

EMORY UNIVERSITY Lawyer

FALL 2019



HISTORY MAKER:

Welcoming
Dean Mary Anne
Bobinski

Thoughtful and strategic steps ahead



IT IS AN HONOR for me to join the Emory Law community, and I greatly appreciate the welcoming messages that I have already received from many of you.

I hope to convey my appreciation to our alumni for all you have done to build one of the nation's leading law schools. A law school's reputation is based in significant part on the accomplishments of its alumni — and you have carried Emory Law into law firms, boardrooms, government offices, nonprofits, and public interest advocacy organizations in major centers of legal practice across the nation and around the world.

A law school's heart — the outstanding educational programs we offer to students and the pathbreaking research we offer to the profession and society — is sustained by ongoing investments by alumni of the gifts of time, ideas, advocacy, and funds. Here, too, I have been deeply impressed by the contributions of thousands of alumni who have chosen to give back to the law school through teaching, mentoring, advisory board membership, and philanthropy at every level.

As I take up this new role, I wanted to let you know that your law school is energized and ambitious about what can be achieved in the years ahead. We will be moving thoughtfully and strategically to harness this energy and ambition to ensure that Emory Law continues to provide world-class legal education and research in an accessible and inclusive environment. As a part of this effort, there will be opportunities for you to provide feedback, perspectives, and suggestions about the law school's current programs and future direction. With your advice and support, Emory Law will continue to recruit and retain distinguished faculty members who can offer our outstanding students the knowledge, ethical foundation, skills, and opportunities necessary to thrive in our constantly changing world.

As you read through this issue of *Emory Lawyer* and engage with stories about how our alumni and faculty are approaching criminal law and policy from a variety of perspectives, I hope you will share your thoughts with me at lawdean@emory.edu. I very much look forward to learning from your thoughts, perspectives, and experience.

Mary Anne Bobinski
Dean

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EDITOR

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COPY EDITOR

Laura Kuechenmeister

CONTRIBUTORS

Andrew Faught, Patti Ghezzi, Candace Gibson, A. Kenyatta Greer, Kerry Maffeo

ART DIRECTION AND DESIGN

Winnie Hulme

PHOTOGRAPHY

Annalise Kaylor, Becky Stein, Duane Stork, Hannah Yoon

ILLUSTRATION

Adam Cruft, Dan Page

ON THE COVER

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Fresh perspective

It's a new era at Emory Law, featuring innovative ideas for educating tomorrow's lawyers, fostering a sense of belonging within the community, and building connections with peer institutions to create opportunities for interdisciplinary collaboration.

PHOTOGRAPH BY ANNALISE KAYLOR





THIS IS MY TAKE





DEAN MARY ANNE
BOBINSKI IS THE
VOICE OF THE NEXT ERA
FOR EMORY LAW

BY CANDACE GIBSON * PHOTOGRAPHY BY ANNALISE KAYLOR



The Emory University School of Law has been waiting a long time for Dean **Mary Anne Bobinski**.

A

fter Professor **Robert Schapiro**'s influential tenure ended in 2017, the law school benefited from the service of two interim deans, with widely respected professor **James B. Hughes Jr.** serving in the role for nearly two years. In September

2018, Emory University's Provost, **Dr. Dwight A. McBride**, announced the launch of the search process to identify Emory Law's new leader. The search was led by search committee chair **Dr. Erika James**, dean and John H. Harland professor at the Goizueta Business School. The search committee also included faculty members, staff, alumni, and university trustees. After a wide-ranging search that generated outstanding candidates from across the United States and abroad, the university announced Mary Anne Bobinski's selection as Emory Law's new dean—and the first woman dean in the school's more than century of existence—in June 2018. So, yes, Emory Law has been waiting a long time for this new dean.

"It is a huge honor to be the first woman dean," Bobinski says, adding that she is proud to join a university "where there are amazing women leaders" throughout, including President **Claire E. Sterk**.

What has impressed Dean Bobinski about Emory Law's first one hundred years? "The Emory Law community is characterized by its strong commitment to students and by the creativity and energy that faculty members have applied to some of the most important challenges facing our society, in areas ranging from corporate law to voting rights." When asked about her own leadership style, Bobinski notes the importance of ensuring that "values and commitment to excellence remain at the core of Emory Law's identity." She also emphasizes fostering a culture of openness and inclusivity within the law school and the opportunities to connect the school even more closely to the strengths of the university, to its alumni, and to the profession as a whole. Bobinski's reputation for promoting inclusiveness and building connections between law schools and their many stakeholders is one of the standout qualities that attracted the search committee's attention.

Dean Bobinski arrived in Atlanta in mid-July with her family, settling into the Morningside neighborhood. "We're close to parks—which is good for the dog—and we're close to the university and my daughter's school," she explains. Transitioning from a temperate Canadian summer back to the steamy South will take time, but Bobinski is excited to become a part of Atlanta's diverse and thriving environment. "Atlanta is the birthplace of civil rights and has seen a long struggle for equal rights, and that is very inspiring to me and, I think, to many other people," Bobinski says. "Both Emory University and the law school have been involved with advancing human rights and driving economic opportunity within Atlanta and around the globe."



I was happy researching and teaching, but those activities lack one really important thing: problem-solving for the entire law school community.



The new dean comes to Atlanta by way of the Allard School of Law at the University of British Columbia, where the law program is now ranked as one of the top 20 in the world, according to the 2019 *Times Higher Education World University Rankings* table. Bobinski served as dean of the law school for 12 years, playing a pivotal role in the enhancement of its faculty, academic programs, facilities, and global recognition. Prior to her leadership role at Allard, Bobinski was the senior associate dean for academic affairs at the University of Houston Law Center in Texas. In Houston, she also served as a John and Rebecca Moores Professor of Law and directed a health law program that was then the top-ranked program of its kind in the United States.

DEAN BOBINSKI'S INTERESTS IN

comparative health law, health care finance, and bioethics have led her to many notable posts. She has served as president and board member of the American Society

of Law, Medicine, and Ethics and was a member of the Canadian Public Health Officer's Ethics Advisory Committee. Additionally, she

has been a visiting scholar at several exemplary institutions, including the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, the University of Sydney Law School, the Hebrew University of Jerusalem, the Melbourne Law School, and the Faculty of Law at Oxford University. Her LL.M. is from Harvard Law School, and she holds a J.D. and a B.A. in psychology from the State University of New York at Buffalo, both received *summa cum laude*. However, Bobinski's modest manner belies her long list of accomplishments. When she concluded her administrative role at Allard in 2015, she returned to her research and to the classroom. "Getting back in the classroom and teaching first-year students torts as well as upper-level classes in health law are both great joys," she says. "Aside from health law, there is nothing better than teaching torts. It is practical in one sense, because everyone knows someone who has had an accident. But it is also a topic that is quite theoretical. You can learn a lot about law and key objectives from the theory of tort law."

Her time spent teaching and returning to her most recent research in comparative health law was well spent. She had an opportunity

to explore public health law and the changing nature of the physician-patient relationship, topics that have engaged her for many years. "I am interested in how different societies approach governmental responsibility and authority to protect public health, particularly where the measures pursued by government might affect or intrude upon the interests and rights of individuals," she says. Her scholarly work explores this through the lens of HIV, in areas ranging from how anti-retroviral treatments are made available to the controversies surrounding how those living with HIV have sometimes been prosecuted for behaviors deemed to create a risk of exposure to others. Bobinski's most recent article explores the role of law in establish-

ing the balance of power in the physician-patient relationship, with a particular focus on addressing conflicts of interest. "This is an important issue because there are many areas where physicians may have conflicts of interest with their patients created, for example, by different types of financial incentives or personal values and beliefs," she explains. "In the United States, the legal approach to conflicts often focuses on whether the treatment relationship is considered to be a fiduciary relationship in which physicians are deemed to have duties of loyalty that require them to serve their patients' interests first." The dean's article considers whether there are alternatives to using the fiduciary framework to address these conflicts. Considering Emory's strategic goal to "be recognized as a top-ranked global leader in health science research to drive societal impact," Bobinski's appointment could usher in an era of greater collaboration between the law school and the university at large. Despite her commitment to this research, she was ready for another leadership position.

"The reality is, I was happy researching and teaching, but those activities lack one really important thing: problem-solving for the entire law school community. I am energized

by identifying and moving toward opportunities that make the place where I am better for students and faculty, and that connect [the school] to the outside world,” she says. Bobinski invested more than a decade as dean at Allard, where she focused on recruiting outstanding faculty members, expanding academic programs, increasing student involvement, and substantial fundraising efforts that included both the largest gift to legal education in Canadian history to support the law school’s endowment and a fundraising campaign to finance the construction of a new law building. Allard Hall was the first new building constructed for a Canadian law school in 30 years. When her term as dean came to a close, Bobinski had much to be proud of. “Term limits are a great concept,” she says. “They help ensure that you have continually fresh energy and new perspectives in administrative roles.”

FOR SOMEONE LIKE BOBINSKI,

who is hardwired for the challenges of strategic planning, fundraising, and engaging with students and faculty, getting back into an administrative role was likely. Bobinski took a measured approach to recruitment efforts. “I think it was the Emory position that drove my interest in returning to [academic leadership],” she says. “It is energizing to be connecting with the Emory community and such a privilege to become part of it. I appreciated the time that people put into the dean search process. That really whet my appetite for continuing conversations with Emory.” What was it about Emory Law that convinced Dean Bobinski it was the right next step for her career? She saw progressive leadership. Talented faculty. Students embedding themselves in and serving the Atlanta community. What’s more, she saw a truly ambitious academic curriculum.

“Particularly in the last decade, Emory Law has been extremely entrepreneurial in developing new types of programs and renewing focus in areas such as transactional law,” she says. Bobinski calls Emory a leader in the effort to think critically and creatively about what comes next for legal education. “There is a recognition among Emory’s leaders that we can take stock of the law school’s programs, assess

their success, and continue to build them. Or, we can see if there are untapped opportunities.” Bobinski says that the law school is in a pivotal position, and she predicts more change and growth ahead. In order to change and grow, an incoming leader must be clear-eyed about the issues she is tasked with solving. Emory Law, like every law school, is grappling with the challenges of a legal education in the 21st century. Bobinski understands that it will be her job to address those challenges. “Our 21st century problems are profound,” she says. “Legal education is in a significant crisis and has been since the downturn in the economy in 2009. It has been a decade of challenges related to the crisis, that have changed the structure of the profession.” Bobinski points out the “disconnect” between fewer entry-level positions for graduating law students and the shortfall in availability of legal aid. “Millions go without access to legal services, while there are graduates who need the jobs that could provide those services.” Bobinski says that disconnect goes even deeper because many legal employers are reluctant to hire candidates without proven legal competence and skills. But if not by interacting with clients or presenting in the courtroom, how do young lawyers establish competence and skills?

BOBINSKI HAS A FEW IDEAS

about how to address this disconnect and ways to bring law schools into the 21st century. Emory Law has already established itself as a national leader in executing one of them: experiential learning programs. “There is a traditional model of legal education that imagines a wise person in front of the classroom engaged in Socratic dialogue with students. This is still a very important part of legal education. It is great for teaching students how to think analytically, like lawyers,” Bobinski says, and there is no doubt that many of Emory’s law faculty members are widely revered for their classroom prowess. This will no doubt be a key feature of the Emory Law experience moving forward. But, as Bobinski notes, “experiential learning is important, too.” Emory Law’s opportunities for experiential and practical learning experiences include clinics, externships, the TI:GER program, trial techniques, transactional law,

moot court, and pro bono volunteer opportunities. The philosophy is that students find the right legal paths for their interests and natural talents by learning the skills needed to apply classroom knowledge to actual legal scenarios. Firsthand experience with the legal profession is an important part of guiding students’ career paths and helping them make practical decisions about what type of practice will best suit them when they leave the law school.

STUDENT LOAN DEBT

is another 21st century issue — and Dean Bobinski does not call it a “crisis” hyperbolically. “We are trying to manage people’s investment in their education so that it doesn’t hamper them from having a full range of career choices when they finish their programs,” she says. Bobinski wants students to find “careers they’re excited about and that will meet society’s needs.” She thinks that Emory Law has a responsibility to recognize the importance of this issue among its students. “Emory is in an interesting position for several reasons,” she says. “Because it has been a national leader in legal education, it has a special responsibility when it comes to making sure that it prepares students for leadership roles as they practice in Atlanta, Georgia, the southeast, . . . nationally and, potentially, globally.” Bobinski points to roles that past Emory Law students have assumed within leading national law firms in major centers of legal practice, as well as in corporate settings, the federal government, public service, nonprofits, and as public defenders. “Emory Law graduates have opportunities in all different settings,” she says confidently. This is in large part because of the law school’s national and global reach, its rigorous curriculum, and the new experiential learning opportunities that prepare students to start jobs with sufficient competence and skills. Where Bobinski intends to make an impact with Emory Law’s curriculum is continuing to graduate law students who are prepared to begin their work with the confidence that they have had the opportunity to acquire the knowledge, skills, values, and situational understanding that they need in their chosen fields of practice. “An important part of this next stage is to have conversations with



It is energizing to be connecting with the Emory community and such a privilege to become part of it.

graduates, professionals, and leaders to see what they think are the curriculum needs as we move forward,” she says. “I want to give the message to leaders that this will be coming. We will actually be engaging with the profession. We will be moving into a strategic planning cycle.”

In addition to addressing the 21st century challenges of a legal education, Bobinski is also expected to help Emory Law generate the level of financial support needed to maintain its leadership position in legal education. “Fundraising is a key aspect of a dean’s role these days. It is a fact of how higher education works,” she says. The law school is aware that it operates at a disadvantage, given the size of its endowment and annual gifts in comparison to its peer institutions. Funding is necessary for the students, faculty, and school to impact the broader community, Bobinski explains. There is no way around it: “You need the funds. That’s the fuel that helps good works happen.”

**GIVEN
HER
SUCCESSFUL**

fundraising history at Allard, one might assume Bobinski has been honing this talent for years. She insists otherwise.

“Fundraising was something I hadn’t had much exposure to before taking up the dean role in British Columbia,” she says. Fundraising, she continues, is “one of the most enjoyable parts of the job.” It helps that she views fundraising as a relationship-building opportunity rather than a financial venture. (Recall that her decision to take on another leadership role was connected with missing the problem-solving aspect of the job.) Bobinski describes fundraising as a complex, deeply personal, and rewarding task. “You . . . connect with and become immersed in the hopes, dreams, and visions of the people you’re working with on a daily basis. You know what they hope to achieve for the school, and then you have conversations with people in the community—with alumni legal professionals, and business leaders.” What comes next, she describes, is learning what the community wants to see from the law school and creating a “shared vision.”

While that might sound overly earnest or like a sound bite coming from a spokesperson, Bobinski is sincere when she explains what

she means by “shared vision.” “It is a two-way communication about aspirations and expectations that ends up—in many cases—generating interests and investments that make a real difference,” she says. The funds allow students to pursue a legal education. They promote pathbreaking and impactful faculty research, and, they connect law schools with their communities, she says.

In her past fundraising experience, Bobinski says, “I saw inspiring relationships that made a real difference for the school and the community. Fundraising generated money for new clinical programs, a new building project, and—critically—establishing endowments that ensured the capacity to do good in perpetuity.” As Bobinski discusses fundraising, Emory Law’s curriculum, her move to Atlanta, and stepping into the dean role, she struggles to find a word besides “exciting.” She is excited. The job is exciting. Her new colleagues excite her. “Please help me find another word!” she laughs. Of course, but it bears mentioning: Dean Bobinski is genuine in her excitement. She will be getting to work right away. Hers is a kind, energetic focus, and the Emory Law community will soon see it. “Over the next few months, one of the most important things I’ll be doing is reaching out to connect with as many Emory Law graduates as possible,” Dean Bobinski says, “as well as friends of the school and those who have been impacted by the school’s programs and activities.” She laughs again as she summarizes her intent. “Basically, I’m looking forward to ensuring that we have the very best advice as we move the law school forward.” Nothing about her new beginning is lost on Emory Law’s incoming dean. She is stepping into a role ripe for fresh leadership. She is making history as the school’s first woman dean. And, though she is arriving in the thick of the 21st century legal education crisis, she is unflinchingly calm about the challenges ahead. “This is such an important moment for the law school,” she says. Noting the law school’s recent celebration of its first 100 years, she said, “This is the next phase of Emory Law’s picking up the mantle of responsibility for leadership in legal education and setting its sights for the future.”



DRUG LAWS GET NEW SCRUTINY

IN ZONE



THE TWO SCHOLARS were sharing a bite at Emory Village’s Rise-n-Dine in 2009 when a question arose between them that few had asked in nearly three decades.

What impact do state drug-free zone laws have on their communities? The laws, developed in the 1980s at the dawn of the so-called “war on drugs,” prescribe heightened penalties for convicted drug dealers who sell illicit substances within, in most cases, a thousand feet of schools, parks and public housing.

“This neutrally designed law,” Emory Law Professor **Kay Levine** posited, “might have hugely differential impacts, depending on where it is being enforced. It’s a thousand feet, whether you’re at a farm, or in a suburb, or in a city.”

Levine and three colleagues with criminology and sociology backgrounds set out to gain a clearer picture.

BY ANDREW FAUGHT

Securing the grant was ringing affirmation of Emory Law scholarship; the school does not typically receive money from groups that fund scientific research.

IN A FORTHCOMING 40-page study, “Race, Place & Discretion in the Handling of Drug-Free Zone Charges,” Levine and former Emory sociology Professor Elizabeth Griffiths, along with two Georgia State University criminologists, Joshua Hinkle and Volkan Topalli, show that inner-city Atlantans do, in fact, face greater legal jeopardy than those living elsewhere in Fulton County.

“Drug-free zone laws, we argue, are problematic in that, if they are followed, they can create these really disparate effects for communities of color,” says Griffiths, now an associate professor of criminal justice at Rutgers University.

It’s what some criminologists and social justice advocates describe as the “hyper-criminalization” of drug offenses, in which people of color and economically disadvantaged residents are disproportionately affected. The scholars hope their work will spur similar research throughout the country. While it’s long been assumed that dense inner cities bear a heavier burden as a result of drug-free zone laws, the group’s work is the first to confirm that’s the case.

“Anywhere in an inner city is going to come close to being within a thousand feet of a school or park or public housing,” says Levine, who helped secure a \$400,000 National Science Foundation grant to fund the study, which focused on Fulton County. “That means every drug sale crime in the inner city is subject to these huge penalties, while people in the suburbs and rural areas simply don’t face them.”

More than half of the city of Atlanta falls within a drug-free law zone; outside of the city, a third of Fulton County is in such zones. Penalties are formidable. In Georgia, the statutory maximum penalty for the first violation of a drug-free zone law is 20 years in prison and a \$20,000 fine.

Highlighting disparities could help advance the rule of law “by inspiring legislators to seriously rethink having this drug-free zone law on the books in its current form,” Levine says. “I think our study could help legislators be more responsible and more modest in their aims.”

The research team’s six-year effort, which culminated in March of this year, broke new ground in law and criminology, as the team embarked on a “mixed-method” study that involved not just statistical analyses, but also interviews with drug dealers, the police, and prosecutors.

“We really got a full picture of how the drug-free zones work, how they operate, and whether they’re effective,” says Topalli, whose scholarly research addresses violence in urban settings, with a particular focus on the decision-making of street criminals. “It’s not easy to do this kind of work because identifying offenders that are willing to talk to you is not a simple exercise. But it’s well worth it, because the data that they give you is very valuable.”

The team also relied on quantitative spatial analyses—using mapping software and arrest records—to illustrate areas considered to be hyper-criminalized.

Securing the grant was ringing affirmation of Emory Law scholarship; the school does not typically receive money from groups that fund scientific research.

“For us, it’s a big deal that an outside agency says, ‘there’s real value in this work, that you have the capacity to do something maybe game-changing, and we want to be a part of that,’” Levine says. “Our goal is,

we wanted to be the first serious researchers to take a look at how these laws are working. The NSF has been an outstanding partner in this research, and they've been supportive of us all the way through."

WHILE THE FULTON COUNTY District Attorney's Office doesn't have a track record of turning over data to social scientists, DA **Paul Howard 76L** did just that: He shared with the researchers 19,063 felony drug arrest records between 2001 and 2009. Levine and her team found that about 5,000 drug dealers could be



Associate Dean of Faculty Kay Levine, a former Emory sociology professor, and two criminologists collaborated on the research.

subject to extra drug-free zone law penalties. Significantly, almost none of the penalties were levied, in large part because police, the district attorney's office, and judges decided the time necessary to do so was too burdensome. Or officials said they simply don't know about provisions.

"We have no idea if Fulton is typical or atypical in terms of the enforcement patterns that we found," Levine says.

Drug-free zone laws continue to this day to be mostly unenforced in Fulton County. They are considered a "dead letter," the legal definition for a law that is not enforced. Cell phones and the advent of social media have caused many open air drug markets in drug-free zones to vanish, as dealers favor more discreet transaction methods, Levine notes.

As the laws were envisioned, they would keep drugs out of areas where children congregate, protect children from exposure to drug use, and foster safe public environments. That they remain on the books, regardless of the almost nonexistent current enforcement status, concerns Levine.

"If the prosecutor's office decided to take a different approach here, and the judges went along with it, the results for the inner-city populations of Fulton would be disastrous," she says. "I mean, it would shock the conscience what would happen to people caught selling or distributing drugs."

In the rare cases that police did file a charge against an offender, "it was a very obvious case of a drug deal going down inside of a school," says Hinkle, whose specialty is evidence-based policing. "But from my interviews, police rarely filed them, and they weren't using [drug-free zone laws] to target their activities or anything."

Many have criticized the war on drugs, with the *New York Times* opining in 2017 that it "has been a failure that has ruined lives, filled prisons and cost a fortune." Some observers have called on lawmakers to decriminalize small-scale drug possession — some of the very infractions targeted by drug-free zone laws.

"Because of how disproportionately drug-free zone laws cover poor, minority areas, it would certainly be a dangerous law if they started enforcing it and cracking down and making arrests," Hinkle says. "Even if they're not being enforced, we shouldn't ignore them. A new district attorney could come in, and decide they want to start prioritizing those charges."

Across the United States, legislators over the years have been criticized for enacting criminal law without the benefit of evidence,

being motivated instead by political calculations. There also are concerns that drug-free zones result in over-policing of neighborhoods, stigmatizing some areas as drug-ridden when maybe they are not.

"We did not write this (study) up with an eye toward cattle prodding," Levine says. "We're hoping it forces a reexamination, as in, 'I don't think this law needs to be on the books anymore.' Clearly, right now in Fulton County, it doesn't make any sense to anybody to use this law."

The laws are not thought to be a deterrent, and even the drug dealers who the team interviewed were unclear on their specifics. Some thought the zones started 5,000 to 10,000 feet away from a school, for example. Others, according to the study, incorrectly assumed that drug-free zones included areas near churches and hospitals.

CONGRESS CREATED THE FIRST drug-free zone law in 1970s, increasing penalties for certain drug offenses committed near schools. Twelve years later, President Reagan's "war on drugs" spurred all 50 states and the District of Columbia to adopt their own drug-free zone laws. Except for a handful of limited-scope studies on drug-free zones, they have mostly avoided serious scrutiny.

"While there has been a ton of work, at least in the social sciences on the various types of policies that emerged out of the war on drugs — and beyond that, helped to contribute to mass incarceration — there has been very little work done on drug-free zones," Griffiths says.

Topalli doesn't demonize the laws, but neither does he see their value.

"I think most of this legislation was well meaning, but it wasn't tested ahead of time," he says, noting a law's efficacy can be hindered by its own opacity. "It's very difficult for something to be a deterrent if people aren't really aware of what the borders and limitations are. It's not like offenders carry measuring tapes with them. But the distance of a drug-free zone is just not something that's particularly important to them. They're much more concerned about competition from other drug dealers."

The big takeaway from the study, Topalli says, "is that drug-free zones are not particularly effective. It's very difficult for us to see how they could be made to work better."

A country in crisis

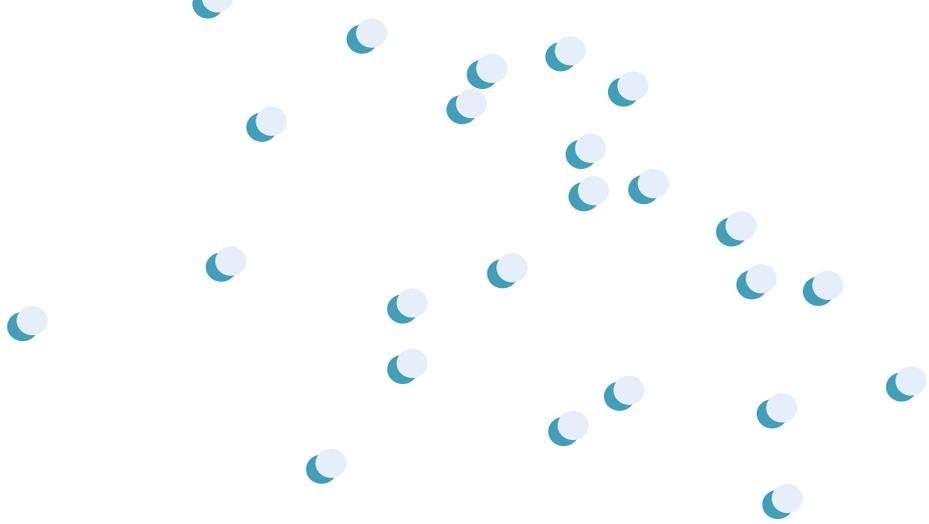
When justice is done, who will pay?

BY KERRY MAFFEO • ILLUSTRATION BY DAN PAGE

Nearly 30 years ago, on the heels of the “war” on illicit drugs, another crisis began to grip the nation. This time, instead of illegal drugs pouring into communities, wave after wave of prescription opioid addictions and deaths ripped through the country, leaving a trail of financial and physical devastation in its wake. According to the Centers for Disease Control and Prevention (CDC), more than 700,000 opioid overdose deaths were recorded between 1999 and 2017.







How could a legitimate medication, touted by the pharmaceutical industry as a safe and low-addiction-risk means for alleviating patients' suffering also unleash a public health catastrophe of this magnitude? And, more importantly, as the country grapples with ongoing opioid abuse, who must be held accountable for the financial cost and the loss of life?

Pending legal actions allege the pharmaceutical industry employed aggressive marketing and intentional dissemination of misinformation on the highly addictive nature of these medications. "We've seen a collective effort on the part of the industry to change the way the American medical community, and the American public, viewed the use of opioids," says **Mark Chalos 98L**, managing partner of Lief Cabraser's Nashville office and member of Emory's Select Committee on Class Actions. "We allege that their intention was to create a perception that using opioids was safe, without very much risk of addiction."

A litigation model emerges

In Oklahoma earlier this year, the first public opioid trial in which the state sued global megacorporation Johnson & Johnson using a "public nuisance" strategy, alleging the company is responsible for fueling one of the worst drug epidemics in U.S. history. On August 26, a landmark decision was issued. In a move expected to shape future litigation, Cleveland County District Judge, Thad Balkman, ordered the company to pay \$572 million for its part in the state's opioid epidemic.

Elsewhere, courts have so far only heard litigation on behalf of states, local jurisdictions,

and groups, but with the sheer volume of cases pending, more than 1,500 federal complaints were bundled together last year under one multidistrict litigation (MDL), presided over by US District Court Judge Dan Polster. This fall, the MDL will have its first trial, expected to become the bellwether in opioid litigation.

Jaime Dodge, director of Emory University School of Law's Institute for Complex Litigation and Mass Claims, says the institute is following the Ohio MDL closely.

"The MDL is being entrusted with the most difficult problems of our time," Dodge says. "For many, there's a recognition that in some of these cases it's not just a dollar or cents issue; it's about fixing ongoing societal problems — and that will require innovation and novel solutions."

"But for others, there is a concern that the enormity of the problem will result in accepting a rough justice that short-circuits due process — and sets a precedent for that to occur in future, less novel cases. The Institute has been at the forefront of the process, helping judges and counsel develop the right innovations to best effectuate justice for all parties. This work has become crucial as these massive cases become more and more frequent, with MDLs now comprising more than half the federal civil docket."

Paul Geller 93L, managing partner of Robbins Geller Rudman & Dowd, and a member of the Institute's board of directors, is representing a number of plaintiffs in the Ohio case. Geller is part of a team that is taking the unconventional approach of filing a motion for certification of a negotiation class, rather than a traditional litigation or settlement class.

If approved, the motion would gather the thousands of counties and cities that have been impacted by the crisis into a single negotiating class for the "sole purpose of negotiating and potentially settling with defendants conducting nationwide opioids manufacturing, sales, or distribution."

"Political subdivisions like counties and cities have filed lawsuits both in state and federal court," Geller explains. "What we are trying to do is use a class procedure in a novel way — to assist in global settlement negotiations, rather than to litigate each claim. Ultimately, it will take collaboration and coordination among the various plaintiff groups to 'land the plane.'"

Attorneys for the plaintiffs are applying a number of legal theories to underpin the prosecution.

"Opioid MDL cases are being tried primarily under the federal racketeering statute, meaning the prosecution alleges that these manufacturers and distributors engaged in a long, wide-ranging scheme to collectively defraud the American public and the medical community," Chalos says. "Opioids are part of a closed system, like all controlled substances, and federal and state law require these companies to know where their drugs are at all times."

Chalos says dumping tens of billions of oxycodone and hydrocodone pills into American communities over a six-year period hardly counts as ethically responsible. "The *Washington Post* recently reported that the DEA's ARCOS database showed that 76 billion opioid pills were manufactured and distributed throughout the US between 2006 and 2012. That's over 240 pills for every man, woman, and child. This crisis is not the fault of the American public."

Geller concurs, "Consumer protection laws, RICO and public nuisance laws are on the books to protect against companies putting the public at risk while they profit off of the sale of potentially dangerous products. If companies use adequate warnings and don't violate the law in the manner in which they market and

sell, then they have nothing to worry about. But that isn't the case here."

The path forward

Both Geller and Chalos represent plaintiffs in the Ohio MDL. Although neither can divulge specifics on an active case, both say enough evidence already in the public record paints a dim view of the conduct of manufacturers, distributors, and other actors within the industry.

What we are trying to do is use a class procedure in a novel way—to assist in global settlement negotiations, rather than to litigate each claim. —PAUL GELLER 93L

"In a very short period of time, opioids went from being rarely used—and only for chronic illnesses such as terminal cancer and palliative care at the end of life—to a patient receiving a 90-day prescription for OxyContin after something as simple as a tooth extraction," Chalos says. "At the same time, we saw distributors making billions of dollars on dumping massive amounts of opioids into communities where there weren't enough people to justify that volume. That was a dramatic sea change."

The hope is, a favorable ruling in the Ohio MDL will go a long way toward not only recovering billions of dollars spent fighting opioid addiction in states and municipalities across the US, but also affect systemic change.

"This is one of those rare instances where large-scale litigation may be the vehicle that achieves what other efforts have been unable to do," Geller explains. "We are fighting not

only to reimburse state and local governments who have taken the brunt of the financial burden of this deadly epidemic, but more importantly, we are fighting for funds to increase treatment beds and recovery programs, to educate the public and re-educate health care providers, to get Naloxone (NARCAN) into the hands of all first responders, and to ban the promotion and lobbying of opioids, among many other goals."

The Herculean efforts to stem the tide of addiction and the opioid-related death toll is also gaining traction outside of the courtroom. On October 24, 2018, President Trump signed into law the bipartisan Substance Use Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act.

The SUPPORT Act expands the industry's reporting obligations under the federal Physician Payment Sunshine Act as well as includes multiple provisions to address the opioid abuse epidemic nationwide.

Assistant Deputy Attorney General for the District of Columbia **Jimmy Rock 03L 03T**, says resolution will require a collaborative effort. "This is an 'all-hands-on-deck' government response. The state and local governments are on the front lines of this crisis, but the federal government is certainly also going to continue to have a role in stemming the tide."

Prescribing in good faith

What about the medical community? Are doctors complicit in this epidemic, or were they acting in good faith to meet a legitimate need for pain relief in their patients? "There's a whole generation of doctors who were told from the time they were in medical school, when your patient is in pain, if you're a good doctor, you give them a pill," says Chalos. "Of course, there are bad actors, doctors who were running pill mills, but the vast majority of them were relying on the manufacturers to give them accurate information."

Geller says that responsible pain management is the key. "There is no question that there are legitimate uses for pain medicine—and for the most part, when good, honorable, and properly educated doctors are treating patients who have legitimate needs, and when the amount and dosage is carefully monitored, you don't see the problems that we're dealing with in the opioid litigation."

The advent of legal and legislative action, though still in its infancy, is producing another sea change in medical care. "There's been a gradual shift back in the way doctors are perceiving opioids and laws have been enacted in some states that encourage doctors to prescribe a shorter course of these drugs," Chalos reports. "We're also seeing insurance companies looking more carefully at the length of a prescription and denying coverage when deemed necessary, such as for pregnant women, in an effort to eliminate cases of neonatal abstinence syndrome."

Unintended consequences

There's a lot riding on the upcoming litigation—and not just for those municipalities and other groups seeking damages. Perhaps one of the most difficult unintended consequences to relieve is the harm done to the end users—the patients—and their families.

"The patient is a very important part of the picture here," Chalos explains. "Everybody agrees that patients who have a legitimate medical need for opioids or any other pain relief, should have access to them. What we want to happen here is for doctors to be given the full picture, including accurate information about these drugs, so that they can prescribe and monitor responsibly. Opioids are highly addictive, and that must be factored in."

Dodge agrees, "There are people who really need these drugs, so you can't shut down the chain of commerce entirely. That makes it very difficult to think about how to craft injunctive relief so you have a way to get justice for the plaintiffs without unintentionally harming others."

Solving the opioid abuse crisis will take the proverbial village because, as Chalos says, unlike the cocaine epidemic, the opioid abuse epidemic is much more insidious. "I think the major difference between the opioid epidemic and the 'war on drugs' is that what we're experiencing with opioids has its roots in the corporate board rooms of billion-dollar corporations. As long as a pharmaceutical company is making billions or tens of billions on opioids, there's not much incentive to investigate alternatives. Our goal is that, ultimately, the MDL litigation will have a dramatic impact on the industry's conduct and will make a change in our communities for the better."



Evidence

of innocence

Julie Seaman, associate dean for academic affairs and associate professor at Emory University School of Law, has served on the board of directors of the Georgia Innocence Project (GIP) since 2008, including several years as board chair. Her experiences in this role have given her a new perspective on justice for all — a perspective and passion she regularly brings into the classroom, engaging fresh new minds in the critical examination of our system of justice, year after year in Evidence class.

BY KERRY MAFFEO

An obvious injustice

More than a decade ago, Seaman was browsing the shelves at a book store, preparing for the next semester's Evidence course, when



Julie Seaman

she came across a book authored by Calvin Johnson Jr., one of the Innocence Project's early exonerees who, coincidentally, had the same name as a colleague. "The author's name was familiar, and that's why I bought *Exit to Freedom*," Seaman recalls. "As I read it, I was horrified by the blatant and obvious injustice."

She continues, "He was a young, African American college student, from a middle-class family, with a private lawyer — all factors that you would typically associate with a defendant who isn't railroaded into a false conviction. But being a black man with an all-white jury and police investigators who were fixated on him as a suspect, it's so clear racial factors played a role."

Seaman was so struck by Johnson's story that she brought it into the classroom during her next Evidence course. As it turned out, a student mentioned that he had an internship at the GIP, where Johnson was an inaugural board member. Seaman invited Johnson in as a guest lecturer, which eventually led to an ongoing relationship with GIP and an appointment to the board of directors.

"My primary experience with the criminal justice system to that point was from the perspective of the victim," Seaman explains. "Having only seen one side of the process, my attitude was that no system is perfect, but our system of justice is quite good and generally reaches fair, accurate, and just results."

"My time on the GIP board in those early days, however, crystalized for me that our criminal justice system has some pretty

significant issues that are really important to address."

According to the Innocence Project, of the 365 DNA exonerations achieved across the US to date, 69 percent involved eyewitness misidentification, 44 percent included the misapplication of forensic science, 28 percent were the result of false confessions, and 17 percent involved informants.

In short, wrongful convictions are a complicated combination of the faults of human nature and deep systemic failures.

"The GIP and other organizations work to correct these common issues through policy work as well as individual legal representation," Seaman says.

"The challenge is, though GIP is working on a person-by-person basis to affect change, we'll never get to every case. Which is why I am also involved with the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School, which takes a systemic, very data-driven, think-tank approach to criminal justice reform."

Attracting attention

In the late 2000s, the Innocence Project wasn't yet in the public consciousness. In fact, it wasn't until the entertainment industry took an interest in some of the organization's higher-profile cases and exonerations that the Innocence Project and its state affiliates in the Innocence Network became the topic of national conversation.

The 2012 film *The Central Park Five* by Ken Burns, Sarah Burns, and David McMahon, and the 2019 Netflix Original miniseries *When They See Us* shocked the nation with the story of the exonerated "Central Park Five" who had been wrongfully convicted of the brutal rape and assault on a female jogger in the eponymous New York City park.

The two-part Netflix docuseries, *Making a Murderer*, was filmed over the course of 13 years and follows the Wisconsin Innocence Project's efforts to free two men they believe to

be innocent of the grisly murder of a freelance photographer.

And the popular *Serial* and *Undisclosed* podcasts — which Seaman regularly infuses into the classroom — continue to spark passionate public debate with their investigation of wrongful convictions and cold cases. One particular case, which significantly raised GIP's profile and helped the organization achieve financial stability, is the story of Georgia native Joey Watkins.

Watkins was convicted of the 2000 roadside crash and murder of a romantic rival based primarily on an incentivized informant and an overzealous police sergeant who was convinced of his guilt.

Despite ample evidence — including eyewitness accounts of Watkins' whereabouts, extensive cell tower records proving he was actually making the 45-minute drive to his girlfriend's house during the time of the murder, reports of a different vehicle seen driving aggressively just before the incident, and a similar unsolved shooting occurring a few miles away that coincided with dispatch taking the initial accident report — Watkins was sentenced to life plus six years.

"The media attention can be a blessing in cases like this, where there is literally nothing more we can do to advance the case from a legal perspective," Seaman explains. "In Joey's case, the GIP hit a roadblock until the *Undisclosed* podcast highlighted his situation in 2016. Over the course of the season, new evidence was uncovered, which put his case in a much better position."

Justice for all?

Getting justice for the wrongly convicted is a lengthy process, and Seaman says that even when exculpatory evidence is revealed, it doesn't always guarantee an exoneration.

"When GIP screens potential cases, we are looking for some possibility of biological evidence still existing," Seaman states. "We might not know where (continued on page 23)

According to the Innocence Project, of the 365 DNA exonerations achieved across the U.S. to date:

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involved eyewitness misidentification

44%

included the misapplication of forensic science

28%

were the result of false confessions

17%

involved informants

class notes

FROM THE ALUMNI BOARD PRESIDENT

What an incredibly exciting time it is for Emory Law. When I first met Dean Bobinski during the search process, we talked about the strengths of, and opportunities for, the law school with great candor.



After our conversation, I knew she could take the best of Emory Law and make it even better. How fortunate we are that she has chosen to make Emory Law her new home. I hope you enjoy learning more about her in this issue.

As you work diligently and serve faithfully in law firms, courtrooms, corporations, non-profits, classrooms, and government agencies around the country and world, I invite you to think back on the foundation—in skills and in relationships—which you built at Emory Law. This special foundation makes for

great lawyers, judges, leaders, teachers, and public servants, including each of you. To remain a place where great foundations can be built, Emory Law needs its alumni. It needs us to share our experiences and ideas, our help in launching its new graduates, and our financial support. If you are already one of our active alumni, thank you. If it has been a while since you were active, now is a great time to come home and get engaged. Get to know our new dean, reacquaint yourself with or learn for the first time about one of our many great programs, volunteer, or just visit with a few of our current students.

Speaking of faithful service, I am so very pleased that we were able to highlight the work of Professor Seaman and the Georgia Innocence Project in this issue. Even if your work does not have you in a capitol building making policy or in a courtroom rendering judgment, now is the time for all of us to remind ourselves of the oath we took when we first became lawyers to defend the Constitution of the United States of America. There is a special place for all of us who have earned a degree from an institution as prestigious as Emory Law to do our part to preserve justice in our communities. It's inspiring to see how the lawyers at Georgia Innocence Project are living out their oath.

It is my privilege to serve as your Alumni Board president as I take the reins from John Jordak. He has been a great leader and contributor to this institution, and we owe him our sincere thanks. Please contact me if you have ideas to share or if I can help enhance your alumni experience. I look forward to hearing from you soon.

Annalisa M. Bloodworth 04L is senior vice president and general counsel for Oglethorpe Power Corporation. She is president of the Emory Law Alumni Board.

65

C. Lash Harrison 62B 65L was recognized for lifetime achievement in the 2019 *Daily Report* awards.

74

Gordon Giffin 74L was recognized for lifetime achievement in the 2019 *Daily Report* awards.

78

Louise Wells 74C 78L was recognized for lifetime achievement in the 2019 *Daily Report* awards.

79

Jim Cohen 79L was profiled by StoryDriven, of Durham, North Carolina, on his work as a silversmith who specializes in Judaica.

81

Mitchell M. Brand 81L has joined Blank Rome as a partner in the Finance, Restructuring, and Bankruptcy group in the firm's New York office.

Jeffrey M. Williams 81L is chair of the nominating committee for the 2019–20 Board of Managers for the American Academy of Matrimonial Lawyers Pennsylvania chapter.

82

David Aughtry 82L was recognized for lifetime achievement in the 2019 *Daily Report* awards. Earlier this year, he was named a Star Individual for tax law in Georgia for the eighth year in a row, and a top-tier attorney in Tax Controversy nationwide in the 2019 *Chambers USA Guide*. He is a shareholder at Chamberlain, Hrdlicka, White, Williams & Aughtry in Atlanta.

Sharon A. Gay 82L is the 2019 recipient of the WomenLEAD Excellence Award, an honor from her firm, Dentons. It recognizes women who distinguish themselves in advancing female colleagues. She is managing partner of the Atlanta office and a member of the Public Policy practice.

Harold Yellin 82B 82L, a partner at HunterMaclean's Savannah office, was named a 2019 Georgia Super Lawyer in the category of Real Estate.

86

In June, **Julie Fershtman 83C 86L** was featured in the *Crain's Detroit Business* profile, "How Julie Fershtman, Former President of the State Bar of Michigan, Helps Other Women Succeed in Law."



1

87

Theodore "Tim" McDowell 87L has published *It's a Hell of a Thing*. McDowell practiced law until 2004 when he suffered a disabling brain injury. Much of the book deals with trauma associated with such an injury.



2

88

In July, JetBlue announced the appointment of **Teri P. McClure 88L** to its board of directors. McClure recently retired after nearly 25 years at UPS, where she was chief human resources officer and senior vice president of labor.



3

Michelle Tanzer 84C 88L of GrayRobinson has been appointed chair of the National Club Association's Membership Committee and co-chair of its Conference Planning Committee.



4

89

Kathy Buckman Gibson 89B 89L was named Woman of the Year by the Technical Association of the Pulp and Paper Industry's Women in Industry Division.



5

90

Lori Cohen 90L was recognized as a "Best Mentor" in the 2019 *Daily Report* awards.

Christine E. Howard 87C 90L started a three-year term on Fisher Phillips' Management Committee, in June. She is the first woman to serve on the three-member committee, considered the equivalent of the board of directors.

91

Sarah Lamar 91L, a partner at HunterMaclean's Savannah office, was named a 2019 Georgia Super Lawyer in the category of Employment and Labor.

92

Rachelle Carnesale 92L was appointed to the Fulton County Superior Court bench by Georgia Governor Brian Kemp in June.

93

Marc Bryant 93L has joined FS Investments in Philadelphia as senior managing director and chief legal officer.

Ross Ginsberg 93L, a partner at Weinberg Wheeler Hudgins Gunn and Dial, has been named a 2019 Georgia Super Lawyer by *Super Lawyers*, in the category of Construction Litigation.

94

Robert Cooper 94L has been named a joint administrative partner of Boies Schiller Flexner's Washington, DC, office.

Lisa Lott 94L took the bench as superior court judge for Georgia's Western Judicial Circuit on January 1. She is the first woman elected to that bench and one of only two judges in the Western Circuit's 118-year history who won their seat purely by election, rather than first serving as a governor's appointee.

95

Stephen T. Kong 95L has joined Pepper Hamilton LLP as partner in its Corporate and Securities Practice Group, resident in Los Angeles and Orange County.

Jeffrey Swart 89B 95L has been promoted to executive vice president and chief legal officer at TrueCar, Inc. Prior to joining TrueCar in 2014, Swart was a litigation partner at Alston & Bird, and also, a CPA with Coopers & Lybrand.

Jonathan A. Vogel 95L of Charlotte, North Carolina, launched Vogel Law Firm, an education law firm focused on issues arising in K-12, higher education, and student loans.

96

John Maggio 96L was recognized for the second year in a row as a Leading Lawyer by The Legal 500 for Transport: Aviation and Air Travel-Litigation. He is a partner at Condon & Forsyth and works in the firm's New York and Miami offices.

97

Shawn Kachmar 97L, a partner at HunterMaclean's Savannah office, was named a 2019 Georgia Super Lawyer in the category of Employment Litigation.

98

In April, President Donald Trump nominated **Steven Grimberg 98L** as judge for the Northern District of Georgia.

00

Joshua H. Viau 00L is now a partner at Fisher & Phillips LLP and practices in the firm's Atlanta offices. His focus is labor and employment law.

03

Eric Barton 00C 03L was one of five lawyers named partner at Seyfarth Shaw's Atlanta offices (and among the 24 new partners announced firm-wide). He is a litigator who focuses on business disputes, trade secrets, and financial services.

Michael Woods 03L is now Orano's new general counsel. He is based in the firm's corporate offices in Washington, DC.

04

Noah Bleicher 04L, a former Government Accountability Office senior bid protest hearing officer, has joined Jenner & Block's Washington, DC, office as a special counsel in its Government Contracts Practice.

05

Jonathan Jacobs 02C 05L is a partner in the Financial Transactions group of the New York office of Morrison & Foerster.

Sharon Zinns 02C 05L is among this year's Georgia Super Lawyers. She is a principal at Beasley Allen's Atlanta offices.

06

Amanda Leech 06L joined Akerman's Corporate Mergers and Acquisition Practice in Atlanta as partner.

Vincent Russo 06L was recognized as an "On the Rise" lawyer in the 2019

Daily Report awards.

07

Allison Surcouf 07L was recognized as a Next Generation Lawyer by The Legal 500 for Transport: Aviation and Air Travel-Litigation. She is a partner in Condon & Forsyth's New York office.

08

Jonathan Benator 08L, a partner with Lazega & Johanson, was included among the 2019 Georgia Super Lawyers Rising Stars list for real estate practice. This is his fifth consecutive year on the list.

Lymari Martinez Cromwell 08L has rejoined Bass, Berry & Sims in Nashville as counsel, where she focuses on labor and employment, and healthcare.

2 Courtney Devon

Taylor 08L is now a partner at Schnader Harrison Segal & Lewis. She joined the firm as counsel in 2015, and is vice-chair of the Securities Litigation Practice Group in both the Philadelphia and New York offices.

09

Jennifer Deal 09L was recognized as an "On the Rise" lawyer in the 2019 *Daily Report* awards.

3 Kelly Frey 09L was named member at Mintz, the firm's equivalent of achieving partner. He practices in Boston.

Hillary Gardner 09L has joined Credigy, a specialty finance company in Atlanta, as corporate counsel.

Christine Norstadt 09L has joined Chamberlain, Hrdlicka, White, Williams & Aughtry as senior counsel and part of the firm's expanding real estate practice.

10

Daniel Shulak 04C 10L was named as a Rising Star in the 2019 edition of Legal 500 US for criminal antitrust investigations and defense. He is a senior associate in Hogan Lovells' White Collar, Investigations, and Fraud Practice Group, based in Washington, DC.

12

Ivie Guobadia Serieux 12L has been named a 2019 Super Lawyers Rising Star and 2019 New York City Bar Associate Leadership Institute Fellow.

Adam Sinton 12L, a partner at Weinberg Wheeler Hudgins Gunn and Dial, has been named a 2019 Georgia Rising Star by *Super Lawyers* in the category of Civil Litigation: Defense.

Anthony Stewart 12L, of Hall Booth Smith, has been designated a Fellow of Information Privacy by the International Association of Privacy Professionals. He is the first and only private-practice attorney in Atlanta to earn the designation and one of 752 individuals worldwide. He focuses on data privacy and security, intellectual property and general liability.

13

Brent Bartlett 10C 13L graduated with distinction from Georgetown Law with an LLM in taxation and began a two-year clerkship with Judge Cary D. Pugh at the United States Tax Court in June.

In July, **D. Barret Broussard 13L** received the Best Lawyer award from *Georgia Voice*. Broussard, an attorney with Carlton Fields in Atlanta, was honored as part of the publication's reader-voted 2019 Best of Atlanta awards. Broussard is vice president/president-elect of the Stonewall Bar Association; his term as president starts in November 2019. He is also the Georgia representative to the National LGBT Bar Association.

15

Baylie Fry 15L was profiled about her life and career at BakerHostetler by *VoyageATL*. She is an associate and focuses on healthcare.

Elizabeth J. Marquardt 15L has joined Miller & Martin as an associate in the firm's Atlanta offices, where she focuses on litigation, insurance litigation, and construction.

17

4 Aaron Metviner 17L 17B is an associate in the financial restructuring group at the New York office of Milbank.

5 Joshua Orlan 17L has joined Hamilton, Miller & Birthisel as an associate in the firm's Miami office.

In memoriam

Scott A. Ray 50C 56L on May 4, 2019.

Jon Douglas Stewart Sr. 60C 62L on May 10, 2019.

John "Jack" Franklin Beasley 63L on April 20, 2019.

George W. Bryan 45C 50G 66L on March 25, 2019.

Robert L. Dodd 66L on March 14, 2019.

Charles Stephen Coy 71L on April 24, 2019.

Ronald Taylor Murphy 73L on April 10, 2019.

Samuel W. Chawkin 74L on May 1, 2019.

David H. Lanner 76L on March 9, 2019.

James "Jimmy" M. Wootan 79L on April 21, 2019.

Brooke Underwood Walker 97L on June 18, 2019.

Philip Joseph Kachmar 19L on June 25, 2019.

EVIDENCE

(continued from page 20)

it is or whether it still exists, but we might find it—lost for 20 years—in a box in a closet or mislabeled on the shelves in a storage room.”

Johnny Lee Gates, an African-American man with intellectual disabilities, was named by a paid police informant as the perpetrator in a gruesome murder in 1976. The state's evidence included a coerced confession, questionable eyewitness identification, and fingerprint evidence gathered after Gates was taken to the crime scene by investigators.

The jury never heard additional evidence, including another confession and the results of blood and semen analyses which would have cleared Gates. Nor were they aware the prosecutors had ensured the case would be heard by an all-white jury.

In 2015, GIP interns located ties which were used to bind the victim. DNA testing excluded Gates, and the Muscogee County Superior Court ordered a new trial. “He's been incarcerated for 41 years—the first 20 of those years on death row—and it is so obvious he didn't do the crime,” says Seaman.

Seaman points out another, “outrageous example of injustice”: Sonny Bharadia's 2003 conviction for a 2001 burglary and aggravated sexual battery. Bharadia was 250 miles away at the time of the assault and had reported that an acquaintance, Sterling Flint, had stolen his car. When investigators located Flint, he claimed the victim's property found in his home, as well as a pair of blue-and-white batting gloves the victim had reported her attacker wearing, actually belonged to Bharadia.

Bharadia was sentenced to life without parole on the weight of Flint's testimony against him and the victim's eyewitness identification (though the victim was blindfolded for the duration of the assault). No DNA testing of the gloves in question was done at the time of the original trial or appeal.

A few years later, GIP took on the case and obtained approval for DNA testing—which revealed that the skin cells on the inside of the gloves used in the assault belonged to Flint, not Bharadia. “Under Georgia precedent, a defendant is not entitled to a new trial based on new evidence if the court finds that he

could have discovered the evidence at the time of the original trial,” says Seaman.

“What is most troubling about the Georgia Supreme Court's decision to deny our motion for a retrial is that the issue of innocence becomes irrelevant if there has been, in the court's view, a failure of due diligence.”

The fight continues

Most scholars estimate that between two and five percent of people incarcerated in the US are factually innocent of the crimes for which they have been convicted. According to the GIP, this means that somewhere in the neighborhood of 88,812 innocent men and women are currently incarcerated in the U.S., 2,100 of whom serve sentences in Georgia prisons.

“It seems that if you scratch the surface of any case we're presented, all the same kinds of problems come pouring out, and it makes you wonder how random these issues really are,” says Seaman. “If they're happening in so many of the cases we're looking at, what about all of the cases we're not looking at? This is a learning process, and we still have a lot of work to do.”

worth noting

Lori G. Cohen 90L
receives the Eléonore
Raoul Trailblazer Award.



EMORY
—
LAW

LOOK INSIDE

The student experience

From Welcome Week and unique learning experiences to Alumni Weekend and career highlights

New federal judges

Alumni confirmed to US District Court seats



The US Senate confirmed two Emory University School of Law graduates to federal judgeships.

Ada Brown 99L will become the first black woman to serve on the US District Court for the Northern District of Texas, after the US Senate voted 80–13 to confirm her nomination.

Brown has been a justice on the Fifth Court of Appeals in Dallas since 2013 and is one of the few African American appellate justices in Texas. Before taking that bench, she practiced at McKool Smith in Dallas, where she focused on commercial litigation and patent infringement cases.

Previously, she presided over Dallas County's Criminal Court No. 1 and served as a prosecutor in the Dallas County District Attorney's Office. She also was a commissioner for the Texas Commission on Law Enforcement Officer Standards and Education and as a commissioner for the Texas Department of Public Safety.

Upon Brown's nomination in June, Senator Ted Cruz, R-Texas, stated, "Senator Cornyn and I recommended Justice Brown's nomination to President Trump because of her dedicated years of public service as a prosecutor, a trial advocate, a trial court judge, and an appellate court justice that will serve the Northern District of Texas well. The full Senate should quickly take up and confirm her nomination so that Justice Brown may continue her public service in a new role as District Judge for the Northern District of Texas."



Former federal prosecutor **Steven Grimberg 98L** was also confirmed to the US District Court, this time for the Northern District of Georgia, with a 75–18 vote. The federal court's jurisdiction includes four divisions: Atlanta, Gainesville, Newnan, and Rome, serving residents in 46 counties.

Grimberg previously led a team of prosecutors in Atlanta's US Attorney's office for cybercrime. He is now a managing director and general counsel of global investigations firm Nardello & Co. and an adjunct professor at Emory Law. He will leave his post at Nardello & Co.

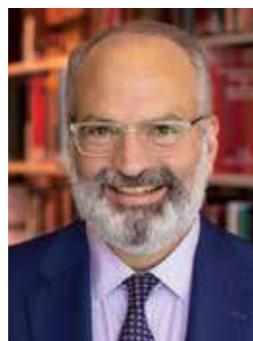
Senator David Perdue, R-Ga., said in a statement, "As a first-generation American and proud graduate of

Emory University, Steven Grimberg has distinguished himself by spearheading the development of a cybercrime unit in Georgia to prosecute criminal organizations around the world. ... I'm confident Steven Grimberg will continue to serve Georgia with integrity in this new role, just as he has throughout his impressive legal career."

Ginsberg named director

Mike Ginsberg has been named director of Emory Law's Kessler-Eidson Program for Trial Techniques after serving as the program's interim director for three years.

The Kessler-Eidson Program for Trial Techniques, founded in 1982, is an impor-



tant part of the Emory Law curriculum. As a mandatory course for our students, it includes a series of spring workshops and a one-week intensive program in May, which culminates in a simulated jury trial. As

one of the largest trial advocacy programs in the country, it has been awarded the Emil Gumpert Award for excellence in the teaching of trial advocacy by the American College of Trial Lawyers. The director manages all aspects of the trial techniques program.

The search committee, led by Professor **Lesley Carroll**, conducted a national search. After initial screening interviews, the committee brought three finalists to campus. Each candidate interviewed with faculty, conducted a teaching demonstration, and met with 3L students.

Ginsberg emerged as the natural choice. He is a partner in the Pittsburgh office of Jones Day and a cum laude graduate of Harvard Law School. During his time as interim director, he made many important programmatic changes, including requiring out-of-town faculty to commit to teaching for a week, supplying faculty with comprehensive teaching guides to provide a more consistent experience for the students, and recruiting a more diverse faculty, including many current and retired minority federal judges.



Alumni (and potential future alumni) participate in Family Fun Day.

OUR ALUMNI

ELAW 2019

Alumni reconnect, celebrate, give back, reflect

Every year, in the bright, clear days of spring, the Emory Law community comes home to Gambrell Hall. This year, the Emory Law Alumni Weekend (ELAW) was as special as ever, with a full slate of events, a family focus, and a special nod to the faculty members who have built among their students and alumni relationships and trust that strengthen this institution today.

My Favorite 15, a new ELAW feature, was an opportunity for alumni to relive their student days. For 15 minutes, students got to listen to their favorite professors give their best lectures. Professors **Laurie Blank**, **Fred Smith Jr.**, and **John Witte Jr.** demonstrated the continuum of faculty excellence.

Four attorneys were recognized during Emory Law Alumni Weekend for public

service and trailblazing as well as for exceptional and distinguished careers. The annual Alumni Awards were presented to:

- **Lori G. Cohen 90L**, Eléonore Raoul Trailblazer Award
- **Lewis "Mike" S. Eidson 71L**, Distinguished Alumni Award
- **John Maggio 96L**, Alumni Service Award
- **Donna Yip 04L**, Young Alumni Award

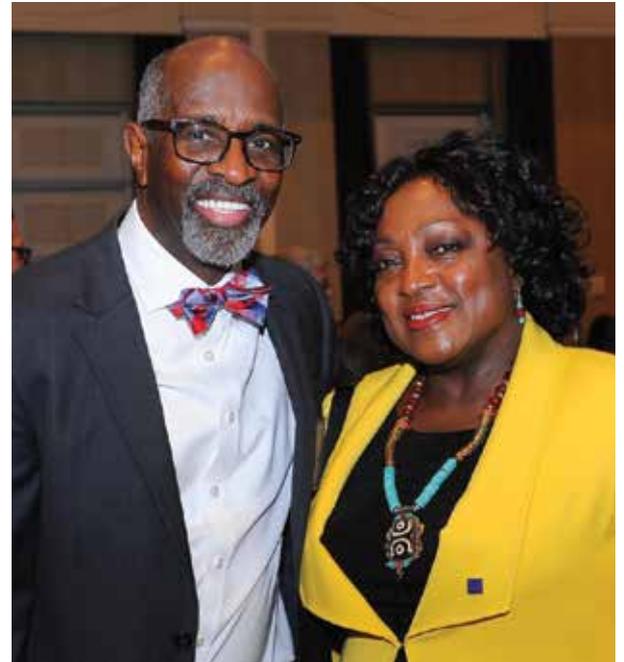
Alumni showed up in full force for the annual reunion parties, too, this year celebrating the following classes: 1954, 1959, 1964, 1969, 1974, 1979, 1984, 1989, 1994, 1999, 2004, 2009, 2014, and 2018. A Corpus Cordis Aureum Medallion Ceremony—honoring 50-year graduates—was held for the classes of 1964

and 1969, as well as classes preceding 1964.

The highlight of the weekend, though, may have been the Family Fun Day, during which alumni—whether or not they'd registered for other events—could bring their families to campus to share in free outdoor family fun with music, games, food, drinks, a bounce house, and a community service project through which families drew pictures and wrote letters to hospitalized veterans.

The next chance to join in all of the revelry is April 17–19, 2020, for the next ELAW, and the folks in the Office of Advancement and Alumni Engagement hope you'll save the date for next year.

For more information, visit law.emory.edu/alumni/events/elaw.html



EMORY LAW ALUMNI WEEKEND
connect
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April 17–19, 2020

OUR STUDENTS

Beyond the numbers

Emory Lawyers come from diverse backgrounds and experiences. They are leaders, entertainers, athletes, and discoverers. They are the future. We salute the members of our incoming class — all **356** of them. And, while the numbers are interesting — maybe even impressive — they don't tell the whole story. Take a look at what the stats tell us, then check out some more personal information about who the incoming Emory Lawyers are.

What the numbers say (as of 8/16/2019)



959

total enrollment

356

total incoming

AJD: 32 / 18 new

JD: 785 / 268 new*

JM on campus: 48 / 18 new

JM online: 29 / 7 new

LLM: 49 / 43 new

SJD: 15 / 1 new

Non-Degree: 1 / 1

* which includes transfers and transients, currently a 245 incoming JD class

38

countries of citizenship
(including US)

21

countries of
citizenship among
incoming students
(including US)



44

states
(including DC)

35

states among
incoming students
(including DC)

What the numbers don't show

Thuy My Do 22L

Speaks five languages:
Vietnamese, German,
English, Chinese, French

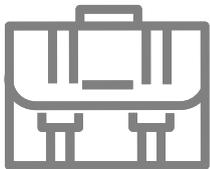


Jackson Eskay 22L

Former professional
soccer player

Tanya Shahjanian 22L

Discovered and named
a new beetle species:
Cratocerus Tanyae



Matthew Jacob 22L

Vice mayor of his
hometown

Arvind Jayakumar 22L

President of a competitive
dance team



One of our new students holds an MD and PhD, has authored 2 books, co-authored 4 books, had 70 scientific exhibitions, and 53 scientific publications.



One of our students was president/CEO of a children's hospital for 12 years.



One of our students is a budding restaurateur.



One of our students has run his own investment and real-estate company for the past 22 years and is now running for city council.

CURRICULUM

In pursuit of equitable outcomes

Hands-on courses and externships prepare students for criminal law careers

by Patti Ghezzi • Photograph by Hannah Yoon

Nicole Elmurr 19L, Sergio Glajar 19L, and Daniel Bergmann 19L stand outside the Philadelphia, Pennsylvania, District Attorney's Office their first week on the job.



Daniel Bergmann 19L arrived at Emory Law with interests in both international human rights and the movement to end mass incarceration in the United States. The courses he took as a 2L, such as Transnational Criminal Litigation, deepened his interest in criminal law.

Then he took Mental Health Issues in the Criminal Justice System, taught by public defender and adjunct instructor **Annie C. Deets**, which emphasized how the competency hearing process can delay a trial, keeping defendants in state custody indefinitely. The course also highlighted the vital role of prosecutors in moving toward a more holistic view of justice that goes beyond punishment and deterrence.

Deets got Bergmann thinking about how a prosecutor's compassionate intervention at the initial stages of criminal proceedings can lead to more just outcomes for both defendants and the state.

"There is a space for prosecutors to do more work in pursuit of equitable outcomes," Bergmann says. "It's more than focusing on convictions and securing harsh penalties."

Emory Law has always offered core criminal law and procedure courses taught by tenured faculty. These doctrinal, lecture-style courses include Criminal Law, Evidence, Constitutional Criminal Procedure: Investigations, Criminal Procedure: Adjudication, and White Collar Crime. They equip students with a solid foundation and help them determine if they want to dig deeper into criminal law. Students interested in issues of juvenile justice can also take courses taught by **Randee Waldman**, director of the Juvenile Defender Clinic at the Barton Child Law and Policy Center, where they can also gain hands-on experience working with juveniles.

In recent years, Emory has increased skills-based criminal courses taught by adjunct instructors "to help our students develop the skill-set they need to go out into the world," says Associate Dean **Kay Levine**. She has assembled a diverse group of adjunct instructors, with a goal of offering five or six courses taught by her "criminal skills posse" every semester.

"The diversity of offerings is so rich, it's fantastic," she says.

Skills-based criminal law courses include Human Trafficking, Domestic Violence, DUI Trials, Expert Witness Examination, Access to Justice, Cross-Examination, and Advanced Criminal Trial Advocacy, which takes students through a murder trial. Many of the criminal law classes taught by adjunct instructors are small, with just 14 students. "We want them up on their feet," Levine says, adding that Emory also offers a practicum in litigating competency hearings.

Interest in specialized criminal courses has grown with the explosion of true-crime blogs, documentaries, and podcasts. Students come to class eager to talk about the injustice, discrimination, and abuse of power they have learned about through their favorite podcasts. "Something has caught fire with our students," Levine says. "They are much more open to the idea that there are breakdowns in the system and that people are fallible."

Registrar **Katherine Hinson** said the small classes taught by adjunct instructors promote hands-on learning that can be applied in the workplace. "I love what Associate Dean Levine has done to keep our criminal course offerings exciting, new, and fresh," she says, adding that the downside of small classes is that it can be hard for students to get a seat.

Levine recommends students take skills-based courses as 2Ls, so they can focus on externships as 3Ls, "and can get involved with actual cases."

Students can build a toolkit that includes skills-based courses, doctrinal courses, the Trial Techniques Program, and externships, ensuring they graduate with the

Courses Related to Criminal Law

- Access to Justice (Adjunct)
- Adv. Criminal Trial Advocacy (Adjunct)
- Adv. Evidence (Adjunct)
- Adv. Issues in White Collar Defense (Adjunct)
- Capital Defender Practicum (Adjunct)
- Constitutional Criminal Procedure (Full-time)
- Criminal Competency/Responsibility (Adjunct)
- Criminal Law (Full-time)
- Criminal Law Defense (Adjunct)
- Criminal Pretrial Motions Practicum (Adjunct)
- Criminal Procedure: Adjudication (Full-time)
- Cross-Examination Techniques (Adjunct)
- Domestic Violence: U.S. Legal Response (Adjunct)
- DUI Trials (Adjunct)
- Evidence (Full-time)
- Expert Witness Examination (Adjunct)
- Federal Prosecution Practice (Adjunct)
- Human Trafficking (Adjunct)
- International Criminal Law (Full-time)
- Juvenile Defender Clinic (Full-time)
- Mental Health Issues in Criminal Justice (Adjunct)
- National Security Law (Full-time)
- National Security Law Workshop (Full-time)
- Sentencing Practice (Adjunct)
- Sentencing: Past, Present, & Future (Adjunct)
- Transnational Criminal Litigation (Adjunct)
- Trial Practice Advocacy (Adjunct)
- Trial Techniques (Adjunct)
- White-Collar Crime (Full-time)
- White-Collar Crime Workshop (Adjunct)

experience and perspective needed to land the job that will get them on the path to a rewarding career in criminal justice.

As a Bederman Fellow, Bergmann studied at The Hague Academy of International Law, where he was briefed on the International Criminal Court. He was struck by how students from countries other than the United States regarded a 20-year sentence as sufficiently harsh for a person convicted of war crimes, whereas Americans tended to perceive such a sentence as too light.

He externed with the Law Office of the Public Defender in DeKalb County and served as a judicial extern for the United States District Court for the Northern District of Georgia. He interned at Human Rights First in Washington DC.

As graduation approached, he got an on-campus interview with the Philadelphia District Attorney's Office. The city's new district attorney, Larry Krasner, was looking for progressive-minded prosecutors to be part of his organization-wide approach to addressing mass incarceration.

Bergmann did not realize he would be interviewing with Krasner until two police officers introduced themselves as Krasner's security detail.

Krasner hired Bergmann, along with two other Emory Law students, former SBA President **Nicole ElMurr 19L** and **Sergio Glajar 19L**, who was president of the Criminal Law Society. "I was attracted to the idea of working in an office where progressive prosecution is not just an individual lawyer's choice about how to do his job," Bergmann says. "Here, progressive prosecution means that all levels of the organization are working together to approach criminal prosecutions in a more just and equitable manner."

In the future, he hopes to be involved with bail reform and other progressive policies aimed at reducing the prison population.

For **Peter Wosnik 17L 17T**, criminal defense proved to be the right path, even though he spent his summer between 1L and 2L at a federal prosecutor's office in Utah. Wosnik then took a detour into law and religion, serving as assistant managing editor for peer review for the *Journal of Law and Religion* and working toward his Master of Theological Studies. All the while, he kept taking criminal



Adjunct Professor Jason Costa 99C 06L is part of the "criminal skills posse" created to help offer valuable courses to students. He teaches Cross Examination and Access to Justice.

law courses. He externed with the Gwinnett County District Attorney's Office in suburban Atlanta.

But for his first job after graduation, he got the opportunity to try criminal defense at the Walton County Public Defender's Office. In just one year, he worked on 600 cases, including felony trials. "After that, I felt like I had the foundation to represent people," he says. He started his own practice in fall of 2018, practicing criminal defense, working cases ranging from traffic violations to murder, as well as family law.

Looking back, he appreciates the core

criminal law courses he took, as well as courses such as Professional Responsibility, which touched on the business skills needed for private practice. The *Journal of Law and Religion* is where he learned to draft professional correspondence and keep track of records.

Wosnik values the experience he got in the public sector, but private practice offers the long-term career he envisions.

"I wanted the autonomy and the ability to take cases where justice was a question and I felt I could make a difference," he said. "I was drawn to the idea that the sky is the limit."

Learning. Earning. Sharing.

Financial gifts help fund student success



George Ong 97L has made a gift to establish an endowed scholarship that will support students who decided to transition from a long-term career in order to attend Emory Law. George was himself a second-career law student, attending Emory Law after a nearly fifteen-year career in accounting and finance in the information technology business. He currently serves as Director and Associate General Counsel for Citigroup where he has combined his business experience and legal knowledge to support Citi's markets and investor services businesses, and operations and technology functions. George is a bibliophile and travels extensively to tour libraries and expand his knowledge of rare books, particularly his collection of antiquarian bibliographies.

For information on how you can give, contact Associate Dean of Advancement and Alumni Engagement Courtney Stombock at Courtney.Stombock@emory.edu or 470.426.5833.



Lee P. Miller 82L and Dr. Leslie Freedman made a commitment to establish an endowed scholarship at Emory Law and further support the Lee Miller Endowed Scholarship at Emory College. Miller is regional director of Glenmede's New York Metro Region. She leads the private wealth business for New York and Northern New Jersey and is advisor to multigeneration families. She currently serves as a member of the Emory University Board of Trustees and member emeritus of the Emory Law Advisory Board. Dr. Freedman, a City University of New York graduate, is a clinical psychologist and family mediator who works with adults, couples, and families in Stamford, Connecticut, and New York City.



Judge **Ruth Rocker McMullin 00L** and Vaughn McMullin have made a commitment to support a newly established Black Law Students Association (BLSA) Alumni scholarship. The endowed scholarship will support 1L students who demonstrate leadership and devotion to the law school, and will continue the organization's legacy of support and excellence. Fellow BLSA Alumni are encouraged to make additional contributions to support this initiative. Judge McMullin has been active with the law school since graduating in 2000. She knows, first hand, the stress of heavy student loan debt coupled with a new law career. One of her passions has been the recruitment and retention of minority students. As part of an ongoing effort to encourage more minority students to attend Emory Law, she hopes to help the school recognize the financial needs and concerns of our prospective students and look to provide more assistance.

GRADUATION

Be a part of justice being done

by A. Kenyatta Greer • Photography by Greta Reynolds

On Mother's Day, in a new venue and among a packed house of family and friends, 454 students crossed the stage in recognition of their graduation from Emory University School of Law.

This year, the ceremony was moved from the Gambrell Hall lawn to the Woodruff Physical Education Center on the Emory University campus. The 174th Commencement Exercises were held the Monday after and included the official conferring of degrees to all schools within the university.

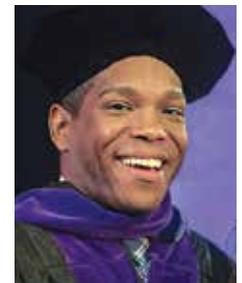
During Sunday evening's Diploma Ceremony, several special honors were awarded, including the new Provost's Distinguished Teaching Award for Excellence in Graduate and Professional Education, which went to Professor of Practice **Kamina Pinder**. Pinder joined the Emory faculty in 2016. She teaches Introduction to Legal Analysis, Introduction to Legal Advocacy, Contracts, Introduction to the Law, Legal Profession, and Law and Legal Professionals. She has taught in several law and business schools in the areas of legal writing, contracts, professional ethics, ethical issues in healthcare, remedies, case settlement negotiation, bar prep, and externship. Pinder is also a bar review lecturer in the subject of professional responsibility.

Nicole ElMurr 19L, 2018–2019 Student Bar Association president, accepted the Most Outstanding Third-Year Student Award. In introducing her, **Sarah Lee 19L**, winner of the Minister Gloria Jean Fowler Angel Award, said Nicole has created “one of the greatest legacies a student can leave behind.” That legacy includes instigating the creation of the law school's first group for students of Middle Eastern descent.

The triennial Ben F. Johnson Award was given to Professor **Martha Grace Duncan**. Interim Dean **James B. Hughes Jr.** said to her, “Professor Duncan, through your advanced training in psychoanalysis and your deep insights into human nature, you illuminate the deepest recesses of the human mind.”

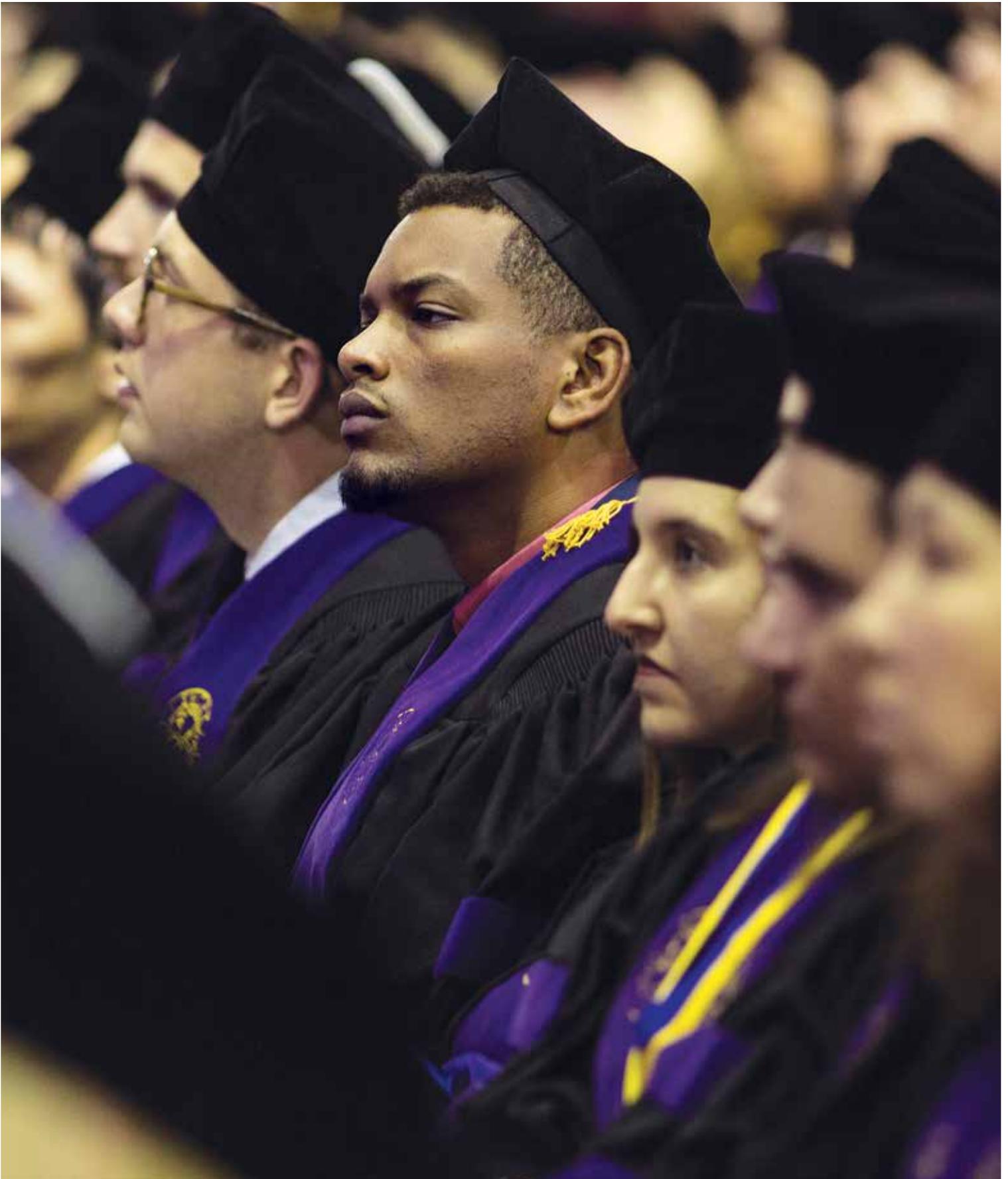
The coveted Most Outstanding Professor Award was given to Professor **Fred Smith**, a scholar of the federal judiciary and constitutional law. Since joining Emory Law fulltime in 2017, he has become a beloved teacher inside and outside of the classroom. In his address, he cautioned the students about the limits of the law: “Law comes with the fragility, the vulnerability of humanity. ... The law only works when people believe in it, have faith in it, and deem the law to be legitimate. ... You get to choose what values and people you choose to be trustees for. I hope you'll be a part of justice being done. It really is a thrill when that happens.”

Congratulations to the class of 2019 as they choose those values and enact them in their future careers.



Top photo: Sarah Lee 19L and Nicole ElMurr 19L.

Lower photos, left to right: Professors Kamina Pinder, Martha Grace Duncan, Fred Smith.







This is my legacy.

Isabel M. Garcia 99L

She is an Atlanta commercial real estate attorney whose many roles included serving as Emory Alumni Board president. Emory recognized her with the 2017 J. Pollard Turman Alumni Service Award.

Her gift will benefit scholarships for law students and the Emory Law Volunteer Clinic for Veterans.

“MY HUSBAND AND I HAVE THE ABILITY TO HAVE A GOOD LIFE, and from that, we want there to be good for others. Because he is active duty military, we designated a portion of our life insurance to a beneficiary outside our family. It was important for us to do that now in our 40s, and there was no question that we would choose Emory Law to receive this gift. I know it will do good there. I want Emory to know that I support it and that I am proud of my degree.”



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The Center for International and Comparative Law presents the David J. Bederman Lecture: "International Law and Prospects for Justice"

Speaker: Justice Rosalie Abella, Supreme Court of Canada



Hon. Rosalie Silberman Abella was appointed to the Supreme Court of Canada in 2004. She is the first Jewish woman and first refugee appointed to the Court, having come to Canada with her family in 1950. She was first appointed to the bench at age 29, the youngest person appointed to the judiciary in Canada. She has written over 90 articles and written or co-edited four books.

The annual David J. Bederman Lecture honors the memory of Professor David Bederman and celebrates his extraordinary accomplishments in scholarship, teaching and advocacy. Emory Law's Center for International and Comparative Law creates a dynamic space for scholars and students to explore the interactions among international and domestic legal systems of the world and to engage both theory and practice for effective study and promotion of the rule of law.

Email EIBRIDG@emory.edu for more information.

October 28, 2019
Emory University School of Law
Tull Auditorium, Gambrell Hall