

# FACULTY

## **STUDYING** *THE HIDDEN EFFECTS OF* **INCARCERATION**

# STEVENSON WINS GRANT TO STUDY HIDDEN EFFECTS OF INCARCERATION

Professor **MEGAN STEVENSON** and her team received a \$200,000 grant from the Laura and John Arnold Foundation to study the hidden long-term effects of incarceration.

The two-year project will evaluate how incarceration impacts a wide range of personal and societal outcomes. The study, called “The Long Run Impacts of Incarceration: Evidence from a Regression Discontinuity Design,” will track long-term measures of economic well-being, such as educational attainment, eviction rates, earnings, employment, subprime borrowing rates and credit access.

Stevenson, an economist and criminal justice scholar, said poor prison conditions in Virginia inspired the project.

“People are stacked in small cells way beyond capacity, facilities are without air conditioning in hot summers, and without sufficient heat in the winter. The violence can be rampant,” she said. “Most prisoners have virtually no access to higher education or any other way to prepare themselves for life after release. We wanted to know what the long-term impacts of this experience are.”

The research team includes Yale University economics professor John Eric Humphries, University of Pennsylvania criminology professor Aurélie Ouss and Harvard University economics professor Winnie van Dijk.

By unearthing the connections between incarceration, barriers to reentry and social ills, the team hopes to provide prosecutors, judges and lawmakers with a body of evidence that will help them make informed decisions, and rewrite laws and sentencing guidelines where appropriate.

Stevenson said the scholars came across a useful “natural experiment” to help isolate the causal impact of incarceration, adding that Virginia uses a scoring system to calculate the sentence recommended by sentencing guide-

lines. Defendants who score right above the threshold for a prison recommendation are much more likely to be sentenced to prison, she said, but are otherwise very similar to those who score right below.

Stevenson has conducted empirical research in various areas of criminal justice reform, including bail, algorithmic risk assessment, misdemeanors and juvenile justice. Her research on bail was cited extensively in a landmark federal civil rights decision, *O'Donnell v. Harris County*, which reformed the bail system in that part of Texas.

Arnold Ventures, which manages the giving for the Laura and John Arnold Foundation, focuses its philanthropy on issues in criminal justice, health, education and public finance, and is guided by evidence-based policy, research and advocacy, according to the organization’s website.

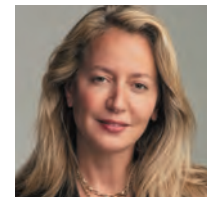
—Mike Fox



**KENNETH S. ABRAHAM** published “What History Can Tell Us About the Future of Insurance and Litigation Law After COVID-19,” in the DePaul Law Review for its annual Clifford Symposium on Tort Law and Social Policy. He also spoke, along with **G. EDWARD WHITE**, about their paper, “Doctrinal Forks in the Road: The Hidden Message of ‘The Nature of the Judicial Process,’” at a conference at Yale Law School in March.



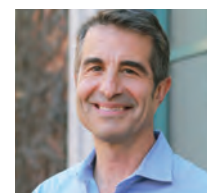
In the Spring, **Z. PAYVAND AHDOUT** published “Enforcement Lawmaking and Judicial Review” in the Harvard Law Review. She also presented her current project, “Separation-of-Powers Avoidance,” at the University of California, Berkeley, Colloquium on Courts and Judicial Process, at the Rehnquist Center’s Constitutional Law Conference and at the annual Civil Procedure Workshop. She was recognized for her scholarship by the Yale Law Journal, which named Ahdout the journal’s inaugural Emerging Scholar of the Year (see p. 66). In June, she testified about state sovereign immunity before the House Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Civil Liberties.



**MICHAL BARZUZA** presented at a Harvard Law School faculty workshop; Tel Aviv University’s Board Diversity Conference; a University of Chicago Law School retrospective on Frank H. Easterbrook and Daniel R. Fischel’s work regarding the economic structure of corporate law; an Oxford Business Law Workshop; law and economics workshops at Harvard Law School and Texas University Law School; and a regulation and markets workshop at Boston College Law School. In August, she presented work with **QUINN CURTIS** at the 32nd annual American Law and Economics Association Meeting. **MEGAN STEVENSON**, who serves on the ALEA board of directors, also presented.



**RACHEL BAYEFSKY** published “Administrative Stays: Power and Procedure” in the Notre Dame Law Review as part of its Federal Courts symposium and “Order without Formalism” in the George Washington Law Review as part of its symposium on the legacy of Justice Ruth Bader Ginsburg. Her review of a book on human dignity is forthcoming from the Review of Politics.



Students in the State and Local Government Policy Clinic, headed by **ANDREW BLOCK**, served

as the primary drafters of the final report of Gov. Ralph Northam’s Commission to Examine Racial Inequity in Virginia. Clinic students also worked with five individual members of the Virginia General Assembly to secure passage of four different pieces of legislation on topics including literacy, social determinants of health and juvenile delinquency prevention. The Virginia Literacy Act comprehensively transforms the way Virginia teaches reading to its youngest students. At the local level, students worked with the city of Charlottesville to determine that the city had legal authority to expand its property tax exemption program. Block was also part of a grant to the University’s libraries to digitize all of Virginia’s Jim Crow laws for public access.



**RICHARD BONNIE '69** served as a co-reporter for the American Law Institute’s Restatement on Children and the Law, earning final approval for eight sections relating to children in the justice system. Six of the sections covered developmental concepts and legal rules relating to the accountability of young people in delinquency proceedings as well as defenses based on immaturity in criminal prosecutions. He is currently trying to formulate the principles and rules governing transfer of youth from juvenile court to criminal court. Columbia Law School professor **ELIZABETH SCOTT '76** is chief reporter for the Restatement on Children and the Law.

Bonnie’s general interest in legal rules



## BAMZAI ELECTED TO AMERICAN LAW INSTITUTE

Professor **ADITYA BAMZAI** became a member of the American Law Institute, the organization announced July 25.

There are now 32 members of the UVA Law faculty currently affiliated with the institute, which produces scholarly work meant to update or otherwise improve the law. The organization includes judges, lawyers and law professors from the U.S. and around the world who are selected on the basis of “professional achievement and demonstrated interest in improving the law.”

Bamzai, who joined the Law School faculty in 2016, teaches and writes about administrative law, civil procedure, computer crime and conflicts of law. He is affiliated with the school’s Center for Criminal Justice, LawTech Center and National Security Law Center, and its programs in Constitutional Law and Legal History, and Public Policy and Regulation.

In 2018, Bamzai argued *Ortiz v. U.S.* before the U.S. Supreme Court as a rare independent amicus. The justices cited him by name 31 times in the case, which tackled the scope of the court’s original and appellate jurisdiction under Article III. He has also argued cases relating to the separation of powers and national security in the Foreign Intelligence Surveillance Court of Review, the D.C. Circuit and other federal courts of appeals.

Before teaching, Bamzai served as an attorney-adviser in the Office of Legal Counsel of the U.S. Department of Justice, and as an appellate attorney in both private practice and for the National Security Division of the Department of Justice.

He clerked for U.S. Supreme Court Justice Antonin Scalia and Judge Jeffrey Sutton of the U.S. Court of Appeals for the Sixth Circuit.

Bamzai received his undergraduate degree from Yale University and his law degree from the University of Chicago Law School, where he was the editor-in-chief of the law review.

Alumni **LYNDA BUTLER '78**, **ROSCOE JONES JR. '03**, **MELISSA SAWYER '00**, **JAMES Y. STERN '09** and **ANDREW WRIGHT '00** were also elected to the American Law Institute (see p. 89).

—Mike Fox



## BONNIE '69 LEADS REPORT OUTLINING DEMENTIA IN PRISON POPULATION

New research involving the University of Virginia is raising a red flag about a forgotten subset of the aging boomer population: prisoners.

The stakes are spelled out in “Persons Living with Dementia in the Criminal Legal System,” a report from the American Bar Association that was created in collaboration with UVA’s Institute of Law, Psychiatry and Public Policy, led by Professor **RICHARD BONNIE '69**, and the National Association of State Mental Health Program Directors.

An estimated 6.2 million Americans ages 65 and older currently have dementia, a number that is projected to increase to 12.7 million by 2050, according to the report. As the U.S. population ages and rates of dementia increase, the prevalence of dementia among people involved in the criminal legal system can also be expected to increase.

In fact, the number of prisoners 55 and older increased 400% from 1993 to 2013. Experts predict that this age group will make up a third of the prison population by 2030.

The nationwide stiffening of criminal sentencing during the late 1980s and 1990s—including lengthy mandatory terms—has contributed to the growth.

Bonnie said there is widespread agreement that most correctional systems are unprepared or unable to provide a safe and caring place for people with neurocognitive troubles, so the report is sending a clarion call about the need to develop and implement an efficient method for dementia screening.

“We need systemwide training for case identification and response for all criminal justice personnel—including law enforcement, attorneys and judges, and particularly for correctional agencies,” Bonnie said.

Bonnie highlighted a particularly troubling cycle in the pretrial process, when a defendant’s competence to stand trial is assessed.

“If the defendant is found incompetent, the court commits the defendant to the hospital for restoration of competence, which is not likely to occur given the nature of the disorder,” he said. “This pointless practice should be ended in favor of a more appropriate placement depending on whether the defendant poses a risk to himself or to society.”

Prisons and jails should also provide “therapeutically appropriate and protective conditions and programming for inmates with dementia,” Bonnie said.

When consistent with public safety, people with dementia should be transferred out of the traditional correctional system altogether, he added.

That would “require legal innovation,” he said, because it would mean creating a new procedure for the placement and protection of aging people with neurocognitive disorders “who pose danger to themselves or others and for whom traditional residential arrangements and family-centered legal protections are not adequate or available.”

—Jane Kelly

relating to adolescent development is also reflected in his ongoing empirical investigation of youth access to firearms. Along with colleagues from Duke University, Bonnie has two articles at press describing a multistate study of the effect of delinquency adjudications on youth access to firearm purchases.

Bonnie, who has championed red flag laws for a decade, played an active role in discussions leading to Congress’ enactment of the Bipartisan Safer Communities Act, and he attended a White House signing event in July. He also participated in strategic planning meetings with the Department of Justice to carry out provisions of the law, including the allocation of federal funds for implementation of state red flag laws.

Bonnie has appointed an advisory group charged with designing and drafting a proposal to divert people with severe mental illness from Virginia’s criminal legal system to a new form of civil commitment. The advisory group includes judges, prosecutors, defense attorneys, forensic psychiatrists and psychologists, and mental health advocates. He aims to have a bill ready for consideration by the Virginia General Assembly in 2023.



**NAOMI CAHN** was a speaker at the Association of American Law Schools’ annual meeting in January in a program co-sponsored by the Aging and the Law, Family and Juvenile Law, and Poverty Law sections. Along with **ELIZABETH**

**SCOTT '77**, Cahn presented at an Ohio State University faculty workshop on Family Law and the 100-Year Life. They presented the same paper with co-author Clare Huntington at the University of Chicago’s Gender and Sexuality Studies Workshop in February.

Cahn also presented at the Ethics of Choice conference at the University of Richmond in February and at Emory University’s vulnerability workshops in January and June. Cahn co-presented a forthcoming chapter on the Restatement of Trusts at the Critical Trusts and Estates Conference in April.

In March, Cahn became the editor of *ACTEC*, the American College of Trust and Estate Counsel’s law journal. Cahn also published a review of “The Rage of Innocence” in *JOTWELL* in June. Her other recent publications include “The Instrumental Case for Corporate Diversity” with June Carbone and Nancy Levit in the *Minnesota Journal of Law & Inequality*; “The Art of Regulating ART” with Sonia M. Suter in the *Chicago-Kent Law Review*; and co-written pieces in *Bloomberg Law*, *The Hill* and *The Conversation*.



**DANIELLE K. CITRON'S** book “The Fight for Privacy: Protecting Dignity, Identity, and Love in the Digital Age” was published in October by W.W. Norton and Penguin Vintage UK. She published several articles in the spring and summer, including “Privacy Injunctions” in the *Emory Law Journal* and

“Privacy Harms” with Daniel Solove in the *Boston University Law Review*. She authored several opinion pieces in *Slate*, gave 15 talks and appeared on CNN and PBS’ TV program “The Open Mind.”



**GEORGE COHEN** served as faculty consultant to the Administrative Conference of the United States on a project regarding the regulation of representatives in agency adjudicative proceedings. He authored a report discussing the rules of conduct for attorneys and non-attorneys representing parties in proceedings before federal agencies. The report led to a series of recommendations adopted by ACUS in December, including convening a working group to promulgate model rules of conduct for representatives before federal agencies. Cohen will serve as a voting member of the working group.

Cohen wrote a brief article discussing this work for the University of Pennsylvania’s *Regulatory Review* and wrote a chapter on rules of conduct for representatives, which will be published in the newest edition of the ABA’s *Guide to Federal Agency Adjudication*.

As part of UVA Law Alumni Weekend, Cohen made a CLE presentation on “Knowledge, Willful Blindness, Due Diligence and the ABA.”

Cohen also submitted and presented comments regarding proposed amendments to the ABA Model Rules of Professional Conduct concerning client due diligence obligations for lawyers.



**ANNE COUGHLIN'S** Sound Justice Lab earned \$1 million in grant funding from UVA’s Democracy Initiative. Coughlin co-directs the lab with the School of Music’s Bonnie Gordon and Nomi Dave (see sidebar).

Coughlin co-authored, with **MOLLY BISHOP SHADEL**, “The Gender Participation Gap and the Politics of Pedagogy,” in the *Virginia Law Review Online*. With **NAOMI CAHN**, Coughlin published an op-ed in *The Washington Post*, “Texas is trampling parents’ rights in its investigations of trans kids.”



**ASHLEY DEEKS** returned from her time at the White House, where she advised the national security adviser and other officials at the National Security Council on legal issues related to the use of force, armed conflict, sanctions, intelligence activities, declassification and a range of other topics. Late last year, she published a book chapter titled, “Will Cyber Autonomy Undercut Democratic Accountability?,” which examines how the increased use of machine learning in cyber operations will challenge the ability of policymakers and the public to understand and oversee cyber decisions.

In the spring, Deeks and co-author **ANDREW HAYASHI** published “Tax Law as Foreign



## COUGHLIN CO-DIRECTS UVA'S NEW SOUND JUSTICE LAB

For Professor **ANNE COUGHLIN**, the law is about much more than rules and doctrines—the law is a discourse that relies on storytelling for its descriptive claims and prescriptive guidance. For example, she pointed out, the holdings of cases are like “punchlines whose meanings emerge from the stories that judges tell to support them.” Yet, she said, lawmakers over the generations have been inattentive and even hostile to the stories of women and girls, as well as those of people of color, LGBTQ individuals and Native Americans.

Those are the concerns targeted by the Sound Justice Lab, a new interdisciplinary gender justice initiative at the University of Virginia, co-directed by Coughlin and music professors Nomi Dave and Bonnie Gordon.

The lab, which launched July 1, received a three-year, \$1 million grant from UVA’s Democracy Initiative to locate, listen to, and amplify voices and experiences that have been neglected by the institutional actors and processes that are charged with dispensing justice.

“One of our most basic objectives is to influence pedagogy both in law school classes and elsewhere,” Coughlin said. “Think about whose voices have the most power in public spaces, which include classrooms. What do those voices sound like? Whose claims and interests are heard and considered relevant, and whose are not? Our lab will study what justice sounds like and looks like when some voices are given a hearing and others are not.”

“Those voices will rise somewhere, and we are committed to hearing, listening and advocating for them,” she added.

Among the initiative’s first events, Coughlin and Gordon held a public talk and discussion of the U.S. Supreme Court decision *Dobbs v. Jackson Women’s Health Organization* on June 29 at the Law School. The ruling overturned *Roe v. Wade* and said there was no constitutional right to abortion under the 14th Amendment. (Coughlin is teaching a course on the law post-*Dobbs* with Professor **NAOMI CAHN** this fall.)

Coughlin, who clerked at the Supreme Court, joined the Law School faculty in 1996 and is the Lewis F. Powell, Jr., Professor of Law. Her primary research and teaching interests are in the areas of criminal law, criminal procedure, feminist jurisprudence, law and public service, and law and the humanities.

The Democracy Initiative was established in 2018 by the College and Graduate School of Arts & Sciences and the Miller Center for Public Affairs. It is designed to engage a wide audience in examining the challenges confronting democracies today.

—Mike Fox

## CURTIS NAMED ASSOCIATE DEAN, RECOGNIZED FOR PAPER

Professor **QUINN CURTIS** was named associate dean for curricular programs at the Law School, effective July 1.

His responsibilities include managing the Law School's varied curriculum and serving on the Curriculum Committee, recruiting and supporting adjunct and short-course instructors, and overseeing and coordinating experiential and dual-degree



programs. "UVA Law offers a huge array of courses and clinics, and I'm looking forward to working with our faculty to make sure our students continue to have access to phenomenal classroom and real-world experiences," Curtis said. "One

of the wonderful things about this law school is how dedicated it is to quality teaching. I'm proud to help carry forward this tradition in this new role."

Curtis, a former Microsoft engineer who holds both a J.D. and a doctorate of finance from Yale University, joined the faculty in 2011. He has written extensively on the regulation of mutual funds and retirement accounts, and he currently teaches courses on corporate law, securities and venture capital.

Curtis succeeds Professor **GEORGE COHEN**, who assumed the newly created position in 2019 and will return to full-time teaching and research.

"George has done a remarkable job in this new role," Dean **RISA GOLUBOFF** said. "He has guided our curriculum, improved our academic policies, and kept the trains running on time during a challenging period. We all owe him our thanks."

Additionally, Curtis' co-authored paper "Do ESG Mutual Funds Deliver on Their Promises?" was named one of the top 10 corporate and securities articles of 2021. A poll of academics conducted for Corporate Practice Commentator selected Curtis' paper, published in the Michigan Law Review, and other honorees from more than 400 candidates.

The paper, co-authored by law professors Jill E. Fisch of the University of Pennsylvania and Adriana Robertson of the University of Toronto, examines whether mutual funds focused on environmental, social and corporate governance goals live up to their label—and concluded that they do.

Curtis' research and writing focuses on empirical work on 401(k) plans, mutual fund governance and fee litigation, as well as corporate governance and corporate litigation. He is affiliated with the John W. Glynn Jr. Law & Business Program.

—Mike Fox

Policy" in the University of Pennsylvania Law Review, analyzing how Congress and the president could make greater use of the income tax as a foreign policy tool. Her book chapter, "Coding the Law of Armed Conflict: First Steps," was published in an edited volume that explores how the law of armed conflict will look in the year 2040.



**KRISTEN EICHENSEHR**, who writes and teaches about national security and foreign relations, appeared on several panels discussing the Russian invasion of Ukraine and accountability in cyberwarfare, including presenting a guest lecture for a legal course at the U.S. Naval War College in May. She discussed cyberattacks on the Lawfare and "Common Law" podcasts and moderated a conversation with journalist Nicole Perloth for the UVA National Security Law Center in February.

She published "Ukraine, Cyberattacks, and the Lessons for International Law" in the American Journal of International Law Unbound, and contributed a book chapter to "The United States' Cyber Strategy and 'Defend Forward': A Comprehensive Legal Assessment."

She presented a forthcoming essay, "National Security Creep in Corporate Transactions," co-authored with **CATHY HWANG**, at the Harvard-Yale Stanford Junior Faculty Forum and the Council on Foreign Relations (see p. 66).



**AMANDA FROST**, who joined the faculty in August, had her most recent book short-listed for the Mark Lynton History Prize, which is awarded by the Neiman Foundation and the Columbia Journalism School for the "narrative history that best combines intellectual distinction with felicity of expression." The book, "You Are Not American: Citizenship Stripping from Dred Scott to the Dreamers," was published in 2021. She discussed the book on Texas Public Radio in September.

She testified before the Senate Judiciary Committee's hearings on transparency and accountability in the federal judiciary and discussed her research into birthright citizenship on NPR's "Throughline" on June 9.

Her article "The Rise of Reparative Citizenship" was published in the 25th anniversary volume of the peer-reviewed journal Citizenship Studies in August.



**MICHAEL GILBERT'S** book, "Public Law and Economics," co-authored with Robert Cooter of the University of California, Berkeley, was published by Oxford University Press. He presented material from the book at a meeting of the International Association of Constitutional Law in Córdoba, Argentina.

His paper "Constitutional Locks," co-authored with

**MAURICIO GUIM S.J.D. '18** and **MICHAEL WEISBUCH '19**, received the 2022 Special Mention award from the International Society of Public Law.

Gilbert gave a lecture titled "Justice, Constitutional Courts, and Economics" to faculty and students at the Pontificia Universidad Católica del Ecuador, and he presented "Political Corruption," co-authored with **DEBORAH HELLMAN**, at a virtual conference on election law.

With **MICAH SCHWARTZMAN '05**, he organized a conference at UVA Law, "Judging Hard Cases."



**RISA GOLUBOFF** moderated a June panel at the Inaugural Civil Rights Law Institute at Monticello, "The Law of Excessive Force and Legal Remedies: Building Winning Arguments as They Relate to the Disproportionate Impact on People of Color."

She served as a panelist about Justice Stephen Breyer's career at the Federal Judges Association Quadrennial Conference in May; she also served as a panelist for the Jewish Theological Seminary's Bernard G. Segal Memorial Lecture in Law and Ethics, "Hate on Trial: The Charlottesville Case," in March.

In September, she taught a National Humanities Center webinar as part of a series on the First Amendment, and interviewed Harvard University law professor Mark Tushnet, for a Constitution Day event at the Law Library of Congress.

Other speaking engagements include a presentation to the Federal Bar Associa-

tion's Western District of Virginia about law schools and the free exchange of ideas, and appearing as the plenary speaker at Amazon Pro Bono Week and the annual meeting of the American Society for Legal History.



**RACHEL HARMON** gave the Mastrofski Lecture at George Mason University in March regarding the basis for her draft paper, "Law and Orders: The Problem of Police Commands." Over the summer, she presented a draft of the paper at the Law of the Police Roundtable at the University of South Carolina and the UVA Law faculty workshop.

She presented another paper, "Force and Flight," at faculty workshops at the University of South Carolina Law School and Penn State Law School in spring. Co-authored with former UVA Law professor Kimberly Kessler Ferzan, the paper considers when force that is necessary to achieve legitimate state ends is nevertheless unjustifiable. It is part of a two-paper series Harmon and Ferzan are writing considering philosophical justifications for police practices.

She was interviewed in February for TalksOnLaw as part of a panel, "Race, Police and Imperfect Justice"; in March, she spoke about police reform as part of UVA's Lifetime Learning panel on criminal justice reform; and in May, she spoke at a roundtable on police unions and police accountability at the Law Library of Congress.

She spoke in April to the American Bar Association Legal Education

Police Practices Consortium about developing courses on policing and the law based on her 2021 seminal casebook, "The Law of the Police." She is an associate reporter for the American Law Institute's project on policing, which was approved by the ALI's membership in May.



**ANDREW HAYASHI** presented his article "The Law and Economics of Animus" at the University of Chicago Law School in May. The article is part of a broader research agenda that involves revisiting law and economics analysis to incorporate a broader set of individual motivations. He is currently working with **MICHAEL GILBERT** on an article about these themes, called "Law and Economics for Empaths and Angels." He is co-editing a volume about theology and taxation, and he hosted a conference at the Law School in September for contributors to that volume.



**DEBORAH HELLMAN** published "The Algorithmic Leviathan" with Kathleen Creel in the Canadian Journal of Philosophy. She also presented work virtually at Gästehaus Goethe University, in Frankfurt, Germany, and at Dartmouth College. In October, she delivered a keynote address at a conference hosted by the Centre for the Experimental-Philosophical Study of Dis-

crimination at Aarhus University in Denmark.



**A. E. DICK HOWARD '61** was honored by the Rhodes Trust in June at a black-tie dinner at Oxford's Ashmolean Museum. The George Parkin Award for service to the trust honored his 29 years of service as Virginia secretary of the Rhodes Trust, and his 40 years of service on the board of directors of the American Association of Rhodes Scholars.

Howard was elected as a Rhodes Scholar while he was a second-year law student at UVA. During his Rhodes fellowship, he studied philosophy, politics and economics at Christ Church, Oxford, earning Oxford's B.A. and M.A. degrees. He has returned to Oxford about a dozen times to present lectures. The board of governors of Christ Church has elected Howard a member of the college's High Table and of its Senior Commons Room.



**CATHY HWANG** published "Contractual Depth" in the Minnesota Law Review with Matthew Jennejohn; "Collaborative Intent" in the Virginia Law Review; "Cleaning Corporate Governance" in the University of Pennsylvania Law Review with Jens Frankenreiter, Yaron Nili and Eric Talley; and "Comment on the Limits of Public Contract Law" in Law & Contemporary Problems.

## ENRIGHT '92, GIVENS WIN PUBLIC SERVICE AWARD

The Innocence Project at UVA Law is a picture of high-stakes collaboration in action, with 14 clinic students, two directors and multiple witnesses, prosecutors and



defense attorneys working together—against time—to free the wrongly convicted.

The University's Public Service Awards Committee recognized the clinic's achievements when it awarded its longtime leaders Professors **DEIRDRE ENRIGHT '92** and **JENNIFER L. GIVENS** one of this year's Collaborative Excellence in Public Service Awards. The duo were recognized at a reception May 9.



Enright started the Innocence Project at UVA Law in 2008; Givens joined her as legal director in 2015, and now serves as director. After stepping down from the clinic over the summer, Enright moved over to run a new criminal justice

policy clinic she launched in January, the Project for Informed Reform. (**JULIET HATCHETT '15** joined the Innocence Project as associate director in August.) Enright is also director of the Law School's Center for Criminal Justice, alongside Professor **RACHEL HARMON**.

In the past calendar year, the project won the release or exoneration of nine clients and won millions in compensation for six who were completely exonerated, representing the culmination of many years of work by the clinic.

"Collaboration is the soul of any good innocence project," Enright wrote in a statement to the awards committee. "[W]e have little power to compel anyone to cooperate with us. The cases are not active in court, so we have no subpoena power. We are left to find ways to collaborate, some obvious and some obscure."

In her own personal statement, Givens noted, "The failure to work collaboratively can stop a case in its tracks. Establishing relationships with police, prosecutors and crime victims is crucial to the ability to fully investigate our cases."

Enright and Givens each received a \$3,000 prize for the public service award, and the Innocence Project will receive an additional \$3,000 to support the program's continuing efforts.

—Melissa Castro Wyatt



## HARMON HONORED WITH ALL-UNIVERSITY TEACHING AWARD

Professor **RACHEL HARMON** was named a recipient of one of this year's All-University Teaching Awards, marking the seventh time in the past 10 years that a member of the school's faculty has been honored for their passion and skill in the classroom.

When Harmon started teaching her class Law of the Police in 2011, she would tell her students not to think of it as a practical course, but rather as a critical perspective on the laws and policies that regulate police activity and conduct. But as she and her students delved into the cases, history and commentary that later became her 2021 seminal casebook of the same name, the students had other ideas.

"Students started immediately pushing back and saying, 'No, we're going to use this in the real world!'" Harmon said. "So I'm not only trying to teach them doctrine, I'm trying to give them tools to help them change the world."

Harmon, a former federal prosecutor with the Department of Justice Civil Rights Division and a director of the school's Center for Criminal Justice, is the Harrison Robertson Professor of Law. She joined the faculty in 2006.

She is a member of the American Law Institute and serves as an associate reporter for ALI's project on Principles of the Law of Policing. She regularly advises nonprofits and government actors on issues of policing and the law.

In addition to teaching Law of the Police, Harmon teaches a battery of more conventional criminal justice classes, including criminal law, criminal procedure and courses examining the Supreme Court's approach to criminal jurisprudence.

Harmon's courses are a hot commodity at the Law School, and students come into the classes with a wide spectrum of political perspectives and life experiences.

As Dean **RISOLA GOLUBOFF** noted in her nomination letter, "These are difficult and controversial subjects. The cases are ripped from the headlines, and they involve deeply troubling facts about violence, racism and discrimination."

Harmon manages these challenges with singular skill, Goluboff said, and called Harmon's ability to create space for a free and respectful exchange of ideas about such controversial issues "miraculous."

—Melissa Castro Wyatt

She presented the "Collaborative Intent" paper at a Columbia Law School conference in April, and presented, with co-author **KRISTEN EICHENSEHR**, "National Security Creep in Corporate Transactions" at the 2022 Harvard/Yale/Stanford Junior Faculty Forum (see p. 66).

Hwang and her co-authors Nili and Jeremy McLane presented "The Lost Promise of Loan Covenants" at the Penn-NYU Empirical Contracts Workshop in June and the Law & Society Association's annual meeting in July.

She also presented a forthcoming University of Pennsylvania Law Review article, "Nonparty Interests in Contract Law," at a faculty workshop at Washington University in St. Louis in April.



In July, **CALE JAFFE '01** was promoted from associate professor to full professor, general faculty. Over the summer, Jaffe and students in the Environmental Law and Community Engagement Clinic filed an amicus brief in the U.S. Supreme Court case *Sackett v. EPA*, a major Clean Water Act case out of Idaho that considers the federal government's jurisdiction over wetlands, streams and other aquatic resources adjacent to traditionally navigable waters. Jaffe's team represented the Idaho Conservation League. Earlier in the spring, Jaffe and clinic students represented the Sierra Club in a Virginia State Corporation Commission proceeding on a proposed wind farm, which would be the largest such project

in the U.S., generating enough electricity to power 660,000 homes.



**CRAIG KONNOTH** was named the University of Virginia John T. Casteen III Faculty Fellow in Ethics, a program that supports integrating ethical analysis and reasoning into courses. At the Law School, Konnoth was named a Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law.



**DOUGLAS LAYCOCK** filed an amicus brief with the U.S. Supreme Court in *Carson v. Makin*, in which the court held that a state that pays tuition for students attending private schools cannot discriminate between religious and secular schools. He spoke in February to UVA's Federalist Society chapter about his amicus brief and to the Yale Federalist Society about the Supreme Court's shadow docket. In March, he spoke on religious liberty to the Washington and Lee University School of Law Federalist Society.

He spoke at the Religious Liberty Scholars Summit in Washington, D.C., on litigating as an academic and dealing with the press (sponsored by Becket Law), and on religious liberty issues arising from COVID-19 and other public health regulations in a Current Issues in Judging course as part of the judicial LL.M. program at

Duke University School of Law.

In April, he taught a class on *Rosenberger v. Rector and Visitors of the University of Virginia* for a UVA course, A History of Religion at UVA. In June, he spoke on the religious liberty work of Sanford Levinson at LevinsonFest, an event celebrating Levinson's 40 years at the University of Texas. He spoke at an Association of American Law Schools webinar on "Teaching Remedies" in July.

He recently published "Restatement (Third) of Torts: Remedies," with Richard L. Hasen and the American Law Institute; "On Friendship, Tolerance, and Religious Liberty" in *Balkanization*; and the 2022 Teachers' Update to "Modern American Remedies: Cases and Materials."



In June, **MICHAEL A. LIVERMORE** presented new work on environmental ethics and endangered species law at the Society for Environmental Law and Economics workshop, which was held at New York University School of Law. He also participated in the Journal of Institutional and Theoretical Economics workshop sponsored by the Max Planck Institute for Research on Collective Goods, this year held in Stralsund, Germany, on the theme of judicial decision-making. In May, he presented work on environmental federalism at the Sustainability Conference of American Legal Educators at Arizona State University. Throughout the summer, he continued as a fellow of the Intercontinental Academy of the University-Based

Institutes for Advanced Study, with its theme of "Intelligence and Artificial Intelligence," and he will participate in a weeklong conference on this topic in Brazil in November.

In December, Livermore will present work at Hebrew University in Jerusalem on text-as-data analysis of legal decision-making. He continues to host the podcast "Free Range with Mike Livermore," which can be found on Apple Podcasts, Spotify and other platforms. Guests in recent months have included Pulitzer Prize-winning author Elizabeth Kolbert; University of California, Davis, economist Francis Moore; and philosopher Ronald Sandler of Northeastern University.



**M. ELIZABETH MAGILL '95**, former UVA executive vice president and provost, became president of the University of Pennsylvania on July 1. She is now David and Mary Harrison Distinguished Professor of Law Emeritus at the Law School.



**RUTH MASON** advised the school's moot court team, which placed second in this year's International and European Tax Moot Court competition in April, while winning a majority of the prizes awarded in the qualifying rounds: Best Pleading Applicant Team, Best Pleading Defendant Team, Best Defendant Brief and Best Oralist for the Applicant. Mason filed an

amicus brief at the Supreme Court in *National Pork Producers Council v. Ross*, arguing that California violated the dormant Commerce Clause with its extra-territorial and unduly burdensome regulation of hog farming.

Over the January term, she taught a course on transfer pricing with former Treasury official Michael McDonald. She served on a panel at Harvard regarding the new global tax framework and a panel at the Tax Policy Council Institute's annual meeting in Washington on "Multilateralism: The New Mode." She was inducted into the American College of Tax Counsel and hosted the Oxford-Virginia Legal Dialogs, an online webinar series.



**JOHN T. MONAHAN** recently co-authored an article in the *Journal of Criminal Justice*, "The Predictive Performance of Criminal Risk Assessment Tools Used at Sentencing: Systematic Review of Validation Studies." He also co-authored a manuscript currently under review at another journal, "Pretrial Risk Assessment, Risk Communication, and Racial Bias." Monahan directs a research project for the John D. and Catherine T. MacArthur Foundation on ways to improve pretrial risk assessment. He also serves on the advisory board for Advancing Pretrial Policy & Research, a project supported by Arnold Ventures.



**DANIEL R. ORTIZ**, director of the Supreme Court Litigation Clinic, filed a cert reply as counsel of record in *Jones v. Hendrix*, which asks whether habeas relief is available to federal inmates who did not file timely challenges to their convictions when statutes or judicial decisions decriminalized the activities at issue after they were convicted of the activity. Ortiz spent the summer drafting the opening merits brief and supervised the students' drafting of the merits reply brief earlier this semester. They are currently preparing for oral argument.

Ortiz also helped draft a cert reply in *Flowers v. United States*, which asked whether conduct that law-abiding members of the general public routinely engage in can establish reasonable suspicion justifying a *Terry* stop merely because the behavior was observed in a high-crime area. (The petition was denied.)

He helped file a cert petition and cert reply in *Spade v. United States Department of Justice*, which asks whether federal courts have subject-matter jurisdiction to determine which injuries fall within the scope of the Federal Employees' Compensation Act.

Ortiz also published an article, "Voting Rights and the 1971 Virginia Constitution," in the UVA Law student-run *Journal of Law & Politics*. He spoke at several events marking Justice Stephen Breyer's retirement, including a UVA Law webinar, "Justice Breyer's Legacy: Four Decades on the Bench," and participated in a Wisconsin Public Radio program on mandatory arbitration.



In February, the Pennsylvania Law Review published a paper by **SAIKRISHNA PRAKASH**, "The Peace Powers: How to End Wars." The article was co-written with **AVERY RASMUSSEN '21**. In January, Prakash presented a paper to the Harvard Public Law Workshop, regarding the president's power to remove appointees. In June, he spoke at a conference held by the National Constitution Center.



**RICHARD RE** published "The Peril and Promise of SCOTUS Resignations" in the *Iowa Law Review Online*. He wrote about the paper in an op-ed for *The Boston Globe*, "Here's a Way for Justice Jackson To Reform the Supreme Court on Her First Day."

He also published "Personal Precedent in the Supreme Court" in the *Harvard Law Review*, and the article was featured by *The New York Times* in "The Problem of 'Personal Precedents' of Supreme Court Justices."



**KIMBERLY JENKINS ROBINSON** published "The Hope of Ketanji Brown Jackson's Nomination" as a guest column in *Richmond Times-Dispatch* in

March and frequently appeared in the media to discuss Jackson's nomination.

She served as a panelist at the American Constitution Society's national convention in June, regarding the "weaponization of 'parental rights.'"

She presented as a guest lecturer on "School Funding and a Federal Right to Education" at Georgetown University's Edunomics Lab in June, and as the keynote speaker on Title IX inequity in higher education to the American Association of University Women of Virginia in March.

Other speaking engagements included UVA Law's Center for the Study of Race and the Law in March on "Teaching Race in K-12 Schools: Cultural, Legal and Policy Perspectives"; the Thurgood Marshall Lecture at Roger Williams University School of Law in March on "A Roadmap to Educational Excellence and Equity for Rhode Island"; a conference at the University of South Carolina School of Law in February on "Rule of Law and Civics"; the Rumi Forum in Charlottesville in February on "Legal Pathways to Ensuring All Children Receive a High-Quality Education"; and at the Education Law Association's 67th annual conference in October on "*San Antonio v. Rodriguez*: Past, Present and Future."

She also served as a moderator for a panel at the Shaping Justice Conference at the Law School in February on "Safe Schools for All Students: Protecting the Rights of LGBTQ+ Youth in the K-12 Education System" and for a litigation workshop on remedies and enforcement at the Education Law Center last November.

## FACULTY HONORS IN BRIEF



Ahdout

### AHDOUT WINS EMERGING SCHOLAR AWARD

**PAYVAND AHDOUT** won The Yale Law Journal's inaugural Emerging Scholar of the Year Award in March. The award recognizes the achievements of early-career academics who have made significant contributions to legal thought and scholarship, according to the journal. It seeks to promote scholarship that has the potential to drive improvements in the law and to spotlight the exceptional work of its honorees. The winner was selected by the journal's editors.



Citron

### SPOTIFY COUNCIL ADDS CITRON

**DANIELLE CITRON**, director of the school's LawTech Center, will help Spotify improve policies and products while respecting creator expression as a founding member of the media services provider's Safety Advisory Council. "Our council members will advise our teams in key areas like policy and safety-feature development as well as guide our approach to equity, impact and academic research," the company said in a statement June 13. Citron was also named a 2022 Fastcase 50 award honoree for her advocacy and innovation in cyberlaw on July 12.



Ross

### CITRON, ROSS JOIN CENTER'S ADVISORY BOARD

**DANIELLE K. CITRON** and **BERTRALL ROSS** have joined the advisory board of the new Fair Elections and Free Speech Center at the University of California, Irvine School of Law. Launched July 20, the center is dedicated to advancing an understanding of, and offering means to counter, threats to the stability and legitimacy of democratic governments exacerbated by the unregulated growth of digital media and other technological changes in mass communication.



Eichensehr

### EICHENSEHR, HWANG PRESENT AT FACULTY FORUM

A paper co-authored by **KRISTEN EICHENSEHR** and **CATHY HWANG** was accepted to the 2022 Harvard/Yale/Stanford Junior Faculty Forum. Eichensehr and Hwang presented "National Security Creep in Corporate Transactions," forthcoming in the Columbia Law Review, during the June 9-10 conference at Harvard Law School. Their article examines national security's rapidly expanding influence on corporate transactions in the United States. The Harvard/Yale/Stanford forum was created to encourage the work of scholars recently appointed to tenure-track positions. Eichensehr directs the National Security Law Center, and Hwang directs the John W. Glynn Jr. Law & Business Program.



Hwang

### NICOLETTI WINS AWARD FOR ARTICLE

**CYNTHIA NICOLETTI**, a legal historian, won the George and Ann Richards Prize for the best article published in The Journal of the Civil War Era in 2021, the journal announced July 19. Her essay, "William Henry Trescott: Pardon Broker," appeared in the December issue. She details the efforts of Trescott, "executive agent" for South Carolina, to secure pardons in order to facilitate the restoration of land the federal government had seized from low country planters during the war.



Nicoletti

### PRAKASH CONTRIBUTES TO ELECTORAL REFORM PROJECT

**SAIKRISHNA PRAKASH** was part of an American Law Institute project exploring reforms to the Electoral Count Act. The group, co-chaired by New York University law professor **BOB BAUER '76**, unanimously agreed that Congress should reform the ECA, passed in 1887, in time for the 2024 election. The project proposed principles "in an effort to contribute to a constitutionally sound bipartisan consensus in Congress." Among the suggestions were limiting objections to electoral votes to those grounded in explicit constitutional requirements; moving the Electoral College meeting date to account for recounts and legal challenges; and affirming that states cannot disregard votes or electors contrary to laws in place on Election Day.



Prakash

—Mike Fox



**BERTRALL ROSS** published "Inequality, Anti-Republicanism, and Our Unique Second Amendment" in the Harvard Law Review Forum and "Voter Data, Democratic Inequality, and the Risk of Political Violence" in the Cornell Law Review.

Ross presented "Toward Democracy: The Evolving Meaning of Republican Form of Government" at the University of Wisconsin Law School conference "Interpretation in the States" in May. At the Duke-Harvard symposium "Guns, Violence, and Democracy" in March he presented "Inequality, Anti-Republicanism, and Our Unique Second Amendment."

He served on three panels at the Association of American Law Schools annual conference in January: "Election Subversion: Assessing the Dangers to American Democracy"; "What Research Can Tell Us About How Law Schools, Lawyers and Leaders Can Nourish Democracy"; and "Redistricting, Gerrymandering, the Voting Rights Act."

He also served as a panelist for the AALS Faculty Focus webinar in April, "Creating an Inclusive Classroom," and for the University of Washington's "Voting Rights Under Attack" webinar in January, sponsored by the Washington Institute for the Study of Inequality and Race.

He provided comments for a paper titled "Election Emergencies" at the Federalist Society's national symposium at the Law School in March.



**GEORGE RUTHERGLEN** is working on a book, "The Contentious Past and Uncertain Future of Employment Discrimination Law," about the likely effects of the Supreme Court's decisions in *Dobbs v. Jackson Women's Health Organization* and in upcoming affirmative action cases on the law of employment discrimination.

Rutherglen is also working on an article about choice-of-law principles for the online edition of the Virginia Journal of International Law, "A Choice by Any Other Name: Ad Hoc Substitutes for Choice of Law."



**FREDERICK SCHAUER'S** book, "The Proof: Uses of Evidence in Law, Politics, and Everything Else," was published by Harvard University Press in May. It explores the use of evidence in courts, medicine, art, history and beyond, helping the reader derive truth in different contexts.

He responded to commentators at a symposium about the book at the International Congress on Evidence and Proof in Girona, Spain, in May.

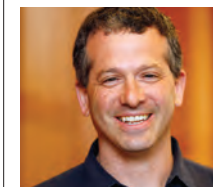
Schauer also published "Kelsen, Kletzer, and the Differentiation of Law" in the American Journal of Jurisprudence and "Statistical Evidence and the Problem of Specification" in Episteme.

He presented his new paper, "A Frame Without a Picture: On the Relevance (or Not)

of Law in the Decision of Hard Cases," at the Karsh Center for Law and Democracy's May conference at the Law School, "Judging Hard Cases."

The 2022 edition of "Leading Cases in Constitutional Law," which he co-authored with Jesse H. Choper, Michael C. Dorf and Richard H. Fallon Jr., was released this year, along with a supplement to "Constitutional Law: Cases, Comments, and Questions" by the same authors.

Schauer gave Zoom lectures on "free speech justifications" for a graduate-level course on freedom of expression in Warsaw and on legal reasoning for a doctoral program in São Paulo. He gave the keynote lecture at a conference on experimental jurisprudence at the University of Michigan Law School.



**RICHARD C. SCHRAGGER** co-sponsored a conference in Tel Aviv titled "Regionalisms: Shifting Scales Beyond Cities and States" and presented his paper "Seeing Like Region." He presented "The City in the Future of Federalism" at a conference on federalism sponsored by Northwestern University Law School, and he was a panelist on "NIMBYism: Triumph of an Illusion II," presented at the annual Urban Affairs Association meeting.

Schragger presented "The Perils of Land Use Deregulation," which was published in the University of Pennsylvania Law Review, to the California Alliance of Local Electeds; was a panelist on "Teaching Race in K-12 Schools: Cultural, Legal, and Political Per-

spectives," sponsored by the American Association of University Professors; spoke about "Emerging Leaders," at the African-American Mayors Association meeting; and was a panelist for "Through the Looking Glass: Living With COVID-19 in 2022," presented at the Virginia Bar Association's annual meeting. He and **MICAH SCHWARTZMAN '05** wrote a critical review of Adrian Vermeule's book, "Common Good Constitutionalism," that appeared in the April issue of The American Prospect.



**MICAH SCHWARTZMAN '05** wrote "The Politics of Proportionality" with Cornell University law professor Nelson Tebbe for the Michigan Law Review and co-authored a piece with Dahlia Lithwick titled, "Is the Religious Liberty Tent Big Enough to Include the Religious Commitments of Jews?"

As director of the Karsh Center for Law and Democracy, Schwartzman co-hosted with **MICHAEL GILBERT** the conference "Judging Hard Cases" at the Law School, and he organized the second annual May Gathering, which brought together scholars and practitioners focused on poverty law and social movements.



**BARBARA SPELLMAN'S** co-authored book, "The Psychological Foundations of Evidence Law," was translated into Japanese for use in a

revamped trial system that now includes lay judges as decision-makers in some criminal cases.

A 2017 University of Chicago Law Review article by Spellman and **FREDERICK SCHAUER** about the use of analogy in legal decisions was cited in Justice Clarence Thomas' majority opinion in *New York State Rifle & Pistol Association Inc. v. Bruen*.

Schauer and Spellman had a paper on precedent and similarity accepted for publication as a chapter in "Philosophical Foundations of Precedent," to be published by Oxford University Press.

Spellman has been working with the Organization of Scientific Area Committees for Forensic Science, a division of the National Institute of Standards and Technology, to help improve forensic science procedures. She was a co-editor of a special issue of the journal Forensic Science International: Synergy. Each article became a chapter in the book, "The Human Factors in Forensic Science Sourcebook."

Spellman was the lead author of a chapter called "Challenges to Reasoning in Forensic Science Decisions." The co-editors produced a one-hour webinar to introduce the book. Spellman was one of 50 authors to contribute to "Psychological Science in the Wake of COVID-19: Social, Methodological, and Meta-Scientific Considerations," a forthcoming paper in the peer-reviewed journal Perspectives on Psychological Science.

Stephan co-authored an amicus brief in *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, urging the U.S. Supreme Court to grant certiorari.

The European Journal of International Law published his article, "The U.S. Context of the Restatement (Fourth) of the Foreign Relations Law of the United States," as well as an interview with Stephan about the Fourth Restatement. (continued on p. 70)



In April, the American Society of Inter-

national Law awarded **PAUL STEPHAN '77** and his co-editor, Sarah Cleveland of Columbia Law School, the 2022 Robert E. Dalton Award for Outstanding Contribution to the Field of Foreign Relations Law for their book, "The Restatement and Beyond: The Past, Present, and Future of U.S. Foreign Relations Law."

Over the summer, he was scholar in residence in the London office of WilmerHale.

In July, Stephan testified before the Senate Judiciary Committee on legislation to authorize some forfeiture of frozen assets owned by Russian oligarchs. He also lectured remotely at the Brazilian International Law Winter Program in Belo Horizonte, Brazil.

He took part in two seminars for U.S. government personnel on the design of Russian sanctions, one organized by the Brookings Institution to assist congressional staff, and another related to the U.S. State Department's Office of the Legal Adviser. The sanctions regime work appeared in a number of blog posts and media interviews, including The New York Times, Izvestiya and Brazilian and Chinese television, and was summarized in his article, "Seizing Russian Assets," to be published in the Capital Markets Law Journal in July.

Stephan co-authored an amicus brief in *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, urging the U.S. Supreme Court to grant certiorari. The European Journal of International Law published his article, "The U.S. Context of the Restatement (Fourth) of the Foreign Relations Law of the United States," as well as an interview with Stephan about the Fourth Restatement. (continued on p. 70)

## PUBLIC LAW AND ECONOMICS

MICHAEL GILBERT AND ROBERT COOTER  
OXFORD UNIVERSITY PRESS

WHEN RONALD COASE AND GUIDO CALABRESI pioneered the application of economics to law in the early 1960s, they pushed efficiency, incentives and the iconic “rational actor”—one who behaves rationally to pursue his preferences—to the forefront of private law fields such as torts, contracts and property.

UVA Law Vice Dean Michael Gilbert has teamed up with his mentor and former professor, Robert Cooter of the University of California, Berkeley, to take that analysis one step further by applying economic theory to the realm of public law in their new textbook, “Public Law and Economics.”

While it may seem counterintuitive to apply economic analysis to fields that don’t involve a focus on money or numbers, the book is an extension of the past 60 years of law and economics scholarship, Gilbert said.

“Many people believe that economics has no place in

public law because it’s concerned with dollars and cents, but that’s a misunderstanding,” Gilbert said. “Economics is built on a much deeper conception of the social good than that. Even if you reject that conception, you should still care about economics because of its focus on incentives. Law usually aims to change people’s behavior, and it’s easier to accomplish that with a thorough understanding of incentives.”

The book was written over the course of six years, and much of the authors’ time was spent figuring out how to organize the text into coherent and digestible topics that apply universally.

“If you understand the economic forces behind these fundamental processes of law-making—bargaining, voting, entrenching, delegating, adjudicating and enforcing—you’ll understand a lot about public law.”

Gilbert and Cooter’s goal is not necessarily to lay out policy prescriptions but rather to use economic analysis to equip readers to think about why public laws and regulations are enacted and whether they are likely to achieve their goals.

Cooter is a pioneer in law and economics and a recipient of the Ronald H. Coase medal, which is awarded in recognition of major contributions to the field.

Gilbert was the inaugural director of the Law School’s Center for Public Law and Political Economy, and is a member of the Democracy Initiative’s Corruption Lab for Ethics, Accountability, and the Rule of Law. He has won UVA’s All-University Teaching Award and the Student Council Distinguished Teaching Award.

Gilbert already incorporates economic theory into his political law classes, including Regulation of the Political Process, and Constitutional Law and Economics, but the new book is designed to make the economic insights and tools available to professors and their students and also a broader audience, including researchers, scholars and policymakers. To accomplish that goal, Cooter and Gilbert arranged for an open access agreement to make the book available online for free.

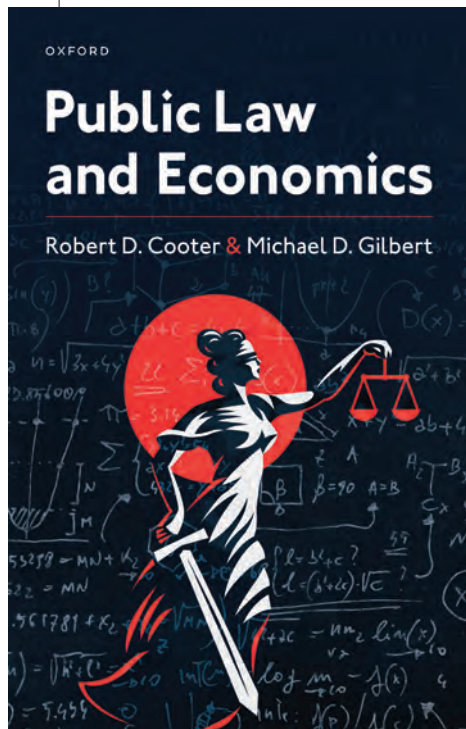
Ironically, they spent six years laboring on a book for no economic return, suggesting that the rational actor may indeed be mythical. But Gilbert explains that tension through the same lens he and Cooter have applied to analyzing public law: The arrangement satisfies each party’s preferences.

“This was never going to be a money-making enterprise—we don’t care about that,” Gilbert said. “We don’t want the money; we want people to use the book. The open access agreement is an investment, and we think it’s a pretty good one.”

—Melissa Castro Wyatt



Michael Gilbert’s co-authored book provides an economic analysis of public law—for free.



## THE FIGHT FOR PRIVACY PROTECTING DIGNITY, IDENTITY AND LOVE IN THE DIGITAL AGE

DANIELLE KEATS CITRON  
W.W. NORTON AND PENGUIN UK

WHEN PROFESSOR DANIELLE K. CITRON first started working on privacy issues in 2005, our intimate lives were still relatively free from digital surveillance, with Facebook in its infancy, and Google Maps and the iPhone not yet in existence.

What began first as a slow erosion has since gathered into a landslide, so when the MacArthur Foundation gave Citron a \$625,000 “genius grant” in 2019, she took a sabbatical to write a book that would frame the stakes for people who still don’t understand why intimate privacy matters.

“The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age” surveys the damage done to privacy rights around the world, makes the case for understanding intimate privacy as a civil and human right, and offers a roadmap for law, industry and individuals to protect those rights.

“The book is about the central role that intimate privacy plays in our lives, and why we need privacy around our bodies, our health, our reading habits, our thoughts, our close relationships, our sexual orientation, sex and gender,” Citron said.

Citron interviewed 60 people who understand what’s at stake because their lives were upended by violations of their intimate privacy. One such victim, a lawyer Citron calls “Joan” in the book, spent three years picking up the pieces of her life after someone secretly taped her showering in a hotel bathroom and then tried to extort her for more nude images. When she refused, the person posted clips of her using the bathroom on thousands of adult sites and adult hookup sites.

“In addition to posting the video online, the extortionist emailed the video to her work colleagues and friends from graduate school, and presumably he got all that information from her LinkedIn account,” Citron said.

She shuttered her social media accounts as she tried (unsuccessfully) to erase the nonconsensual damage to her online identity. She lost contact with friends, delayed her wedding by two years and gave up certain career aspirations.

“All the ways that social media allowed her to connect with other people was the way he was exploiting her,” Citron said. “It changed the arc of her life, and Joan’s experience is resonant with so many people’s experiences. It’s just a wholesale disruption of how you feel about yourself and your emotional

safety and physical safety.”

As Citron explains in her book, there are more than 9,500 sites whose very existence is predicated on exploiting intimate privacy violations. Some sites make a game of it, offering rewards and prizes for popular “nudes.” Sites get away with the abuse because federal law gives them immunity from liability for content posted by third parties.

“We have Section 230 of the Communications Decency Act to thank for that,” Citron writes. Citron argues in her book that courts have read the law so broadly that it makes a mockery of its stated purpose, which

was to incentivize websites to self-monitor online abuse and other “offensive” material.

Citron writes and teaches about privacy, free expression and civil rights, and serves as the inaugural director of the school’s LawTech Center, which focuses on pressing questions in law and technology.

Companies are spying on people’s intimate lives in ways that are hard for the average person to begin to comprehend.

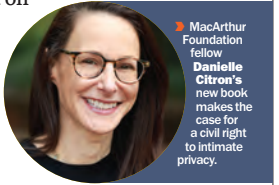
“Unfortunately, we have so little protection around the collection and sale of our intimate information that when period-tracking apps sell our information to data brokers who then sell it to law enforcement, it’s now a problem for women’s safety and their freedom, because there will soon be over 25 states that have laws criminalizing abortion,” Citron said.

Citron is working with staff for U.S. Sen. Elizabeth Warren on the Health and Location Privacy Protection Act and with U.S. Rep. Sara Jacobs on the My Body, My Data Act. Both bills aim to prevent the collection and storage of intimate health and location data, and to prevent the sale of

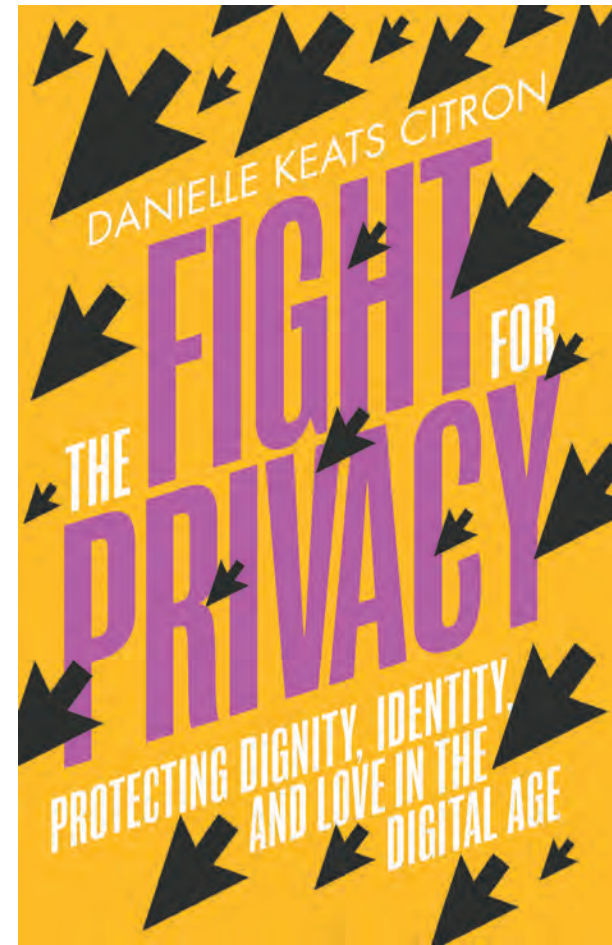
it to law enforcement without a subpoena or warrant.

She advocates for amending Section 230, which immunizes websites trafficking in nonconsensual porn, to exclude bad actors specializing in intimate privacy violations and stalking. She also recommends creating a “duty of care” that websites must meet in order to qualify for immunity in cases involving intimate privacy violations and cyberstalking.

—Melissa Castro Wyatt



MacArthur Foundation fellow Danielle Keats Citron’s new book makes the case for a civil right to intimate privacy.





## ROSS LAUNCHES PROJECT EXPLORING WAYS TO INCENTIVIZE VOTER OUTREACH

Professor **BERTRALL ROSS** is betting he can help fix the way low-income voters have been inadvertently shut out of the voting process because of how campaigns use voter history data.

When campaigns canvas, they target those houses with people who are most likely to vote for their candidate.

“But that results in this contact gap between more wealthy and poor people, because those with low income tend not to vote,” said Ross, the Justice Thurgood Marshall Distinguished Professor of Law.

Ross and a co-author, University of Colorado law professor Douglas M. Spencer, outlined this theory in “Voter Data, Democratic Inequality, and the Risk of Political Violence,” a paper published in the Cornell Law Review in August.

Voter outreach has become more crucial as mass-media advertising has become obsolete, Ross argued, because that face-to-face conversation might be the only opportunity a low-income voter has to learn when and where to vote, and how the ballot issues and candidates’ positions will affect their lives. In fact, one study found that face-to-face canvassing increased turnout by nearly 10 percent.

Conversely, because voting is often logistically difficult for low-income voters, the lack of contact from a campaign decreases the likelihood of them voting in the next election, Ross said. That “vicious cycle” then leads to their needs going ignored because there are no electoral consequences for shutting them out.

Moreover, that sense of alienation can lead to political violence when the marginalized feel they no longer have a voice in the decisions being made. A Washington Post analysis cited in Ross’ paper looked at 125 people arrested for breaking into the Capitol during the Jan. 6 insurrection; of those, nearly 60% had histories of financial struggles, from unpaid taxes to bankruptcy and foreclosure.

“So how do we make it rational for campaigns to use resources in ways that might reduce alienation and marginalization,” Ross asked, rhetorically. “You can imagine a voucher system that gives low-propensity voters cash vouchers they can give to campaigns that contact them. Would that change the campaign’s calculation, knowing that they might not only earn a vote, but they might also earn money for their campaign by identifying and targeting these individuals?”

After laying out the idea in his paper, Ross will now be exploring the use of vouchers and other incentive systems as part of his upcoming Designing Democracy: Participation lab course sponsored this spring by UVA Law’s Karsh Center for Law and Democracy, which Ross co-directs with Professor **MICAH SCHWARTZMAN ’05**.

In the course, eight lab students will identify patterns of problems and begin proposing solutions through model legislation. Next fall’s lab students will lobby for the model legislation at the state and federal levels.

The Karsh Center at the Law School was established in 2018 as part of a record \$44 million gift from **MARTHA ’81** and **BRUCE KARSH ’80**.

—Melissa Castro Wyatt

Cambridge University Press will publish his book, “The World Crisis and International Law: The Knowledge Economy and the Battle for the Future,” later this year. He submitted the manuscript for the third edition of his casebook, “Doing Business in Emerging Markets: A Transactional Course,” co-authored with Richard Dean ’80 and James Skelton, to Foundation Press.



**MEGAN T. STEVENSON** won a \$200,000 grant from the Arnold Foundation to study the long-term socio-economic impacts of incarceration (*see p. 58*). Her article “Does Cash Bail Deter Misconduct?” will be published in the American Economic Journal: Applied Economics.

She presented at the National Bureau of Economic Research’s Summer Institute, the Harvard Program on Criminal Justice, the Harvard Roundtable on Racial Disparities in Massachusetts Criminal Courts and the annual meeting of the American Law and Economics Association. She appeared on Virginia Public Radio, WMRA, NBC29 and UVA Law’s “Common Law” podcast.

In January, she was elected chair of the Section on Law and Economics of the Association of American Law Schools; her term begins in 2024.

In the past year, she served on ALEA’s finance committee, and on the best-article prize committee for the American Law and Economics Review.



**LEON SZEPTYCKI** co-authored two environmental law articles: one appeared in Environmental Research Letters and focused on the Colorado River basin’s environmental water markets as an adaptation to drought, “Decoupling Environmental Water Markets from Water Law”; the second, a report issued by UVA’s Environmental Resilience Institute, assessed the potential for carbon sequestration in Virginia, “Leading the Way on Climate Restoration: Environmental and Economic Opportunities for Virginia.”



In September, **G. EDWARD WHITE** and **KENNETH S. ABRAHAM** participated in a UVA Law panel discussion of their recently published book, “Tort Law and the Construction of Change.”

The two presented a forthcoming paper about Justice Benjamin Cardozo’s classic, “The Nature of the Judicial Process,” at a March conference at Yale. The paper, “Doctrinal Forks in the Road: The Hidden Message of ‘The Nature of the Judicial Process,’” will appear in a forthcoming issue of the Yale Journal of Law and Humanities.

The two also wrote the introductory chapter of a forthcoming book about the American Law Institute, “The Work of the ALI in Historical Context.”



## IN MEMORIAM: ROBERT SAYLER LITIGATION STAR WHO GREW UVA LAW’S ORAL ADVOCACY PROGRAM

**ROBERT N. SAYLER**, a renowned litigator who turned to teaching insurance and oral advocacy courses at UVA Law later in his career, died Sept. 7. He was 82.

Saylor joined the faculty in 1995 as the John A. Ewald, Jr., Distinguished Visiting Professor of Law when Professor **KENNETH S. ABRAHAM** asked him to co-teach an advanced seminar on the practical side of liability insurance. Saylor was then a partner with Covington & Burling, and the “leading policyholder lawyer in the country,” Abraham said.

“He was in a sense one of the founders of the bar in that field, having litigated the first ‘mega-coverage’ cases involving asbestos and pollution liability insurance,” Abraham said. “These cases led to important precedents that are still the seminal cases in the field.”

Saylor found that he enjoyed teaching so much that he moved to Charlottesville to join the faculty in the early 2000s. In the succeeding years, he launched much of the school’s coursework in oral advocacy and public speaking.

“His courses were incredibly popular, intellectually challenging and very practical, all at the same time,” Abraham said. “He took the material and his teaching seriously, but never took himself too seriously, although he was one of the great lawyers of his time. We were very lucky to have him here for so long.”

Saylor helped recruit Professor **MOLLY BISHOP SHADEL**, a

former Covington mentee, in 2004, when she was looking for a job in Charlottesville following work in the Justice Department.

“Bob said, ‘Let me help you get a job at the Law School,’” she recalled. “He was that kind of person, so generous and so invested in helping other people succeed.”

The pair regularly co-taught public speaking and oral advocacy courses until Saylor’s retirement in 2017, and together wrote and worked on two successive editions of a book, “Tongue-Tied America: Reviving the Art of Verbal Persuasion.” (Saylor continued to teach occasionally at the Law School through 2021.)

Though Saylor had designed the courses he asked Shadel to join, he soon asked her to add on to the course to incorporate her own experiences. (*continued on p. 72*)





“That’s how he was at Covington & Burling, too,” she said. “He would take on young lawyers to mentor and would help them in their careers, never asking for any sort of acknowledgment of what he had done. He was just in your corner.”

At Covington, she added, Saylor was “a star.”

“Bob was one of first people to recognize that insurance coverage was a really fruitful place for litigators to explore,” she said. “Because of his expertise, Covington & Burling became known for insurance coverage litigation, and he brought that kind of real-world expertise into the classroom.”

Saylor spent three decades at the firm, eventually becoming head of the litigation department, and served on the firm’s management committee.

As a young lawyer, he argued before the Supreme Court in *Richardson v. Wright* in 1972, advocating for the rights of individuals facing termination of disability benefit payments.

In the 1980s and 1990s, he served as lead counsel on multiple cases holding insurance companies liable for claims exceeding \$1 billion, including the Exxon Valdez disaster, environmental cleanup claims incurred against Boeing and defective breast implant claims.

His most notable win may have been the yearslong California case Saylor described as the “mother of all trials.” In *Coordinated Asbestos Insurance Cases*, he succeeded in forcing insurance companies to pay billions of dollars in asbestos claims, which would have bankrupted his manufacturer clients otherwise.

Saylor never lost a case as lead counsel while at Covington & Burling, and he was consistently cited as one of the “100 Most Influential Lawyers in America” in the National Law Journal’s triennial surveys.

Despite the heights he reached as a litigator, Saylor focused on helping others, Shadel said. Saylor and his wife, Marty Saylor, took Shadel and her husband out multiple times when she was new to town, and shepherded them to football and basketball games.

“Some of my fondest memories are of going to the basketball games to cheer on UVA or going to those football games and getting to enjoy his really terrific parking space, which was right by the stadium,” she said. “If you talk to lawyers at Covington & Burling, you would encounter many who experienced the same kind of generosity of spirit—young attorneys who were mentored by him who now are senior partners in positions of power and who still think very fondly of their interactions with Bob.”

**C. BENJAMIN COOPER '11**, a partner at Cooper & Elliott, was a former student of Saylor and Shadel’s who eventually taught public speaking courses alongside both his former professors. He remembered Saylor’s sense of humor, whose jokes came “with a wry smile and a twinkle in his eye.”

“More than a decade later, I still remember a story Bob told

about trying an insurance coverage case against Allstate,” Cooper said. “Bob’s argument to the jury was about how Allstate had promised coverage, promised his client would be ‘in good hands,’ but that the ‘good hands of Allstate came for their neck!’ It’s such a vivid and effective line, underscored with Bob’s sense of humor.”

Another former student and co-instructor, **BEN SACHS '09**, said Saylor understood, and wanted students

to understand, the power of words to change minds.

“He wasn’t just teaching students to deliver speeches; he was teaching how to make a connection,” said Sachs, who teaches Negotiation and Professional Responsibility at UVA Law and is the president of The Landing Group. “More than that, he showed how easily that connection can be broken by leaders who were unable or unwilling to consider the perspectives of those who disagreed with them. In that way, his classes were not merely about the craft of public speaking but about leadership itself, and the responsibility we all have as attorneys to embody the best of both.”

A graduate of Harvard Law School, Saylor joined Covington directly after his graduation in 1965. The firm offered oral advocacy courses to young associates because law schools seldom taught the subject to students then. Saylor, who had a 57-year career at the firm, eventually led those courses himself.

A statement the firm released called Saylor “unfailing thoughtful, fair and focused on the firm’s best interests. As a mentor, he was extraordinarily generous in launching or boosting the careers of others, invariably deflecting credit away from himself.”

Saylor’s leadership extended beyond the firm. He had served as chair of the American Bar Association’s Litigation Section and as a member of the Coalition for Justice and Ad Hoc Committee on State Justice Initiatives. He also served as president of the board of the Legal Aid Society of Washington, and as a fellow of the American College of Trial Lawyers and of the American Bar Foundation.

The foundation for Saylor’s courses in oral advocacy was his undergraduate education at Stanford University, where he received a degree in rhetoric in 1962.

Each course started by covering Aristotle’s classical rhetorical values—ethos (credibility), pathos (emotional engagement) and logos (logic). “Those [qualities] are what we’re ultimately trying to project,” he said in the interview.

Shadel said he persuaded her that it was a helpful way to think about public speaking and advocacy.

“The students who are currently enrolled in classes like Hallmarks of Distinguished Advocacy or Oral Presentations In and Out of the Courtroom may never have met Bob Saylor in person, but they are being influenced by him because those are the principles that I continue to teach today,” Shadel said. “The fact that UVA has a robust public speaking program now is due to Bob Saylor.”

Saylor experienced a little pathos himself after seeing how far his students progressed during his courses.

He said in the 2017 interview that when the students give their final argument to the class, “they are so darned improved, I literally, literally have had tears in my eyes a couple of times.”

—Mary Wood

with reporting by Alec Sieber