BEHIND THE SCHOLARSHIP: ASHLEY DEEKS ON A ‘SECRET’ PAPER

PAGE 58
KEEPING SECRETS
PROFESSOR ASHLEY DEEKS’ NEW PAPER EXPLORES ACCOUNTABILITY FOR CLASSIFIED DECISIONS

When the United States recently moved in on Islamic State leader Abu Bakr al-Baghdadi al-Qurayshi, resulting in al-Baghdadi’s suicide by explosive vest, the U.S. conducted the military operation under the highest secrecy. That the public learned so much detail about the mission after the fact was unusual.

The president, courts and Congress make national security decisions every day that the public may never hear about. There is little or no reporting, by design, because transparency could jeopardize U.S. national security and American lives.


Deeks, a national security law expert who formerly advised the State Department’s Office of the Legal Adviser and served as a U.S. embassy adviser in Baghdad, said the article developed from a series of faculty incubator lunches in which colleagues offered feedback about what she was working on.

Among the better-known examples of secret reason-giving are those mandated by statute. The U.S. Foreign Intelligence Surveillance Act, for example, requires the executive branch to give the FISA court reasons why a foreign electronic surveillance warrant is merited. Likewise, a judge on the FISA court must give a written reason when denying a request, to facilitate the appeals process.

In other instances, such as a classified report prepared by the Senate Select Committee on Intelligence or an executive official making the case to Congress for conducting air strikes against an enemy, reasons would naturally follow in support of arguments and conclusions.

Checking executive branch decision-making is perhaps the most important function of secret reason-giving, Deeks argues in her paper. It “strikes a balance between two unappealing alternatives: allowing the Executive to decline to share its decision-making with any other branch and act unilaterally, or requiring the Executive to publicly share all of its decisions and justifications.”

Deeks maps in the paper how executive branch reason-giving can work internally among superiors, subordinates and peers inside the executive branch, and externally to the other two branches. She notes that secret reason-giving can even extend beyond the U.S. government to allies, as when the United States seeks to persuade those allies to join it in classified operations.

She ultimately finds that “secret reason-giving improves the overall quality and effectiveness of government decision-making and operations, constrains the decision-maker, and strengthens the decision-maker’s legitimacy.”

At UVA, Deeks is E. James Kelly, Jr.–Class of 1965 Research Professor of Law; a senior fellow at the Center for National Security Law; and a faculty senior fellow at the Miller Center. She has written articles on the use of force, executive power, secret treaties, the intersection of national security and international law, and the laws of armed conflict. She is a member of the State Department’s Advisory Committee on International Law and serves as a senior contributor to the Lawfare blog. Deeks also serves on the boards of editors of the American Journal of International Law and the Journal of National Security Law and Policy. She is the supervising editor for AJIL Unbound and a senior fellow at the Lieber Institute for Law and Land Warfare.

—Eric Williamson
Studies at Hebrew University for 2020-21, Barzuza will publish “Shareholder Value(s): Index Fund Activism & the New Millennial Corporate Governance,” co-authored with QUINN CURTIS and David Webber, in the Southern California Law Review.

In collaboration with colleagues serving on the Ethics, Law and Humanities Committee of the American Academy of Neurology, RICHARD BONNIE ’59 has been developing a strategy for modifying the Uniform Determination of Death Act to resolve several controversial issues regarding the determination of “brain death.” Three articles were published in the fall and winter of 2019-20 in the medical and legal literature, including the Journal of Law, Medicine and Ethics; Annals of Internal Medicine; and JAMA Neurology.

In December 2019, the University’s Institute of Law, Psychiatry, and Public Policy issued an interim Report on Mandatory Outpatient Treatment produced by a work group chaired by Bonnie and supported by the Virginia Department of Behavioral Health and Developmental Services. The report summarized implementation of such treatment since the judicial procedures were enacted in 2008 in the wake of the Virginia Tech tragedy. The work group’s initial legislative recommendations were adopted by the Virginia General Assembly during the 2020 session. A final report will be released during the summer of 2020.

“The Promise of Adolescence,” a consensus report of the National Academies of Sciences, Engineering and Medicine chaired by Bonnie, has received considerable attention following its release in 2019. Dissemination efforts are underway in education, health services and other youth-serving systems. He spoke at the Society for Research on Adolescence in San Diego in March.

Bonnie also gave talks sponsored by the Bloomberg School of Public Health, in Baltimore, and the Georgia Bar Association, in Atlanta, on the constitutional foundation of “extreme risk protective orders,” which are designed to remove firearms from individuals whose behavior shows an elevated risk of suicide or violence to others. These policies, already enacted in 17 states, have been designed, disseminated and monitored by the Consortium on Risk-Based Firearms Policies. Bonnie, a founding member, sits on the Consortium’s Steering Committee.

Bonnie spoke Feb. 21 at an Arizona State University Sandra Day O’Connor College of Law conference commemorating the 50th anniversary of enactment of the federal Controlled Substances Act in 1970. He used his talk as an opportunity to highlight the work of the National Commission on Marijuana and Drug Abuse, for which he served as associate director from 1973-75. Bonnie’s central claim is that the commission and key federal drug policy officials developed and implemented progressive public health-oriented drug policies during the 1970s. Unfortunately, repressive policies embraced in response to the “crack” epidemic in the 1980s weakened the public health infrastructure for addiction treatment.

The Law School will host the 16th annual Conference on Empirical Legal Studies, known as CELS, in 2021. Additionally, Professors MICHAL BARZUZA, KEVIN COPE, and QUINN CURTIS were elected to the Society for Empirical Legal Studies board of directors for three-year terms.

Sponsored by the society, the conference brings together scholars from law, economics, political science, psychology, policy analysis and other fields who are interested in the empirical analysis of law and legal institutions.

Fourteen members of the Law School faculty hold a Ph.D. in a social science discipline with a quantitative focus, and over a dozen more have published their empirical research in law reviews or peer-reviewed law or social science journals. Over the past several years, several faculty members have participated at CELS as either presenters or panelists.


Cope is an associate professor of law at the Law School, an associate professor of law and public policy at the Batten School of Leadership and Public Policy, and faculty affiliate at the Woodrow Wilson Department of Politics. One of his ongoing projects involves developing an “expert crowd-sourced” text-analysis method for rating all U.S. federal judges on a single ideological scale. He earned a Ph.D. in political science from the University of Michigan and J.D. from the Northwestern University School of Law.

Curtis teaches courses on corporate law, securities and venture capital. His research focuses on empirical law and finance. Last year he authored a Washington Post op-ed based on his paper “Costs, Conflicts, and College Savings: Evaluating Section 529 Savings Plans.” He earned a Ph.D. in finance from the Yale School of Management and J.D. from Yale Law School.

—Mike Fox
DEEKS, HELLMAN ELECTED TO AMERICAN LAW INSTITUTE

Professors ASHLEY DEEKS and DEBORAH HELLMAN were elected as members of the American Law Institute. There are now 26 members of the UVA Law faculty currently affiliated with ALI.

The institute is the leading independent organization in the United States producing scholarly work to clarify, modernize and otherwise improve the law. The organization includes judges, lawyers and law professors from the United States and abroad, selected on the basis of professional achievement and demonstrated interest in improving the law.

Deeks and Hellman, who both joined the Law School in 2012, were among 45 new members inducted in December nationwide. Deeks is the E. James Kelly, Jr.—Class of 1965 Research Professor of Law and a senior fellow at the Center for National Security Law, and at the Miller Center. She is also a member of the State Department’s Advisory Committee on International Law and formerly served as the assistant legal adviser for political-military affairs in the U.S. State Department’s Office of the Legal Adviser.

Hellman is the David Lurton Massee, Jr., Professor of Law and Roy L. and Rosamond Woodruff Morgan Professor of Law. Her article “A Theory of Bribery” won the 2019 Fred Berger Memorial Prize (for philosophy of law) from the American Philosophical Association. Hellman and Professor Michael Gilbert are inaugural scholars in UVA’s Corruption Lab on Ethics, Accountability, and the Rule of Law, also known as CLEAR.

Members were selected from confidential nominations submitted by ALI members. ALI was formed in 1923 “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.”

Mike Fox

and produced mass incarceration, leaving the nation unprepared for the worst opioid epidemic in its history.

and social justice as they relate to diverse communities and places across the globe. In February, Cannon spoke on the politics of climate change at a University of Miami symposium. His chapters on judicial review of climate change regulations under the Clean Air Act and on the Environmental Protection Agency’s implementation of the Clean Water Act are scheduled to appear in books published this year.

Before the event was canceled due to COVID-19, DARRYL BROWN ’90 was scheduled to speak on the worldwide trend of the “disappearing trial” and the U.S. model of plea bargaining at the national meeting of German criminal defense lawyers in Berlin in March. He also gave the Barrock Lecture on Criminal Law at Marquette University Law School in November. He was scheduled to speak in April at an international criminal procedure symposium hosted by Bucerius Law School in Hamburg, Germany, before it was canceled.


In November, KEVIN COPE was elected to the board of directors of the Society for Empirical Legal Studies. Along with MICHAEL BARZILAI and QUINN CURTIS, he will serve as co-president of the 2021 Conference on Empirical Legal Studies, to be held at the Law School. Earlier this year, Cope’s co-authored article, “A Nationalist Backlash to International Refugee Law: Evidence from a Survey Experiment in Turkey,” was accepted for publication in the Journal of Empirical Legal Studies.

JONATHAN CANNON is leading a new initiative at the Law School—the Program in Law, Communities and the Environment—which held its inaugural meeting March 27 (see story on p. 13). The program will support teaching, discourse and research on questions of environmental law.

business professors Justin Hopkins and Dain Donelson, is forthcoming in the peer-reviewed journal Contemporary Accounting Research. Curtis’ current projects focus on retirement savings and corporate governance.

ASHLEY DEEKS gave several talks this fall related to the use of machine learning by the military. She spoke at the 10th National Security Law Workshop on a panel addressing the impact of autonomous weapons on the War Powers Resolution.

At a conference held at West Point looking ahead at what the laws of armed conflict could be in 2040, she presented a paper on how militaries might code the laws of armed conflict into algorithms. She also spoke at the Defense Intelligence Agency about the use of machine learning algorithms and the role of lawyers.

In December, her piece “The Judicial Demand for Explainable AI” appeared in the Columbia Law Review, and in January, the Yale Law Journal published her article “Secret Reason-Giving.” She joined Curtis Bradley and Jack Goldsmith in the seventh edition of their “Foreign Relations Law” casebook, which came out this spring.

Deeks presented a paper this spring about the new role for technology companies and state and local governments in checking executive branch secrecy at workshops at Harvard Law School and the University of Houston Law Center.
In November, KIMBERLY KESSLER FERZAN was an International Visiting Fellow at the University of Warwick’s Institute for Advanced Studies. While at Warwick, Ferzan presented “#BelieveWomen and the Presumption of Innocence: Lessons for Law and Life” at the Centre for Ethics, Law and Public Affairs; co-organized a workshop on sexual consent, where she presented “Dissent-Sensitive Permissions”; and gave a public lecture on “Consent, Culpability, and the Law of Rape.” While in the U.K., Ferzan also gave a K.Juris seminar at King’s College in London, workshop shopping her “#BelieveWomen” paper, and she also workshoped “Dissent-Sensitive Permissions” at a Hart Seminar at the University of Surrey.

In December, Ferzan participated in the “Roots of Responsibility” conference at University College in London, where she presented “#BelieveWomen and the Presumption of Innocence: Lessons for Law and Life.” Also that month, she traveled to Oslo to participate in a workshop on University of Southern California law and philosophy professor Jonathan Quong’s forthcoming self-defense book, presenting “Quong and the Means Principle: Quibbles, Questions, and Qualms.”

Ferzan’s co-edited book, “The Palgrave Handbook of Applied Ethics and the Criminal Law,” was published at the end of 2019. It includes both senior established scholars and rising stars, and a wide range of topics are covered, including revenge porn, neuroscience and criminal law, the death penalty, stand your ground laws, fraud and animal rights.

In February, JOE FORE ’11 began authoring a new, regular feature devoted to legal writing in Virginia Lawyer, the official publication of the Virginia State Bar. His first column, “Four Steps to More Concise Writing,” focused on advanced editing tips to help lawyers trim excess language from their writing.


GEORGE GEIS recently published “Information Litigation in Corporate Law” with the Alabama Law Review. He also presented on this topic at Elon Law School and at UCLA. Geis joined and published a chapter of the casebook “Corporate Finance: Principles and Practice” (Foundation Press) with Emory law professor William Carney and Berkeley law professor Robert Bartlett, and is teaching from his new casebook this spring. Geis also gave talks at Fordham Law School on blockchain and the law, and at the University of Utah on a current research project exploring shareholder responsibility for corporate misdeeds. And he has been active at the faculty director of the John W. Glynn, Jr. Law & Business Program—teaching a new seminar in this area, coaching the Law School’s new transactional law case competition team, and leading other activities at the intersection of law and business.

RISA GOLUBOFF contributed an article, “On Firsts, Feminism, and the Future of the Legal Profession,” to “Women & the Law,” a joint publication of 15 different law reviews, including the Virginia Law Review. As a member of the Deans Steering Committee for the Association of GEIS ADDS CORPORATE LAW EXPERTISE TO THE GREAT COURSES SERIES

Professor GEORGE GEIS, an expert in corporate law and finance, is the latest UVA Law professor to be tapped for The Great Courses series.

Geis teaches an introduction to corporate law in the “Law School for Everyone” category.

“Corporate law is society’s means of facilitating the good that corporations do while reining in bad behavior—setting the boundaries of fair play so that different players can focus their energy and resources on productive efforts,” he says in an online promotion for the class, which is available in video and audio formats.

The 12-part course outlines the various types of corporations, including how they’re created, examines the work of boards of directors and what their legal rights are, and observes the fiduciary obligations that protect corporations.

Professor MOLLY BISHOP SHADEL has also recorded installments for “Law School for Everyone.”

At UVA Law, Geis teaches contracts, corporations, accounting and corporate finance. He also directs the John W. Glynn, Jr. Law & Business Program and is the faculty adviser for the J.D.-MBA dual-degree program. In 2018, his paper, “Traceable Shares and Corporate Law,” was named one of the top 10 corporate and securities articles of 2018.

Geis is the William S. Potter Professor of Law and the Thomas F. Bergin Teaching Professor of Law. From 2012-17, he served as vice dean of the Law School.

—Eric Williamson
American Law Schools, she led the planning committee for the Deans Forum at the 2020 AALS Annual Meeting. The Deans Forum was a daylong event titled “Dean-ing in an Age of Rapid Change.” She also participated in “The Role of Universities and Law Schools in Constitutional Democracy” at the opening plenary session of the AALS Annual Meeting.

Rachel Harmon is finishing her casebook, “The Law of the Police,” which will be published by Wolters Kluwer this fall. “The casebook is the first to present materials and analysis for law school classes on how law regulates police interactions with the public,” Harmon said. “It lays out a conceptual structure for understanding the burgeoning scholarship and commentary on law and policing that goes far beyond criminal procedure.” The book can also serve as a resource for lawyers, judges, policymakers, journalists, scholars and activists who want an introduction to the law that guides police conduct. Harmon also published the essay “Policing, Protecting and Insignificance of Hostile Audiences,” about the mismatch between Supreme Court case law and the contemporary challenges of policing protests in “The Perils of Public Square: Structural Threats to Free Expression Today,” edited by David E. Pozen and to be published in June. She spoke about law enforcement accountability at the MFlA Access and Accountability conference at Yale Law School in October. In January, in Washington, D.C., Harmon participated in a full-day symposium on “21st Century Policing,” both speaking on the panel “Policing, Theory and Practice” and moderating the panel “The Limits of Patrol,” at the AALS Annual Meeting.

As a founding board member of the Fountain Fund, a new nonprofit dedicated to providing microloans to ex-offenders, Harmon has been helping to provide capital and financial education to individuals reentering communities and to develop research on how these tools can work to elevate individual lives after a period of incarceration. Harmon continues to serve as an associate reporter on the American Law Institute’s Principles of Policing Project.

Andrew Hayashi presented his papers “Consumer Law Myopia” at Harvard Law School; “Bullied in the Sky,” co-authored with Richard Hynes, at Loyola Law School; and “Rules and Standards: The Games We Play” at the George Mason University Antonin Scalia Law School. His paper “Do Good Citizens Need Good Laws? The Economic Limits of the Expressive Function,” co-authored with Michael Gebers, was presented at a symposium in honor of Robert Cooter that was hosted by Berkeley Law School. He is working on the articles “The Law and Economics of Anisms,” “Paternalist Externalities,” “Countercyclical Tax Bases” and “Recessional Property Taxes.”

Deborah Hellman was elected to the American Law Institute in December. In addition, she recently published an article and a book chapter: “The Epistemic Function of Pasting Equal Protection and Due Process” in the William & Mary Bill of Rights Journal and “Understanding Bribery” in The Palgrave Handbook of Applied Ethics and the Criminal Law. She has also been busy preparing new work. She presented a paper on the use of sex in predictive algorithms at the University of Toronto in November, Princeton University Center for Human Values in November, Fordham Law School in December, and the Radcliffe Institute for Advanced Study at Harvard University in January. In addition, she presented an article, co-authored with Kate Nicholson, on “Opioid Prescribing and the Birbal Duty to Do No Harm,” at the 2020 Symposium of the American Journal of Law & Medicine, hosted by Boston University in January.

In the fall, Alex Johnson was recognized as one of the “Seventy Amazing Alumni to Celebrate 70 Years” in UCLA Law Magazine. He was identified as one of five “Academic Leaders” who have made a mark in scholarship and leadership in the legal academy.

In January, Leslie Kendrick ’06 presented on recent Supreme Court First Amendment cases at the Virginia Bar Association annual meeting in Williamsburg, Va. In February she presented new work at the University of Minnesota Law School. She is slated to speak at the First Amendment at the Seventh Circuit Bar Association conference in October.

Douglas Laycock recently filed two amicus briefs in the Supreme Court. In Liu v. Securities and Exchange Commission, he argued (contra the defendants) that disgorgement of the wrongdoer’s profits is “equitable relief” authorized by the Securities and Exchange Act, but (contra the SEC) that it is measured by each defendant’s net profits, not by joint and several liability for the gross receipts of the entire conspiracy. And in Tanzin v. Tanvir, he argued that “appropriate relief” under the Religious Freedom Restoration Act was modeled on U.S. Code § 1983, including damage suits against individual officers, subject to the qualified immunity rules.

In January, Michael Livermore moderated a panel at the Association of American Law Schools annual meeting in Washington, D.C., that focused on the use of computational text analysis by legal scholars. The panel expanded on themes developed by Livermore and his frequent collaborator Daniel Rockmore, a professor of mathematics and computer science at Dartmouth College, in their co-edited volume “Law as Data: Text, Computation, & the Future of Legal Analysis,” which was published by the Santa Fe Institute Press last spring.

Livermore returned to Washington, D.C., at the end of the month for a daylong workshop to discuss his forthcoming book, “Revisiting the Flying Carpet: Cost-Benefit Analysis for the Sake of the Environment and Our Health,” co-authored with Richard L. Revesz of New York University. The workshop was attended by prominent legal scholars and former government officials, focused on how to rebuild bipartisan consensus for the principled use of economic tools to evaluate public policy.

In February, Livermore visited Berkeley Law School to present research—with Rockmore and Keith Carlson, a computer science Ph.D. candidate at Dartmouth College—that examines data biases in the pool of published federal appellate court decisions. Later that month, he participated in a roundtable discussion on the future of law and artificial intelligence at the UCLA School of Law. In March, Livermore was at Michigan State University College of Law to present the results of a multiyear cross-disciplinary collaboration that uses computational tools to study the process of law search. That work will appear in the 2020 Michigan State Law
EU states from discriminating against companies on the basis of their nationality. She also published “Identifying Illegal Subsidies” in the American University Law Review. The article is critical of the European Commission’s current methods of identifying government subsidies for purposes of enforcing the EU Treaty’s prohibition of “state aid,” which resulted in a $13 billion penalty for Apple in 2015, and offers a new method of identifying tax subsidies that does not rely on normative net-income definitions. Mason contributes regularly to Tax Notes, including recent articles on the Starbucks and Fiat state aid cases and the Steiner v. Utah cert. petition. In 2019, Forbes named Mason’s among its 100 must-follow tax Twitter accounts.

GREG MITCHELL recently participated in a symposium on “Corporate Crime 20 Years After the Creation of Justice Department Prosecution Policy” at Duke Law School. He was a speaker on two panels at the Annual Convention of the Association of American Law Schools held in Washington, D.C., on one panel, Mitchell discussed the pros and cons of the use of citation studies in the ranking of law schools, and on the other panel, he provided advice on the use of empirical methods in legal scholarship. He participated in a panel on implicit bias research at the 23rd Annual Workshop on Employment Law for Federal Judges conducted by the New York University School of Law and the Federal Judicial Center in March. Mitchell co-authored the article “Testing Compliance” with former colleague Brandon Garrett in the journal Law & Contemporary Problems, and “Maintaining Scholarly Integrity in the Age of Bibliometrics” with colleague Andrew Hayashi in the Journal of Legal Education. Mitchell co-authored the article “Employee Surveys on Sensitive Topics” in Compliance & Ethics Professional Magazine.


The Pretrial Risk Management Project, which Monahan co-directed, has recently completed its work. The goal of the project, funded by the John D. and Catherine T. MacArthur Foundation, was to foster dialogue among behavioral scientists, human rights lawyers and statisticians fluent in machine learning. The project published a critical issue brief, “Civil Rights and Pretrial Risk Assessment Instruments.” A new MacArthur Foundation project that Monahan co-directs focuses on conducting innovative empirical research on pretrial risk assessment. In addition, Monahan co-directs the Virginia Criminal Justice Policy Reform Project, funded by the Charles Koch Foundation. This project is concerned with reducing mass incarceration in Virginia, particularly of low-risk offenders and of people with mental illnesses.

NACHBAR APPOINTED TO FCC ADVISORY SUBCOMMITTEE

Professor THOMAS NACHBAR was appointed to a Federal Communications Commission advisory subcommittee that’s helping make sure callers’ voices won’t get cut off in case of an emergency.

The Communications Security, Reliability and Interoperability Council provides the FCC with recommendations that promote the resiliency of the nation’s communications systems.

Nachbar serves as a member of the subcommittee that is looking at security vulnerabilities affecting the Session Initiation Protocol, the signaling technology that makes possible the creating, modifying, and terminating of electronic communications sessions. These sessions include Internet telephones and other types of multimedia conferencing and distribution.

Because SIP is used to initiate voice sessions, it is also important for 911 service. The FCC has directed the council to develop best practices to address any vulnerabilities. Nachbar has both practiced and published in the field of telecommunications law. He authored, with Professor Emeritus GLEN ROBINSON, the casebook “Communications Regulation.” His research focuses on the nature of regulation: how the law is used (and by whom) to shape and control behavior. He is also an expert in national security law, and serves as a judge advocate in the U.S. Army Reserve and as a senior fellow at the Center for National Security Law.

This spring, THOMAS NACHBAR is teaching a new, joint class with UVA politics professor Phil Potter and engineering professor Jack Davidson called Innovation in the Public Interest. In the course, law students are placed on cross-functional teams with policy and engineering students, and each team is given a project nominated by
The Palgrave Handbook of Applied Ethics and the Criminal Law

EDITED BY KIMBERLY KESSLER FERZAN AND LARRY ALEXANDER
PALGRAVE MACMILLAN

The latest co-edited book by Professor Kimberly Kessler Ferrzan examines contemporary issues in criminal law—on such topics as fraud, blackmail and revenge pornography—and their theoretical underpinnings.

“The Palgrave Handbook of Applied Ethics and the Criminal Law” was published in December.

Ferrzan, an expert in criminal law theory, said she and co-editor Larry Alexander, a University of San Diego law professor and her frequent collaborator, sought to do something a little different with the collection.

“Most handbooks are basically reference materials,” Ferrzan said. “They are a leading light covering a topic within that scholar’s expertise. Our handbook departs from this model. We let our authors have free rein to offer their own views on the topic and not just a scholarly summary.”

Ferrzan said the book features established scholars as well as up-and-coming stars in criminal law. The editors encouraged scholars to work outside their comfort zones.

Ferrzan is the Harrison Robertson Professor of Law, and the Joel B. Piassick Research Professor of Law.

Murder in the Shenandoah
Making Law Sovereign in Revolutionary Virginia

JESSICA LOWE
CAMBRIDGE UNIVERSITY PRESS

“Murder in the Shenandoah,” by legal historian and visiting scholar Jessica Lowe, explores a real-life murder mystery and what the case implies about Americans’ views of justice shortly after the nation’s founding.

John Crane, the accused in the murder case, was a 24-year-old landowner and son of a deputy sheriff in Berkeley County, Va. (located in the Shenandoah Valley, what is West Virginia today). Crane’s property spanned 200 acres, yet it was modest compared to some of his family’s holdings. His wife was from one of Virginia’s oldest and most powerful families.

In studying the case, Lowe said, “We’re looking at the consequences of the American Revolution. What did the revolution mean for law, for people, for classes?”

Lowe said her research was full of surprises. The cast of characters in Crane’s case would also include future Chief Justice John Marshall, future U.S. Attorney General Charles Lee, Gen. Daniel Morgan and many others. Lowe didn’t want to give away the ending, but the case challenges common preconceptions about justice and privilege, and the permissibility of violence in the South during the time period. It even involves an insanity defense.
The Living Presidency
An Originalist Argument Against Its Ever-Expanding Powers

SAIKRISHNA PRAKASH
HARVARD UNIVERSITY PRESS, BELKNAP

In his new book, “The Living Presidency: An Originalist Argument Against Its Ever-Expanding Powers,” Professor Sairkrishna Prakash explains why the executive branch’s power has swelled in recent decades, why he thinks that is a problem and how Congress might respond to defend its authority.

The book’s publisher heralds Prakash’s unique approach: “A constitutional originalist sounds the alarm over the presidency’s ever-expanding powers, ascribing them unexpectedly to the liberal embrace of a living Constitution.

“Liberal scholars and politicians routinely denounce the imperial presidency—a self-aggrandizing executive that has progressively sidelined Congress. Yet the same people invariably extol the virtues of a living Constitution, whose meaning adapts with the times. Sairkrishna Bangalore Prakash argues that these stances are fundamentally incompatible. A Constitution prone to informal amendment systematically favors the executive and ensures that there are no enduring constraints on executive power. In this careful study, Prakash contends that an originalist interpretation of the Constitution can rein in the ‘living presidency’ legitimated by the living Constitution.”

Prakash is the James Monroe Distinguished Professor of Law, and the Paul G. Mahoney Research Professor of Law. For more about his book, see page 44.

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A Federal Right to Education
Fundamental Questions for Our Democracy

EDITED BY KIMBERLY JENKINS ROBINSON

NYU PRESS

Professor Kimberly J. Robinson has edited a book that examines whether all children should be guaranteed a federal right to education.

“A Federal Right to Education” features contributions from constitutional law and education experts, including Linda Darling-Hammond, considered by many to be the top education scholar in the nation; Rachel Moran, former dean of UCLA School of Law; and Martha Minow, the former dean of Harvard Law School.

Robinson, who joined the UVA Law faculty this year, is also a nationally recognized expert on how federal and state law and policy can close educational opportunity gaps. Her focus includes civil rights and the federal government’s role in education.

The book explores arguments for—and some against—a federal right to education, potential pathways to federal recognition and what such a right might entail.

In Robinson’s view, federal intervention is a must because states have failed to address the educational opportunity gap for K-12 students.

“We set [children] up for failure, generation after generation,” she said.

Robinson is the Elizabeth D. and Richard A. Merrill Professor of Law, and a professor of education at the Curry School of Education.

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Global Banks on Trial
U.S. Prosecutions and the Remaking of International Finance

PIERRE-HUGUES VERDIER
OXFORD UNIVERSITY PRESS

Professor Pierre-Hugues Verdier may soon help dispel a widely held belief that big banks don’t pay when they run afoul of the law.

In “Global Banks on Trial: U.S. Prosecutions and the Remaking of International Finance,” Verdier reviews the repercussions—which he says have been both substantial and largely beneficial to society—stemming from U.S. prosecutions and other enforcement actions aimed at foreign banks.

The assumption by a lot of people, especially before the financial crisis, was the largest banks in the world were outside the purview of the U.S. criminal justice system,” said Verdier, an expert in international law and banking regulations.

Essentially, he said, the United States and other nations felt that as long as the banks weren’t acting as criminal organizations, they should largely be left alone.

“I think after the financial crisis that perspective changed,” he said. “Real questions were raised about the effectiveness of existing bank examinations and about the oversight and priorities of regulatory agencies. And I think that might have encouraged prosecutors to take a closer look.”

The book explores instances of benchmark manipulation, tax evasion and sanctions violations. Verdier is the John A. Ewald Jr. Research Professor of Law and director of the Graduate Studies Program.

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--- Eric Williamson
RILEY APPOINTED TO NEW NIH ADVISORY COMMITTEE

Professor MARGARET FOSTER RILEY, an expert in bioethics, has been appointed to a new National Institutes of Health advisory committee that’s exploring biotechnological questions.

The Novel and Exceptional Technology and Research Advisory Committee provides recommendations to the NIH director and a public forum for the discussion of the scientific, safety and ethical issues in biotech. Riley co-chairs a working group charged with establishing a framework for the committee’s study and reporting.

The NIH, a part of the U.S. Department of Health and Human Services, is the nation’s medical research agency.

At the committee’s first meeting in December, members were asked to focus on five technologies: gene editing techniques, gene drives, neurotechnology, artificial intelligence and synthetic biology.

“Many of these technologies are now within the grasp of individuals who have no academic, government, or major corporate affiliations,” Riley said. “That raises the proverbial issue of ‘two guys in a garage’ who are largely not subject to any form of governance or supervision. So one of our tasks will be to consider governance issues.

“Another example: You’ve probably heard of the Canadian researchers who announced that they had synthesized the horsepox virus, a relative of smallpox, from genetic pieces ordered in the mail. That obviously has concerns for biosafety and national security.”

Riley has written and presented extensively about health care law, biomedical research, genetics, reproductive technologies, stem cell research, animal biotechnology, health disparities and chronic disease. She is also director of the Law School’s Animal Law Program.

She serves as chair of UVA’s Embryonic Stem Cell Research Oversight Committee and as legal adviser to the Health Sciences Institutional Review Board, which is responsible for reviewing all human subject research at UVA involving medically invasive procedures.

Mike Fox

in the clinic’s December case, Georgia v. Public Resource Org Inc., which asks whether works such as statutory annotations, which lack the force of law, are copyrightable. As co-counsel he also helped draft the clinic’s cert petition and cert reply in Hannah P. v. Maguire, which asks whether an employment decision that is based on conduct caused by a qualified individual’s disability is insulated from scrutiny under the federal disability discrimination statute on the grounds that the decision is not made on the basis of disability. He similarly helped draft the clinic’s cert petition and cert reply in Phoenix v. Regions Bank, which asks whether guarantors are protected from discrimination under the Equal Credit Opportunity Act. In February, he participated in the Stanford Law School event “The Supreme Court at Mid-Term.”

Kimberly Robinson spoke on “The Future of Affirmative Action” at the American Association of Law Schools Annual Meeting in January. In October she was a guest lecturer on “School Funding and a Federal Right to Education” at Georgetown University’s Edynomials Lab and on “A Federal Right to Education” at the University of Memphis Cecil C. Humphreys School of Law. She also was interviewed by Education Week. Robinson was selected to deliver the Thurgood Marshall Memorial Lecture at Roger Williams University School of Law.

In addition to other scholarship, GEORGE RUTHERGLEN is preparing an article on the effects of the contested ratification of the Equal Rights Amendment and a review of Justice John Paul Stevens’ memoir, “The Making of a Justice: Reflections on My First 94 Years.” He is also continuing to serve as counsel to prisoners seeking treatment for hepatitis C, currently as pro bono counsel at the request of the U.S. District Court for the Western District of Virginia.

Frederick Schauer’s “Stare Decisis: Rhet-
Preemption Statutes” was produced by the International Municipal Lawyers Association in October. It is available on the IMLA website. In November, Schragger presented the paper “Confederate Monuments and the Attack on American Cities” at the University of Kentucky College of Law. He was an invited participant in the Conference on the Theory and Pedagogy of Urban Law, held at LUISS Guido Carli, in Rome, also in November. Schragger’s article “Federalism, Metropolitanism, and the Problem of States” was published by the Virginia Law Review in December. Another article, “Establishment Clause Inversion in the Bladenburg Case” co-authored with MICAH SCHWARTZMAN ’05, appeared in the 2018-19 American Constitution Society Supreme Court Review. His editorial, “It’s Time for Home Rule in Virginia,” appeared in the Richmond Times-Dispatch in December.

MICAH SCHWARTZMAN ’05 spoke on “The Future of the Establishment Clause in the Roberts Court” at the National Lawyers Convention of the Federalist Society and on “Religious Rights and Antidiscrimination Laws” for the National Association of Attorneys General Capital Forum in Washington, D.C. He gave the paper “Stanley Fish—Why are You Still Picking on Liberalism?” for a conference on Professor Stanley Fish’s new book at Cardozo Law School. As director of the Karsh Center for Law and Democracy, he hosted a group of legal scholars and journalists for a colloquium on “Illicit Politics in America” and moderated a panel on “The Religion Clauses and Religious Minorities.” Schwartzman’s recent publications include “Establishment Clause Appreament” in The Supreme Court Review, co-authored with Cornell law professor Nelson Tebbe; “Establishment Clause Inversion and the Bladenburg Case” in the ACS Supreme Court Review, co-authored with RICHARD SCHRAGGER; and “The Unreasonableness of Catholic Integralism” in the University of San Diego Law Review, co-authored with JOCELYN WILSON ’21.

In January, BARBARA A. SPELLMAN co-teaches an intensive January term Negotiation course. While there, she spoke to undergraduates in the Brain Synaptogenesis Club about how their psychology and cognitive science majors could be useful as they planned future careers in law. Spellman has been appointed to the Organization of Scientific Area Committees for Forensic Science, which is administered by the National Institute of Standards and Technology. She is the human factors representative to the Subcommittee on Crime Scene Analysis and Reconstruction.

RICHAH D. SCHRAVERGER co-hosted the State and Local Government Works-in-Progress Conference at UVA in September, which featured more than 35 state and local government law scholars from around the world. His webinar on “Confederate Statutes and State
BARBARA SPELLMAN, a professor of law and psychology, was named a recipient of the Women in Cognitive Science Leadership Award.

The award, sponsored by the Psychonomic Society and Women in Cognitive Science, recognizes initiatives that individuals have undertaken, beyond their own students and laboratories, to benefit women in cognitive science more broadly. Spellman was one of two women honored with the award in November at the Psychonomic Society Meeting in Montreal.


Spellman considers her editorship with Perspectives her greatest contribution to not just women and cognitive science but to the field of psychology. She opened the portal to all submissions and confronted “the replication crisis”—the recognition that many findings across science could not be repeated and were likely the results of poor methodology.

Spellman earned a bachelor’s from Wesleyan University and a J.D. from the New York University School of Law. After practicing for a few years, she earned a Ph.D. in cognitive psychology from UCLA in 1993. Her psychology research focused on memory, analogical reasoning and causal reasoning. Now she writes about judicial reasoning, forensics and the replication crisis.

Spellman joined the faculty of the UVA Department of Psychology in 1997 and moved to the Law School in 2008. She teaches Evidence and various courses on the intersection of psychology and law, such as Behavioral Decision Making and Law, and the Psychology of Wrongful Convictions.

Women in Cognitive Science, founded in 2001 and originally affiliated with the Psychonomic Society, works to improve visibility of women in the profession, encourage young women to join the field, and provide professional training and development. The Psychonomic Society, formed nearly 60 years ago, is the preeminent society for the experimental study of cognition.

—Mike Fox