship Program to help highly qualified Northwestern Law students gain public interest experience upon graduation. Dan (JD ’86) and Karen Pritzker are Foundation trustees. Named for Dan Pritzker’s father, who graduated from the Law School in 1947, the program is designed to encourage collaboration. It is a challenge gift, in which additional donors who make a gift of $25,000 in support of these fellowships have their gift matched to fully fund one fellow, up to a maximum of nine per year for three years. The program began last year, with nine fellows selected from the class of 2014.
A Supreme Success
Appellate Advocacy Center secures new protection for pretrial detainees
By Amy Weiss
Professor Sarah O’Rourke Schrup (center), director of the Bluhm Legal Clinic’s Appellate Advocacy Center, and a team of faculty, students, and alumni—including (from left to right) Steve Art (JD ’09), Sarah Grady (JD ’12), Daniel Fishbein (JD ’15), and Andrew Thompson (JD ’15)—helped bring *Kingsley v. Hendrickson*, a 7th Circuit case involving the rights of pretrial detainees, before the Supreme Court. In June, 2015, the Court issued a 5-4 decision in favor of their proposed standard for evaluating excessive force claims.
One morning in March 2014 Northwestern Law professor Sarah O’Rourke Schrup was riding the El on her way into work, scrolling through recent opinions from the Seventh Circuit Court of Appeals when she came across a decision that had been issued just minutes earlier in *Kingsley v. Hendrickson*, a case where a pretrial detainee was suing his former jail guards for a civil rights violation, claiming they used excessive force. The Seventh Circuit panel had upheld the trial court’s decision, but reading a dissent from Seventh Circuit Judge David Hamilton, Schrup saw an opportunity.

Walking down Chicago Avenue, she looked up the petitioner’s attorney, called her, and by the time she walked through the doors of Rubloff, she had offered the full assistance of the Bluhm Legal Clinic’s Appellate Advocacy Center. A little over a year later, Schrup, along with fellow faculty members, alumni, and clinic students would be celebrating a Supreme Court victory, and the legal standard for evaluating excessive force claims by pretrial detainees would be forever changed.
Kingsley v. Hendrickson

In May 2010, Michael Kingsley was arrested and held in the Monroe County Jail in Sparta, Wisconsin, awaiting trial. Guards instructed him to remove a piece of paper that had been taped over a light in his cell. He said he did not place the paper there and refused to take it down. After several requests over the course of more than a day, officers handcuffed Kingsley and carried him to another cell, where he was placed face down on a cement bunk.

Officers claim Kingsley then purposely tensed his arms to make the handcuffs difficult to remove; he claims he did not resist. While still handcuffed, Kingsley was tased by one of the officers, then left alone. Some time later, officers were able to remove the handcuffs without incident.

Kingsley led a Section 1983 civil rights suit against the guards, alleging that they deprived him of his constitutional right to be free from punishment as a pretrial detainee. He lost the case at the district level, but appealed with the Seventh Circuit which centered around jury instructions and the standard for evaluating claims of excessive force by pretrial detainees against agents of the state.

Pretrial detainees are in an unusual position with respect to these claims. When a person out on the street makes a claim of excessive force, the Fourth Amendment standard of objective reasonableness applies—that is, whether a reasonable officer in similar circumstances would have employed the force in the same way. The officer’s actual state of mind is irrelevant. At the other end of the spectrum are convicted prisoners. Because they have been found guilty beyond a reasonable doubt, the Eighth Amendment—not the Fourth—governs their claims of excessive force. Under that standard, a prisoner civil-rights plaintiff must prove that the jail guards harbored malicious or sadistic intent. Courts have struggled with how to assess excessive force claims by pretrial detainees: they have not yet been proven guilty beyond a reasonable doubt but often are incarcerated alongside convicted prisoners as they await trial. Although courts have generally agreed that the due process clause of the Fourteenth Amendment governs such claims, they have been split on whether an objective standard like the Fourth Amendment or a subjective one like the Eighth Amendment is more appropriate. The jury instructions in the original trial required a showing of subjective intent, but Kingsley’s lawyers—which later included Schrup and her Supreme Court Clinic co-instructor Jeffrey Green, a partner at Sidley Austin—argued for an objective standard.

Seventh Circuit Judge Hamilton, in his dissent, wrote: “If a pretrial detainee can prove that a correctional officer used objectively unreasonable force against him, it should be self-evident that the detainee was ‘punished’ without due process of law.”

This observation inspired Schrup to pick up the phone. “Forcing a pretrial detainee to prove the jailer’s subjective intent is too onerous, particularly when that person has not yet been adjudged guilty of the charged crime and is presumed innocent. Many of the people who are sitting in jail awaiting trial are there because they’re poor; they can’t make bail, and a person’s constitutional rights should not turn on such vagaries,” Schrup said.

The Appellate Advocacy Center

Schrup, Harry B. Reese Teaching Professor of Law and director of the Appellate Advocacy Center, knew the Center was uniquely qualified to handle the case.
Founded in 2006, the Center offers a Federal Appellate Clinic, where students represent criminal defendants before the Seventh Circuit Court of Appeals and, in partnership with Sidley Austin’s Supreme Court practice, a Supreme Court Clinic where students work with the firm’s attorneys to assist with petitions for certiorari, merits briefs, amicus assistance, and oral argument preparation.

The Center’s results are impressive—the Federal Appellate Clinic has achieved favorable outcomes for its clients in 30 percent of cases, a rate much higher than the national average, and the Supreme Court Clinic has assisted with over 140 cases in some capacity. It’s easy to see why the experience appeals to students.

“What compelled me to enroll in the clinic last fall was the opportunity to work on real cases at the highest level of our judicial system, while working with and learning from truly some of the best advocates in the country at Sidley and Northwestern,” said Daniel Fishbein (JD ’15), one of the students who worked on Kingsley. Fishbein conducted extensive legal research, helped to draft the merit briefs, and played opposing counsel in a moot court.

“Connection to the Center often doesn’t end after the case or the semester does. While students are grateful for the opportunities the Center provides, Schrup is grateful for the continued commitment from alumni.

“What I’m struck by is how alums of the clinic really do stay involved. They come back and they help with our cases,” she said. “I think it’s remarkable for somebody who has been out for ten years to remember what it was like to prepare for their first oral argument and to come back and help a current student now in that same position.”

“Getting to Work

Wendy Ward, Kingsley’s Wisconsin lawyer who brought his appeal to the Seventh Circuit, agreed to work with the Center on the case, and Schrup and her students hit the ground running. They drafted the petition for rehearing in the Seventh Circuit, which was denied, and then drafted the petition for writ of certiorari.

After certiorari was granted in January 2015, Schrup recruited other members of the Northwestern Law community.

“We immediately rallied the troops around here,” she said. “I’m certainly not an expert in civil rights litigation. I’ve done a few cases but there are many more people at the Law School who are much more well-versed.”

Schrup reached out to David Shapiro, a clinical assistant professor and attorney with the Bluhm Legal Clinic’s Roderick and Solange MacArthur Justice Center, and Alan Mills, a Northwestern Law adjunct professor who serves as executive director of the Uptown People’s Law Center, to help brainstorm and strategize.

Schrup and her students drafted the merits briefs, which she calls the most important part of the case.

“The students were essential to this case,” she said.

“The Kingsley case made use of all of the Center’s greatest strengths: the wealth of knowledge and expertise with both the Seventh Circuit and the Supreme Court, the extensive collaboration between faculty, students, and alumni; and the rigorous moot court process to prepare for oral arguments.

“Forcing a pretrial detainee to prove the jailer’s subjective intent is too onerous, particularly when that person has not yet been adjudged guilty of the charged crime and it presumed innocent.”

—SARAH SCHRP
Andrew Thompson (JD ’15), who plans on working in corporate law, took the long hours of research in stride, recognizing it was an opportunity he wasn’t likely to repeat.

“This was a phenomenal experience and gave me exposure to issues that I wouldn’t be able to see otherwise,” he said.

Called to Justice

In the winter, Schrup and her students received word that their opponents had requested a meeting with the Solicitor General’s office and that the SG wanted to meet with them as well. Even though the federal government was not a party in this suit, the decision would have obvious consequences for government agencies.

Schrup and the rest of the Kingsley team flew to Washington DC. Waiting in the quiet halls of the Department of Justice Building, they caught a glimpse of their competition.

“To this point, the group of guards had been represented by small Madison firm,” explained Schrup.

“The deputy SG who is escorting us in points to the group exiting the conference room and says ‘Oh, there’s your opposing counsel.’ So we peer down the hallway and right there in the middle of this group of lawyers is [former Solicitor General] Paul Clement.”

Now knowing they would be facing one of the most experienced and formidable Supreme Court advocates, they entered the conference room to meet with lawyers from across the Department of Justice, an experience Schrup called “one of the most fascinating things I’ve done in my legal career.”

Ultimately, the SG filed a brief that didn’t fully commit to either side but endorsed the standard proposed by the Kingsley team.

A Little Help from Their Friends

Schrup reached out to two Northwestern Law alumni, Steve Art (JD ’09) and Sarah Grady (JD ’12) at the civil rights firm Loevy and Loevy to help execute their amicus curiae strategy by submitting a brief on behalf of former correctional administrators and experts.

“Our brief was important because the opposition argued that if you were to decide the use of force is ruled by an objective standard, you would have a ‘parade of horribles,’” explained Grady, who worked in the MacArthur Justice Center as a law student.

“They said, ‘Guards would start to be very scared that if they were to use force they might be sued, so they would use less force. And let’s all face it, jails are very dangerous places and we need to give guards great latitude.’ The people on whose behalf we wrote said to us that jail guards are already told to use force based on an objective standard. So in this brief I think we were able to argue very persuasively if the Court did indeed choose a community standard, looking objectively at what a reasonable guard would do, there would be no ‘parade of horribles.’ In fact, it would be a better guide to guards and correctional departments.”

“There is a tangible benefit to having great amici on your side,” said Schrup. “We asked ourselves, ‘Where can we flesh out the narrative of our case?’ and we thought if former correctional officers who ran prisons are going to say objective standards are better, who would argue with that?”

The Kingsley team also secured briefs from the American Civil Liberties Union, underscoring that many pretrial detainees are nonviolent offenders unable to afford bail and...
the pervasiveness of guard-on-detainee violence, and the National Association of Criminal Defense Lawyers, which highlighted the long legal history of objective reasonableness as a standard in excessive force cases.

Practice Makes Perfect

The Appellate Advocacy Center has a robust moot program for Supreme Court cases, holding roughly a half dozen each year. Northwestern Law faculty, Chicago-based lawyers, and alumni from all over the country are frequent participants—acting as the justices, asking questions, and providing critique. Clinic students argue the opposing side.

Class of 1940 Research Professor of Law James Speta, a frequent participant in the Center’s moots, ran one of the moots for Kingsley where Ward prepared for oral argument. Amicus brief authors Art and Grady were among the attendees.

“It’s an incredibly collaborative, open environment to ask questions and see how different folks approach the task and litigate at the appellate level,” said Art, who participated in clinics with the Center on Wrongful Convictions and the Center for International Human Rights as a law student.

“Aside from writing the brief, participating in the moot was my favorite part of the experience,” said Grady. “I was very fortunate that Sarah invited me, because I really enjoyed being able to participate in the process of shaping the argument. It also allowed me to see how involved the students were, which I think is so unique to Northwestern’s clinics as a whole. They all do a great job of involving students in those types of very important issues and really giving them a ground-level ability to participate.”

After observing oral arguments in April, it was clear to Thompson the preparations paid off.

“No one had really asked this question before and that’s why it’s at the Supreme Court,” he said. “It was amazing to see how all of the questions we were asking each other came up in the argument. Every question they asked, we had asked. Every issue they wondered about, we had wondered about. It was fantastic to see that.”

Decision Day

On June 22, 2015, the Court issued a 5-4 decision in favor of Kingsley and objective reasonableness as the test for excessive force claims by pretrial detainees.

Justice Breyer—joined by Justices Kennedy, Ginsburg, Sotomayor, and Kagan—wrote: “The question before us is whether, to prove an excessive force claim, a pretrial detainee must show that the officers were subjectively aware that their use of force was
The Court’s decision will affect millions of pretrial detainees for the better.” —DANIEL FISHBEIN

acknowledging that it can be difficult to balance those rights against what can be a challenging atmosphere where people have to protect themselves and other prisoners,” said Grady. “I think it went a long way to recognize that these issues should not be dealt with by giving total deference to correctional officers, and that the constitutional rights of those who are incarcerated—especially those who have not been convicted of any crime—really must be protected. I was also thrilled to see the majority opinion really questioning whether or not subjective intent should come in to play for claims of excessive force, even once a prisoner has been convicted. I think it really left open the door for a future Eighth Amendment challenge.”

Schrup couldn’t help but notice how their case coincided with a renewed national attention to the civil rights of those dealing with law enforcement—the Baltimore riots in the wake of Freddie Gray’s death were the same week as Kingsley’s oral arguments. Green doesn’t think that played a role in the outcome of Kingsley at all, but thinks the new consciousness might help push the justice system toward embracing objective standards more broadly, as Grady described.

“To the extent that we continue to see more in the media about how people are treated, both in the course of arrest and once they’re incarcerated it may be that courts will be more amenable to suggestions in cases that the standard for Section

unreasonable, or only that the officers’ use of that force was objectively unreasonable. We conclude that the latter standard is the correct one.”

Breyer said they arrived at that decision for three reasons: there was ample legal precedent for the standard with respect to pretrial detainees and those who have been accused but not yet convicted of crimes; experience suggests the standard is practical, specifically citing the brief by Art and Grady; and the standard offers sufficient protection for officers.

Art and Grady were surprised at both the outcome and the tone of the decision.

“It is exceedingly rare these days to see a victory for a civil rights plaintiff from the Supreme Court,” said Art.

“It was a really surprising and incredible decision that acknowledged head-on the difficulties between assuring that pretrial detainees have their rights protected while also recognizing that it can be difficult to balance those rights against what can be a challenging atmosphere where people have to protect themselves and other prisoners,” said Grady. “I think it went a long way to recognize that these issues should not be dealt with by giving total deference to correctional officers, and that the constitutional rights of those who are incarcerated—especially those who have not been convicted of any crime—really must be protected. I was also thrilled to see the majority opinion really questioning whether or not subjective intent should come in to play for claims of excessive force, even once a prisoner has been convicted. I think it really left open the door for a future Eighth Amendment challenge.”

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The decision sent the case back down to the Seventh Circuit to revisit in light of the new standard, and the Seventh Circuit recently remanded it back to the district court for a new trial. Regardless of the eventual outcome of that suit, Michael Kingsley’s legal battle will have a lasting effect on the criminal justice system.

“In the first week, Andrew and I quickly got the impression that what we were doing really mattered,” said Fishbein. “We saw the fruits of our research become the basis of our team’s strategic decisions, and so as the weeks went on we really wanted to make sure we were getting it right. The most incredible part of working on Kingsley has been its impact. The Court’s decision will affect millions of pretrial detainees for the better, and to be part of that effort has been its greatest reward.”

“In law school, you read these cases that make really foundational decisions about the law and I think in 20 years, Kingsley v. Hendrickson will be that case for pretrial detainees,” said Grady.☺

Carter Phillips Named One of the Most Influential Members of the Supreme Court Bar

A close analysis of Supreme Court briefs from 1946-2013 found Carter Phillips (JD ’77) to be one of the most successful lawyers who have argued in front of the Supreme Court. The study, “Who Wins in the Supreme Court? An Examination of Attorney and Law Firm Influence,” authored by Adam Feldman, analyzes “the amount of language shared between over 9,400 Supreme Court merits briefs and their respective Supreme Court opinions from 1946 through 2013.”

Phillips has argued eighty cases before the nation’s highest court. Feldman’s analysis leads him to conclude that he “is also one of the most successful Supreme Court brief-writers.”

Bloomberg BNA reported, “Individually, Feldman named Carter Phillips of Sidley Austin and Chief Justice John Roberts, who once practiced at Hogan & Hartson, as the most successful lawyers because they were the most experienced before the Supreme Court and because the Court consistently adopted portions of the language in their briefs.”

The study echoes a Reuters report from 2014, which identified Phillips, along with Sarah O’Rourke Schrup and Jeffrey T. Green, all co-directors of Northwestern Law’s Supreme Court Clinic, as some of the most influential attorneys at the United States Supreme Court.
Established in 2006, the Searle Center on Law, Regulation, and Economic Growth conducts research into how government regulation, and the interpretation of laws and regulations by the courts, affect business and economic growth. It has a dual mission—to study these issues and to communicate the results of the research to academic and policy thought leaders.

THE PROJECT ON INNOVATION ECONOMICS

In 2013, the Searle Center launched the Project on Innovation Economics, a research initiative designed to investigate the role of patents and standard-setting organizations in incentivizing technological innovation by studying how patent laws may—or may not—hinder technological innovation.

During the last two years, Searle Center scholars have created a series of related databases to facilitate empirical research on technology standards, particularly on standard-setting organizations, standard-essential patents, and market coordination related to standards. These databases provide robust, soon-to-be publicly available data that researchers are using to understand how inventive activity occurs, how it is commercialized, and what might be done to facilitate innovation going forward.

“There is a huge disconnect between theory and evidence in this field,” said Matthew L. Spitzer, the Howard and Elizabeth Chapman Professor at Northwestern Law and director of the Searle Center. “The generally accepted theory states that the very large number of patents involved in complex technologies, such as smart phones, should burden and oppress the manufacturers who are implementing all of the patents. The need for manufacturers to get permission to use patents and pay royalties on all of those patents should discourage manufacturers from making the complex products. The inventors, anticipating the manufacturers’ reticence to license and pay royalties on the patents involved in complex standards, should refuse to invent or to take part in the standard setting process. Technological progress should slow.”

“And yet,” Spitzer continued, “the evidence that we see in markets for complex goods such as smart phones, televisions, and automobiles all seems completely the opposite—rapid, intense innovation and massive participation in the standard setting process. Manufacturers rush to produce goods, and consumers are inundated with choices. How do we reconcile the theory and evidence? These new databases will help us understand how the standard setting organizations work, and how the various players interact with each other in this context.”

Professor Daniel F. Spulber, research director at the Searle Center and the Elinor Hobbs Distinguished Professor of International Business and Professor of Management Strategy at the Kellogg School of Management, is the initiative’s academic director.

“Scholars will be able to use these databases to understand how inventive activity occurs, how it is commercialized, and what might be done to facilitate future innovation,” Spulber said in describing the project.

Spulber has edited two special issues of the *Journal of Economics & Management Strategy* with research from this initiative, and the Searle Center has hosted a series of conferences and roundtables to discuss cutting-edge research in this area.

Dr. Justus Barone, who brings expertise in data and empirical work on technology standards and standard organizations, and Dr. Pere

“…”This initiative is creating new intellectual assets that will fundamentally alter the nature of the debate about standard setting organizations and patents.”—DANIEL B. RODRIGUEZ
Arqué-Castells, who brings expertise in data and empirical work on patents, are also working on the project.

“Tackling a critical problem designed not to reward innovation and enforce intellectual property, but to threaten companies in order to extract settlements based on questionable claims.”

**TACKLING ON PATENT TROLL CLAIMS**

In June of 2013, former director of the National Economic Council and assistant to President Obama for economic policy Gene Sperling published a post on the White House blog entitled, “Taking on Patent Trolls to Protect American Innovation,” in which he penned this dire claim: “In recent years, there has been an explosion of abusive patent litigation designed not to reward innovation and enforce intellectual property, but to threaten companies in order to extract settlements based on questionable claims.”

But is this really true?

Professor David Schwartz, who joined the Northwestern Law faculty this year [see related story, page 34], is interested in the economic impact of patent assertion entities. Schwartz was a patent litigator for ten years before he became a law professor, and he understands that public discussion—and resulting public policy proposals—around these entities is often driven by incomplete narratives. He also understands that knowing how these organizations actually function is critical to informed public policy.

Research he conducted with Christopher Cotropia of the University of Richmond School of Law and Jay Kesan of the University of Illinois College of Law suggests that the threat is overstated. In an article published earlier this year, they wrote:

> “Many of these studies also rely upon an overly broad definition of patent ‘troll.’ We note that the phrase patent ‘troll’ itself is a loaded term, implying an evil creature demanding tolls from innocent passersby. The press characterizes them as shell companies who do not invent anything but merely buy patents to sue other innovative companies. In truth, patent assertion entities (‘PAEs’) represent a wide range of entities, including universities, individual inventors, failed startups and companies, and speculators. Since many have included all of these diverse entities within their definition of patent ‘troll’ and kept their data secret, we cannot evaluate the effect of removing individual inventors or universities, for instance, from their definition. And there is publicly available data to suggest removing such entities would dramatically change their conclusions. For example, in 2010, we found that 20-30% of patent lawsuits filed by non-manufacturers were filed by individual inventors (or companies formed and owned by individual inventors).

> “As for the purported explosion in the number of patent lawsuits in the past two years, we have researched the issue and found there has not been any such explosion between 2010 and 2012. Instead, we find that most of the differences between the years are likely explained by, and attributable to, a procedural legal change adopted in 2011 that required separate lawsuits for each unrelated accused infringer. Before 2011, multiple, unrelated accused infringers could be sued together in a single lawsuit. The legal change in 2011 appears to have merely introduced a cosmetic increase in the number of lawsuits; while leaving the overall number of patent holders and accused infringers largely unchanged. To be sure, data is complicated, and we do find a modest increase in PAE litigation, especially if one uses a narrow definition of PAEs. But overall, the often-repeated ‘explosion’ of PAE litigation from 2010 to 2012 (before and after the last major patent reform in 2011) is essentially a myth.”

> “This research took the air out of calls for more patent reform legislation,” said Spitzer. “In studying every patent suit filed, David discovered that the rhetoric doesn’t match the facts on the ground. This approach—finding out what the facts are before you proceed—is at the core of the Searle Center’s approach to policy formation.”

Schwartz is also interested in entities known as “mass patent aggregators”—organizations designed to pursue the interests of their investors, goals which frequently do not include manufacturing or research. As with patent assertion entities, mass patent aggregators have been vilified in the media, and have become a focal point for criticism of the patent system.

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The National Institutes of Health awarded Professor Michael Frakes a $1.2 million grant to conduct a four-year study entitled, “The Impact of Exempting Medical Providers from Malpractice Protection.” The study will examine questions related to the impact of medical malpractice on health care outcomes.

Frakes, who will serve as the project’s principal investigator, joined the Northwestern Law faculty in 2014. A noted expert in law and economics, his research includes health law, with a particular focus on how certain legal and financial incentives affect decision making in health care, and innovation policy, with a focus on the relationship between the financing of the US Patent and Trademark Office and its decision-making processes. Frakes holds a BS and a PhD from the Massachusetts Institute of Technology and a JD from Harvard Law School.

To conduct this research, Frakes will work with a unique data set from the Military Health System (MHS): extensive information on treatment, outcomes, and patient satisfaction from active duty personnel, dependents, and retirees.

“Under federal law, active duty patients who are negligently harmed while receiving treatment at military facilities cannot sue for medical malpractice,” Frakes explained. “But malpractice laws do apply to the treatment of dependents and retirees at these same facilities.” These rules, along with certain other features of the MHS, provide a crucial input for this study—the observation of a group of patients whose doctors face no malpractice pressure.

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—DEAN DANIEL B. RODRIGUEZ

Harvard Medical School, to study how reforms to medical liability standards, along with state-mandated damage caps on malpractice awards, influence physician behavior. [see related article, below]

“The research this grant makes possible is of enormous importance to the ongoing debate about the effect legal and regulatory structures have on health care delivery in this country,” said Dean Daniel B. Rodriguez. “This is solid empirical research that will certainly inform policy discussions in useful ways.”

and loss of companionship, do not appear to affect the quality of care.

However, the authors highlight the limitations of addressing this question solely from the lens of a damages cap analysis. Legislatures can modify tort rules in ways beyond just limiting the extent of the harm posed by the current system. They may attempt to adopt a new system altogether—for instance, a system that sets the standards to which physicians are held in an entirely different light. Scholars know even less about how physicians would respond to reforms of this nature. Frakes and Jena fill this gap in knowledge by testing for changes in healthcare quality when states moved to national standards in assessing physicians’ care, as opposed to the customary practices of nearby physicians.

In states where healthcare quality was rated more highly before using national standards, adopting national standard laws did not seem to change the quality of care. In states that initially had low-quality care, however, adopting national standards was linked to improvements in all of the quality measures.

Their findings offer a more revealing look into how doctors respond to next-generation reforms to malpractice laws that alter the clinical expectations being placed on physicians.

“When we change the structure to a meaningful degree—and we argue that these moves to local to national standards were sort of really meaningful changes—we see a sizeable response,” Frakes said. “So one of the takeaways [of our study] is that it might be a little premature to say that physicians are universally unresponsive to medical liability based solely on the results of those studies exploring responses to damages caps.”

Original story courtesy of Northwestern University’s Institute for Policy Research, where Frakes is a faculty fellow. The paper can be found at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374599.
Bowman and Hughes Recognized as Legal Legends

The American Constitution Society for Law and Policy Chicago Chapter honored two members of the Northwestern Law faculty at their 2015 Legal Legends Luncheon on July 28. Joyce A. Hughes, professor of law, and Locke E. Bowman, clinical professor of law and executive director of the Roderick and Solange MacArthur Justice Center, were two of the four honorees recognized for their careers and for their commitment to the values of the United States Constitution, individual rights and liberties, genuine equality, access to justice, democracy and the rule of the law.

Now in its 10th year, the Legal Legends Luncheon has recognized notable legal professionals including Dawn Clark Netsch (JD ’52), Newton N. Minow, (JD ’50), and Cook County Board President Toni Preckwinkle.

Hughes became the first black female tenure-track professor at a majority law school in the United States in 1971. She has been a member of the Northwestern Law faculty for nearly forty years, teaching Evidence, the Fourteenth Amendment, and a seminar on Refugees and Asylum.

Bowman has worked on a wide array of civil rights cases over the course of his career. A faculty member at Northwestern Law for the past nine years, Bowman’s litigation work has addressed many criminal justice issues including police misconduct, compensation of the wrongfully convicted, and firearms control, among others.

The American Constitution Society for Law and Policy shapes the debate on legal and constitutional issues by building a network of legal professionals dedicated to the idea that the law should improve the lives of all people.

Bienen to be Honored Guest at Literary Awards Dinner

Leigh Bienen, a senior lecturer at Northwestern Law, will be an honored guest at the Chicago Public Library Foundation’s 16th Annual Carl Sandburg Literary Awards Dinner on October 21, 2015, an event celebrating Chicago’s vibrant literary community.

Bienen’s most recent book, Florence Kelley, Factory Inspector in 1890s Chicago, and the Children, is a detailed account of Florence Kelley’s social and legal activism in Chicago and throughout the state of Illinois. Bienen had previously created the Florence Kelley website, (florencekelley.northwestern.edu) which includes historical documents, health and labor reports, and transcripts of legal materials.

Kelley, a 1895 graduate of Northwestern Law, was the first woman to hold statewide office in Illinois—she was appointed to the post of Chief Factory Inspector by Governor John Peter Altgeld in 1893. A tireless activist for child workers and women’s education, her efforts had a profound impact on labor law and social history. Her principal adversary in Chicago was the brilliant attorney Levy Mayer. After leaving Chicago, Florence Kelley and her colleague at the National Consumers League, Josephine Goldmark, invented the “Brandeis Brief” for advocate Louis Brandeis in a landmark labor case, Muller v. Oregon, which they won before the United States Supreme Court in 1908.

In researching Florence Kelley’s work and life, Bienen discovered that none of the existing biographies thoroughly covered her important contributions as the first chief factory inspector in Illinois. “None, in my opinion, conveyed the richness of the historical context surrounding the effort to reform conditions in Chicago sweatshops and tenements. The writings and legacy of contemporaneous figures such Jane Addams, Henry Demarest Lloyd, and Theodore Dreiser were also inspiring,” Bienen said. “They accomplished so much at a time when women didn’t even have the vote.”

Prior to joining the Northwestern Law faculty in 1995, Bienen worked for the Department of the Public Advocate in New Jersey. Her areas of expertise include homicide research, capital punishment, sex crimes, and rape reform legislation. Before joining the faculty at Northwestern, she taught at Princeton University, the University of Pennsylvania, and the University of California, Berkeley.

Authors honored at the Carl Sandburg Literary Awards in the past have included: Scott Turow, Sara Paretsky, Elizabeth Berg, Sandra Cisneros, David Axelrod, and Clarence Page. This year, composer, lyricist and author Stephen Sondheim and local novelist Eric Charles May will also be recognized.
New Rotating Chair Appointments

Four Northwestern Law faculty members have been appointed rotating chair holders for the 2015–2016 academic year.

Katherine Litvak has been named the Benjamin Mazur Summer Research Professor of Law. Litvak joined the Law School in 2009. Her areas of expertise include venture capital, private equity, corporate and securities law, and corporate finance. She previously served as an assistant professor at the University of Texas School of Law, as a clerk for both the Honorable Ralph K. Winter of the US Court of Appeals for the Second Circuit and the Honorable Frank H. Easterbrook of the US Court of Appeals for the Seventh Circuit, and as a John M. Olin Fellow in Law and Economics at Columbia Law School. She earned a BA from the University of California, Los Angeles; an MA from Harvard University; and a JD from Stanford Law School.

The Benjamin Mazur Summer Research Professorship was established in 1994 by the estate of 1993 graduate Benjamin Mazur to provide summer research support.

Janice Nadler has been named the Stanford Clinton Research Professor of Law. Nadler, who also serves as the associate dean for faculty affairs, has been a member of the Northwestern Law faculty since 2000. Her research focuses on criminal law, social norms and compliance with the law, and negotiation and dispute resolution. She holds a joint appointment as a research fellow with the American Bar Foundation. She earned a BA from Cornell University; a JD from the University of California, Berkeley; and a PhD in social psychology from the University of Illinois at Urbana-Champaign. She previously served as an assistant professor at the University of Texas School of Law, as a clerk for both the Honorable Ralph K. Winter of the US Court of Appeals for the Second Circuit and the Honorable Frank H. Easterbrook of the US Court of Appeals for the Seventh Circuit, and practiced with Kirkland & Ellis LLP. She earned a BS from Georgetown University and a JD from the University of Michigan.

The Stanford Clinton Research Professorship was established in 1984 by Stanford Clinton, a graduate of the Class of 1931, and Zylpha Kilbride Clinton.

Sarah O’Rourke Schrup has been named the Harry B. Reese Teaching Professor of Law. She is also the director and founder of the Bluhm Legal Clinic’s Appellate Advocacy Center, which includes the Federal Appellate Clinic and the Supreme Court Clinic. Prior to joining the Law School in 2004, she clerked for the Honorable Ruben Castillo of the Northern District of Illinois, served as a staff law clerk for the US Court of Appeals for the

James Speta has been named the Class of 1940 Research Professor of Law. He is also senior associate dean for academic affairs and international initiatives and director of Northwestern Law’s executive LLM programs. His research interests include telecommunications and Internet policy, antitrust, administrative law, and market organization. Before joining the faculty in 1999, he clerked for Judge Harry T. Edwards on the US Court of Appeals for the DC Circuit and practiced appellate, telecommunications, and antitrust law with the Chicago firm Sidley Austin LLP. He earned a BA and a JD from the University of Michigan.

The Harry B. Reese Teaching Professorship was established in 1993 by various donors in honor of former Law School faculty member Harry Reese.

James Speta has been named the Class of 1940 Research Professor of Law. He is also senior associate dean for academic affairs and international initiatives and director of Northwestern Law’s executive LLM programs. His research interests include telecommunications and Internet policy, antitrust, administrative law, and market organization. Before joining the faculty in 1999, he clerked for Judge Harry T. Edwards on the US Court of Appeals for the DC Circuit and practiced appellate, telecommunications, and antitrust law with the Chicago firm Sidley Austin LLP. He earned a BA and a JD from the University of Michigan.

Members of the Class of 1940 established this chair in 1991 on the occasion of their 50-year Law School reunion.
New Research Faculty

Two distinguished scholars will join Northwestern Law in 2014–15, enhancing the diversity of interests and expertise that distinguish the school’s faculty.

Candice Player
ASSISTANT PROFESSOR OF LAW
AB, Harvard College
JD, Harvard Law School
MPhil, University of Cambridge
PhD, Ethics and Health Policy, Harvard University

Candice Player first became interested in how the law deals with mentally ill individuals when she was an undergraduate student at Harvard University. “I remember walking around Harvard Square and seeing lots of people who were clearly mentally ill and poor, asking for change, and I wondered ’How did that happen? What went wrong?’” Player said. “Lots of important public policy issues in the United States are heavily contested, but I think we can all agree it’s clearly wrong for somebody who has a mental illness to be in the streets and in need of food and shelter.”

She continued investigating these issues throughout her academic career, earning a JD and a PhD in ethics and health policy at Harvard and an MPhil in criminology from Cambridge University. Player also completed a fellowship in health policy, law, and medicine at the University of Pennsylvania before joining the Northwestern Law faculty. “I started researching the shift from institutional mental health care to community mental health care,” she continued. “And I started thinking about what reformers intended to achieve and what actually happened.”

Critics of current mental health policy often blame the high rates of homelessness among the mentally ill on the changes in laws involving involuntary commitment that took place in the 1970s. But instead of just asking what the standards should be, Player is interested in why the law allows for certain exceptions when dealing with the mentally ill. “Ordinarily someone has to be convicted of a crime, or at least charged with a crime, before you can lock them up—unless they are mentally ill, in which case you can detain a person in advance of a crime they might commit,” she said. “It made me wonder, what is it about mental illness that would justify an exception to the rule that we ordinarily wait for someone to be convicted of a crime before you can detain them?”

These are the types of questions Player plans to tackle in her research and her teaching. She is working on a series of articles that together will provide a comprehensive look at the mental health system in the United States—the cost, quality, coordination of, and access to care. She is similarly excited to tackle tough questions with her students when she teaches Bioethics and Law this fall. “I’m always so interested in what people’s intuitions are about hard questions around physician assisted suicide, or abortion, or organ sales, or requiring a person to purchase health insurance,” she said. “I’m really looking forward to those conversations with students.”

Player’s commitment to these issues extends beyond the classroom walls. During her postdoctoral work at the University of Pennsylvania, she served as a street outreach volunteer with Project HOME, a Philadelphia-based nonprofit dedicated to ending homelessness, and she is eager to uncover similar opportunities within the Northwestern Law and Chicago communities.

David Schwartz
PROFESSOR OF LAW
BS, University of Illinois at Urbana-Champaign
JD, University of Michigan Law School

With an engineering background and ten years of experience practicing patent law, David Schwartz entered academia to conduct the kind of empirical research he found so valuable in his practice. “There are so many interesting issues in patent law,” he said. “Empirical studies relating to patent litigation are of importance right now to policymakers, and they’re also useful and important to practitioners.”

Schwartz’s current research focuses on comparing “patent trolls” or patent assertion entities—“companies that don’t make any products and intend to make money from asserting their patent portfolio” as he describes them—to companies that own patents and do make products. “I’m trying to understand in a little bit more nuanced manner how they’re different
and how they’re similar, why they’re different and why they’re similar,” he explained. Some charge that patent assertion entities mainly bring frivolous charges of infringement, seek nuisance fee settlements, and settle the cases quickly to avoid adjudication of their claims on the merits. However, the empirical evidence on this critical charge is lacking and needs further study.

Schwartz is a co-editor of Volume II of the Research Handbook on the Economics of Intellectual Property Law, which surveys analytical methods for understanding and testing hypotheses about the economic and related effects of intellectual property law. Earlier this year he hosted a conference that brought together over thirty legal and economics scholars from across the globe to work on the book.

Schwartz taught at Northwestern Law as a visiting professor in 2014, and is looking forward to reengaging with the faculty and students. He will teach Intellectual Property.

“I’m interested in being part of a vibrant scholarly community of other academics as well as being among great, smart, interesting students. I taught here as a visitor a year ago and the students are just fantastic—that’s what I think I’m most excited about.”

Prior to joining Northwestern Law, Schwartz was on the faculty at IIT Chicago-Kent College of Law, where he served as co-director of the Center for Empirical Studies of Intellectual Property. He also taught at John Marshall Law School, and worked at several Chicago law firms prior to teaching, beginning his career at Jenner & Block.

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Newly Tenured Faculty

Peter DiCola
Professor of Law
Searle Research Fellow

DiCola’s current research focuses on intellectual property law, especially music copyright. He joined the faculty in 2008, after clerking for the Honorable Thomas L. Ambro of the US Court of Appeals for the Third Circuit. He earned an AB from Princeton University, and a JD and a PhD in economics from the University of Michigan.

Joshua Fischman
Professor of Law

Fischman’s research focuses on law and economics, empirical methods, judicial decision making, and criminal sentencing. He joined the faculty in 2012. Previously, he was an associate professor at the University of Virginia School of Law and an assistant professor in the economics department at Tufts University. He earned an AB from Princeton University, a JD from Yale Law School, and a PhD in economics from the Massachusetts Institute of Technology.

Ezra Friedman
Professor of Law

Friedman’s research applies law and economics to legal doctrine in fields such as insurance and tort law. His current work uses formal economic theory to create proposals for evaluating an insurer’s duty to settle, and a framework for tort liability for injuries from generic drugs. He joined the faculty in 2008, after serving as a visiting lecturer at Yale University and as a staff economist at the Federal Trade Commission. He is the chair elect of the Association of American Law Schools Section on Insurance Law. He earned a BA from Haverford College, a JD from Yale Law School, and a PhD in economics from the Massachusetts Institute of Technology.
New Endowed Chair Appointments

Three Northwestern Law faculty members have been appointed to endowed chairs, effective at the beginning of the 2015–2016 academic year.

Robert Burns has been named to the William W. Gurley Memorial Professorship. Burns joined the faculty in 1980. He teaches evidence and professional responsibility in the Bartlit Center for Trial Advocacy and courses in civil, criminal, and administrative procedure. He has received the Dean’s Teaching Award and the Robert Childress Memorial Award for Teaching Excellence multiple times. Recently, he authored *Kafka’s Law: The Trial and American Justice* (University of Chicago, 2014). He earned an AB at Fordham University, and a JD and a PhD from the University of Chicago.

The William W. Gurley Memorial Professorship was established in 1975 through a bequest from Helen K. Gurley in memory of her father, a distinguished member of the Chicago Bar and general counsel to a number of major business firms.

Max Schanzenbach has been named the first Seigle Family Professor of Law. Schanzenbach’s research is primarily empirical and has ranged across such fields as trusts and estates, criminal sentencing, public sector employment, and tort reform’s impact on healthcare markets. He joined the faculty in 2003, served as the director of the Searle Center on Law, Regulation, and Economic Growth from 2010–2013, and has been the co-editor in chief of the *American Law and Economics Review* since 2012. He earned a BA from the University of Oklahoma, and a JD and PhD in economics from Yale University.

The Seigle Family chair was established earlier this year by Harry J. Seigle, a member of the class of 1971, the founder of the Elgin Company, and a noted Chicago civic leader.

Kim Yuracko has been named to the Judd and Mary Morris Leighton Chair. Her primary research interests are in antidiscrimination law with a focus on sex discrimination in employment and gender equity in education, and she teaches courses in employment law, property, and family law. She joined the faculty in 2002, and has served as both associate dean for academic affairs and interim dean of the Law School. She earned a BA, a JD, and a PhD in political science from Stanford University.

Judd and Mary Morris Leighton established the chair in 1989. Mr. Leighton, a member of the class of 1947, is retired from positions including chairman and chief executive officer of Benicia Industries Inc., and as a director on several corporate boards.
New Professors of Practice

Bruce Markell
Professor of Bankruptcy Law and Practice
Before joining the faculty in 2014 as a visiting professor, Markell was the Jeffrey A. Stoops Professor of Law at Florida State University’s School of Law. Before that, he served as a United States Bankruptcy Judge for the District of Nevada from 2004 to 2013, and as a member of the Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals from 2007 to 2013. He was a tenured professor before taking the bench, and was a partner at Sidley & Austin prior to becoming a full-time academic in 1990. He contributes to Collier on Bankruptcy and is a member of Collier’s editorial advisory board. He is a fellow of the American College of Bankruptcy, a charter member of the International Insolvency Institute, a conferee of the National Bankruptcy Conference, and a member of the American Law Institute. He consults regularly with the International Monetary Fund on insolvency-related issues, and is currently engaged in redrafting Kosovo’s bankruptcy law. He earned a BA from Pitzer College and a JD from the University of California, Davis.

Robert Wootton
Professor of Practice
Wootton joined the faculty in 2006 as a senior lecturer, and was an adjunct professor from 1987–1989. A partnership tax scholar, he brings to the classroom insights gleaned over almost twenty-five years in private practice at Sidley & Austin and successor partnerships and as the Tax Legislative Counsel for the US Treasury Department during the George H.W. Bush Administration. Wootton has served as chairman and committee member for the University of Chicago Law School Federal Tax Conference, is a fellow with the American College of Tax Counsel, and has won the teaching award from the LLM Tax Program students at Northwestern Law six times. He earned a BA and a JD from Yale University, and a BPhil from Oxford University.
New Clinical Faculty

Vanessa del Valle

**CLINICAL ASSISTANT PROFESSOR OF LAW**

Del Valle joins the Bluhm Legal Clinic in Fall 2015 after a two-year clerkship with Northern District of Illinois Chief Judge Ruben Castillo. While in law school, she participated in Stanford’s community and criminal defense clinics and completed a summer associateship at Skadden, Arps, Slate, Meagher & Flom LLP in New York. She earned a BA from Yale University and a JD from Stanford University.

Andrea Lewis

**CLINICAL ASSISTANT PROFESSOR OF LAW**

Lewis joined the Center on Wrongful Convictions in 2013, serving as a clinical fellow for the Women’s Project until September 2015, when she was appointed clinical assistant professor of law and became a permanent member of the Center’s staff. Prior to working at the Center, she was an associate in the labor and employment group at Vedder Price PC in Chicago, where she represented clients in state and federal matters as well as working on pro bono projects. She earned a BA from Lawrence University and a JD from Northwestern University.

Visiting Faculty 2015–16

Yitzhak Benbaji

**VISITING PROFESSOR OF LAW & (FALL 2015)**

BA, PhD, Hebrew University of Jerusalem

Yitzhak Benbaji is an associate professor at Tel-Aviv University Law School, where he teaches ethics, political philosophy, and jurisprudence. Previously, Benbaji taught at Bar-Ilan University in Israel. He was also a senior fellow at the Shalom Hartman Institute, a member at the Institute for Advanced Study at Princeton University, and a global ethics fellow with the Carnegie Council for Ethics in International Affairs.

Sarah Lawsky

**VISITING PROFESSOR OF LAW (FALL 2015)**

AB, University of Chicago
JD, Yale University
LLM Taxation, New York University

Sarah Lawsky is a professor of law and the senior associate dean for academic affairs at the University of California, Irvine School of Law, and an adjunct professor of law at New York University School of Law. An expert in tax law, she co-authored the fourth edition of the *Federal Income Taxation* (Aspen Casebook, 2015). She previously taught at George Washington University, and prior to entering academia, she worked at the law firm of Hogan & Hartson LLP, where she provided tax advice to corporations, LLCs, tax-exempt organizations, and high-net-worth individuals.
Pierre Legrand

VISITING PROFESSOR OF LAW (SPRING 2016)
BCL and LLB, McGill University
DEA and PhD, Université Panthéon-Sorbonne
MLitt, University of Oxford
PhD, Lancaster University

Pierre Legrand is professor of law at the Université Panthéon–Sorbonne, where he is responsible for the postgraduate program on globalization and legal pluralism after serving for ten years as director of postgraduate comparative legal studies. Legrand has held visiting professorships at a number of universities and has taught and lectured in more than twenty countries, including the United States, Canada, Australia, China, Brazil, Singapore, and European nations. His teaching and writing focus on comparative legal studies with reference to theoretical issues arising from comparative interventions. He publishes in English and French, and his work has been translated into other languages.

Alan D. Miller

VISITING PROFESSOR OF LAW (2015–2016)
BA, University of California, Berkeley
JD, Northwestern University
PhD, California Institute of Technology

Alan D. Miller is a senior lecturer in the faculty of law and department of economics at the University of Haifa. He studies legal institutions using tools from mathematical economics. His recent work has focused on community standards used in tort, contract, and obscenity jurisprudence. He currently serves as an associate editor of the interdisciplinary journal Mathematical Social Sciences. He joins the faculty at the Searle Center on Law, Regulation, and Economic Growth at the Law School for the upcoming academic year.

Simone M. Sepe

VISITING PROFESSOR OF LAW (FALL 2015)
JSD, LLM, Yale Law School
PhD, M.Sc., Toulouse School of Economics
PhD, University of Siena
JD, LUISS Guido Carli University

Simone Sepe is a professor of law at the James E. Rogers College of Law at the University of Arizona where he teaches courses in business and finance. His research examines questions in corporate law, contract theory, and financial regulation with recent work focusing on corporate governance and the division of power between boards and shareholders. Sepe practiced banking and finance law at Clifford Chance, an international law firm based in London, and worked as an investment banker at Fortress Investment Group in London and New York. He is program director in law at the IAST - Fondation Jean-Jacques Laffont - TSE in Toulouse and co-director of the University of Arizona’s Center for Law and Philosophy.
Faculty Publications

The Northwestern Law faculty produces world-class scholarship on a diverse range of contemporary legal issues. The following is a selection of scholarly works by residential faculty published between July 1, 2014, and June 30, 2015.

Ronald J. Allen
JOHN HENRY WIGMORE PROFESSOR OF LAW


Karen J. Alter
PROFESSOR OF LAW (BY COURTESY)


Esther S. Barron
CLINICAL PROFESSOR OF LAW


Michael Barsa
SENIOR LECTURER

Sheila Bedi
CLINICAL ASSOCIATE PROFESSOR OF LAW

“Seeking Transformative Justice in Ferguson, Dearborn, and Beyond.” Huffington Post. 2014.


Herbert Beller
SENIOR LECTURER
“The Tax Section Distinguished Service Award: Twenty Years of History.” Tax Lawyer. 2014.

Leigh Bienen
SENIOR LECTURER

Bernard Black
NICHOLAS D. CHABRAJA PROFESSOR OF LAW AND BUSINESS

Steven G. Calabresi
CLAYTON J. AND HENRY R. BARBER PROFESSOR OF LAW

Deborah L. Borman
CLINICAL ASSISTANT PROFESSOR OF LAW


Robert P. Burns
WILLIAM W. GURLEY PROFESSOR OF LAW


Karen J. Alter
PROFESSOR OF LAW (BY COURTESY)


Esther S. Barron
CLINICAL PROFESSOR OF LAW


Michael Barsa
SENIOR LECTURER

Sheila Bedi
CLINICAL ASSOCIATE PROFESSOR OF LAW

“Seeking Transformative Justice in Ferguson, Dearborn, and Beyond.” Huffington Post. 2014.


Herbert Beller
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Leigh Bienen
SENIOR LECTURER

Bernard Black
NICHOLAS D. CHABRAJA PROFESSOR OF LAW AND BUSINESS

Steven G. Calabresi
CLAYTON J. AND HENRY R. BARBER PROFESSOR OF LAW

Deborah L. Borman
CLINICAL ASSISTANT PROFESSOR OF LAW


Robert P. Burns
WILLIAM W. GURLEY PROFESSOR OF LAW


2014.

Journal of International Law.


Classroom Teacher in the World.” Northwestern University Law Review. 2014.

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“The Trial is actually closer to reality than fantasy as far as the client’s perception of the system. It’s supposed to be a fantastic allegory, but it’s reality. It’s very important that lawyers read it and understand this.” —Justice Anthony Kennedy

In *The Trial*, Kafka depicts a recognizably modern man living in a modern society, a man largely defined publicly by his economic role and privately by his fears and desires. He does not seem to have a place to stand outside that system, has no “interiority” except the generalized guilt he feels when the system accuses him. When the system of which he is a mere functionary turns against him, he can hardly complain. A spokesman explains, “The law … receives you when you come and dismisses you when you go.” (His colleagues and family members in effect shrug and accept that Josef K. has “his process,” as if it were a natural condition to be expected.) He becomes the confused target of a system intent on his destruction. The trial process advances like a natural process. “The Court” has relatively little concern for what he had done, but seems very interested in whether he shows sufficient deference, servility really, toward the process itself. And these surmises
Katherine Litvak
BENJAMIN MAZUR
SUMMER RESEARCH PROFESSOR OF LAW

Steven Lubet
EDNA B. AND EDNYFED H. WILLIAMS MEMORIAL PROFESSOR OF LAW
“Let Us Pour Some Cold Water on That California Sunshine.” Chicago Tribune. 2015.


Bruce A. Markell
PROFESSOR OF BANKRUPTCY LAW AND PRACTICE

“Respecting Palestinians or Demonizing Israel.” Chicago Tribune. 2015.


“Did This Acclaimed Sociologist Drive the Getaway Car in a Murder Plot?” New Republic. 2015.

“Scalia’s Torture Debacle.” Salon. 2014.


“El Tu Ralph?: More on Motors Liquidation, and a Bonus on Attorney’s Fees in Appeals of Involuntary Bankruptcies.” Bankruptcy Law Letter. 2015.


John O. McGinnis
GEORGE C. DIX PROFESSOR IN CONSTITUTIONAL LAW


Janice Nadler
STANFORD CLINTON RESEARCH PROFESSOR OF LAW

can only be guesses, because the motivations of his pursuers are hidden, as are the issues to which he could address any counterarguments.

Kafka does portray a nightmare. That nightmare emerged in his imagination from his experience with a modern bureaucratic legal system in a capitalist country during the second decade of the twentieth century. Twenty years later, the nightmare became reality through the awful exaggeration of certain features implicit in the system he knew.

We shouldn’t expect to see in our legal order the dangers Kafka imagined and exaggerated in exactly the form that existed in the public world where he practiced law. Nor are we likely to become the regime that succeeded his, likely “the most terrible regime in history has so far produced.” Even those most inclined to be pessimistic see only a “friendly fascism” or a “sanitized version of the brave new world” in our future. This is, of course, some comfort but not much. Although our public situation is different from the one Kafka experienced, in some troubling ways it is the same. Although our intellectual landscape has changed, the same fundamental issues in political and legal philosophy recur in a somewhat different key. The characteristics of his extreme system may allow us to see features of our system that could become nightmarish and, in Justice Kennedy’s view, which may already be showing dangerous signs.
Laura H. Nirider
CLINICAL ASSISTANT PROFESSOR OF LAW


Jide Nzelibe
HARRY R. H NORIES PROFESSOR IN INTERNATIONAL LAW


Laura Pedraza-Fariña
ASSISTANT PROFESSOR OF LAW


James E. Pfander
OWEN L. COON PROFESSOR OF LAW


Candice Player
ASSISTANT PROFESSOR OF LAW


Philip Postlewaite
PROFESSOR OF LAW


Stephen B. Presser
RAUL BERGER PROFESSOR OF LAW EMERITUS


“Scalia: A Court of One.” The University Bookman. 2014.

Martin H. Redish
LOUIS AND HARRIET ANCEL PROFESSOR OF LAW AND PUBLIC POLICY


Stephen F. Reed
CLINICAL PROFESSOR OF LAW


Leonard L. Riskin
HARRIS H. AGNEW VISITING PROFESSOR OF DISPUTE RESOLUTION


Daniel B. Rodriguez
DEAN AND HAROLD WASHINGTON PROFESSOR


Meredith Martin Rountree
VISITING ASSISTANT PROFESSOR


Faculty Authors Appear on C-SPAN's Book TV

Over the summer, Northwestern Law professors Andrew Koppelman and Robert Burns sat down for interviews with C-SPAN's Book TV program.

Koppelman, the John Paul Stevens Professor of Law, discussed his 2013 book *The Tough Luck Constitution and the Assault on Health Care Reform*, which provides a broad historical context for the Affordable Care Act (ACA), and outlines the “tough luck” philosophy adopted by the Supreme Court’s conservatives in recent years. He warns the Court’s interpretation of the commerce clause in the 2012 case challenging the ACA “almost crippled America’s ability to reverse rising health-care costs and shrinking access” even while it upheld the law itself.

“They did a lot less damage than they could have,” Koppelman told C-SPAN host Peter Slen. “The most significant thing they did was tell states they could revise and edit the federal Medicaid program and refuse the parts of it that had Obama’s name on it and that’s had really terrible health consequences for a lot of people […] and they did that on the basis of really terrible legal reasoning. If there’s one thing that I’m trying to get across in the book it’s to get clear to ordinary people who aren’t lawyers just how bad the legal reasoning was in this case.”

Burns, the William W. Gurley Memorial Professor of Law, discussed his 2014 book *Kafka’s Law: “The Trial” and American Criminal Justice* (see excerpt on page 42).

In the book, Burns argues that the American criminal justice system is beginning to resemble Franz Kafka’s *The Trial*, and uses the allegory as a lens through which to examine its current flaws.

“There are elements of the American criminal justice system that bear an uncanny and disturbing resemblance to the picture of ‘The Law’ as [Kafka] describes it in the book,” he told Slen.

Burns highlights the tension between the way police conduct interrogations, which often lead to plea bargains, by assuming an individual is guilty when the legal system is supposed to afford him or her the presumption of innocence. He argues that returning the tradition of trial by jury to a more central place in American criminal justice can remedy this.

Videos of the full interviews are available on the C-SPAN website:

luck-constitution-assault-health-care-reform

As excellent as the three [existing] biographies of Florence Kelley were, none, in my opinion, conveyed the richness of the historical context of the effort to reform the conditions in the city sweatshops and tenements, and the people who fought that fight. There was the ever-present mystery of the interplay between the actions and personalities of public figures, such as Florence Kelley and Jane Addams, their role in historic events and the role of chance, circumstance, and unpredictable externalities, such as the World’s Columbian Exposition, the massive immigration to Chicago of the 1880s and 1890s, the depression of 1893, and the nature of the determined political opposition. A different time, a different place, and different individuals, and none of this would have happened in quite the same way. In other words, it was just like the present.

This unique array of energetic and talented individuals who came to Chicago in the 1890s and played a role in the Herculean efforts to clean up
the sweatshops and slums of Chicago—Henry Demarest Lloyd, Jane Addams, John Peter Altgeld, Carroll Wright, Abraham Bisno, and Florence Kelley—began speaking to me in their own voices. I came to recognize Florence Kelley’s handwriting in the archives, and that of her mother, son, father, and brother. The pictures of Chicago during the 1890s were richly evocative, but the photographs of the family and the public occasions did not match the power of their words. They were remarkable writers. The more I read about them, about what they and others said about themselves and each other, the more I wanted to know about their families and their lives.

A photograph found while working on the homicide site haunted me. There are three men, working men, heavily dressed, wearing several layers of thick wool clothing, standing next to a cart and a pony shaggy in its full winter coat. One man holds the reins. They are standing on ice next to the first Chicago water intake crib, built in 1867, four miles from the shore of Lake Michigan. They must have taken the cart and the pony over the ice for four miles, which means that the lake must have frozen for four miles out. Were the winters that much colder then? Elsewhere I came across reports of large parts of the lake freezing over, and of the unemployed being sent to cut ice through the winter for cooling in the winter and the summer.

Perhaps the photograph dated from the devastatingly cold winter of 1893, when Florence Kelley had just been appointed factory inspector. Like so many of the remnants in the archives, the picture was mesmerizing, and raised more questions than it answered. Now I was really drawn in. In addition to that devastating winter and the economic depression of 1893, what else was happening in Chicago during 1893 and the few years when Florence Kelley was state factory inspector?

Deborah Tuerkheimer
PROFESSOR OF LAW

Alexa Van Brunt
CLINICAL ASSISTANT
PROFESSOR OF LAW

Kimberly A. Yuracko
JUDD AND MARY MORRIS LEIGHTON PROFESSOR OF LAW
Federal Judge Sides with MacArthur Justice Center Attorney in First Amendment Case

In late April, a federal judge overturned a Pennsylvania law designed to prevent current and former prisoners from causing mental anguish to crime victims, saying it violated the First Amendment. David M. Shapiro, a clinical assistant professor of law and attorney with the Bluhm Legal Clinic’s Roderick and Solange MacArthur Justice Center, represented a group of plaintiffs challenging the law.

The law was passed in late 2014, in response to a recorded commencement address to a Vermont college by Mumia Abu-Jamal. Abu-Jamal was convicted of killing a Philadelphia police officer in 1981, and is currently serving a life sentence after having his death sentence vacated. Abu-Jamal has maintained his innocence, and has worked as an author and activist while in prison. He had given prerecorded commencement speeches previously, but the one in October 2014 to Goddard College inspired Pennsylvania state legislators to draft and quickly implement The Revictimization Relief Act, aimed at preventing such actions by allowing victims to seek civil injunctions against prisoners making statements that cause a victim “a temporary or permanent state of mental anguish.”

“It’s a really terrible law when you think about all of the things that one might do that could cause someone offense,” Shapiro said. “People are offended by different things and there’s no real way of knowing what speech is going to offend person X, or what speech is going to offend person Y—and if the First Amendment means anything, it means that you can’t prohibit speech just because it offends people. There are Supreme Court cases upholding speech that relates to protesting war veterans’ funerals and hate speech by the Ku Klux Klan. In our society, the way that we deal with people saying offensive things is we either ignore them or we respond to them, but we don’t use the club of the law to shut them up.”

Shapiro, who previously worked at the ACLU National Prison Project and has significant experience litigating cases involving prisoners’ First Amendment rights, served as a lead attorney for a group of plaintiffs that included Abu-Jamal and several other prisoners, as well as media organizations who recognized the law could impact them, too.

“The breadth of really important speech that could have been destroyed by this law was sweeping,” Shapiro said. “You can’t really do criminal justice reporting without talking to people who have committed crimes and it’s chilling to think what would have happened if people were unable to be sources for fear that this law would be applied against them.”

United States District Judge Christopher Conner agreed, calling the law “unlawfully purposeful, vaguely executed, and patently overbroad in scope” in his ruling. “The First Amendment does not evanesce at the prison gate, and its enduring guarantee of freedom of speech subsumes the right to expressive conduct that some may find offensive,” he said.

Shapiro said his students were critical to preparing a successful case in a short amount of time.

“There was an enormous amount of research to be done. The First Amendment issues were relatively straightforward, but there were some very significant and challenging procedural issues and in many ways that was the harder part of the case,” he said. “Students were very, very involved in research and drafting. This was a real opportunity to get immersed in the law, and it affects the free speech rights of hundreds of thousands current and former prisoners in Pennsylvania, so it was a chance to be involved in something important.”

Center for International Human Rights to Work on Justice System in Republic of Georgia

The Bluhm Legal Clinic’s Center for International Human Rights received a five-year grant of $310,000 from the United States Agency for International Development (USAID) to develop curriculum and assist with training and strategic litigation for the Promoting the Rule of Law in Georgia program. The program’s goal is to protect human rights and build a strong legal framework in the Republic of Georgia; it is administered through the East-West Management Institute.

Mayer Brown/Robert A. Helman Professor of Law David Scheffer believes now is a valuable time for the Law School to engage with the Caucasus region.

“As Georgia continues to face geopolitical challenges this is an interesting opportunity to help promote the rule of law in the region,” Scheffer said. “There are enormous challenges regarding corruption and human rights, which we can contribute to resolving. We can make a difference.”

Scheffer went on to note that there will be a variety of opportunities for students to engage with the project, ranging from international externships to clinical offerings, and anticipates some being available as early as 2016.

The three core areas of the grant are: professional training, such as working with attorneys in the Georgia Bar Association for continuing education; academic assistance within Georgian law schools; and strategic litigation to help enforce due process and protect the rights of marginalized communities.
After 27 Years, Daniel Andersen Cleared for a Murder He Did Not Commit

Daniel Andersen, a joint client of Northwestern University School of Law’s Center on Wrongful Convictions of Youth (CWCY) and the University of Chicago’s Exoneration Project, was officially cleared of the 1980 murder and attempted rape convictions that cost him over 27 years in prison.

On August 13, 2015, the Cook County State’s Attorney’s Office formally dropped all charges against Andersen following Cook County Circuit Court Judge Alfredo Maldonado’s July 20 decision to vacate Andersen’s convictions based on new DNA evidence that the judge called “extraordinarily compelling.”

A Northwestern Law connection led the CWCY to represent Andersen and re-investigate his case. Andersen’s cousin, Bernard “Bud” Bobber, a 1987 alumnus of the Law School, is a partner in the Milwaukee law firm of Foley and Lardner, LLP. Bobber was a law classmate of Northwestern Law Professor Steven Drizin.

Bobber, a civil litigator, had tried to clear his cousin’s name by filing a clemency petition on Andersen’s behalf. When that petition was denied, he called his former classmate Drizin and asked for the Center’s help.

“If Bud had not vouched for Daniel, I am not sure we would have taken Daniel’s case,” Drizin said. “It is doubtful whether any other innocence organization would have taken Daniel’s case because he had already served his time in prison and was out on parole. We made an exception. It was the personal Northwestern connection that made all the difference.”

Andersen’s conviction stemmed from the homicide of Cathy Trunko, a young woman from Chicago’s Back of the Yards neighborhood, who was found stabbed to death on the 4900 block of South Paulina Street on Jan. 19, 1980. Police believed a bloody knife found two days after her stabbing in a neighbor’s yard was the murder weapon. Andersen was 19 years old, sleep deprived, and intoxicated when he confessed to killing Trunko with this bloody knife after 16 hours of police interrogation. At trial, prosecutors said the blood type on the knife matched Trunko’s and argued that Andersen’s confession to killing Trunko with that knife proved his guilt. He was convicted by a jury and sentenced to 55 years in prison.

The new DNA results prove that the bloody knife was not the murder weapon and that Andersen’s confession was false and wholly unreliable. DNA testing on the knife showed that neither Trunko’s blood nor Andersen’s DNA was on the knife, proving it was not the murder weapon after all.

As Judge Maldonado concluded, “the knife was the lynchpin of the State’s case” against Andersen; without it, there is absolutely no physical evidence linking Andersen to this crime. Additional testing showed that the victim had two male profiles underneath her fingernails, both of which excluded Andersen. This fingernail DNA evidence is truly exculpatory because the evidence indicates that Trunko defended herself against her attacker and that at least one, if not both, of these DNA profiles belong to her assailant(s).

Andersen had spent over 27 years in prison when he was released in 2007. Despite being out of prison for eight years, Andersen has been required to register as a sex offender. His lengthy prison sentence and murder and sex offense convictions have greatly inhibited his ability to find employment, housing, and move on with his life. He has continued to fight to clear his name in the years since his release. The July ruling overturning his conviction represented a huge step toward doing so, according to his attorneys.

Andersen is represented by Megan Crane, Laura Nirider and Steven Drizin, attorneys from Northwestern Law’s Center on Wrongful Conviction of Youth, and Joshua Tepfer of the Exoneration Project at the University of Chicago.
Jason Strong Exonerated
Bluhm Legal Clinic team’s seven-year effort to reverse a wrongful conviction

Jason Strong was convicted of the 1999 murder of Mary Kate Sunderlin. Bluhm Legal Clinic Director Thomas Geraghty led a team of faculty, students, and alumni on a seven-year effort that resolved complicated procedural problems and uncovered facts in the case that revealed Strong’s innocence. His conviction was vacated in May of 2015 and he was released from prison a free man.

When Bluhm Legal Clinic Director Tom Geraghty (JD ’69) got a call from US District Judge Matthew F. Kennelly in 2008 asking him to represent Jason Strong at his habeas corpus hearing, Geraghty didn’t think twice about accepting. Beyond the legal issues relating to the statute of limitations on the petition itself—which were interesting in their own right—Geraghty was intrigued by Strong’s innocence claim and the unusual facets of the case, notably, the fact that the victim was identified several years after her body was found.

Because the case had both procedural and investigative elements, Geraghty set simultaneous tracks in motion in the clinic, with some students working on the habeas petition and exhausting all state remedies before approaching federal court, while others investigated the innocence claim. Over the years, the case engaged multiple classes of law students and clinic faculty who devoted hundreds of hours to uncovering the facts.

A FALSE ACCUSATION, A FALSE CONFESSION
On December 9, 1999 the body of an unidentified woman was found in a forest preserve near North Chicago. During the initial investigation, police followed a lead provided Jeremy Tweedy, who mentioned Sunderlin’s death to an undercover officer.

Tweedy identified Strong as one of two men who beat and tortured her before dumping her body, a story that became central to the case against Strong. But Tweedy’s story kept changing; he gave conflicting statements, and he later said that he had been coerced by law enforcement.

Strong confessed to the crime under interrogation; later, he also said his confession was coerced. He was found guilty in 2000 and sentenced to 46 years in prison.

It wasn’t until 2006 that authorities identified the victim as Mary Kate Sunderlin. With that identification, other facts supporting Strong’s innocence claim began to surface, and in 2007 he filed the petition that ultimately brought the case to Geraghty and the Bluhm Legal Clinic.

Because the clinic became involved eight years into the case, many of the team members who initially worked on it spent a great deal of time getting caught up. Jeff Davidson (JD ’09) remembered hours in the clinic conference room poring over transcripts, and piecing together the history of the case. Brian J. Nisbet (JD ’09), one of the two students who worked on the case from its inception to the end, described it as a “complex factual case,” and believes the clinic team was the first to investigate Mary Kate Sunderlin’s life.

Among the key figures the team identified were Correen and Tracy Lewis, a mother-daughter con team who had been convicted of defrauding elderly people, and Gonzalo Chamizo, a mentally disabled man Sunderlin had been married to a few months before she was killed. In researching their criminal and employment histories in order to better understand their relationship to Sunderlin, alternative theories of the case emerged. The more they learned the stronger Strong’s innocence claim became.

In 2009, they had their first big break when they spoke with Jeremy Tweedy, who recanted the story he told police. Nisbet called it a “major stepping stone” for the investigation—although getting Tweedy to actually sign an affidavit officially recanting his original testimony was a more difficult process.

A NEW LAKE COUNTY STATE’S ATTORNEY
During the course of the seven years the clinic worked on the case, the Lake County State’s Attorney’s office experienced a change in leadership.

Mike Mermel, senior trial attorney in the Lake County State’s Attorney’s office when it was headed by Michael Waller, built the state’s case against Jason Strong in 1999. Mermel had a reputation for discounting post-conviction evidence, going as far as telling the Chicago Tribune in an interview: “The taxpayers don’t pay us for intellectual curiosity. They pay us to get convictions.”

In 2012, Mermel retired, and Michael Nerheim was elected to lead Lake County office. A prosecutor who entered office with a reform agenda, Nerheim immediately created an independent conviction integrity unit and began to review convictions.

Judy Royal (JD ’81), visiting clinical assistant professor of law, believes Nerheim taking over as state’s attorney in Lake County was a pivotal turning point in the case. As an attorney who worked on another wrongful conviction case in Lake County for client Juan Rivera, she was familiar with how the Lake County office had operated in the past.
Royal had provided counsel on the Strong case as early as 2010, and when Nerheim took over, she wanted his Conviction Review Panel to agree to further DNA testing of items from the Sunderlin investigation. These findings would allow the team to keep building the case for Strong’s innocence.

**FORENSIC DISCOVERY**

During an unprecedented meeting with attorney general’s staff in 2013, the clinic argued that by gaining access to forensic and medical reports they believed they could open doubt to the integrity of the conviction. Royal described the meeting as a “cooperative search for the truth,” and one that led to a reinvestigation of Strong’s innocence claim.

Maria Hawilo, visiting clinical assistant professor of law, joined the Bluhm Legal Clinic in 2013, and went on to pursue the forensic and medical evidence marshalled in the case. She recalled unusual autopsy video footage and incongruences between the state’s description of the victim’s body, and what the medical evidence showcased. Hawilo believes the medical records provided “one of the first pieces of objective evidence,” and that even with the most sensitive DNA testing available they couldn’t find any material linking Strong to the victim.

Perhaps the key revelation from the mounting forensic evidence was that timing and cause of death didn’t square with the state’s theory that Strong met Sunderlin, and over the course of 12 hours, tortured and killed her. Instead, the medical records pointed to longer term injuries and a time of death up to 72 hours before her body was discovered.

As the investigation eroded the state’s original case, Charles DeVore (JD ’11)—who worked on the case over six years—recalls feeling a “sense of injustice that was heightened at every turn. Every piece of information we uncovered supported the idea that Jason Strong did not do this.”

**CONVICTION VACATED**

When the team presented the medical evidence to the Lake County state’s attorney’s office with an independent forensic pathologist verifying key facts, Nerheim’s office regrouped. Together with Assistant Attorney General Vincenzo Chimera, an agreement was reached. The attorney general’s office granted Strong’s habeas petition, in effect granting him a new trial, and the Lake County state’s attorney’s office decided not to pursue a new trial based on the innocence claim. Strong’s conviction was vacated in May of 2015 and he was released from prison.

“Watching Jason walk out of prison after so many years is a moment I’ll never have again,” said David Luger (JD ’09). Luger, DeVore, and Nisbet, the three attorneys who worked on the case from law student to practicing attorney, all went down to Menard Correctional Facility to be there when Strong was released.

“This case is the high water mark of my career,” said Nisbet. “It is a reminder of how powerful the profession can be.”

For some students, the Jason Strong case was their first encounter with criminal law, and for others it was one of several post-conviction cases they were working on. Regardless of their familiarity level, they all marveled at the experience of working with such a large and committed group over so many years.

Luger was involved in nearly every aspect of the case, from drafting petitions and appeals at the state and federal level to tracking down key witnesses, including Jeremy Tweedy. When it came time to graduate, Luger felt compelled to continue working on the case, and he and Nisbet together brought it to Winston and Strawn as pro bono work.

DeVore, Luger, and Nisbet’s consistent presence on the case provided a backbone of institutional knowledge that proved critical over the years, and DeVore highlighted Geraghty’s crucial role in keeping momentum in the case going, even as students cycled in and out of the project and new faculty members were brought on.

“There’s an inherent difficulty of keeping a case like this going with students,” DeVore said. “Tom maintained continuity, and that made all the difference.”

Royal, too, praised Geraghty’s role in leading the team. “Tom works every case like it’s the only one he has. He inspires people to do everything they can.”
Northwestern Law Celebrates the Class of 2015

Addressing more than 500 graduates and their guests who filled the historic Chicago Theatre, commencement keynote speaker Tina Tchen (JD ’84) credited Northwestern University School of Law with preparing her for her impressive legal career, taking her from the classrooms of Levy Mayer to the halls of the White House.

“Being a lawyer remains who I am; it’s how I think […] and Northwestern Law was where I learned what it means to be a lawyer,” she said at the May 15 ceremony.

Tchen spent 25 years at the law firm Skadden, Arps, Slate, Meagher & Flom—including 13 years as a partner—before joining the Obama administration as an assistant to President Barack Obama and chief of staff to First Lady Michelle Obama in 2011.

Tchen was an appropriate choice to address the Class of 2015, a group with an impressive commitment to public service. In his remarks to open the ceremony, Northwestern Law Dean Daniel B. Rodriguez highlighted some of the class’s accomplishments: 220 students gave more than 19,000 hours of time to public service—with 50 students individually giving hundreds of hours—and 165 students participating in programs through the Bluhm Legal Clinic.

Additionally, 2015 marked the first graduating class of the Master of Science in Law program, a unique multi-disciplinary course of study that combines STEM backgrounds with business and legal curriculum.

“I am convinced that you will take your education here—not simply your credential, but your education—and do great things in and for the world,” Rodriguez said.

In addition to Tchen and Rodriguez, Northwestern University President Morton Schapiro and student speakers Nicholas Roosevelt (JD ’15), Najd Almuhaitheef (LLM IHR ’15), and Bertram Hudson (MSL ’15) spoke to the crowd. Schapiro encouraged graduates to take a moment to be proud of their momentous achievement, and to reach out and thank someone who helped get them there.
2015 CONVOCATION

Student-Voted Faculty Awards
Outstanding Adjunct Professor
Judge Ruben Castillo
Outstanding First-Year Course Professor
Michael Waterstone
Outstanding Professor of a Small Class
Nadav Shoked
Outstanding LLM Tax Professor
Philip Postlewaite
Robert Childres Memorial Award for Teaching Excellence
Erin Delaney

Student Awards
Wigmore Key
Nicholas Roosevelt
Courage Award
Beatrice Roger
Legal Profession Award
Kimberly-Claire Seymour and Abigail Leinsdorf
Service Award
Andrew Beatty
Leadership Award
Jesse-Justin Cuevas
Class Notes

1950s
Newton N. Minow (JD ’50) was honored at WTTW’s 60th Anniversary Gala.
Thomas T. Grimshaw (JD ’56) was honored for his dedicated service to the state of Colorado by Governor Hickenlooper proclaiming August 29, 2015 to be “Tom Grimshaw Day.”
Richard E. Wiley (JD ’58) received the 2015 Ed Meese Award, the Republican National Lawyers Association’s highest honor.

1960s
Neil G. Bluhm (JD ’62) was elected co-chairman at the Whitney Museum of American Art.
Judith B. Biggert (JD ’63) was appointed to the Illinois Educational Labor Relations Board by Governor Bruce Rauner.

1970s
Howard A. Tullman (JD ’70) received the Public Humanities Award from the Illinois Humanities Council for his contributions to building relationships between business and the humanities.
Shelli Z. Rosenberg (JD ’66) was appointed to the governing board at MATTER, a healthcare technology incubator for the next-generation health IT, medical device, diagnostics and biopharma companies.
Harry J. Pearce (JD ’67) retired from the board of directors at Marriott International, Inc.
Chief Justice James T. Jones (JD ’67) was elected chief justice of the Idaho Supreme Court.
Miles C. Cortez (JD ’67) was inducted into the Trinity University athletic hall of fame.
Judge Simeon R. Acoba (JD ’69) was appointed to the board of regents at the University of Hawaii.

1980s
Burton D. Cohen (JD ’63) was appointed to the board of directors at the Learning Experience.

1990s
Richard E. Wiley (JD ’90) received the 2015 Ed Meese Award, the Republican National Lawyers Association’s highest honor.

Members of the class of 1954 gathered at the 2014 All Alumni Weekend to reminisce about their time at the Law School. Back row, from left: James Griffith, James Murphy, Myron Liberman, David Pauker, Lowell Komie, Aaron S. Wolff, and Don Beimdiek; front row: John Grady.
Volunteering
is rewarding.

Alumni volunteers play a vital role in the success of the Law School. Following are some of the many ways to get involved.

**Alumni Interviewer** Northwestern has the most extensive law school admissions interviewing program in the country. With your help, we recruit the finest students from the United States and abroad.

**Alumni Coach Volunteer** Northwestern Law students and alumni coaches are paired for mock job interviews of about 45 minutes.

**Career-Related Adviser** Students and alumni may discuss practice areas, market trends, and career advice with volunteer advisers through occasional phone conversations, email exchanges, or informational interviews.

**Miner Moot Court Competition Volunteer** Moot Court judges prepare students to participate in appellate arguments.

**Firm and Corporate Representatives** Representatives support and raise contributions to the Law School Fund by motivating alumni at their firms or businesses.

**Reunion Committee Member** Committee members gather friends to join the committee, help plan the event, establish and garner support for the class gift, and encourage classmates to attend Reunion.

For more information, visit law.alumni.northwestern.edu and find volunteer opportunities listed under the “Connect” tab.
Jonathan W. Levin (JD-MBA ’84) was appointed to the board of directors at the National Parkinson Foundation.

Ann Ustad Smith (JD ’84) was selected by the Wisconsin Law Journal as a 2015 Women in the Law award recipient.

Rodney A. Ferguson (JD ’84) was appointed to the board of directors at Hercules Technology Growth Capital, Inc.

Douglas Frazer (JD ’85) received the Messenger Award from the Milwaukee Bar Association for his article “The Cranberry Brief.”

Thomas W. Furlong (JD ’86) was appointed partner at DLA Piper in the firm’s corporate practice.

Shelley B. Ballard (JD ’87) was featured in the March 2015 issue of Leading Lawyers magazine for her exemplary work in adoption and reproductive technology law.

John W. Borkowski (JD ’87) joined Husch Blackwell’s Healthcare, Life Sciences and Education industry team as a partner.

Ronald D. Coleman, Esq. (JD ’88) joined Archer & Greiner as a partner.

Maria Wyckoff Boyce (JD ’88) was appointed partner at Hogan Lovells.

Javier Maldonado (JD ’88) was appointed to the board of directors at Santander Consumer US Holdings Inc.

David L. Reifman (JD ’88) was appointed the new commissioner for the City of Chicago’s Department of Planning and Development.

Ruth A. Bahe-Jachna (JD ’89) was featured in the March 2015 issue of Leading Lawyers magazine for her exemplary work in litigation and teaching a new generation of attorneys.

Scott Craven Jones (JD ’89) was appointed to the board of directors at GuestLogix, Inc.

Sheila Berner Kennedy (JD ’89) received the Catholic Theological Union’s Diakonia Award for service at its annual Blessed are the Peace-makers Trustee Dinner.

Michael J. Eason (JD ’89) joined Husch Blackwell as senior counsel on the firm’s Energy and Natural Resources industry team.

1990s

Kathryn Kovitz Arnold (JD ’90) was featured in the March 2015 issue of Leading Lawyers magazine for her exemplary work in real estate law.

Robin Wolkoff (JD ’90) was appointed chief legal officer at Sasser Family Holdings.

Douglas G. Beck (JD ’92) was appointed vice president, secretary, and general counsel at Hub Group.

Hillary Anne Ebach (JD ’93) was appointed vice president and general counsel at Journal Media Group.

Jared F. Bartie (JD ’93) was appointed counsel at Herrick, Feinstein LLP in the firm’s sports law group.

Ivan J. Presant (JD ’94) was named a shareholder at Greenberg Traurig.

Johana Castro (JD ’05) and Jacqueline Johnson Arana (JD ’05) at the New York City Alumni Club reception, April 8, 2015.
In Memoriam

Northwestern University School of Law extends its heartfelt condolences to the loved ones of recently deceased alumni, faculty, and friends.

1940s

Sidney Waller (JD ’47)
Arthur R. Seder (JD ’47)

1950s

Don A. Banta (LLM ’50)
Judge Edward C. Farmer Jr. (JD ’51)
William W. Volkman (JD ’52)
Marvin F. Metge (JD ’53)
Charles V. Falkenberg Jr. (JD ’55)
Henry R. Vanhouten (JD ’57)
Judge Howard R. Kaufman (JD ’57)
Jay Contorer (JD ’59)
Sheldon Chertow (JD ’59)

1960s

Robert G. Jorgensen (JD ’61)
Judge Walter B. MacDonald (JD ’63)
O. Gene Maddox (JD ’63)
W. Wayne Withers (JD ’65)
Judge James C. Kingsley (JD ’66)
Ronald E. Rokosz (JD ’69)

1970s

Louis A. Reisman (JD ’70)
Terrence Hutton (JD ’72)
Patrick D. Ertel (JD ’73)
Judge Helen G. Cropper (JD ’78)

1980s

Benjamin D. Fields (JD ’84)

1990s

Jeffrey W. Eich (JD ’91)
Measure of Legal Education’s Value Extends Far Beyond Big Law

BY JAMES LUPO

The criticisms—constant and haranguing—are terribly shortsighted. They are premised on assessments of the initial value of a law school education, not the socially critical values law school teaches. Evaluated in this way, disheartening numbers are readily available. To look at real worth, much more perspective and nuance are needed.

Students who choose to come to law school despite all of the empirical gloom and doom are doing so for what have always been the right reasons—not because they are liberal arts majors at wit’s end about a career path and not because law school is a reliable entree to social status and financial gain.

They are coming because they want to be advocates and problem solvers. They want to learn the sharp, analytical cast of mind law school teaches. They recognize that an ethical practice of law is central to the functioning of a system of ordered justice and how that ordered justice upholds the rule of law. They are returning to first principles. They seek values, not just immediate value; they seek the necessary qualities of leadership, not just leading roles at the top of an increasingly unreliable ladder of success.

This means law schools, too, must return to first principles and organize themselves in line with what these students are seeking. We must teach them to engage the practice of law with the values and leadership necessary to succeed. And we must base that teaching not just on our own assumptions of what they need, but on what we learn by engaging with the practice world our students will occupy upon graduation.

The measure of a law school then must not be based solely on the value of its initial return on investment upon graduation, but on how well it instills values such as ethics, respect for the rule of law and deep understanding of the jurisprudential thought that roots our conceptions of liberty and freedom to the rules regarding an ordered administration of justice.

The value of law school is in how well it teaches the policies and principles that undergird the social compacts we agree to as a society and which lawyers are uniquely charged with understanding and protecting while advocating for successful, just outcomes for their clients’ disputes.

The measure of a law school must be based as well on the traits of leadership in law we teach, not merely whether students upon graduation ascend to leading law firms or lead the march to the one percent. Leadership in law means developing the judgment and strategic thinking skills necessary to know not only what is allowable under the law in any given context, but also how and when a legal resolution should apply. We must teach our students that a lawyer’s leadership is critical to the successful, civil resolution of problems just as it is critical to the functioning of our rule-of-law society. We must show them that how we practice law is inextricably linked to how justice is delivered.

To see institutions charged with this responsibility as irrelevant or of little value defies logic. It defies history. And it disparages the thoughtful and courageous decisions of new law students who take on the challenge of becoming a lawyer when the common assessments of that decision advise against it.

Of course law schools must do all they can to make legal education available and unburdensome upon graduation. But it is in being too fast to believe the claims of law school’s irrelevance and offering uninformed change for change’s sake instead of redoubling our commitment to teaching law practice-relevant values and leadership that we give credence to the criticisms.
U.S. Prosecutors Have Too Much Power

Tuesday, November 10, 2015 at 6:30 p.m.
Thorne Auditorium, Northwestern School of Law

Autonomy and immunity endow prosecutors with immense power within the criminal justice system. They control who will be charged, the specifics of the charge, and what goes to trial. What’s more, defendants and defense attorneys are not permitted to be present during the grand jury process preceding and determining criminal indictments. Critics charge that there is an epidemic of prosecutorial misconduct, encouraged by an opacity and lack of accountability that threatens our legal system and democracy itself. But when the system works well, they are able to effectively prosecute crimes of great complexity. Is it time to rein in prosecutors?

About the Newt and Jo Minow Debate Series at Northwestern Law: Presented in partnership with Intelligence Squared Debates, this debate initiates the newly-founded Newt and Jo Minow Debate Series. The Minow Debate Series are made possible by friends and colleagues of Newton N. Minow, a 1950 graduate of Northwestern Law, who together donated funds to honor his numerous contributions to public and civic life by establishing an endowment to support a series of debates that engage outside experts, law school faculty, and students on important and timely legal topics.

law.alumni.northwestern.edu/minow